



Agenda

CITY CLERK'S OFFICE

DATE 3/14/17 TIME 3:50 PM

SERVED BY Geraldine Quinto

RECEIVED BY Paul Byrne

BOARD OF ADJUSTMENT
Tuesday, April 4, 2017 at 6:00 P.M.
City Council Chambers
City Hall 1st Floor – 200 Lincoln Avenue

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. APPROVAL OF MINUTES: Minutes of March 7, 2017**
- E. FINDINGS/CONCLUSIONS:**

Case #2016-111. Omega Storage Special Use Permit.

- F. OLD BUSINESS**
- G. NEW BUSINESS**

1. **Case # 2016-149.** Appeal of Ellen Casey/Suella Domres from the November 23, 2016, Decision of the Land Use Director to Issue Building Permit No 16-2492 to Andres Mercado/Christin Chen at 494 Camino Don Miguel (Zachary Shandler, Assistant City Attorney, Case Manager).

- H. STAFF COMMUNICATIONS**
- I. MATTERS FROM THE COMMISSION**
- J. ADJOURNMENT**

NOTES:

New Mexico law requires the following administrative procedures be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearing before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to cross-examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

**SUMMARY INDEX
OF THE BOARD OF ADJUSTMENT MEETING
Tuesday, April 4, 2017**

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CALL TO ORDER AND ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved	1
APPROVAL OF MINUTES – March 7, 2017	Approved	2
FINDINGS/CONCLUSIONS: <u>CASE #2016-149. OMEGA STORAGE SPECIAL USE PERMIT</u>	Approved	2
OLD BUSINESS	None	2
<u>NEW BUSINESS</u>		
<u>CASE #2016-149. APPEAL OF ELLEN CASEY/SUELLA DOMRES FROM THE NOVEMBER 23, 2016 DECISION OF THE LAND USE DIRECTOR TO ISSUE BUILDING PERMIT NO. 16-2492 TO ANDRES MERCADO/CHRISTIN CHEN AT 494 CAMINO DON MIGUEL</u>	Approve	2-27
STAFF COMMUNICATIONS	None	27
MATTERS FROM THE COMMISSION	None	27
ADJOURNMENT		27

**MINUTES OF THE MEETING OF THE
BOARD OF ADJUSTMENT
CITY COUNCIL CHAMBERS
SANTA FE, NEW MEXICO
Tuesday, April 4, 2017**

A. CALL TO ORDER AND ROLL CALL

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Gary Friedman, Chair, at approximately 6:00 p.m., on Tuesday, April 4, 2017, in the Council Chambers, City Hall, Santa Fe, New Mexico.

MEMBERS PRESENT:

Rachel L. Winston, Vice-Chair
Coleen Dearing
Patricia Hawkins
Donna Reynolds

MEMBERS EXCUSED:

Gary Friedman, Chair
Douglas Maahs
Daniel H. Werwath

OTHERS PRESENT:

Zachary Shandler, Assistant City Attorney
Greg Smith, Director, Current Planning Division
Melessia Helberg, Stenographer

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

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA

MOTION: Coleen Dearing moved, seconded by Donna Reynolds, to approve the Agenda, as published.

VOTE: The motion was approved unanimously on a voice vote.

D. APPROVAL OF MINUTES – March 7, 2017

MOTION: Coleen Dearing moved, seconded by Donna Reynolds, to approve the minutes of the meeting of March 7, 2017, as presented.

VOTE: The motion was approved unanimously on a voice vote.

E. FINDINGS/CONCLUSIONS:

CASE #2016-149. OMEGA STORAGE SPECIAL USE PERMIT.

A copy of the Findings of Fact and Conclusions of Law in Case #2016-149, Omega Storage Special Use Permit, is incorporated herewith to these minutes as Exhibit "1."

Responding to Vice-Chair Winston, Mr. Shandler said he has no changes.

MOTION: Coleen Dearing moved, seconded by Donna Reynolds, to approve the Findings of Fact and Conclusions of Law in Case #2016-149, Omega Storage Special Use Permit, as presented.

VOTE: The motion was approved unanimously on a voice vote.

F. OLD BUSINESS

There was no Old Business.

G. NEW BUSINESS

1. **CASE #2016-149. APPEAL OF ELLEN CASEY/SUELLA DOMRES FROM THE NOVEMBER 23, 2016 DECISION OF THE LAND USE DIRECTOR TO ISSUE BUILDING PERMIT NO. 16-2492 TO ANDRES MERCADO/CHRISTIN CHEN AT 494 CAMINO DON MIGUEL. (ZACHARY SHANDLER, ASSISTANT CITY ATTORNEY, CASE MANAGER)**

A Memorandum prepared March 28, 2017, for the April 4, 2017 meeting, with attachments, to the Board of Adjustment, from , Land Use Planner Senior, is incorporated herewith to these minutes as Exhibit +“2.”

A copy of a packet of information, entered for the record by Karl Sommer, is incorporated herewith to these minutes as Exhibit “3.”

A color photograph of the subject site, entered for the record by Andres Mercado, is incorporated herewith to these minutes as Exhibit “4.”

Vice-Chair Winston explained the rules of procedure and the way the Board of Adjustment will conduct the hearing in this matter. She asked if the Appellee has a separate opportunity to present.

Mr. Shandler said, "Both sides will have a chance, yes."

Staff Report

The staff report was presented by Zachary Shandler, Assistant City Attorney, which is contained in Exhibit "2." Please see Exhibit "2" for the complete specifics of this presentation.

Mr. Shandler said, "I'll make a brief opening presentation. First, just to work out some names. What we're talking about tonight is that Andres Mercado has made the building permit, so you could call him the Applicant. And then Ellen Casey has filed the Appeal and you can call her the Appellant. In my memo, I just use their last names, because at some point in the time sequence they both applied for permits, so it became a little confusing for me, so I used the last names. But we have the Appellant and the Applicant here this evening."

Mr. Shandler continued, "The property is at 494 Camino Don Miguel, the Mercados property, and Casey lives next door at 486 Camino Don Miguel, although some of the material referred to it as 486½, and the parties will have an opportunity to correct any omissions, or incorrect information in the record. Both properties are in the Downtown Eastside Historic District, and that's why we have David Rasch here from the City Historic Division in case you have any questions on that."

Mr. Shandler continued, "Let me just briefly talk about the history of the property as I know it, and the parties will have a chance to correct it. In September 2015, Casey obtained a building permit to improve the existing cement wall that exists between the two properties. Mercado then, in Spring 2016, began the process of constructing an addition onto the northern side of his residence. The proposed addition would make his residence much closer to the property line. He also proposed to build several walls and gates, rather than, to tonight's appeal, putting a 4 to 6 foot high coyote fence next to the existing cement wall that separated the properties."

Mr. Shandler continued, "His next path was to go to the City Historic Board to get their authorization, because the property is in the Downtown Eastside Historic District. On August 9, 2016, the Board did hold a hearing and voted to authorize his design. Casey was not present at that hearing. On September 1, 2016, Casey filed a lawsuit in State District Court, and filed a Judicial Declaration of Protected Solar Rights on the southern side of the Casey Property. Casey wrote that the Declaration of Solar Rights is currently in litigation and they're seeking a Declaration that the Applicant may not build any addition or fencing that interferes with their right to have sunlight fall on their solar collector and on their southern side of the property. Case... State laws, and the City does not enforce Declaration of Solar Rights and the Declaration litigation will not necessarily be a basis for repeal, but it is present. The Court did not issue a stay or freeze on the City's actions on these properties."

Mr. Shandler continued, "Next, Applicant Mercado went to the Building Permit Division. And on October 3, 2016 he applied for a building permit, and on November 23, he did receive Building 162492. Shortly thereafter, on December 6, Casey filed its petition appealing the issuance of that building permit. That's the Building Permit that is the source of tonight's appeal. As a result of the appeal, and under City Code, Mercado's Building Permit is frozen and he cannot work on the project."

Mr. Shandler continued, "Next Casey wanted to add a trombe wall, what I'll characterize is to add to the existing solar collection system on the first floor of the property on the southern side. Since this in the Historic District, in January 2017, Casey had to go to the Historic Board and sought design approval for this trombe wall. The request was initially postponed for redesign, but on February 14, 2017, the Board voted to approve the request. Casey then, next step, was going to the Building Permit Division, and on February 21, 2017, she applied for a building permit. It is my understanding that the permit is still under review, but for our purposes, it has been assigned Building Permit 170396. That Building Permit is not part of tonight's appeal."

Mr. Shandler continued, "Going forward, the City has tried to schedule this Appeal for several months, and this was our thinking. We researched the District Court Docket and discovered that the parties were set for Court mediation on the Solar Rights Case back on February 1, 2017, and they were actually were going to trial in the Spring of this year. Therefore, on January 13, 2017, I sent a letter to the attorneys and the parties, explaining that I felt it would better for the Court Mediator to try to resolve the matter, prior to you tackling the appeal, you being the Board of Adjustment. And for that reason we didn't schedule the appeal for February or March. And I've been in contact with the lawyers, but unable to facilitate a resolution."

Mr. Shandler continued, "I recently researched the District Court Docket, and discovered the court mediation had been postponed. In fact, according to my review, the entire case process has been moved back approximately six months. According to the Docket, the parties will not have their trial until October 2017, at the earliest."

Mr. Shandler continued, "Therefore, I decided I should bring this to your attention at the April Board of Adjustment meeting in case you wanted to take up the matter. That will be one of the threshold questions, whether you feel you want to take up the matter, or you would like to postpone it while the District Court decides it, and I provided 3 different motions in your packet. If you do want to take it, there are 3 main issues that I have identified in the Appeal. The allegation is the Mercados failed to post the Historic Board poster, with notice of that August Historic Board meeting. Mercado regraded the northern part of his property with dirt without a City building permit, and 3, Mercado did not disclose to City staff that he regraded the northern part with dirt without a City Building permit."

Mr. Shandler said, "In my evaluation of claims, in terms of Issue 1, I should say, first there are two flaws with Issue #1 about the poster. First, it would be my advice to you that under City Code 14-2.4(C), you have jurisdiction over certain matters. I do not advise you that you have jurisdiction over disputes over the notice that is supposed to be provided for Historic Board meetings. And, second I was too frugal when

I entered Mercado's address, and I found a picture of the property with a poster at the time frame, July, in advance of that August meeting, and I believe I attached that. So my evaluation is the Casey's first claim is actually rebutted by the evidence in the record.

Mr. Shandler continued, "In terms of Issue #2 about the regrade of the northern part of the property without a City Building permit. The reason that is relevant here, as written in Casey's appeal is that Casey says, 'Applicant eradicated the existing natural slope between his house and the common wall, by adding fill to his property without first obtaining the required construction permit for grading. Applicant's plans provide for the installation of a 4-6 foot high coyote fence located right at the site of the common property which would create an 11 to 13 foot barrier, where an existing 7 ft. 11 in. cement wall is combined with the coyote fence.' So just to pause, in the exhibits, I tried to provide showing the difference in the grades in the drawings and that Ms. Casey's property is lower, and with the wall, plus the coyote fence, since the allegation that it would just be too high with this added dirt."

Mr. Shandler continued, "Based on my research, and the parties are free to dispute that tonight, I found that Casey had applied for a building permit for that improved wall back in September 2015, the building permit called it a retaining wall. The drawings that are in the documents here, do say there would be a height from grade to top 7 feet on her side, and from grade to top just 2 feet on Mercado's side. I also reviewed the permit and saw the comment that said, 'All disturbed area should be revegetated. Neighbor will permit and regrade the other side of the wall.' In this context, the neighbor was Mercado. So staff's interpretation is that, as part of the 2015 revised retaining wall, Mercado was given the right to regrade to this side of his property and make sure this retaining wall remained stable. And then the engineering drawings, that you are free to examine and parties can definitely question today, seemed to allow him to regrade his side of the property to have 2 feet of wall showing on his side of the property. Therefore, actually the argument is that he received permission to regrade through her 2015 permit."

Mr. Shandler continued, "Issue #3 kind of falls in line with Issue #2. Again, mainly in regards to his communication with Historic Board staff. And this Board may not have jurisdiction over Historic Board matters, but the argument I guess that flows from #2, is that if he, Mercado, did receive City permission to regrade through her 2015 permit, then he didn't misrepresent anything to the Historic Staff."

Mr. Shandler continued, "So, that's the introduction of the 3 different issues, my analysis. On the last page, it's a public document, I provided 3 different options. So it's kind of a threshold question if you even want to take the appeal and listen tonight. If you do not, you have Option #3 listed there. If you feel like the issues may be separate, or issues of equity, because if the Appeal continues his Building Permit is frozen right now, he can't build. And if you decide to wait until the judicial decision is made in October, that could be 10 months from the issuance date of his permit to when it gets unfrozen. And you may feel like, in the bounds of equity, that is too long of a period. I think you have a sufficient amount of discretion to decide which way you want to go."

Mr. Shandler concluded, "So that's my presentation. I stand for any initial questions."

Questions from the Board Prior to Public Hearing

Vice-Chair Winston said Mr. Shandler had mentioned GoogleMap in Exhibit "F," but she doesn't actually see the sign on, so she was confused by that.

Mr. Shandler said, "I have some color photos. But in Exhibit F is a photocopy, and the colored photos that proffer evidence, I would say, that is that tree that looks like a split-V in the middle, right in front of that is the poster."

Ms. Hawkins said she understand the permit would be frozen if this Board rules that you should wait for the Appeal to go before the Court. However, if this Board rules in Mr. Mercado's favor, and he starts doing all this work and the Court case goes against it, she asked what happens.

Mr. Shandler said, "That is a valid point. So what would happen is they're seeking a Court's Declaration of Solar Rights, and they probably can clarify this for the record if they want, that would entitle them to kind of uninterfered access, based on particular geometric angles and the Court may say, Mercado you have to tear things down because don't have the legal right to interfere with this geometric angle."

Vice-Chair Winston said then in other words, Mercado would assume the risk at that point.

Mr. Shandler said, "Right. He would assume the risk. It probably would be an at-risk permit that would be assigned to that number."

Vice-Chair Winston asked if it is possible and/or advisable for the Board to hear the Appeal, and subsequent to the hearing to postpone action on the testimony.

Mr. Shandler said, "You could do that, we've done that before. I think we had a fence dispute earlier this year and we did take testimony. And at the completion of the testimony, you decided in that case there was a Magistrate Court, and did the motion to postpone until the Magistrate Court made its decision, which they ultimate did, and the parties dropped their appeal. So yes, there is precedent for taking testimony, but then deciding to vote Motion #3."

Vice-Chair asked if there are motions from the Board, saying if there are no motions, she will continue with the agenda.

Ms. Dearing said she wants to make sure she understands that we should hear the testimony and then we can make a decision of whether to postpone, deny or support the Appeal.

Vice-Chair Winston that is an option to the Board, and you have the right to postpone without testimony at this stage. She said, "So, if I hear no motions from the Board then I will continue with tonight's meeting."

MOTION: Patricia Hawkins moved, with respect to Case #2016-149, the Appeal of Ellen Casey/Domres from the November 23, 2016 decision of the Land Use Director to issue Building Permit No. 16-1492 to Andres Mercado/Christian Chen, to postpone action on the appeal until the Board is meeting following the final resolution of the District Court case. **THE MOTION DIED FOR LACK OF A SECOND.**

Ms. Hawkins said her reasoning is that if we take any other action tonight, somebody is going to be disadvantaged when that case comes to Court, and said she doesn't think that is the role of this Board.

Public Hearing

Presentation by the Appellant

Karl Sommer, Attorney for Appellant, Box 2476, Santa Fe 87504, provided handouts for the record [Exhibit "3"]. He said he has handed the Board of group of exhibits which are relevant to this Appeal, and he will go through those with the Board.

Mr. Sommer said, "This case is about a permit that would never have been issued if the rules and regulations of the City had been followed, and the facts of the Applicant, Mr. Mercado, as they actually were, had been disclosed to relevant decision-makers here at the City. Had the rules been followed and the facts have been disclosed, we would not be here, because this permit would not have been issued under the applicable regulations. We intend to demonstrate tonight that what happened was there was unpermitted grading that Mr. Mercado failed to disclose. The permit is based on the unpermitted grading and as a consequence of those violations the height ordinance under the City's regulations in this District was violated, and was not determined under the applicable rules. That's what we intend to show."

Mr. Sommer continued, "Why we are here fundamentally is because this construction, as proposed, has a severe and deleterious effect on Ms. Casey's and Ms. Domres' house. If you can imagine along Don Miguel the Mercado house sits higher than the Casey/Domres house. However, what the natural grade was between those two houses was a gradual slope down from the top of the hill where the Mercado house is down to Ms. Casey's house. I'm going to call it the Casey House if you don't mind. What we have today now is not that situation. What we have is this. You have a plane and then it drops right down to right where the back yard of Ms. Casey is. That's why we're here tonight. That construction, as proposed violates the Casey's solar rights and that will be determined in the District Court as Mr. Shandler has indicated, but more importantly it violates and interferes with Casey's right to use and enjoy her back yard. Now, looking across this property line, they will be looking up at 'this' structure and 'that' structure will be peering down into this backyard. That's not the way the natural grade was and that's not the way the Ordinances would have permitted construction. So that's why we're here tonight. This case is extremely important to our client."

Mr. Sommer continued, "The first exhibit that I've shown you..... I'm going to come a little closer so I can point out, if that's all right with you Madam Chair."

Vice-Chair Winston indicated it is okay.

Mr. Sommer said, "These exhibits [collectively Exhibit "3"] have a little blue number, so when I'm referring to them, they are Exhibits 1-10, and that little blue number is in handwriting so we can follow along, and I'll refer to that as we go. The first exhibit demonstrates the point that I was saying is so important. This Exhibit with this yellow line, that yellow line is the direction from which the sun comes to the Casey property. It comes across the Mercado property and that is their back yard. The construction that is right in 'this' location where the yellow line is will interfere with the things I told you – her solar rights, as well as the esthetic in their back yards."

Mr. Sommer continued, "So we're not here on an academic... a neighbor telling another you have to get a permit for that or follow the rules. This is really important, and a mistake in this has a severe impact, and a failure to follow the rules has a severe impact. It has an incredibly unfair benefit to Mr. Mercado."

Mr. Sommer continued, "So how did we get here. What happened over the course of several years is that Mr. Mercado pursued a course of unpermitted construction and development on his property. He added to his house and did all kinds of construction – put up structures – all without permits. Did grading, dug holes, all without permits. In 2015, he came to the City and said well I've done all this unpermitted construction in the Historic District and he came and asked for permission for many of the things he had done. Taken out windows, added portals, added onto the house, all kinds of things. The Board granted him approval, retroactively."

Mr. Sommer continued, "What he did not come to the City for was all the grading he had done. It is clear, undeniable, indisputable that nobody in the City can do grading on their property of any kind without a permit. Why. Because you affect drainage, adjacent structures and many many things that require engineering – inspections, permitting fees – all of those things are required when somebody comes to the City and wants to do grading, Mr. Mercado did for years on his property without a permit. He came in asking permission to take care of all the things he had done before without a permit, but he didn't ask for a permit to approve the grading he had done. As a result of the grading he had done, he undermined and damaged the wall that is between these two properties. There used to be an approximately 5 ft. 7 in. wall, and his grading damaged this wall. Ms. Casey and Domres said we have to fix the wall. He paid for half of it. What did they do, they went and got a permit. They put up a new wall, reinforced in their back yard, 7 feet tall, and they got the permit for it."

Mr. Sommer continued, saying, "Exhibit 2 that I've got here shows you the relative grade before the destruction of the wall by Mr. Mercado. If you go to the first page with a picture, if I can approach. What you're looking at here on the right hand side is before 1990, that is the view of the wall from the Mercado property, looking at the Casey property, so you're looking at the wall. So what you're looking at in this photograph on the right hand side is a 5 ft. 7 in. wall. Do you see the road leading up to the wall, that was the natural grade on the Mercado property prior to the destruction of a 5 foot wall that was there. At the foot on the left, is the far east corner by the street of that same wall, and you can see the distance between the ground and the top of the wall is 5 ft. almost 6 ft. that is the condition, that was the existing grade when Mr. Mercado bought the property. He immediately, if you go to the next page, you'll see the photograph on the left hand side, the same view of the wall we're talking about before its construction and before any fill. So you're looking at the wall if one is standing next to it, the wall is about like 'this.' If you're

standing on the Mercado property, it's about like 'this.' It's about 5 feet tall, or a little taller."

Mr. Sommer continued, "Go to the next page. Enter Mr. Mercado and he immediately begins digging in his back yard. 'There' is a Bobcat with Mr. Mercado in it in 2012 digging in the back yard. This is not permitted, this was not permitted, there is no permit for it, but he got back there and started digging and started filling. And the next photo is similar on the next page, is the same backhoe in the back yard, taken from the Casey property looking South at the Mercado property. That shows you the relative heights of the properties. I was telling you, remember, the Mercado property is on a hill further away. These photographs show you the house in the distance and the grade that goes up to it. That was the natural grade before the excavation. The next page is similarly Mr. Mercado on November 8, 2012, again digging in his back yard. But what does that show you. Do you see the depth of the grade. Where that Bobcat is now and I'll show you is flat. Thank you very much."

Mr. Sommer continued, "This is the wall that was there, 'this' wall right 'there,' taken from the Casey property, looking up at the Mercado property. You can see that the grade slopes down to the wall, even after he started digging back there. The purpose of showing you is not to show the work was done without a permit, still hasn't been permitted. It is to show you the relative slope that we don't have to rely on somebody's testimony, we have photographs showing the relative slope, the natural grade. That grade is important in this case."

Mr. Sommer said, "The next photograph is a wall that was put up in the northeast corner by Mr. Mercado, he dug down below with his backhoe, put up this retaining wall, all without a permit. This was going on for years in the backyard next to the Casey property. And you can see the wall that has been destroyed and has now been replaced in that photograph. You see that block wall, that block wall is where that was. The next photograph is very similar, shows the same kind of grading and construction, all without a permit."

Mr. Sommer continued, "I submit to you that all of the photographs... if you go to Exhibit #2, where the truck is. Allow me to approach again. It shows you in 2016 what had occurred. You all saw the photograph. That is the back yard filled in, all without a permit. It used to slope from the edge of that house down to the wall. Now you can see it is filled in. Now 'that' wall in 'that' photograph is a 7 foot wall and it's filled to just below the top of the wall. It's within 2 feet of that wall. What we had was a slope naturally from the back of the Mercado house to the wall, and what we have now, without a permit, is a flat plane from the back of the Mercado house to the property line. That is relevant and critical for a couple of reasons in this case."

Mr. Sommer continued, "Now, Mr. Shandler told you, well he got permission to do this. He got permission to fill in his backyard by virtue of the permit that Ms. Casey got for her property. If you go to Exhibit 3 and Exhibit 4 there's two pieces of paper. One is a design of the wall, Exhibit 4, and Exhibit 3 is a portion of that Permit that is critical, critical to this case. So the wall design shows 7 feet, and what the City is saying to you is.... you see in the upper right hand corner of Exhibit 4, I've put in a square there. There is a notation that Mr. Mercado asked the engineer to put on the plan that says he was going to fill to that location."

Mr. Sommer continued, "Well this is a permit for the construction of a wall on Ms. Casey's property. It is not a permit in Mr. Mercado's name for any purpose whatsoever. And why do we know that. Because the City Inspector on Exhibit 3, and it's Exhibit B that Mr. Shandler showed you said this, and if I may just show you the language I'm referring to, which is a little hard to read. On this Exhibit 3, if you look at the very last line on Exhibit 3. These are notes by the Inspector, on this permit for Ms. Casey for this wall. And what does he say, he says, 'Neighbor will permit and regrade other side of the wall.' That never happened. What happened was Mr. Mercado took it on himself to flatten the whole back side of his property."

Mr. Sommer continued, "As I said when I started this, in the City of Santa Fe if you are going to grade, and you can ask Mr. Smith who works in that Department, if someone wants to do this kind of grading they would have to have an engineer, pay a permit fee, have plans, inspections and a final sign-off to show that it was correct. That didn't happen here. Yet the City reaches the conclusion that he had permission to all of that work without a permit. No plans, no fees, no inspections, no final, no nothing. I submit to you that conclusion is not supportable or by the City's policy or by law. You should ask Mr. Smith if someone wants to fill in their back yard, what would they have to get. Would a wall permit do it, not just a wall permit, but would a wall permit on the neighbors property do it. The answer is patently clear that would not do it. And the City Inspector says, 'Neighbor will permit.' And what he did not do was permit, and what he did instead was he filled. I submit to you that is the essence of this appeal."

Mr. Sommer continued, "Mr. Shandler said these words to you in his opening, he said, 'If Mr. Mercado had permission he did not fail to disclose to the H-Board the grading.' That, I submit to you, is a very big if, and an unsupportable if. He did not have permission, he did not get permission and he graded anyway. So by virtue of the logic in Mr. Shandler's statement, if he did not have permission then he failed to disclose it to the H-Board. We'll get to why that's important."

Mr. Sommer continued, "The next two exhibits, 6 and 7, are plans of Mr. Mercado's evolving ideas for his property. Exhibit 5 shows you what Mr. Mercado came to the H-Board with in 2015, asking for forgiveness. In the area I have highlighted in yellow, he shows there a proposed addition. He didn't ask for permission to do it, he just says proposed addition and he gives the dimensions on the plan. That's like 8 ft. x 15 ft., and you can see, 'this' is the northern boundary of the property and you can see how far away his addition is. He had not finished filling the property at that time. When he finished filling without a permit, Exhibit 6 shows you what he got a permit for. That addition, in the same location, is now within 5 feet of the Casey property line, and it's twice the size. How did that happen. Because it's sitting on about 5 feet of unpermitted fill. That's how it happened."

Mr. Sommer continued, "So this wasn't an accident. This was a strategy. We're going to build on this property as much as we possibly can. I'll get to why it's critically important. But the last two photographs in the packet, 7 and 8, show you the plane that has been created in his back yard without a permit."

Mr. Sommer continued, "If you go to Exhibit 9, this is the heart of this case. This is a section in the Code that says what the height measurement is on this property, and it says, *'In the Historic Districts, height shall be the vertical distance measured between the highest part of the structure and the existing or*

finished grade, whichever is more restrictive. So if you come to the city and propose a structure, they take it from the existing or natural grade to the top of the structure. If Mr. Mercado had come in and said to the H-Board and City Staff in the permitting, I filled this property, they would have said, how much did you fill, what was the elevation before you started filling and we're going to measure your structure from the existing grade, not the unpermitted finished grade. That's what the rule is. So why is that important. Because there's height limitation on this property of 16 feet. If you add 5 feet of fill in back of the house without permission, the building permit would not have been issued. This permit would not have been issued, if the City had known, or had it been disclosed to the City that there was 5 feet of fill up against this wall, placed there by Mr. Mercado without a permit. They would have measured the application against that and this permit would not have been issued."

Mr. Sommer continued, "So when I said this case is about a permit that would not have been issued if the rules had been followed, i.e. he have pulled a permit. And second of all, he would have disclosed what the actual facts were. The actual facts were that the existing grade, prior to an unpermitted fill was 5 feet lower. And I have handed to you the H-Board approval that confirms, in highlighting, what the height limitation is on this property. It's 16 ft. 2 in., he would not have made it. Or at least, we would have an opportunity to know whether he made it. But what the H-Board was....they said there's dirt, we go 12.5 feet from there *voila* approved. That's not the way it works."

Mr. Sommer continued, "This goes to the heart of what Land Use laws try to do, which is to try and make it so we all can live together without unreasonably interfering with one another's use and enjoyment of our properties. That's what the rules are designed to do. And when you break the rules, you end up with one party benefitting, i.e., being able to do something that no one else in the District can do, get different rules applied to you. And the impact on your neighbor is, now they're sitting there where they used to have a structure in the distance, up a slope. Now they're looking at a structure that is 7 feet above to the bottom of that structure and another almost 13 feet above that, towering over the backyard. I submit to you that is a violation of the spirit of this law, and not just the letter of this law. It is why we have these kinds of limitations in these districts – it is to prevent this kind of impact by one party on another."

Mr. Sommer continued, "So when I started, I said this is not an academic exercise for Ms. Casey and Ms. Domres. They're not here saying, now you, Mr. Mercado, you're a bad boy, you have to follow the rules and pull your permit. They're saying to him, what you've done violates our use and enjoyment of the property, and that's not permitted by the law. And you did it by failing to tell these people and the H-Board exactly what the facts were. That you filled your backyard without a permit and you covered up the existing grade with 5 feet of fill on there. At the very least, we don't know, because you didn't tell them the truth. Now I say to you, that was no accident. If there had been a permit for this fill, there would have been a design, a permit would have been issued and these two ladies would have had an opportunity to review that. Instead, they do not."

Mr. Sommer concluded, "So I submit to you this case is very straightforward and very simple. This permit would never have been issued if he had followed the rules and disclosed what actually had happened. And that's why we appealed. And we ask you to grant our appeal and revoke the permit, because it is based on a violation of the rules and ends up with a permit that violates the height requirements of the Code. And we would stand for any questions you might have."

Presentation by the Applicant/Appellee

Andres Mercado, Applicant/Appellee, 494 Camino Don Miguel, was sworn.

Vice-Chair Winston said, "Thank you Mr. Mercado, you are welcome to present."

Mr. Mercado said, "Good evening and I know that that sounded like this is a slam-dunk case, and I was operating a backhoe and brought in a lot of soil, didn't pull any permits and have done a lot of things very incorrectly, and I would like to convince you otherwise. I have prepared a few things, I'm not an attorney, so I'm not used to presenting in front of Boards such as this one."

Mr. Mercado continued, "And first I want to go to the packet that Mr. Sommer gave you, to correct a few of the things that he mentioned. Let me start with this. The photograph that I just handed out [Exhibit "4"], shows the grade on the property when I purchased it. You can see tree stumps, shrubbery, that is undisturbed soil. If you look on the far left of the photograph, in the center on the left, there is a tree stump of an old Ailanthus tree, a Tree of Heaven. So you can see that this is undisturbed soil. On the right, at the top of that shrubbery, you can also see some stumps, Siberian Elm stumps, and that's in the foreground, you can see several Siberian Elms there. So I think it's pretty clear that this is undisturbed soil when I purchased the property."

Mr. Mercado continued, "One thing I would like to clarify about what Mr. Sommer represented. If you look at his Exhibit 2, the 3rd page, the first page with photographs. The photograph on the left shows a wall, which Mr. Sommer suggested may be about 4-5 feet tall. That is about a 6 ft. high wall. If you need reference point from different points in time, if you look at the photo that I photographed, the cement wall that is along the street side is a wall that was there when I purchased the property, that has not been altered. So that is a good point of reference, and that wall is 6 feet above it's footing. So that's a steady place to measure from. The photo in Mr. Sommer's Exhibit #2.... so on the 3rd page the photograph that shows the high end of the wall, that's the northeast corner of my property. The wall there, that you can also see on the photograph that I distributed, the wall there is very high; it is about 6 feet high if you were standing on my side of the wall, it is about a 6 ft. wall. But the photograph I handed out also shows there is a hole in the northeast corner of my property and it rose as you walked the property line west, it rose."

Mr. Mercado continued, "And Mr. Sommer characterized that wall as being 5-6 feet tall without qualifying that it was about the tallest at the northeast corner, but most of the wall was much lower than that as you can see from the photographs. Actually, you can count it, you can make out the courses of blocks, and each one of those of courses is 8 inches, 8 x 16 inches. So that is about, I think I've measured it, I believe that is between 36 and 40 inches of exposed wall. Because that wall along the street side is stable, so we can use it as a reference point throughout all these photographs. That is a wall that generally, Ms. Casey was telling us on the south to be demolished to be replaced with a new retaining wall. You can see where that wall, especially where it makes a corner where the old wall that was demolished meets the wall that remained that is along the street, that wall is about 6 feet tall. There is no change in the level there, but then as you come west it comes up about one course of block, about 8 inches."

Mr. Mercado said, "Something else I wanted to clarify. In Exhibit 2, photographs with a Bobcat in the middle of the night with a light. When Mr. Sommer suggested they are here, doing all of this permitted work with the Bobcat, I can tell you, if there were photographs taken of me doing this, I would feel very embarrassed. This is not me. It is a gentleman that I contracted, and there is no grading going on here. I have photographs of what this man was doing. What he was doing is these elm stumps that we can see, those were formidable. In many places they were 3 or 4 headed and each elm was enormous, they were about 'this' size. But when they joined together, the root boles, I have photographs of the root boles. He was digging up the root boles. He was not grading, we were not adding soils. He was digging those out and had to dig very low. That's why you see the Bobcat in a depression. He actually had to get underneath those root boles because they were enormous, and I have photographs of them. I wanted to clarify that."

Mr. Mercado continued, "I wanted to clarify that Mr. Sommer said that all the work I've done is without a permit. He said that a few times, and I just want to make sure that doesn't sway your thinking, because there were permits for this and I'll present those in a minute. The Inspector's note, 'Neighbor will permit and regrade other side of the wall.' And Mr. Sommer seems to suggest that I had done all this work without receiving any permits, plans, engineering drawings, paid fees and final inspections. I will tell you, as we through here, and I think I would also agree with staff, the permit was pulled for this grading as part of the permit that is being appealed tonight. I provided drawings. The engineer drawings were actually provided by Ms. Casey. I paid fees. There hasn't been a final inspection because the construction hasn't finished, so you don't get a final inspection until you're done with construction."

Mr. Mercado said, "Mr. Sommer also said.... Mr. Sommer suggested that Mr. Smith could tell you that if someone wants to grade their property, and there's a permit for a wall that's not even on the property, it's on the neighbor's property. This wall is build on a property line. There is a shared wall. I have had communications with Ms. Casey. The wall, when I purchased the property was 4 inches to the north, so it's just outside of my property. One of the big motivations for them to want to build this wall was to actually move it and get it on the property line. The contractor did not measure correctly and the wall is tilted, so part of it is on my property, it straddles the property line. It was meant to be right on the property line so we could share the wall. It was going to be a shared wall. The contractor didn't do a very good job. A corner of it is on my property, then it goes at an angle, it doesn't go perfectly parallel to it. So this isn't some wall that is on far off land, this is a shared property wall that we intended to build, and that's how we pulled the permit. I wouldn't pay for a wall on someone else's property. This is a shared wall."

Mr. Mercado continued, "Something else Mr. Sommer pointed out in his Exhibits 5 and 6, those are the separate and different drawings that I submitted to Historic Review. And I'll try to tie this all together chronologically in a minutes, I just want to address some of these issues. Exhibit 5 which shows a slender east-west addition on the north side of my property was a future addition. We didn't know what we were going to build. When we were going before Historic for that, during this application process, was to get retroactive [approval] for some work that had been done on the property. And I'll explain my unpermitted work, because I want to be very clear. I went to get retroactive approval. Mr. Sommer calculated this as 8 x 15. If this was 8 x 15, my house would be the size of a train car. It was about 15 by 40, and that's much larger than 8 x 15. I just wanted to clarify that."

Mr. Mercado continued, "The reason that this Exhibit 5 and Exhibit 6 are so different. This Exhibit 5 is a placeholder. I thought I will probably build something like this. I wanted to show Historic this is the general area where we're going to do an addition. But I didn't have elevations, floor plans, I didn't have anything for that. 'This, which is a year later, and after consideration, after working with a draftsman, after considering a lot of different design options, that in fact that we have submitted for this has nothing to do with a grade change. This has to do with a design idea we had and this is what we decided to build.'"

Mr. Mercado continued, "Something that I want to make clear that sort of came through during Mr. Shandler's presentation is there is some master strategy here at work, that I'm sort of working on to wreak all sorts of havoc. And I want to make sure that I make clear that I'm not some master mind with some strategy, working on a Bobcat in the middle of the night."

Mr. Mercado continued, "Exhibit 9, which Mr. Sommer said is so important, and there is something in there that is so important that it not only merited bold, but bold, italics and underlining. And that is '*...the existing grade or finished grade, whichever is more restrictive....*' That's what Mr. Sommer decided to focus on. But if you look, the next fragment of that section which is '*...at the midpoint of the street facing façade...*' That's what we want to measure, so just regular trisect. Let's get an average of all these houses, figure out what is the tallest building we can build here. We don't watch the *[inaudible]* portion of all the rest of the buildings in the neighborhood. So you go to the east facing façade. You take the midpoint and measure from there. If you take the midpoint.... we've already determined that we can build up to 16 feet which is pretty high. My ceiling isn't 16 ft. I have a single story home, but the reason I can build up to 16 feet is because there are tall buildings on the block. One of them is my neighbors, Ms. Casey and Domres. They have a basement which is below grade, they have a first story, and then they have a second story. To the east of me, not directly to the east of me, and just to the north and just to the south of the house *[inaudible]* there are 2 two-story houses. There are several two-story houses throughout the neighborhood, tall buildings."

Mr. Mercado continued, "And this goes to a word that I see repeated both in the paperwork that was submitted for the appeal and then today during the presentation, of towering. And to be sure, even if we were allowed to go forth with the proposed construction, if I were to walk out of my bedroom, I would look up at the second story windows that tower over my property. It would be back and forth where they would be over our property and we would be over their first floor. I don't take that lightly. I sympathize with Ms. Case and Ms. Domres. I understand what that feels like. I live next to a two-story house. I understand what that feels like and I don't want to tower over anybody."

Mr. Mercado continued, "In March 2012, I bought that house. A simple adobe home. I fell in love with it. I had a local adobe legend, Ed Crocker, to come by the house. I had been reading a bunch of his articles, and I asked him to come by and give me his opinion on the house. He came back and said this house is structurally sound. This is a solid adobe house. So I started doing some work on the house so my wife and I could move in as quickly as possible. And soon after, in 2013 we were living there and in the home. And I work in public safety. On my day off, I would do work myself. I didn't have contractors coming over and doing a bunch of work. In the pictures, the really dramatic photographs of the bulldozers, you can see all the stucco was gone from the house, so I, with a grinder took all the stucco off and mud and did more plaster on it. I did all the work. And I would do that on the weekend, in fact I spent a lot of

time outside. During this time I met Ms. Casey and Ms. Domres and something that is crucial here is this retaining wall. During our interactions, we decided to embark on a joint project to rebuild this wall."

Mr. Mercado continued, "So let me describe this property to you. When we moved in, there were elms, Ailanthus, wild rose bushes, weeds, it was just this jungle. So I cut the trees down, took out the stumps, took out all the scrubs. The grade was approximately 14%. So you look at the photograph I have presented to you, you can take a ruler, you can eyeball, but you can take a ruler. On the far right, you see the footings of the house, and if you look in the distance, you can see it's horizontal.... if you just do a horizontal line across you can eyeball it pretty closely. The footing of the house is just above the old wall level. So I said it was between 36 and 40 inches between the top of the wall and the grade, so let's add a little bit. Let's say between 38 inches up to 4 feet. That is the absolutely the lowest point, without counting the hole on the northeast side."

Mr. Mercado continued, "So on that northeast corner, there was a deep hole, I was pretty much at the level of the street. If you were inside of the wooden fence on the photograph that shared, if you were standing there, you would be pretty much at street level, a little higher, but pretty much at street level. There was this concrete block wall that predates Ms. Casey and Ms. Domres' purchase of the property, so it's over 20 years old, give or take. I think that's more or less when they bought their property. It ran east/west, approximately 80 feet, parallel and very close to the property line, but just on their side, it was just completely on their side. So we moved into the house, and on my days off I spent a lot of time outside working on the house and enjoying the yard."

Mr. Mercado continued, "So the neighbors had communicated interest in removing the wall, building a new one, essentially moving the entire thing 4-5 inches so it would be a shared wall and it would be on the property line. I was interested in building it, and a retaining wall to increase the property value and to increase the ability to use my property in the future. So we talked about splitting the cost of this wall. When contractors came over to look at it, they told this was a very old wall that moved over a course of years, that had been built with a little more than chewing gum. It didn't have any rebar. It didn't have concrete fill. It didn't even have a footing. This was being held together by mortar."

Mr. Mercado continued, "So, with this information we went and talked to [inaudible] talked to contractors. It all ended up being much more expensive than what we initially thought it was going to be. During this time, knowing that we were going to build a retaining wall, we'd already embarked on this process, we already retained an engineer, I brought in some [inaudible] and I spread it near the house, away from the wall, because it would collapse if I put any dirt near it. I also bought some red rock, some red moss rock. And you can sort of see it from the photograph I gave you. There is a hump on the property and then it just drops down to the street. So I used some moss rock to sort of reinforce that grade, and filled it in. So now there is a dry stocked stone retaining wall. That was not permitted. I did not get a permit for that."

Mr. Mercado continued, "So during construction of that rock wall, that same bozo in the Bobcat that was doing the work, and I didn't even know he was working at night. I was on shift that night, and it was not a pleasant experience to work with him. So he built the rock wall. So in Exhibit 2 that Mr. Sommer gave out, several pages back, this is the one that shows the rock wall in the corner and shows the concrete

block wall where the blocks have gone. This guy, as he was leveling that area, which was already pretty level, but he doing a little bit of digging there, he knocked over those concrete blocks. Ms. Casey and Ms. Domres were mad and I completely understand they were mad. I apologized and offered to replace that wall to its original condition, essentially just mortar them back in place, it would have been very easy. But since we were already talking about just tearing the whole thing down, they didn't require me to do so, so I didn't do that."

Mr. Mercado continued, "So we got the engineering guys finalized for the new wall. We wrote a contract between the neighbors, the contractor and myself. The neighbor submitted the permit to the City, and we have [inaudible] by a contractor, thank goodness, not this guy. I will never hire him again. After the construction, the dirt that was excavated... this is a massive retaining wall. The footing is 5 feet wide of concrete, and it's in the drawings, I don't know how thick, but this is a massive, massive footing and a massive wall. There was a lot of dirt that was excavated that was replaced by concrete. When they were done, they just left a big mountain of dirt on my property, they were supposed to clean up. I cleaned it up, I didn't complain about it. I cleaned it up to leave it a cleaner site. I didn't bring other dirt in, I just spread that around."

Mr. Mercado continued, "After we were done with this project, I had really had it with the fact that when he knocked that wall down. I was really upset about it. That wasn't my property, but if he would have knocked my wall down, that's another thing. But he knocked the neighbors wall down and I was upset about that. And I decided I'm going to get permits, and from now I'm going to for this addition, I'm going to go through the process, I'm going to get permits, I'm going go to Historic. I'm going to come clean with them and tell them, listen, I replaced the windows. They are true divided light, and Historic didn't say you are such a distasteful human being. This is in keeping with Historic. It was divided light windows, all done in good taste, but I replaced the windows, I sanded the floors, I sanded the vigas, I did the mud plaster, I added a small sunroom on the south side, and all of this without a permit."

Mr. Mercado continued, "So I went back to the City, and I said here's what I did. [I said] I'd like to make it right, what do I need to do. So they gave me retroactive approval with a few conditions. Then our firstborn who is here in the audience was born on Thanksgiving Day 2015, just a month after the Historic Review meeting. Our house which is 1 bedroom and a 3/4 bath, it doesn't have a full bath, and a bedroom and 3/4 bath is 1,000 square feet. We put a [inaudible] overnight. About a year after his birth, I went back to Historic. That's Exhibit 5 or 6. That's the most recent site plan you have which shows the larger addition. Historic approved our design. I took construction drawings, submitted them to the City and went through a long process and finally got a construction permit. Part of this was a review by the Technical Review Division to make sure the grader, stormwater management and all that was in place. Two weeks later I found out that our permit was being appealed by our neighbors, claiming the 3 claims that are before you tonight."

Mr. Mercado continued, "So far as Claim No. 1. I have no idea where this came from. 15 days before the meeting, actually before that, with a lot of pride, I had my sign out there celebrating the work and money it had taken me to get this permit. And as Mr. Shandler points out, even if this Board had jurisdiction on this matter, it seems like a meritless claim, since we did have our sign flying out in front of the street. "

Mr. Mercado continued, "Claim #2. When I read this, I said huh, I didn't get a permit. I'm the guy that said I wanted to come clean and go right to work. The first thing is I came down here. I talked to Richard Valentine. I said here's my permit. Somebody said I didn't get permits to do this grading. What did I do wrong. Did I skip a step. Did you require me to provide you a [inaudible]. What do you want me to do. He said no, that you have what you need to continue on your construction. I said okay, can you send someone from the City to come to the site, take a look at it and make sure. Because I want to make sure we're good. I don't want to go through this mess again. Bill Morris and Soni Ahmed came by the house, I was at work. They met my wife there and my wife explained the situation. And they said this looks good, you've got your permit, your grading, your stormwater, the retaining wall of 5 ft. 7 in., you're good to go."

Mr. Mercado said, "As far as Claim #3, it seems very much related to Claim #2, that I didn't get permits and that I didn't represent the information correctly when I believe I did. So there are 3 motions before this Board tonight. I urge you to separate this case from the case that our neighbors have against us in District Court, suing us for a solar right. The level, the grade of my property doesn't impinge on the disputed space. Obviously, construction on that road, or really on any grade, could impinge on this space. To go to Ms. Hawkins' question from the beginning of his hearing. The District Court has the option of just freezing my permit. If I start building, the neighbors are upset and say you're putting up this building and we're suing you, you've got to go to Court, get a building injunction and they tell me, stop right now. Your building permit is frozen. They could do that. Not only that, let's say over a weekend I get in there and put up this huge wall. The Court, as was said by the Board, could force me to remove any construction that's in a contested space that may be invading on any solar right."

Mr. Mercado continued, "In other words, the decision that this Board should make about the permit that was issued is independent of this easement through the sky which is before District Court. The plan that is approved, even though it minimally encroaches on the contested space would be a really bad move on my part trying this situation with my neighbors. This wouldn't get us any closer to resolution."

Mr. Mercado continued, "If this Board makes a decision and says this, and the process was followed, we don't have jurisdiction on certain of these issues, it will allow my neighbors and myself to concentrate our energies on finding a reasonable and legal solution to the solar right claim that they have."

Mr. Mercado continued, "I'm going to say this and this is the last thing I'm going to say. I know I've been speaking for some time, but this is pretty important to me. And I'm going to say this, and I don't want this to come across as an attack. Because I tried to come here today to be reasonable and to try to move this forward. Like I said at the beginning, I made some errors from which I learned. And I've been following the process to the letter of the law, since I learned that lesson. This Board likely wants to hear about the actual case before it, and not about a complicated situation among neighbors. That is not the jurisdiction of this Board. Nobody is perfect. After our neighbors sued us, however, I wanted to talk to [inaudible]. After we were served with this lawsuit, the neighbors started on an illegal project themselves of building a [inaudible] solar collection system next to their patio door, which they're claiming to be a solar collector. It is illegal, there is no permit and it was red-tagged by the City. Only after that did they come before Historic to ask for approval of their work. I'm not saying this to demonize them. That's not the point. But those without sin should cast the first stone and I'm not perfect, but I just want to make sure I'm

not portrayed here [inaudible]. So I pray of you that you recognize that I learned my lesson early, and the matter that is before you today isn't some bandit doing illegal, unpermitted work, but a man that is trying to provide a home for his family....

Mr. Mercado continued, "And I urge you to make a ruling on this tonight and allow us to move forward with the issue at hand which is the solar right. I urge you to pay attention to staff's recommendation and to understand that, even if in Exhibit 9, the one that has the line about the finished grade and the height that I would be allowed to build. I'm allowed to build 16 feet on my property, as stated by Mr. Sommer. This picture shows that at the very lowest point is 34 to 44 in. or so. As you come up that slope, a constant slope to the house. So even if I wanted to build right on a property line.... let's say I filled in 4 feet of soil there, I would still be able to build a 12 foot high house there. If I come back, the proposed height, I don't have it in front of me. It's like 12 ft, or 13 ft., I'm not building a palace, it's just a minimal house. You're not here to judge whether.... you're here to judge whatever rules are followed, and I think Historic or the Building Division would have made a different ruling even if you suggested that we filled in 5 feet of soil. Well, we did not fill in 5 feet of the soil. And that we didn't pull permits, but we did pull permits."

Mr. Mercado concluded, "I'm really urging you to focus on, remind yourselves what is the jurisdiction of this Board, take staff's recommendation into consideration. Take my testimony and Mr. Sommer's into consideration and make a ruling tonight, and deny this permit appeal and allow the permit to stand on its own and for us to continue our process with the Courts. And ideally, not with the Courts, but as neighbors and we can just work this out, talk this through, sit down and figure out what it is that we need to do so that Ms. Casey and Ms. Domres can enjoy their property and we can enjoy ours. So thank you. And I would be happy to take any questions that you will have."

Questions and Comments by the Board

Vice-Chair Winston said there is conflicting information – there was a permit, there wasn't a permit. You're saying there is a permit. She said, "I understand that you were issued a Building Permit, but in terms of the grading. Can you explain the... this is unusual.... so you describe this as the wall is on their property, but you jointly agreed and entered into a joint contract with each other and a 3rd party contractor to move the wall and place it on the property line. But the permit that was issued is in the name of the Appellants address, or has the Appellant's address on it. Can you just talk us through that permitting process and how it is that it applies to your property as well."

Mr. Mercado said, "As from what I understand, and has been explained to me by folks at Land Use, is that when you are going to retain a bunch of soil, so you want to terrace a property or you want to do some stepping stones up a path. If you were to retain fewer than 30 feet of soil, you don't need an engineer's stamp. It's essentially minor landscaping. Like if you want to do some rock gardens or something you wouldn't need engineer stamps and permits, it's just minor landscaping. If you are going to do something above that, something that is a substantial project, you need an engineer to approve it, because you want to make sure that hydrostatic pressure of that soil isn't going to destroy it and create a bunch of damage."

Mr. Mercado continued, "The permit that was pulled for 486 ½ Camino Don Miguel was to include that engineers drawing. You can't pull a permit for two houses, I don't think. So we pulled a permit for one house. There is a shared wall and we decided to pull it under the 486 ½ address. So essentially, we worked on this together. We worked on the drawings together, we worked with the contractor together. All the work was done from my side of the property. I did a lot of the clear up. This is really a joint project. So, even through the permit is assigned to 486 ½ Camino Don Miguel, I paid half of the permit fees, I paid half of the engineer fees, I paid half of the fees, so I sort of feel like, even though it is in their name, pulled by them, it is a shared permit. That permit allows to bring the grade up, not to exceed 5 ft. 7". That's what the engineer specified. So that's one part of it."

Mr. Mercado continued, "The second part of it, is that when I applied to build the addition to my house, they require you to explain what you're going to do about the soil around the house, primarily what they want know is what you are going to do about stormwater retention. They don't water to just be flowing out to the street and over burdening the sewer system. So, in the permit that I pulled for my house, for my addition, I had to show what the layout was going to be, where finished grade was going to be, where any catchment ponds were going to be. So, because of that, and I would defer to staff, I believe that all the permits were pulled. And as soon as I heard there may be a problem, my first stop was Land Use. And I said, did I not pull a permit, am I missing something."

Mr. Mercado continued, "And I stand here ready to say, listen if I did something wrong by the City, if I didn't follow something in the process, I am more than willing to work with the City and get that taken care of. I'm not trying to short circuit this. I'm willing to do whatever I need to do. If I missed a step, great, I try to call myself out on it by going around and saying, what did I do wrong. So if this Board can tell me what steps I need to do to remediate that, that's great, but the staff in the department that is responsible for making these decisions told me, 'you have all the permits that are required.' They even did a site visit and said you have all the permits that are required. So does that answer your question, Madam Chair."

Vice-Chair Winston said, "Partially. So what is your interpretation of the notation on the post-inspection permit, that says, 'Neighbor will permit and regrade other side of wall,' and that you will submit to the fact that it references the neighbor, suggests to me that you had some participation in this process, I assume. Otherwise, I don't know how you would be made aware of it."

Mr. Mercado said, "That may have been in conversation with Ms. Casey and Ms. Domres, when they pulled the permit. I did not physically come down here to pull the permit for them. So maybe the permit and regrade the other side of the wall. I did regrade the other wall. I actually intend to regrade it more. The final road isn't even done. So the permit I pulled for the addition has the final grade. So I pulled the permit, and I haven't regraded, I still need to do footers. There is still a lot of work to do, but when I'm done, it'll have its finished grade and have it's final inspection. That's how I interpret the Inspector's note."

Vice-Chair Winston said, "Then you're interpreting that to mean a building permit versus a grading entering edge permit. Is that correct."

Mr. Mercado said, "A Building Permit has a lot of things in the category – electrical, plumbing – it has a lot of different permits. A building permit is sort of a bad term, but there a lot of different inspections. That's how I interpret that. And if I'm interpreting this wrong and I can be clarified on that and there's an extra step I need to take, I'm very happy to do it. I'm trying to follow the process."

Ms. Hawkins said, before we leave this section, she would share that the staff hasn't interpreted that Inspector's statement by saying that it was their interpretation. She said, "I don't know if you want to refer to that, but can you actually speak to this statement. Can you share all of that with us again."

Mr. Shandler said, "It appears that the sides agree on something that the staff has a different position on. And the way staff interprets that with the permit would be, has authorized this work. I don't see the words 'will seek a permit.' It appears the two sides actually disagree with me, that I'm pretty sure, and I will allow Mr. Sommer to get up and tell me if I'm wrong. I think he reads that to mean, 'will seek a permit.' And I believe Mr. Mercado, and you can correct me if I'm wrong, also agrees that you interpret that to mean you will seek a permit, and you did so, by getting Permit #262496. So they are in a different place than I am, and that's just based on new information that we've heard tonight. If I'm incorrect, please correct the record."

Mr. Mercado said, "I wouldn't say that I disagree with staff, maybe that is an incorrect interpretation. Just sort of plainspeak, I haven't heard that. I guess I could interpret it either way. And whichever way it is interpreted, I'm okay with it. I feel like I followed the process. I went to Land Use and asked if there is a permit I need to seek. And I was told no, you have all the required permits. So I'm not an expert in the Code, but I rely on the experts who work in the City and I was told that I have all the permits. And I do permit (?) having the [inaudible] that the engineer specified on my property. I agreed to that when we built the joint wall."

Ms. Dearing asked staff, "If two parties have a shared wall, because it seems that this intended to be a shared wall along the property line, however it ended up on whomever's property, it was intended to be a shared wall. When a permit is pulled for the construction of a shared fence or wall structure, there is only one permit, correct."

Mr. Shandler said, "Yes."

Ms. Dearing said, "So it would be appropriate for it to be pulled either addressing one property or the other, depending on filed the paper work."

Mr. Shandler said "Yes."

Vice Chair Winston said she is looking at the Lucchini and Trujillo Structural Engineering drawing of the retaining wall. She said Mr. Sommer made mention of the boxed notation, 'Final grade max retaining,' and thinks Mr. Mercado did as well. She is unsure she understands. She said, "Mr. Sommer indicated that you had made an unauthorized request of the engineer, if I understood him correctly, to insert this notation. I don't understand its significance and I just want you to speak to it in general, and then I'm actually going to ask Mr. Sommer to return and speak to it as well."

Mr. Mercado said, "That's Exhibit 4. So in all engineering drawings they are showing the limit of that wall. So that wall is engineered to hold the hydrostatic pressure of 5 ft. 7 in. of soil on that retaining side. So it's important that the engineer, whether it's a retaining wall or Hoover Dam, to say this is engineered toward this much. As far as me going through some back channels to try and influence underhandedly the engineer, that is not the case. Ms. Casey who has done this, spoke to Antonio Lucchini separately, I spoke with him separately, in the normal course of communication, we were all speaking at one point. They spoke with the contractor, Mauricio *[inaudible]*, I spoke with the contractor, Maricio *[inaudible]*. I did mention to Mr. Lucchini that I wanted the wall to be high enough... it's not a level lot, actually, it will be terraced, it has to be terraced, because the grade of my house... the grade at the existing house is about at the top of this cement wall, it's higher. So we could not level the whole yard, it would spill over into their yard, so there is a step down."

Mr. Mercado continued, "The grade height is absolutely critical in determining the cost of the wall. This wall was extremely.... I think it was total \$26,000. That's more than my car, that's almost twice as much as what I paid for my car. It's an extremely expensive wall. Way, way, way more than I was thinking it was going to cost. There was discussion about the height of the grade, in emails back and forth between Ms. Casey and myself about is this too high, are you asking to retain too much soil. There was some concern about that back then. I can tell you that our emails back and forth which you don't want to read, range from the simple and friendly to the rude and unkind. It was not a pretty conversation back and forth at times. At times it was fine, sometimes it was pretty tense. We agreed.... when these drawings were finalized, I reviewed these carefully. I said, I'm going to spend \$26,000 on this wall, I want to make sure I know what I am getting for \$26,000. I'm going to spend \$26,000 on something I would read the whole thing and make sure that I was getting what I wanted."

Mr. Mercado continued, "There was conversation back and forth and by submitting this permit, Ms. Casey tacitly agreed to this height. If there was a fight to be had, we should have done it back then. It would have saved us money and it should have saved us time. So, it's important that is there on a *[inaudible]*, but it is just because it's just one of the engineering outputs of the design. It's important to the case before you tonight, because this grade was actually whether Ms. Casey and I don't want to *[inaudible]*, but Ms. Casey did agree to this. We went through the proposals. I read through the contract very carefully. We went back and forth and the contractor *[inaudible]* because I proposed changes, they proposed changes, they didn't like some of my changes. I mean, this is a lot of back and forth about this. And I reviewed the specs of the drawing, I reviewed the contract language, and I made sure that I was getting what I wanted. And that's what we do when you deal with a neighbor. And they knew that it was going to be 5 ft. 7 in. At times they expressed a desire to have that be lower, but I fired back and said, and this was during one of the rude times, I said no. This is my property. I want it to be 5 ft. 7 in., that's what I agreed to. That is what I agreed to. And by signing that contract and submitting that permit, they agreed to this grade. I don't want to turn this into a fight. I want to see if we can find a resolution that works for them and for us. I'm not trying...."

Vice-Chair Winston said, "Thank you. I understood. I think you answered my question thank you. Mr. Sommer, I would like for you to speak to the same issue."

Mr. Sommer said he has several questions for Mr. Mercado.

Mr. Shandler said, "Right. He's allowed to do some cross examination."

Questions of the Applicant/Appellee by Attorney Karl Sommer

Mr. Sommer said, "The photograph that you gave the Board, thank you, shows the wall that was there. Correct."

Mr. Mercado said, "That's right. That is a pre-existing wall. That's before the joint wall project that we undertook."

Mr. Sommer said, "It has been replaced by a wall that is approximately 2 feet taller. Correct."

Mr. Mercado said, "The new wall is 1 ft. 8 in. higher."

Mr. Sommer said, "If you look at the permitted section, is that 7 ft. 1 in., or how tall is the wall from the footing, the top of the footing to the top of the wall."

Mr. Mercado said, "The top of the footing to the top of wall is different than the grade on Ms. Domres side, and the top of the wall. There is a foot of grade on their side, so.... are you asking the step off, or just down to the footing which below the frost grade."

Mr. Sommer said, "No. The footing is..."

Mr. Mercado said, "Below the frost grade."

Mr. Sommer said, "The top of the footing to the top of the wall is how tall. Well, we can look at that. Just, yes."

Mr. Mercado said, "I just want to clarify that the bottom of the wall we're talking about, a lot of that wall is underground, that needs to be below the frost line. If I imagine a 6 foot tall wall, I imagine it should be 'here,' but I wouldn't count the 2 feet that is underground as part of that wall."

Mr. Sommer said, "My question is, is the wall taller today than it was before. Correct."

Mr. Mercado said, "That's right."

Mr. Sommer said, "And the notation on the plan says 'NTE.' You know what that means, right."

Mr. Mercado said, "Not to exceed."

Mr. Sommer said, "Right. Not to exceed. It doesn't say that that's where you are going to build it."

Mr. Mercado said, "That is correct."

Mr. Sommer said, "It says that you cannot build above that on this wall on your part."

Mr. Mercado said, "That's correct."

Mr. Sommer said, "In the photograph you've given, this whole area, right 'here,' which is below the height of the old wall. See that area there. Do you see that area there."

Mr. Mercado said, "Well I see the area where you are pointing to. I don't want to agree that it is the same height as the wall. There is a 5 foot drop over a 35 foot run. That is a 14% slope, so the area that you're pointing to is much further south and is not the same height as that are you have circled, which is where the wall meets the grade."

Mr. Sommer said, "This is my question. From the bottom of the wall that is in the photograph, to the top of the grade by your house, that whole area is now filled in. Correct."

Mr. Mercado said, "Let me take a look."

Mr. Sommer said, "From the bottom of the wall to the foot of the building, that area now has dirt that was not there before. Correct."

Mr. Mercado said, "Yes. That's right. So the 14% slope was brought up."

Mr. Sommer said, "So it's your position that 'this' permit, 'this' permit for the wall, this joint permit that you talk about, gave you permission to fill all the way to the back, to wherever the grade is today. That's what your position is, isn't it."

Mr. Mercado said, "My position is, is this your copy or mine."

Mr. Sommer said, "Is that your position. That's my copy."

Mr. Mercado said, "My position is that that permit allowed to build the grade up to 5 ft. 7 in., not to exceed 5 ft. 7 in. above the grade..."

Mr. Sommer said, "All the way back toward your house."

Mr. Mercado said, "Yes."

Mr. Sommer said, "That's what your position is."

Mr. Mercado said, "No. No. My position is that permit allowed for there to be soil up to 5 ft. 7in., and then that the Building Permit that I applied for with the house with the addition allowed for the grading of the entire property."

Mr. Sommer said, "And the grading that you just talked about was done before you applied for the permit, wasn't it."

Mr. Mercado said, "No. A lot of that grading...."

Mr. Sommer said, "You've done grading since you got a permit."

Mr. Mercado said, "I brought in some soil after I got the permit. Yes. Just after I got the permit."

Mr. Sommer said, "So, it's your position that you've done grading in accordance with the permit that you now have."

Mr. Mercado said, "First of all, I used the soil from the excavation, spread that out, and that brought the grade up. And I guess that was before the permit. That was just excess soil that was left over, which I spread out, and it was quite a bit of dirt that they excavated out. And I've brought in some soil since I got the permit. I started laying some soil. I'm probably going to have to end up taking some soil out."

Mr. Sommer said, "I have no further questions. I would like to address the point that you asked about."

Vice-Chair Winston said, "Yes. Please do."

Mr. Mercado asked, "Does the Board have any more questions for me, or can I sit down."

Vice-Chair Winston said, "Actually, hold on. Let me ask, does the Board have any more questions of the Applicant. Yes, seeing as how there are no more questions, you can have a seat. Normally, at this point we would open the meeting to the public, but I would like to get a response from Mr. Sommer before doing so."

Mr. Sommer said, "And I understand your question about the interpretation of the language on that. The language at the top of that, is language that Ms. Casey understands was put there by, and at the request of, Mr. Mercado. You can ask her that question directly. But you will note that it says, 'Not to Exceed.' And I think that you all, you don't have to take my word for it or Mr. Mercado's word for it. This gentleman sitting right here, Greg Smith, has worked for the City for my guess is 15-16 years. He will tell you whether this is a grading and drainage permit for the work that occurred. He'll tell you, you don't have to believe me. Ask him whether this would allow someone to fill in their back yard to 5 ft. 7 ft. against this wall, without an additional permit. I submit to you the answer is it would not. It does not require interpretation to look at that notation and say, the interpretation giving the City is saying, will permit, not will seek a permit. But their interpretation is, it does permit. They don't say 'will' as in the future. They're

interpreting it to say this permit does permit that. That changes the wording. And this is really kind of absurd. We don't need to talk about it. Ask this gentleman right here, in his experience, whether this wall permit would permit the kind of grading that went on, on Mr. Mercado's property. I submit to you the answer is pretty clear. No."

Vice-Chair Winston said that concludes the Applicant's presentation.

Speaking to the Request

Mr. Mercado asked to speak.

Vice-Chair Winston said, "We're done with that, but if you want to speak, I will allow you if you want to make a statement. But..."

Mr. Mercado said, "One last thing. I know I've hogged the microphone. I hope I've been clear. If Mr. Smith can point us to the correct permits that I need to pull to make this right, I'll do it. I don't have an issue with that. Thank you."

The public testimony portion of the public hearing was closed

The Board commented and asked questions as follows:

- ◆ Ms. Reynolds said, "Once again, in the staff notes, I would like to read from them. This is related to the question that was left on the floor. It is that, 'Mr. Mercado was given City permission to import and regrade along the length of the improved wall with that permit.' Is that not correct, or am I reading something incorrect."

Mr. Shandler said, "You are correct in that's our position.

- ◆ Vice-Chair Winston said, "And I actually would like to ask Mr. Smith if you could speak to the grading and drainage permit, and whether that applied to the grading on the adjacent property."

Mr. Shandler said, "I will say he can talk generally, and based on his experience. I don't believe he had any involvement with this particular case."

- ◆ Vice-Chair Winston said, "Can you speak generally to the topic."

Greg Smith said, "In general terms, as Mr. Shandler has indicated, I did not reviewed the technicians approving this *[inaudible]*. In general, Section 14-13.11 Construction Permits that also includes grading and drainage. As to whether the permit in general was intended to include the grading and drainage for Applicants, I can't speak to, or dispute the interpretation Mr. Shandler has arrived at after review by the staff. In general, the *[inaudible]* case that a the building permit

including grading, would be a solution to a prior grading which was in conflict with the Codes, being that had been done without permitting after the fact, provided the typical cure for that type of situation."

- ◆ Ms. Dearing said, "If a one *[inaudible]* that if you are doing a correctly engineered wall, there would be excavation of dirt. Does the City have any position on what happens to the dirt that is removed that there is no room for anymore because you replaced it with concrete and wall. Is that expected to be removed from the property, or is that something that is usually expected to be spread. Or is it silent to that."

Mr. Shandler said, "If you look to the notes, the two sentences that were there, one talking about regrading and one talking that we're having this debate about what the verb actually means, as the instruction to the parties about what to do with that remaining soil. And it's up to your interpretation on what that means."

- ◆ Vice-Chair Winston said, "Mr. Smith, one last question, can you speak to the significance of the notation on the engineering drawing, the final grade maximum retaining, not to exceed. What does that mean... how high one can infill, and whether that permits infill adjacent to the wall and all the way across the property. Does this constitute an instruction or permit for the neighboring property."

Mr. Smith said, "I would have to have an opportunity to consult with the staff who reviewed and approved and issued that permit. I have not had that opportunity at this point."

MOTION: Patricia Hawkins moved, with respect to Case #2016-149, the Appeal of Ellen Casey/Domres from the November 23, 2016 decision of the Land Use Director to issue Building Permit No. 16-1492 to Andres Mercado/Christian Chen, to postpone action on the appeal until the Board is meeting following the final resolution of the District Court case, "because to do anything else, would be unfair to both parties."

DISCUSSION: Vice-Chair Winston said, "Do I have a second, on the assumption that your initial recitation of the motion will be inserted at this point."

Responding to Ms. Hawkins, Vice-Chair Winston said, "I think we can agree that her initial motion is now being remotioned. Is that clear."

Ms. Helberg said the motion will be as originally stated, subject to her verification with the audio tape.

THE MOTION DIED FOR LACK OF A SECOND THE MOTION DIED FOR LACK OF A SECOND.

MOTION: Donna Reynolds moved, seconded by Coleen Dearing, with respect to Case #2016-149, the Appeal of Ellen Casey/Domres from the November 23, 2016 decision of the Land Use Director to issue Building Permit No. 16-1492 to Andres Mercado/Christian Chen at 494 Camino Don Miguel, to deny Casey's appeal on grounds that the Land Use Department's issuance of the Building Permit No. 16-2492 was consistent with Chapter 14.

CLARIFICATION OF MOTION BY ASSISTANT CITY ATTORNEY: Mr. Shandler said, "Could you just give two or three sentences in the record, so if it passes, we could work on some findings, just explaining your rationale."

Ms. Reynolds said, "Again, it looks as though a collaborative permit was issued, there was some desire to regrade, it looks as though that may have been permitted. It looks as though the Staff Recommendation may be correct. I will admit that there is some language there that you have to interpret, and we will rely on the staff for that interpretation."

Mr. Shandler said, "Thank you. That's sufficient for the findings, I'll let you proceed. Thank you."

VOTE: The motion was approved unanimously on a voice vote.

H. STAFF COMMUNICATIONS

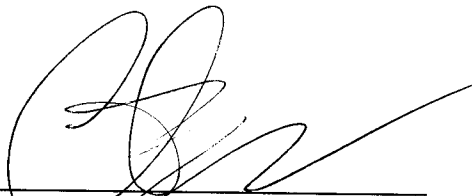
There were no Staff Communications.

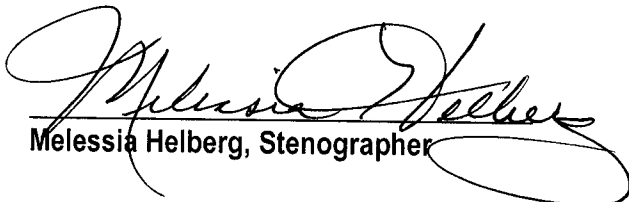
I. MATTERS FROM THE COMMISSION

There were no Matters from the Commission.

J. ADJOURNMENT

There was no further business to come before the Board, and the meeting was adjourned at approximately 8:00 p.m.



Gary Friedman, Chair

Melessia Helberg, Stenographer

City of Santa Fe
Board of Adjustment
Findings of Fact and Conclusions of Law

Case # 2016-111—Omega Storage Special Use Permit
Owner/Applicant's Name—Omega Automotive Real Estate Ltd
Agent's Name-- Vicki and Tracy Northington

THIS MATTER came before the Board of Adjustment (Board) for hearing on March 7, 2017 (Hearing) upon the application (Application) of Vicki and Tracy Northington, agents for Omega Automotive Real Estate Ltd (Applicant). The Applicant seeks a special use permit to convert the existing 25,326 square foot building located at 4480 Cerrillos Road (previously the Honda/Subaru car dealership) to individual climate controlled self-storage units, self-storage office space and some mini storage units in the building with exterior access. The property is 3.94 \pm acres and is zoned C-2 PUD (General Commercial Planned Unit Commercial).

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

FINDINGS OF FACT

1. The Board heard reports from staff and received testimony and evidence from the Applicant. No members of the public interested in the matter spoke at the hearing.
2. Pursuant to Code §14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Code §§14-3.6 (Special Use Permits) and 14-6 (Permitted Uses).
3. Pursuant to Code §14-3.6(B) the Board has the authority to hear and decide applications for special use permits in accordance with applicable provisions of Chapter 14; to decide questions that are involved in determining whether special use permits should be granted; and to grant special use permits with such conditions and safeguards as appropriate under Chapter 14; or to deny special use permits when not in harmony with the intent and purpose of Code Chapter 14.
4. Table 14-6.1-1 requires approval of a special use permit for an indoor storage facility in the C-2 district.
5. Code Section 14-3.1(F)(2)(a)(viii) requires an ENN for special use permits and Code Section 14-3.1(F)(4)-(6) establishes procedures for the ENN, including:
 - (a) Compliance with the notice requirements of Code Section 14-3.1(H) [Section 14-3.1(F)(4)];
 - (b) Timing for the ENN meeting and the principles underlying its conduct [Section 14-3.1(F)(5)]; and
 - (c) Guidelines for the conduct of the ENN meeting [Section 14-3.1(F)(6)].
6. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
7. An ENN meeting was held on August 15, 2016 at the Hyatt Place Hotel
8. The ENN meeting was attended by the Applicant, City staff, and five interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).

Exhibit "1"

9. Code Section 14-3.6(C) sets out the procedures to be followed prior to the grant by the Board of a special use permit, including:
 - (a) Approval of a site plan and other site development drawings necessary to demonstrate that the Project can be accomplished in conformance with applicable Code standards [Section 14-3.6(C)(1)];
 - (b) Submittal of an application indicating the Code section under which the special use permit is sought and stating the grounds on which it is requested [Section 14-3.6(C)(2)]; and
 - (c) That a special use permit is limited to the specific use and intensity granted, requiring a new or amended special use permit if the use is changed or intensified [Section 14-3.6(C)(3)].
10. Code Section 14-3.6(D)(1) sets out certain findings that the Board must make to grant a special use permit, including:
 - (a) That the Board has the authority to grant a special use permit for the Project [Section 14-3.6(D)(1)(a)]; *Section 14-2.4(C) grants the Board the authority under the section of Chapter 14 described to grant a special use permit.*
 - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(b)]; *The proposed special use permit application complies with minimum standards for Chapter 14.*
 - (c) That the Project is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project [Section 14-3.6(D)(1)(c)].
 - i. *The storage facility will be in an already established building.*
 - ii. *No major changes are planned to the design of the building.*
 - iii. *The proposal includes an 8-foot tall split face block wall, in earth tones colors, around the perimeter of the site.*
 - iv. *The wall will secure the property with a gated entry set back into the property to allow access into the front office.*
 - v. *The landscape plan reflects planting along the wall along the north and west property lines to soften the appearance of the 8 foot tall wall.*
 - vi. *A hill on the east side of the project blocks the view of the wall from the east.*
 - vii. *The subject property is located 4-8 feet below the grade of the property to the north, minimizing the impact of the massing and visibility of the wall to the north.*
 - viii. *The Staff Report provides that the requirements for Code Section 14-6.2(D)(2) for individual storage areas have been satisfied.*
 - ix. *The Staff Report provides that the requirements for Code Section 14-6.2(D)(3) for mini storage units have been satisfied.*
11. Code Section 14-3.6(D)(2) authorizes the Board to specify conditions of approval for a special use permit to accomplish the proper development of the area and to implement the policies of the general plan.
12. The Applicant submitted a site plan and an application indicating the Code section under which the special use permit was being sought and stating the grounds for the request.
13. Board staff provided the Board with a report (Staff Report) evaluating the factors relevant to the proposed special use permit and recommending approval by the Board of such special use permit, subject to the conditions set out in the Staff Report (the Conditions).

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the Hearing, the Board CONCLUDES as follows:

1. The Board has the power and authority under Code §§14-2.4(C)(2) and 14-3.6(B) to grant the special use permit applied for in this request.
2. The special use permit was properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
3. The ENN meeting complied with the requirements established under the Code.
4. The granting of the special use permit will not adversely affect the public interest.
5. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
6. The special use permit granted herewith is granted for the specific use of the Property and intensity applied for and no change of use or more intense use shall be allowed unless approved by the Board under a new or amended special use permit or as otherwise permitted by applicable Code.

WHEREFORE, IT IS ORDERED ON THE 4th DAY OF APRIL, 2017 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE:

1. That the special use permit is approved as applied for, subject to the Conditions presented in Staff's report.
2. The special use permit granted herewith shall expire if (a) it is not exercised within three (3) years of the date these Findings of Fact and Conclusions of Law are adopted by vote of the Board, subject to any right of the Applicant under applicable Code to request an extension of such time or (b) it ceases for any reason for a period of three hundred and sixty five (365) days.

Gary Friedman
Chair

Date:

FILED WITH THE CITY CLERK:

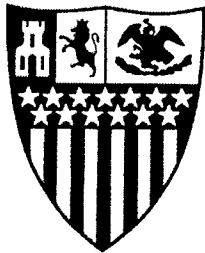
Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Zachary Shandler
Assistant City Attorney

Date:



City of Santa Fe, New Mexico

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

www.santafenm.gov

Javier M. Gonzales, Mayor

Councilors:

Signe I. Lindell, Mayor Pro Tem, Dist. 1

Renee Villarreal, Dist. 1

Peter N. Ives, Dist. 2

Joseph M. Maestas, Dist. 2

Carmichael A. Dominguez, Dist. 3

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 38
Assistant City Attorney

Re: Appeal of Ellen Casey/Suella Domres from the November 23, 2016, Decision of the Land Use Director to Issue Building Permit No. 16-2492 to Andres Mercado/Christin Chen at 494 Camino Don Miguel
Case No. 2016-149

Date: March 28, 2017 for the April 4, 2017 Meeting of the Board of Adjustment

The Appeal

On December 6, 2016, Ellen Casey/Suella Domres (Appellant or CASEY) filed a Verified Appeal Petition (Petition) appealing the November 23, 2016 Decision of the Land Use to Issue Building Permit No. 16-2492 to Andres Mercado/Christin Chen (Applicant or MERCADO) at 494 Camino Don Miguel (Petition attached as **Exhibit A**).

The Property

MERCADO lives at 494 Camino Don Miguel. CASEY lives next door at 486 Camino Don Miguel. (Please note, some of the documents in the City's files refer to 486 Camino Don Miguel and some documents refer to 486 ½ Camino Don Miguel—for this memorandum, we will use 486 Camino Don Miguel.) Both properties are in the Downtown and Eastside Historic District. MERCADO's property has a slope characteristic that is relevant to this appeal. MERCADO's residence sits higher than CASEY's residence. There is a cement wall that divides the two properties.

History of the Case

a) CASEY gets Building Permit for an improved cement wall

In September 2015, CASEY obtained a building permit to improve the existing cement wall between the properties (Building Permit #15-1446).

Exhibit "2"

b) MERCADO – an addition to his property

In the spring 2016, MERCADO began the process of constructing an addition onto the northern side of his residence. The proposed addition would make the MERCADO residence much closer to the property line. (Drawing attached as **Exhibit C**). MERCADO also proposed to build several walls and gates, including putting a 4 to 6 foot high coyote fence next to an existing cement fence that separated the properties. (Drawing attached as **Exhibit D**).

c) MERCADO goes to Historic Board

MERCADO's first step was to obtain design approval from the City's Historic Districts Review Board (**Board**) because the property was in the Downtown and Eastside Historic District. On August 9, 2016, the Board held a hearing and voted to approve MERCADO's design. CASEY was not present. On August 23, the Board issued a written Finding of Fact. CASEY did not file an appeal of the Board's decision.

d) CASEY filed lawsuit on solar rights

On September 1, 2016, CASEY filed a lawsuit in District Court against MERCADO and sought a judicial "Declaration" of protected solar rights for the southern side of the CASEY residence. (Court Docket Sheet attached as **Exhibit E**). CASEY wrote that it has "filed a Declaration of their Solar Rights pursuant to State statute and are currently in litigation with Applicant [MERCADO] seeking a Declaration that Applicant [MERCADO] may not build any addition/portal/fencing that interferes with their right to have the sunlight fall on their solar collector and to gain heat and sunlight from the rays of the sun, as this proposed construction clearly does." See **Exhibit A**. CASEY wrote that it "understand[s] that the City does not enforce Declaration of Solar Rights and that the Declaration and litigation are not necessarily a basis for this appeal, but it is important as an aspect of the harm that Appellants' [CASEY] will suffer if the proposed additions to Applicant's [MERCADO] property are completed." See **Exhibit A**. The Court, however, did not issue a "Stay" freezing the City's actions.

e) MERCADO goes to Building Permit Division

MERCADO's second step was to apply for a building permit from the City's Building Permit Division. On October 3, 2016, he applied for a building permit. On November 23, 2016, the City issued Building Permit No. 16-2492.

f) CASEY filed an appeal of MERCADO's building permit.

On December 6, 2016, CASEY filed its Petition appealing the issuance of the building permit. As a result of the appeal, under City Code, MERCADO's building permit is "frozen" and he cannot work on the project.

g) CASEY -- remodel her property

Casey wanted to add a trombe wall, to add to the existing solar collection system, on the first floor of the southern side of her property.

h) CASEY goes to the Historic Board

In January 2017, CASEY went to the Historic Board because the property was in the Downtown and Eastside Historic District. She sought design approval for a trombe wall on the first floor of the southern side of the property. The request was postponed for re-design. On February 14, 2017, the Board voted to approve the request. On February 28, the Board issued its Findings of Fact. MERCADO did not appeal the decision.

i) CASEY goes to Building Permit Division

CASEY's second step was to apply for a building permit from the City's Building Permit Division. On February 21, 2017, she applied for a building permit. It appears the permit is still under review but has been assigned Building Permit No. 17-0396.

j) CITY staff tries to schedule the appeal on Building Permit No. 16-2492.

During the winter of 2016-2017, the City staff began the process of scheduling CASEY's appeal for a Board of Adjustment meeting. However, the City Attorney's Office researched the District Court docket and discovered that the parties were set for a court mediation in the solar rights case that was to occur on or before February 1, 2017. The case docket also showed the case set to go to trial in the spring of 2017. Therefore, on January 13, 2017, the City Attorney's Office wrote a letter to the attorneys of CASEY and MERCADO and explained it would be better for the court mediator to try to resolve the court case prior to the Board of Adjustment tackling the appeal.

City staff did not schedule the appeal for the February Board of Adjustment meeting. City staff did not schedule the appeal for the March Board of Adjustment meeting. The City Attorney's Office was in contact with the lawyers, but was unable to facilitate a resolution.

Then, the City Attorney's Office researched the District Court docket and discovered the court mediation had been postponed, and in fact, the entire court case process had been moved back by approximately six months. According to the docket, the parties will not have the trial until October 2, 2017 (at the earliest). At that point, City staff decided to schedule the appeal for the April Board of Adjustment meeting, in case the Board wanted to take up the matter.

Basis of Appeal

CASEY has alleged:

1. MERCADO failed to post a Historic Board poster with notice of the August 9, 2016, Historic Districts Review Board meeting.
2. MERCADO regraded the northern part of the property with dirt without a city building permit.
3. MERCADO did not disclose to City staff that MERCADO regraded the northern part of the property with dirt without a city building permit.

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 NMSA¹ (the Statute);
- (2) Code Chapter 14 has not been applied properly; or
- (3) the decision appealed from is not supported by substantial evidence.

General Claims.

The general rule is that when a neighbor files a district court lawsuit against another neighbor, the City will wait for the Court's ruling on the case. The Board of Adjustment has this option. However, the City Attorney's Office wanted to give the Board, at least the option to review the appeal, based on an issue of timing. As stated above, MERCADO received his building permit on November 23, 2016. CASEY filed an appeal freezing action on the building permit. If the Board chooses to wait for the Court's ruling, the court ruling may not occur until October 2017 (at the earliest). That may mean MERCADO's building permit would be frozen for almost eleven months.

Issue #1— The City should not have issued Building Permit No. 16-2492 because MERCADO failed to post a poster with notice of the August 9, 2016, Historic Districts Review Board meeting.

CASEY's Appeal Petition stated: "Applicant [MERCADO] failed to post the notice as required by Code and as a result, Appellants [CASEY] were not aware of the HDRB hearing and did not attend the meeting." This assertion has two flaws. First, under City Code Section 14-2.4(C), the Board of Adjustment has jurisdiction over certain matters; it does not have jurisdiction over disputes over notice of the Historic Districts Review Board meetings. Second, city staff went to the search engine "Google" and entered "494 Camino Don Miguel" and found there was a picture of the property with a Historic Board notice poster in the property. (Picture attached as **Exhibit F**). The picture is date stamped during the period of time (July) in advance of the August 9, 2106 Board meeting. Therefore, the CASEY'S claim is rebutted by evidence in the record.

Therefore, Claim #1 does not fall within any of the three bases for appeal cited above and should be denied.

Issue #2-- The City should not have issued Building Permit No. 16-2492 because MERCADO regraded the northern part of the property with dirt without a city building permit.

CASEY's Appeal Petition stated: "Applicant [MERCADO] eradicted the existing, natural slope between his house and the common wall by adding fill dirt to his property without having first obtaining the required construction permit for grading." See **Exhibit A**. It stated: "Applicant's [MERCADO] plans provide for installation of a four to six-foot (4 -6') coyote fence located right at Applicant's [MERCADO] side of the common boundary...will create an eleven to thirteen-foot (11-13') barrier...when the existing seven feet eleven-inch (7'11") [cement] wall is combined

¹ 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. ..."

[with the coyote fence]....” See **Exhibit A**. It further stated: “The proposed addition to the Applicant’s [MERCADO] home will be built upon grades that have been altered as described above.” See **Exhibit A**. CASEY’s assertion is that MERCADO raised the grade on the northern side of his property so much so that the proposed addition and coyote fence will tower over CASEY’s first floor.

As stated above, there is a cement wall between the properties. In September 2015, CASEY applied for a building permit (No. 15-1446) for the improved wall between the properties. The building permit called it a “retaining” wall. CASEY’s contractor, Luchini & Trujillo Engineering, proposed an improved wall with a height of 7 feet (from grade to top) on CASEY’s side and 2 feet (from grade to top) on MERCADO’s side. (Drawing attached as **Exhibit G**). The City reviewed the permit and made the comment in the file “All disturbed areas shall be revegetated with native grasses, other drought [sic] tolerant plants or have other erosion control treatment. Neighbor will permit and regrade other side of the wall.” (Permit Comment attached as **Exhibit B**). In this context, “neighbor” refers to MERCADO. City staff’s interpretation of this sentence is that MERCADO did not object to CASEY’s improved wall and MERCADO was given the right to regrade his side of the property to make sure the wall remained stable. The engineer’s drawings seem to show that MERCADO was allowed to regrade his side of the property and have two feet of wall showing on his side of the property.

This means that MERCADO was given City permission to import dirt and regrade along the length of the improved wall. To put it another way, MERCADO was given permission to regrade through CASEY’s permit (Permit No. 15-1446.) Therefore, CASEY’s claim is rebutted by evidence in the record.

Therefore, Claim #2 does not fall within any of the three bases for appeal cited above and should be denied.

Issue #3: The City should not have issued Building Permit No. 16-2492 because MERCADO did not disclose to City staff that MERCADO regraded the northern part of the property with dirt without a city building permit.

CASEY’s Appeal Petition stated: “As a result of Applicant’s [MERCADO] decision to raise the grade north of the existing residence without notice to the City, the HDRB analysis of the proposed application was fatally flawed.” This assertion has two flaws. First, the Board of Adjustment has no jurisdiction under Code Section 14-2.4(C) over disputes over cases in front of the Historic Districts Review Board. Second, as stated above, MERCADO received city permission to regrade and import dirt, through Permit No. 15-1446, along the length of the wall. Therefore, the addition of dirt was permitted and there was no deception on MERCADO’s part to City officials.

Therefore, Claim #3 does not fall within any of the three bases for appeal cited above and should be denied.

Conclusion

Based upon the foregoing, CASEY has failed to state a valid basis for appeal under Code §14-3.17(A)(2) for Claim #1-3.

Motions

Option #1—I move to deny CASEY's appeal on grounds the Land Use Department's issuance of the building permit No. 16-2492 was consistent with Chapter 14.

Option #2—I move to grant CASEY's appeal on grounds the Land Use Department's issuance of the building permit No. 16-2492 was not valid.

Option #3—I move to postpone action on the appeal until the Board is meeting following the final resolution of the District Court case.



LUD Use Only

Time Filed: 16:17
Fee paid: \$ 100.00
Receipt attached: ☒

(date stamp)
RECEIVED
DEC - 6 2016
Land Use Dept.

Casett 2016-149

**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: CASEY DOMRBS ELLEN J. S.
Last First M.I.
Address: P.O. BOX 2068 SANTA FE K/M 87504
Street Address City Suite/Unit #
Phone: (505) 690-1085 E-mail Address: ecasey@hinklekntm.com
Additional Appellant Names: _____

Correspondence Directed to: ☐ Appellant ☐ Agent ☐ Both

Agent Authorization (if applicable)

I/We: S. NUBIA DOMRBS
authorize SOMMER KARNES ASSOCIATES, LLP to act as my/our agent to execute this application.
Signed: Sue Nubia Sommer Date: 11/28/16
Signed: _____ Date: _____

Subject of Appeal

Project Name: _____
Applicant or Owner Name: ANDRES MERCAOD AND CHRISTIN CHEN
Location of Subject Site: 494 CAMINO DON MIGUEL
Case Number: 16-0471 Permit Number (if applicable): _____

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-DR ☒ HDRB

Basis of Standing (see Section 14-3.17(B) SFCC 2001):

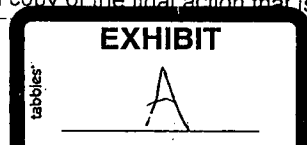
APPELLANTS ARE ADJOINING PROPERTY OWNERS

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:

THIS IS AN APPEAL FROM THE ISSUANCE OF A BUILDING PERMIT (16-2492) AND A FINAL DETERMINATION BY TAB HDRB IN CASE NO. ~~16-0471~~ H-12-030

☒ Check here if you have attached a copy of the final action that is being appealed. (SEE FINDINGS OF FACT AND CONCLUSIONS OF LAW ATTACHED)



Description of Harm

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

SEE EXHIBIT A ATTACHED HERE TO

Explain the Basis for Appeal

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

SEE EXHIBIT B ATTACHED HERE TO

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: Suella Nubia Domres Date: 11-28-16

Agent Signature: Karl H. Sommer Date: 11/28/16

State of New Mexico)

) ss.

County of Santa Fe)

I/We ELLEN S. CASEY AND S. NUBIA DOMRES, 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:

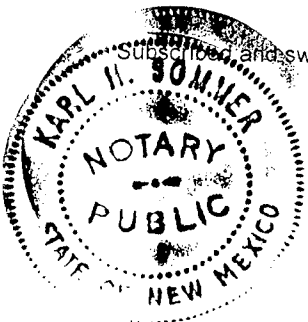
Ellen S. Casey
Signature

S. Nubia Domres
Signature

Ellen S. Casey
Print Name

Suella Nubia Domres
Print Name

Subscribed and sworn to before me this 28th day of November, 20 16.



Karl H. Sommer
NOTARY PUBLIC

My commission expires:

3-11-19

BP200I01

City of Santa Fe
Application Inquiry

12/02/16
10:29:27

Application number : 16 00002492
Application status, date . . : PERMIT ISSUED 11/23/16 Exp
Property : 494 CAMINO DON MIGUEL
UPC Code : 1-055-098-320-207- -
County Assessor Acct Num . . :
Subdivision :
Zoning : R5 RESIDENTIAL 5DU
Application type : ADRR ADDITION RESIDENTIAL ATTACHED
Application date : 10/03/16
Tenant number, name : LOT 28, BLK 11,
Master plan number, rev'wd by: JDR
Estimated valuation : 80000
Total square footage : 1770
Public building : NO
Work description, qty :
Pin number : 337368
Application desc : int/ext rmdl,1017sf portl,bedrms,bathrm addn,wal
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

Exhibit A to Verified Appeal Petition

Overview:

Appellants own the real property located at 486 ½ Camino Don Miguel, which is directly adjacent to Applicant's home at 494 Camino Don Miguel. Applicant's northern boundary is Appellants' southern boundary. The proposed addition on the north side of Applicant's existing house will almost double the size of the structure. The addition and related improvements will tower over Appellants' property and residence, with an adverse impact upon the sunlight that currently reaches Appellants' home and with seriously negative effects on the value of their property. The proposed addition will interfere significantly with Appellants' peaceful enjoyment of their property.

Specific Harm:

Applicant eradicated the existing, natural slope between his house and the common wall by adding fill dirt to his property without having first obtaining the required construction permit for grading (see below). The fill dirt raised the grade of his entire north side (contiguous with Applicant's south facing side). Applicant raised the grade by approximately three to four feet (3' to-4') above the original, natural grade at the common wall. As a result of the unpermitted fill, Appellants' grade is now some six feet below the grade of Applicant's property.

Neither Applicant's plans submitted the Historic Districts Review Board or to the City's permit and development review personnel disclosed the altered grade, and the approvals granted were based upon the altered grades.

The proposed addition to the Applicant's home will be built upon grades that have been altered as described above. Therefore, the addition will be built higher than would be allowed if the addition was built on the natural grade. Along with a proposed fence, the proposed addition will tower over Appellants' home in a manner that would not have been permitted if the illegally increased grade change had been disclosed by Applicant.

Applicant's plans provide for installation of a four to six-foot (4-6') coyote fence located right at Applicant's side of the common boundary on the illegally altered grade. This will create an eleven to thirteen-foot (11-13') barrier in Appellants' narrow back yard and, effectively, a 20' high wall when the existing seven feet eleven-inch (7'11") wall is combined with the twelve-foot (12') wall, just 5' back from the property line.

Appellants have filed a Declaration of their Solar Rights pursuant to State statute and are currently in litigation with Applicant seeking a Declaration that Applicant may not build any addition\portal\fencing that interferes with their right to have the sunlight fall on their solar collector and to gain heat and sunlight from the rays of the sun, as this proposed construction clearly does. Appellants understand that the City does not enforce Declaration of Solar Rights and that the Declaration and litigation are not necessarily a basis for this appeal, but it is important as an aspect of the harm that Appellants' will suffer if the proposed additions to Applicant's property are completed. Specifically, the proposed improvements will interfere with Appellants' Solar Rights.

Exhibit B to Verified Appeal Petition

This appeal is legally premised upon the following:

1. **Notice Violations:** Applicant was required to post notice of the August 9, 2016, Historic Districts Review Board hearing in Case No. #H-12-030 on the subject property. Applicant failed to post the notice as required by Code and as a result, Appellants were not aware of the HDRB hearing and did not attend the meeting. Appellants are aware of prior work that Applicant has carried out on the property including personally witnessing the importation of fill addressed below. Appellants would have testified against the application at the HDRB hearing had they been aware of the meeting. Given Applicant's attempt to evade the Code requirement that building height be measured based on the more restrictive of the existing or finished grade, Appellants believe that Applicant intentionally concealed the notice sign in an effort to avoid scrutiny of the application, which facially violated the Code's height requirements.
2. **Unlawful Grade Changes:** Prior to Applicant's importation of fill, the natural slope on the north side of Applicant's property dropped from the existing residence to the property line adjacent to Appellants' property. Without obtaining prior approval from the City, Applicant imported fill and raised the area between the existing residence and the north property line to be level with the grade at the north side of the existing residence.

Applicant has the burden of proof that the importation of fill does not require a City permit. Due to Applicant's actions, Applicant is unable to fulfill their burden by demonstrating the following:

 - a. the disturbed natural slopes were less than 30%. (Code §14-3.11.E.3)
 - b. the height of the proposed addition, taking into account the natural/existing grade complies with the maximum height calculation contained in the historic overlay requirements. (Code §14-5.2.D.9.c)
3. **Approvals Based Upon False or Inaccurate Information.** As a result of Applicant's decision to raise the grade north of the existing residence without notice to the City, the HDRB analysis of the proposed application was fatally flawed. Applicant failed to submit an accurate height calculation

to the Historic Preservation Department reflecting the existing grade, as required by Code §14-5.2.D.9.c. Applicant's actions deprived staff, the decision-makers and the public of the ability to assess compliance of the proposed addition with the applicable Code sections. The Applicant's concealment of the existing grade constitutes unclean hands which, regardless of whether the City accepts Appellants' argument concerning Applicant's failure to provide proper notice of the HDRB hearing, renders the City's subsequent decision on the Applicant's building permit application fatally defective.

To determine whether a construction permit was required in the first instance and to determine the allowable height based on the existing grade, the City must require Applicant to carry out forensic excavation to reveal the natural grade between the existing residence and the north property line. Otherwise, Applicant will have failed its burden of demonstrating compliance with City Code requirements and the City's decisions on both the building permit and the historic application will be defective due to a lack of substantial evidence in the record to support the decision.

BP502I02

City of Santa Fe
Inspection Inquiry - Results Comments

1/25/17
15:36:03

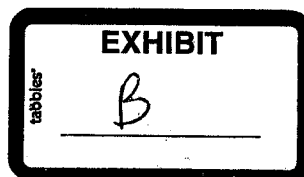
UPC Code : 1-055-098-205-327- -
Property address : 486 CAMINO DON MIGUEL
Appl, structure nbr : 15 00001446 000 000
Permit type, seq nbr : BLDR 00 BUILDING PERMIT RESIDENTIAL
Inspection type, seq nbr : G002 0001 GRADING & DRAINAGE, FINAL
Inspection status, date : INSPECTION COMPLETED 12/23/15

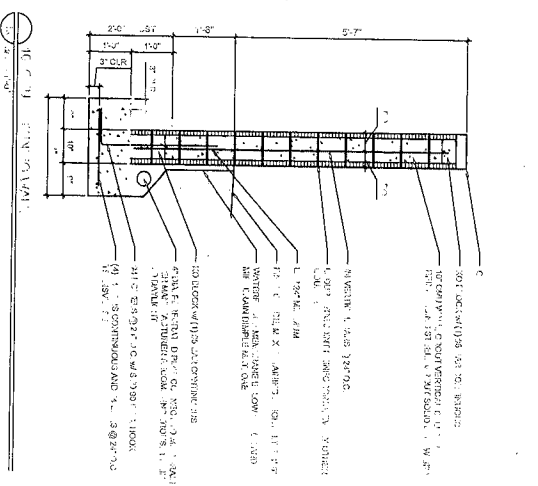
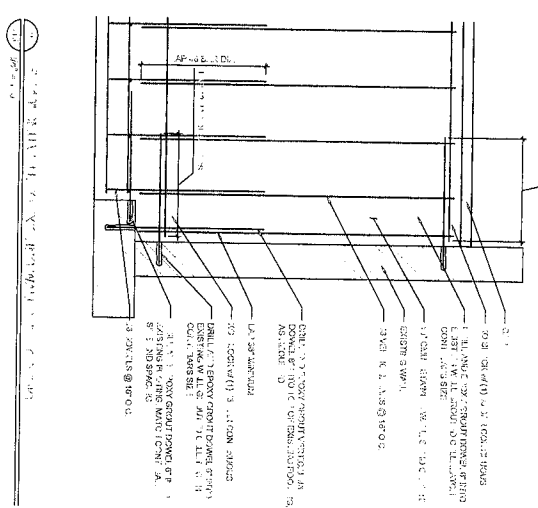
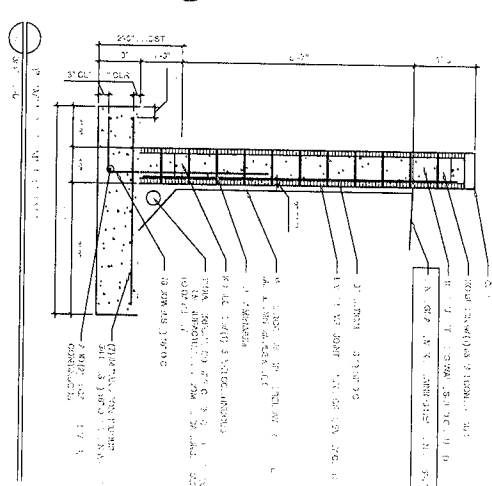
Inspection Results Comments

All disturbed areas shall be revegetated with native grasses
grasses, other grought tolerant plants or have other
erosion control treatment.
Neighbor will permit and regrade other side of wall.

Press Enter to continue.
F3=Exit F12=Cancel

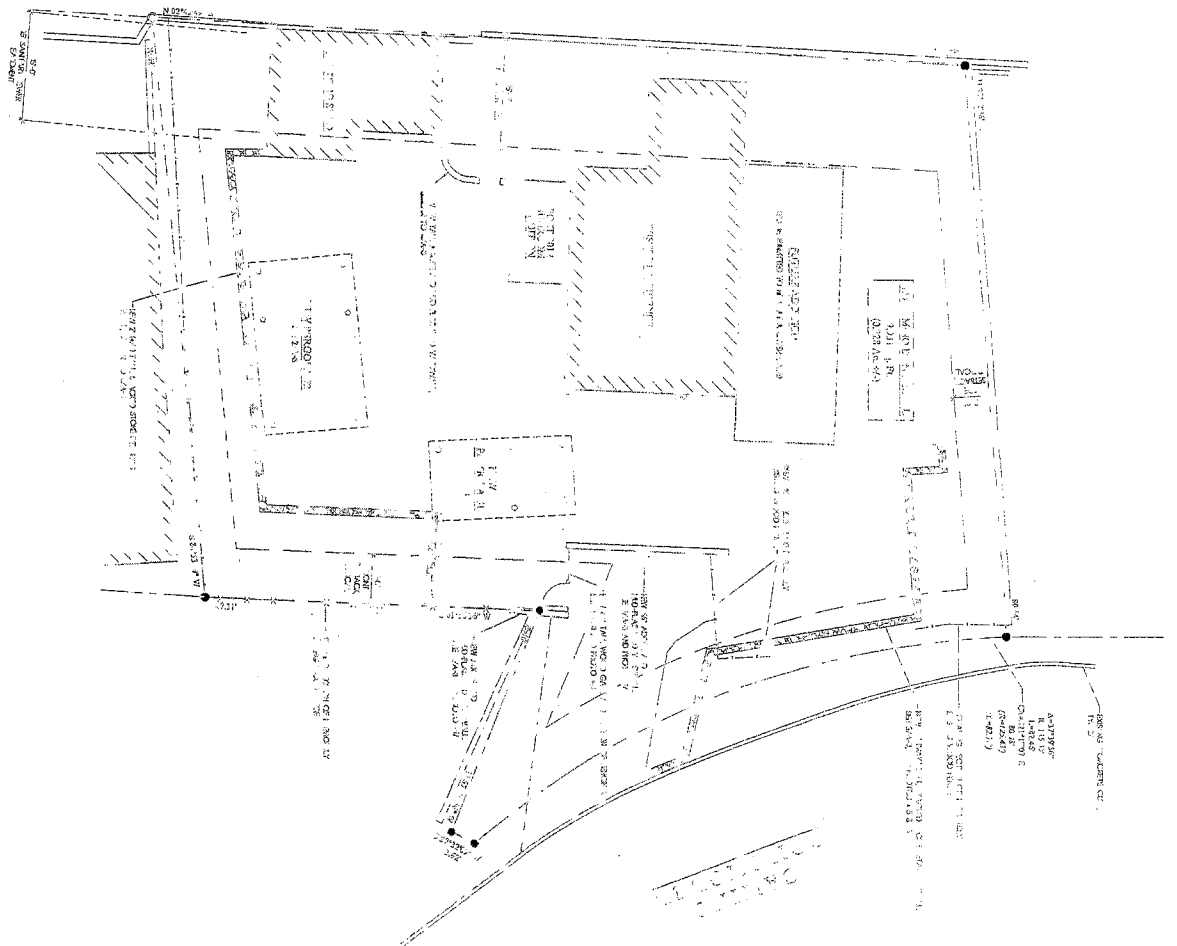
Bottom



[illegible][illegible]

1. EXISTING SITE PLAN

VIC. PLANT



5

C-1

ADDITIONS, REMODEL AND
SITE IMPROVEMENTS AT
104 CARLING DRIVE

ALU 21

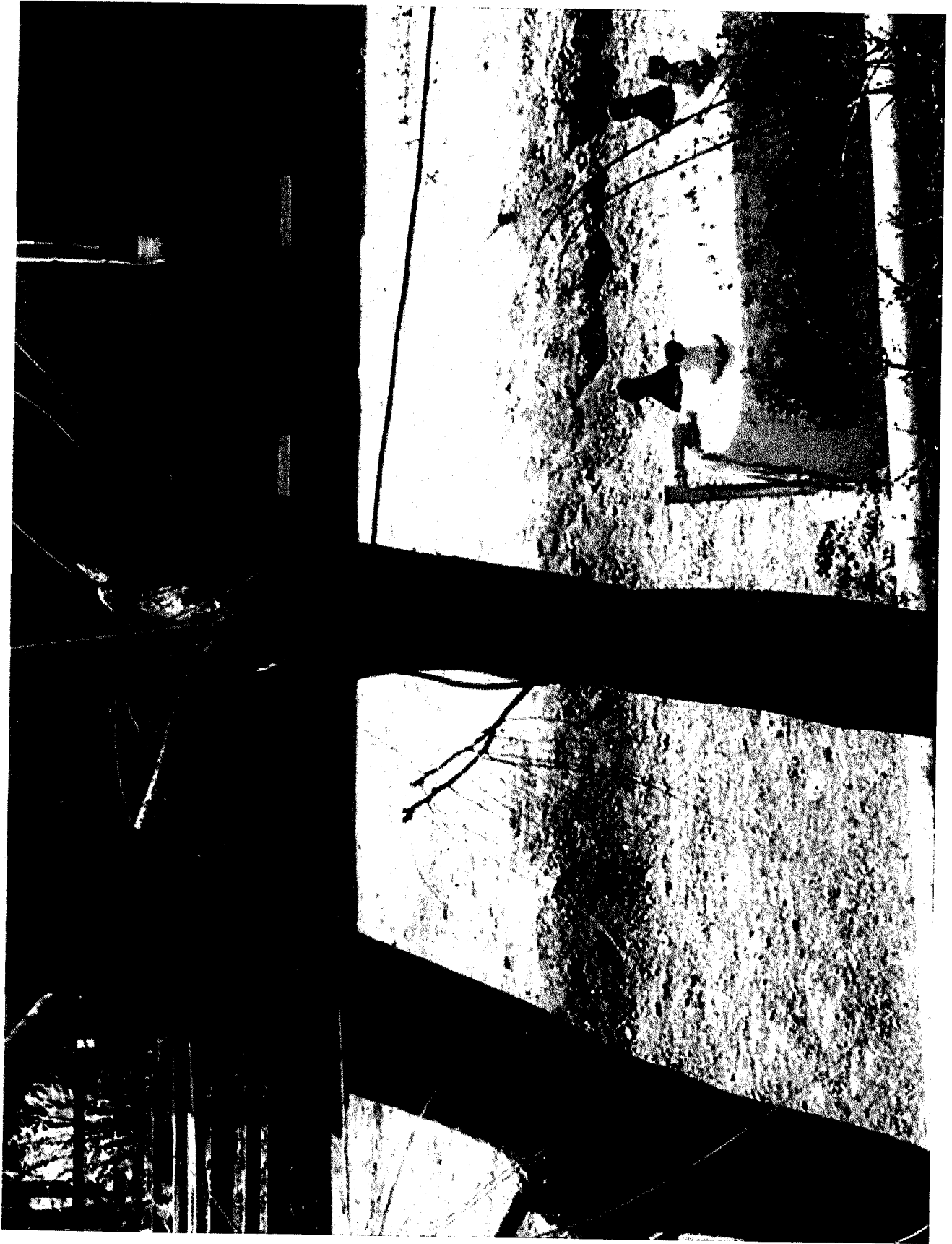
76-612-713

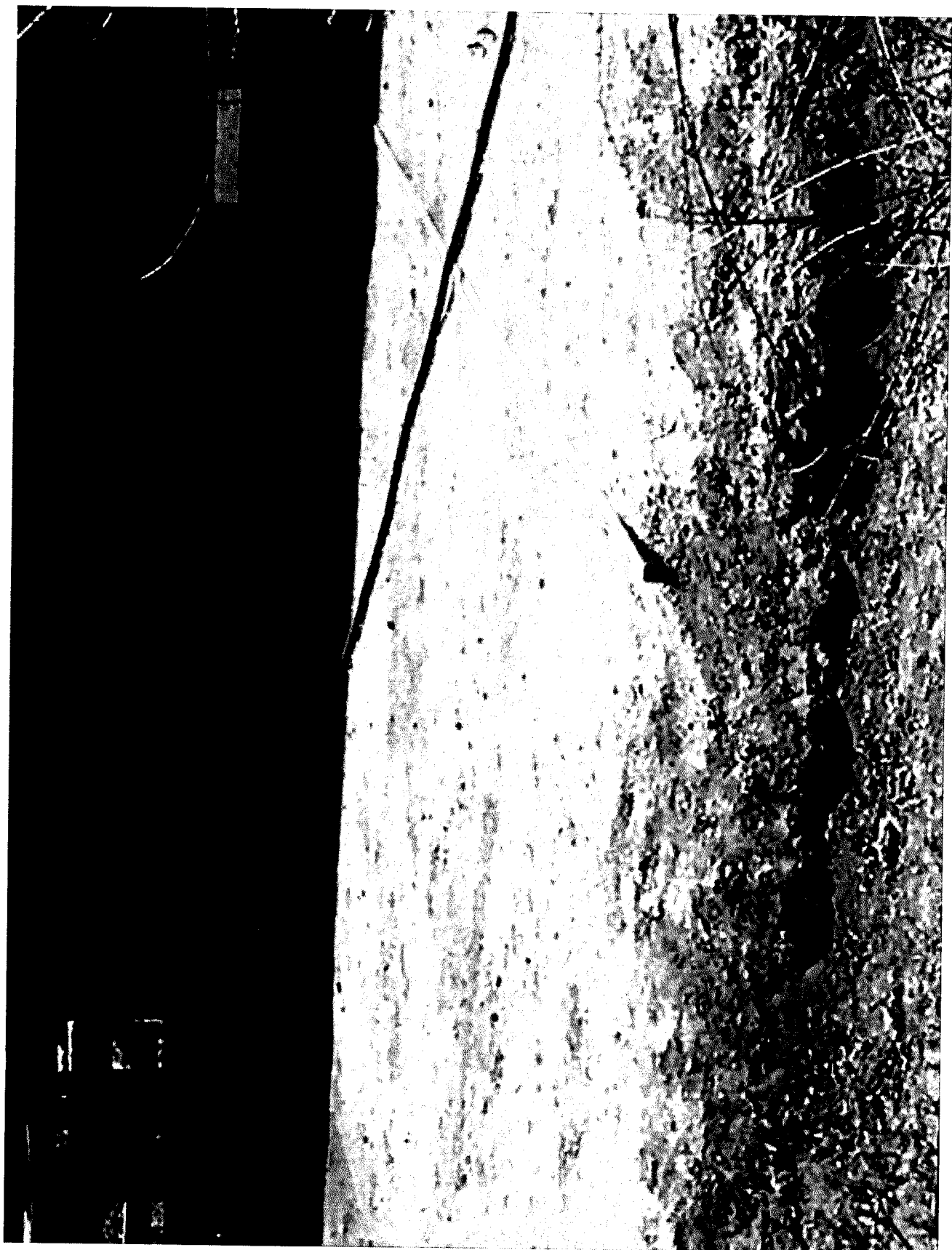
[illegible]

ADDITIONAL AND YARDWALKS
AT
494 CALIFORNIA BOULEVARD

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

805-812-7612 info@rev.dandrewjonesdesign.com
PO BOX 145 SANTA FE NEW MEXICO





Historic District Ordinance 14-5.2(D)(9)(C)(iii)

(iii) In historic districts, height shall be the vertical distance measured between the highest part of a *structure* and **the existing grade or finished grade, whichever is more restrictive**, at the midpoint of the *street* facing facade, excluding *rooftop appurtenances*, the increased height of *walls* or fences over pedestrian and vehicular openings, and gates (either in opened or closed position). For *structures* which do not have *street* frontage, height shall be determined by the facade which contains the tallest vertical distance measured between the highest part of a *structure* and the existing *grade* or finished *grade*, whichever is more restrictive. The height of *walls* and fences is measured from the *street*-facing side of the *wall* or fence. (Ord. No. 2002-37 § 27)

City of Santa Fe
Historic Districts Review Board
Findings of Fact and Conclusions of Law

Case #H-12-030

Address – 494 Camino Don Miguel

Agent's Name – Andres Mercado

Owner/Applicant's Name – Andres Mercado

THIS MATTER came before the Historic Districts Review Board ("Board") for hearing on August 9, 2016.

494 Camino Don Miguel is a single-family residence constructed before 1931 in a simplified Spanish-Pueblo Revival manner. The building is listed as contributing to the Downtown & Eastside Historic District and elevations 1 (excluding the east porch infill), 2, and 3 are designated as primary. On September 22, 2015, the HDRB approved remodeling on the property that included exceptions to remove historic materials, place an addition on a primary elevation, increase the height of a primary elevation, and to change the character of the roof. At the July 26, 2016 hearing, the Applicant proposed to remodel the property with the following nine items.

1. A 727 square-foot addition will be constructed on the north elevation of the residence to a height of 12.5' where the maximum allowable height is 16' 2". The addition will feature mud-plastered adobe walls, reused windows, and single-lite doors that will not be publicly visible. Applicant requested an exception to exceed the 50% footprint standard (Subsection 14-5.2(D)(2)(d)); the exception responses at the end of staff's report were amended by the Applicant before the hearing.
2. A 158 square-foot portal will be constructed at the northwest corner of the addition to a height of 10.75'. The portal will feature a corrugated metal shed roof and a corner fireplace that is integrated into a partially enclosing mud-plastered adobe wall.
3. A window on the north elevation of the residence will be removed and replaced with a single-lite door that will not be publicly visible.
4. Four solar tubes will be installed.
5. The existing mud-plastered adobe yardwall at the west side of the parking area will be modified by evening the wall and installing a "drip edge cap" of unknown material (sheet C-3 # 5 A and B).
6. A mud-plastered adobe yardwall will be constructed behind the street frontage rock wall to a maximum height of 5' 8" and predominately at 4' high (sheet C-2 # 2). The wall will feature two window openings, steps in height at one end, a buttress in the center, and a "drip edge cap".
7. A 5' 8" high mud-plastered adobe yardwall with a "drip edge cap" and a bileaf wooden gate will be constructed at the north side of the parking area (sheet C-2 # 3).
8. A 5' 8" high mud-plastered adobe yardwall with a "drip edge cap" and a single-leaf wooden gate will be constructed at the south side of the parking area (sheet C-2 # 4).
9. A coyote fence will be constructed along the north side of the lot at 4' and 6' high (sheet C-2 #1).

FINDINGS OF FACT

1. After conducting public hearings and having heard from the Applicant and all interested persons, the Board hereby FINDS, as follows:
2. Zoning staff determined that the Application meets underlying zoning standards.
3. Staff Recommendation: Staff found that the exception request to exceed the 50% footprint standard was met. Staff found that besides the required exception approval, the Application complies with Section 14-5.2(D) General Design Standards and (E) Downtown & Eastside Historic District.
4. The project is, without limitation, subject to requirements of the following sections of the Santa Fe Land Development Code:
 - X Section 14-5.2(D)(9) General Design Standards, Height Pitch Scale and Massing (of any structure).
 - X Section 14-5.2(D) General Design Standards
 - X Section 14-5.2(C), Regulation of Significant and Contributing Structures
5. The property is located in the following district and subject to the related sections of the Santa Fe Land Development Code:
 - X Downtown and Eastside Historic District (Section 14-5.2(E))
6. An Exception Request to exceed the 50% footprint standard was applicable to this Application:
 - X Exception criteria were met, as found by staff at the hearing, based on the Applicant's amended exception criteria responses.
7. Staff stated that it believed that if the exception request were granted by the Board, that the changes would not interfere with the residence's status as contributing.
8. The Applicant testified that he will use mud plaster and that the addition on the north will be made with straw bale walls.
9. The Applicant would apply the mud plaster, after a contractor constructed the straw bale walls.
10. The Application, as proposed, lacks distinction between the old from the new construction.
11. The Applicant testified that the coyote fence will have irregular latilla heights and the stringers will be on the inside.
12. The Applicant testified that the drip edge cap material is 12 inch metal flashing bet to shape to cover the adobe wall.
13. Under Sections 14-2.6(C), 14-2.7(C)(2), 14-5.2(A)(1), 14-5.2(C)(2)(a-d & f) and 14-5.2(C)(3)(b), 14-5.2(C)(3)(a) and Section 14-5.2(D) the Board has authority to review, approve, with or without conditions, or deny, all or some of the Applicant's proposed design to assure overall compliance with applicable design standards.
14. Under Section 14-5.2(C)(3)(b), the Board has the authority to approve an application for alteration or new construction on the condition that changes relating to exterior appearance recommended by the Board be made in the proposed work, and no permit is to issue until new exhibits, satisfactory to the Board, have been submitted.
15. The information contained in the Application, and provided in testimony and evidence establishes that all applicable requirements for Board review have been met.

16. The information contained in the Application, and provided in testimony and evidence establishes that all applicable design standards for Board approval as herein described have been met.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the hearing, the Board acted upon the Application as follows:

1. The Board has the authority to review and approve the Application.
2. The Board unanimously approved the Application as recommended by Staff.
X Additional conditions, which are: that the coyote fence have irregular latilla tops; that there be no publicly-visible rooftop appurtenances (including visible skylights); that the Applicant maintain the dry stack rock wall; that the Applicant offset the proposed addition in front of the existing east elevation, extending it east approximately 18" off the east elevation and that staff shall review and approve the redesign for the offset before Applicant submits a construction permit application.

IT IS SO ORDERED ON THIS 23rd DAY OF AUGUST 2016, THE HISTORIC DISTRICTS REVIEW BOARD OF THE CITY OF SANTA FE.

Cecilia Rio
Chairperson

23 August 2016
Date:

FILED:

Yolanda Y. Vigil
Yolanda Y. Vigil
City Clerk

8/24/16
Date:

APPROVED AS TO FORM
Mueg
Assistant City Attorney

8/23/2016
Date:

CAMINO DON MIGUEL

EXISTING CONCRETE CURB,
TYPICAL

$\Delta=37^{\circ}39'56''$
 $R=125.43'$
 $L=82.46'$
Ch-S21°18'07"E
80.98'
(R=125.43')
(L=82.76')

EXISTING WOOD FENCE

EXISTING STONE WALL

23'-3 7/16'
(+/-)

PROPOSED
ADOBE WALL

PROPOSED
BUTTRESS

PROPOSED
COYOTE GATE

PROPOSED
ADOBE WALL

NEW ADOBE WALL KEYED
INTO EXISTING ADOBE WALL

NEW ADOBE WALL KEYED
INTO EXISTING ADOBE WALL

EXISTING ADOBE WALL

80.64'

22'-10'
(+/-)

PROPOSED 4' TALL
COYOTE FENCE

TRANSITION HEIGHT
OF NEW FENCE

32'-0'
(+/-)

PROPOSED 6' TALL
COYOTE FENCE

N 85°52'26" E

8'-0" O.C.
TYPICAL

5'-0"
SIDE
SETBACK,
TYPICAL

PROPOSED
ADDITION

SINGLE-PLY MEMBRANE
ROOF TO MATCH
EXISTING, TYPICAL

NEW RIDGE

PROPOSED
PORTAL

NEW CORRUGATED
METAL ROOF

NEW PARAPET AT
NEW ADDITION,
TYPICAL

NEW GUTTER AND
DOWNSPOUT TO
MATCH EXISTING

EXISTING PARAPET
(NOT ALL EXISTING
PARAPETS SHOWN)

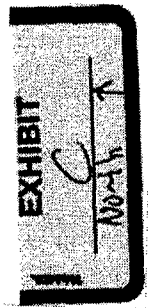
NEW PARAPET TO MATCH
EXISTING FOR PURPOSE OF
RESLOPING EXISTING ROOF AS
NEEDED

RESLOPE
EXISTING ROOF
AS NEEDED

EXISTING RESIDENCE

EXISTING PARAPET
(NOT ALL PARAPETS
SHOWN)

NEW SOLAR TUBE SKYLIGHT AT
EXISTING STRUCTURE—
TYPICAL OF 4



114.78'

LATILLA POSTS, TYPICAL

22'10"
(+/-)

32'
(+/-)

① PROPOSED NORTH EXTERIOR FENCE YARD WALL ELEVATION

EXHIBIT

to the Historic Preservation Department reflecting the existing grade, as required by Code §14-5.2.D.9.c. Applicant's actions deprived staff, the decision-makers and the public of the ability to assess compliance of the proposed addition with the applicable Code sections. The Applicant's concealment of the existing grade constitutes unclean hands which, regardless of whether the City accepts Appellants' argument concerning Applicant's failure to provide proper notice of the HDRB hearing, renders the City's subsequent decision on the Applicant's building permit application fatally defective.

To determine whether a construction permit was required in the first instance and to determine the allowable height based on the existing grade, the City must require Applicant to carry out forensic excavation to reveal the natural grade between the existing residence and the north property line. Otherwise, Applicant will have failed its burden of demonstrating compliance with City Code requirements and the City's decisions on both the building permit and the historic application will be defective due to a lack of substantial evidence in the record to support the decision.

Ellen S Casey, et. al.,
v.
Andres J. Mercado, et. al.

CASE DETAIL

CASE #	CURRENT JUDGE	FILING DATE	COURT
D-101-CV-201602112	Singleton, Sarah	09/01/2016	SANTA FE District

PARTIES TO THIS CASE

PARTY TYPE	PARTY DESCRIPTION	PARTY #	PARTY NAME
D	Defendant	1	MERCADO ANDRES J.
D	Defendant	2	CHEN CHRISTINE
P	Plaintiff	1	CASEY ELLEN S
	ATTORNEY: CASEY ELLEN S.		
	ATTORNEY: MCLEAN JACLYN M		
P	Plaintiff	2	DOMRES SUELLA V
	ATTORNEY: CASEY ELLEN S.		
	ATTORNEY: MCLEAN JACLYN M		

CIVIL COMPLAINT DETAIL

COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISP	DISP DATE
09/01/2016	1	OPN: COMPLAINT		

COA SEQ #	COA DESCRIPTION
1	Other

PARTY NAME	PARTY TYPE	PARTY #
------------	------------	---------

COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISP	DISP DATE
10/12/2016	1	OPN: COMPLAINT		

COA SEQ #	COA DESCRIPTION
1	Other

PARTY NAME	PARTY TYPE	PARTY #
------------	------------	---------

HEARINGS FOR THIS CASE

HEARING DATE	HEARING TIME	HEARING TYPE	HEARING JUDGE	COURT	COURT ROOM
10/02/2017	9:00 AM	DOCKET CALL	Singleton, Sarah	SANTA FE	Room 250
09/08/2017	3:00 PM	PRE-TRIAL CONFERENCE	Singleton, Sarah	SANTA FE	Room 250

REGISTER OF ACTIONS ACTIVITY

EVENT DATE	EVENT DESCRIPTION	EVENT RESULT	PARTY TYPE	PARTY #	AMOUNT
03/02/2017	SCHEDULING ORDER				
	AMENDED Scheduling Order				
02/24/2017	ORD: RULE 16B				
	SCHEDULING/FORM				
	Order Granting Joint Motion to Vacate and Reset Rule 16(B) Scheduling Order Deadlines				
02/21/2017	MTN: TO VACATE				
	Joint Motion to Vacate and Reset Rule 16(b) Scheduling Order Deadlines				
01/31/2017	ANSWER				
	Plaintiffs' Answer to Defendants' Counterclaim				
01/30/2017	MOTION/ PETITION TO				
	EXTEND TIME				
	Defendants' Motion for Extension of Scheduling Order Deadlines to Facilitate Settlement Conference				
01/20/2017	CERTIFICATE OF SERVICE				
	Certificate of Service				
01/03/2017	SCHEDULING ORDER				



12/29/2016	Amended Rule 16(B) Scheduling Order Non Jury ORD: EXTENDING TIME Order on Motion to Extend Deadlikne to Answer Discovery Requests		
12/29/2016	ORD: EXTENDING TIME Order on Motion to Extend Deadline to Answer Counterclaim		
12/28/2016	MOTION/ PETITION TO EXTEND TIME Joint Motion to Extend Deadline for Plaintiffs' Answer to Defendants' Counterclaim		
12/28/2016	MOTION/ PETITION TO EXTEND TIME Joint Motion to Extend Deadline for Defendants' Answers to Plaintiffs' First Set of Discovery Requests		
12/28/2016	REPORT Case Scheduling Status Report		
11/22/2016	NTC: OF HEARING Scheduling Conference		
11/21/2016	CERTIFICATE OF SERVICE Certificate of Service - Plaintiffs' First Requests for Production and First Interrogatories to Defendants		
11/16/2016	REQUEST Request for Rule 16B Scheduling Conference		
11/10/2016	ORD: EXTENDING TIME Order to Extend Deadline to Answer Counterclaim		
11/09/2016	MOTION/ PETITION TO EXTEND TIME Plaintiffs' Unopposed Motion to Extend Deadline for Plaintiffs' Answer to Defendants' Counterclaim		
11/09/2016	NTC: OF NON- AVAILABILITY Notice of Non-Availability of Bryan Biedscheid		
10/18/2016	RETURN OF SERVICE Christine Chen		
10/18/2016	RETURN OF SERVICE Andres J. Mercado		
10/12/2016	ANSWER & COUNTERCLAIM ANDRES J. MERCADO AND CHRISTINE CHEN S ANSWER TO PLAINTIFFS COMPLAINT FOR DECLARATORY JUDGMENT AND COUNTERCLAIMS FOR SLANDER OF TITLE AND PRIMA FACIE TORT		
10/12/2016	RETURN OF SERVICE Return of Service	D	2
10/12/2016	RETURN OF SERVICE Return of Service	D	1
09/12/2016	SUMMONS ISSUED Christine Chen		
09/12/2016	SUMMONS ISSUED Andres J. Mercado		
09/01/2016	OPN: COMPLAINT Complaint for Declaratory Judgment		

JUDGE ASSIGNMENT HISTORY

ASSIGNMENT DATE	JUDGE NAME	SEQ #	ASSIGNMENT EVENT DESCRIPTION
09/01/2016	Singleton, Sarah	1	INITIAL ASSIGNMENT

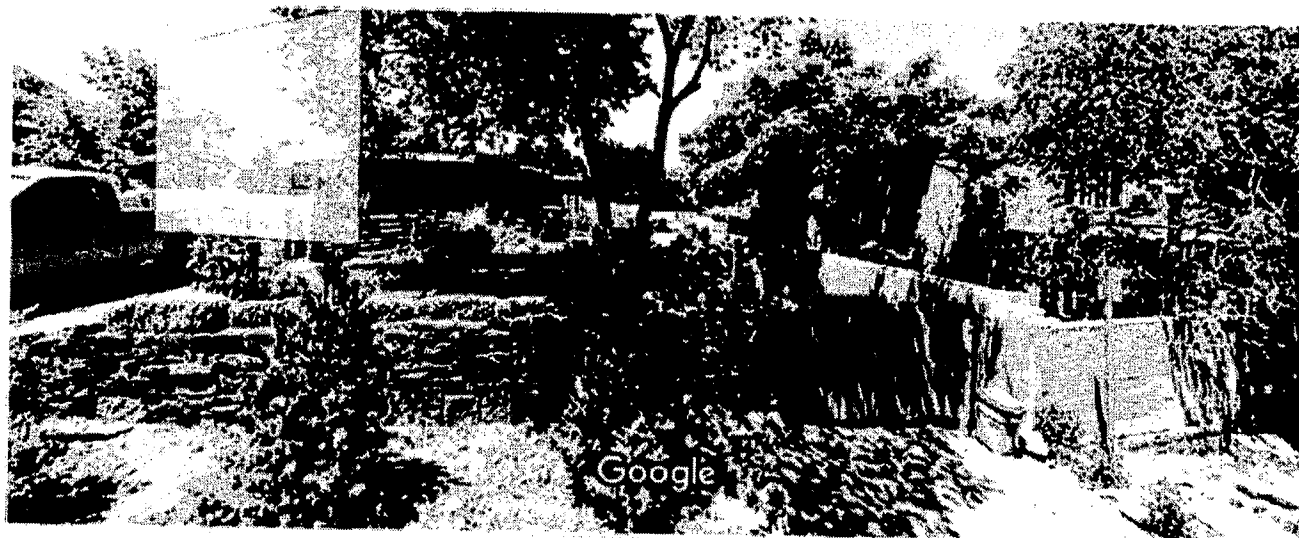
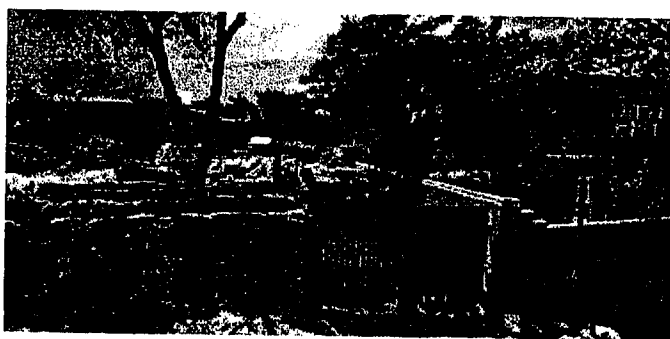


Image capture: Jul 2016 © 2017 Google

Santa Fe, New Mexico

Street View - Jul 2016



Jun 2016

El Caminito

Camino

Camino C



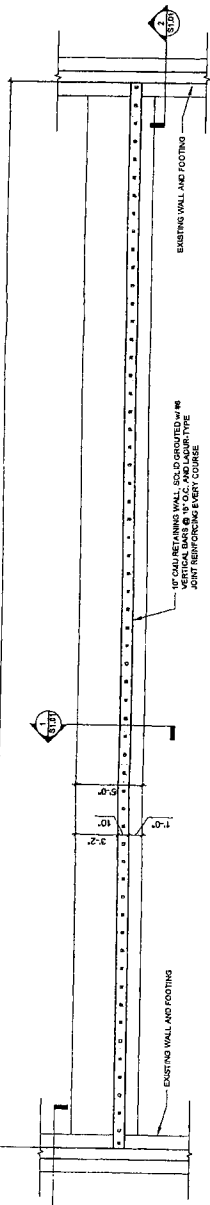
494 Cam

Camino



SECTION
CUTTABLE

APPROX. 78" (VERIFY IN FIELD)



FOUNDATION PLAN
1/4\"/>

OUTLINE SPECIFICATIONS FOR CMU RETAINING WALL

- I. GENERAL NOTES & DESIGN CRITERIA
 - A. Design Codes and Manuals:
 1. 2009 International Building Code (IBC)
 2. ASCE 7-02, Minimum Design Loads for Buildings and Other Structures
 3. ACI 318-05, Building Code Requirements for Reinforced Concrete
 4. American Society for Testing and Materials (ASTM)
 - B. Minimum Design Loads
 1. Retaining Wall Design Loads
 - a) Active Pressure: 40 PCF
 - b) Live Load Surcharge: 40 PSF
 - C. Foundation Notes
 - a) Contractor to verify resulting wall design parameters indicated in the specification by geotechnical investigation, prior to construction.
 2. Design is based on the following assumed soil parameters, to be verified by contractor:
 - a) Allowable soil bearing pressure = 2000 psf
 - b) Front Depth (Maximum Exterior Footing Embedment) = 24"
 3. Soil to be compacted to a minimum 95%.
 - D. CONTRACTOR'S NOTE
 1. Any conflict between structural drawings, architectural drawings and/or specifications shall be brought to the attention of the architect prior to proceeding with the work indicated.
 2. All steel reinforcing shall be done cold. Heating of bars will not be permitted.
 3. OPENINGS
 - a) Openings, bays, etc. to be placed through any structural member shall be approved by the engineer. All openings shall be provided for by the contractor. Cutting of members shall be done in accordance with the structural drawings.
 - b) Damage or deterioration to materials and components shall be repaired or replaced as required.
 - c) Conditions of installation or lack of support.
 - d) Items noted as existing on the drawings, but not found in the field, shall be noted as existing on the drawings, but not found in the field.
 - e) The contractor shall provide all measures necessary to protect the structure and existing conditions. The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - f) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - g) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - h) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - i) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - j) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - k) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - l) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - m) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - n) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - o) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - p) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - q) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - r) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - s) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - t) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - u) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - v) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - w) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - x) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - y) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
 - z) The contractor shall be responsible for the protection of existing conditions and shall not be limited to the protection of existing conditions.
- II. STRUCTURAL CONCRETE
 - A. Unless indicated otherwise, all concrete shall be ready-mixed concrete with standard stone aggregate (1 1/4\"/>
- III. REINFORCED MASONRY
 - A. Unit design and construction per National Concrete Masonry Association.
 - B. Concrete Masonry Units:
 1. Design Masonry Compressive, f_m : 1,500 PSI
 2. Mortar shall be Type "M" or "S"
 3. Type "M" = 2500 PSI at 28 days
 4. Type "S" = 1800 PSI at 28 days
 - C. Grout for reinforced masonry: f_c = 3,000 PSI @ 28 days. Grout to be an 8 bag mix per cu. yd. with 8" to 9" slump.
 - D. Masonry should not be loaded before grouting.
 - E. All masonry head joints and end joints must be filled solidly with mortar for a distance in from the face of the wall not less than the thickness of the longitudinal face shells.
 - F. To insure proper placement of grout in vertical cells, cross webs must be fully bedded on mortar thus eliminating leakage.
 - G. The minimum continuous unobstructed cell end must not be less than 2' x 4' x 8 in. sq. and mortar fills must be removed before grouting.
 - H. Mortar droppings must be kept out of cells which are to be grouted.
 - I. Clean out holes are not required unless grouting is done in more than 4' of fill.
 - J. Bars need not be tied at splices but should be separated by not less than the nominal diameter of the bar, nor less than 1 in.
 - K. All grout to be placed or loaded to insure cells are completely filled.
 - L. All grout to be placed or loaded to insure cells are completely filled.
 - M. Grout placement stopped for one hour or more should be stopped 1 1/2' below the top of the masonry unit to provide key for subsequent grouting.
 - N. Reinforcing steel - A615, Grade 60
 - O. High strength bars shall be used in all cases where indicated.
 - P. Single wall walls, concrete batters from horizontal face, including with 1 gauge side and cross rods at every course. (Don't Use Lateral Type or Reinforcing).
 - Q. Lay out walls in advance for accurate spacing of vertical bars, aligning with vertical joints. And using half-half size units, particularly at corners, joints, and where offsets, or other locations.
 - R. Vertical bars shall be installed at 20" o.c. or within 15" of corner, LCN. Coordinate locations of all vertical joints and footings prior to installation.
- IV. REINFORCING STEEL
 1. Deformed Bars:
 - a) ASTM A615, Grade 60

ENGINEERS SEAL
APPROVED FOR CONSTRUCTION
1752 JOB # 1154



10' CMU RETAINING WALL
8'10\"/>

REINFORCING WALL
SCALE
1\"/>

FOUNDATION
PLAN DETAILS
SPECS

10' CMU RETAINING WALL AND FOOTING
8'10\"/>

REINFORCING WALL
SCALE
1\"/>

FOUNDATION
PLAN DETAILS
SPECS

10' CMU RETAINING WALL AND FOOTING
8'10\"/>

EXHIBIT
G

LYING & BEING SITUATE WITHIN SECTION 30,
TOWNSHIP 17 NORTH, RANGE 10 EAST, N.M.P.M.
CITY & COUNTY OF SANTA FE, NEW MEXICO

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

① EASY MONUMENT SET
 CAN BE USED IN ANY ZONE
 ② CALCULATED POINT
 ③ FAMILY PENDER MANDOLE
 ④ UTILITY POLE
 ⑤ WATER METER
 ⑥ ELECTRIC TRANSFORMER
 ⑦ TELEPHONE JUNCTION BOX
 ⑧ ELECTRIC METER
 ⑨ GAS METER
 ⑩ LIGHT STUARD
 ⑪ CABLE TV JUNCTION BOX
 ⑫ SPUR
 ⑬ BRANCH LINE
 ⑭ HUNDRED BOUNDARY LINE
 ⑮ BUILDING SET BACK LINE
 ⑯ COVETE FENCE
 ⑰ CHAINLINK FENCE
 ⑱ OVERHEAD WIRE

- 6) BASIS OF REFERENCE TO "BANK" FROM TRANSDUCERS AND OPERATIONS OF AERONAUTICS NORTH ON FEBRUARY 28, 2016
- 7) REFER TO A PLAT OF SUBDIVISION, "SANTA FE SUBDIVISION FOR ZONE 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 82

[illegible]

COUNTY OF SANTA FE } ES
STATE OF NEW MEXICO }
I HEREBY CERTIFY THAT THIS INSTRUMENT NO. _____
Dated _____ A.D. 20 _____ AT _____

FOREIGN INFORMATION FOR COUNTY CLERK

NAME	ELLEN SULLIVAN CASEY
FILE NO	BOOK 588, PAGE 328
SUBDIVISION	N/A
SECTION	SECTION 30, T17N, R10E
DATE	1-6-98 (98-0015-507)

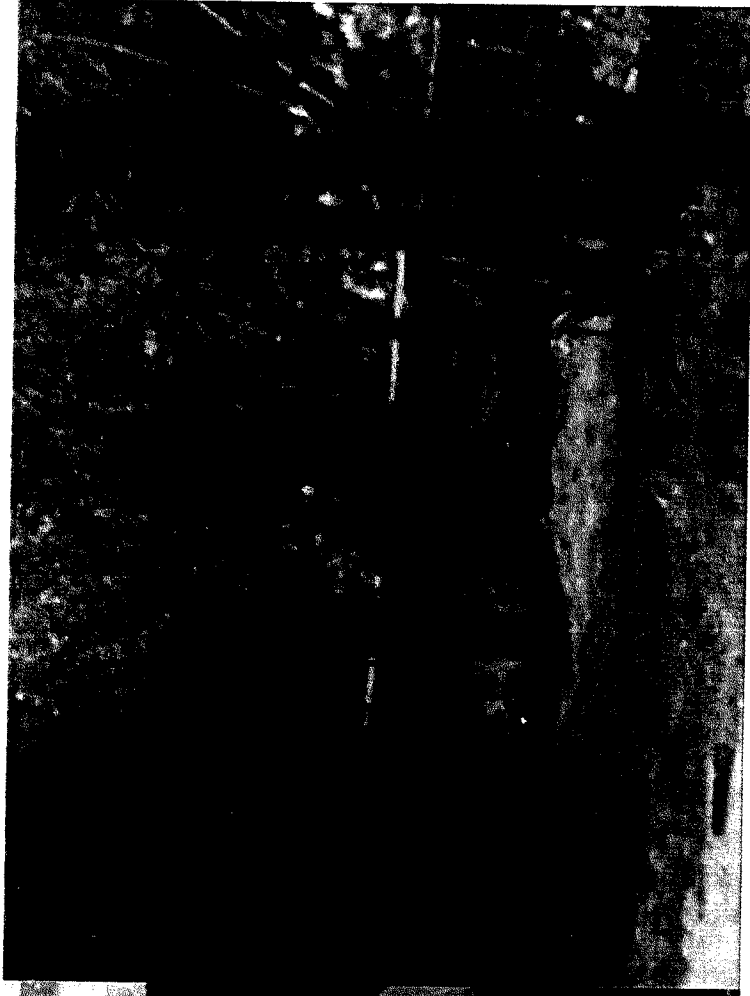
MOUNTAIN SURVEYS
 1114 HICKOX ST., SANTA FE, N.M. 87505
 TEL: 505-842-9428 FAX: TEL: 505-842-1413
 DATE (S): WORKSHEET: PROJECT: _____

Exhibit "30"

History of Unpermitted Grade Changes – 494 Camino Don Miguel

1987 Ellen S. Casey/Suella V. Domres purchase 486 Camino Don Miguel.

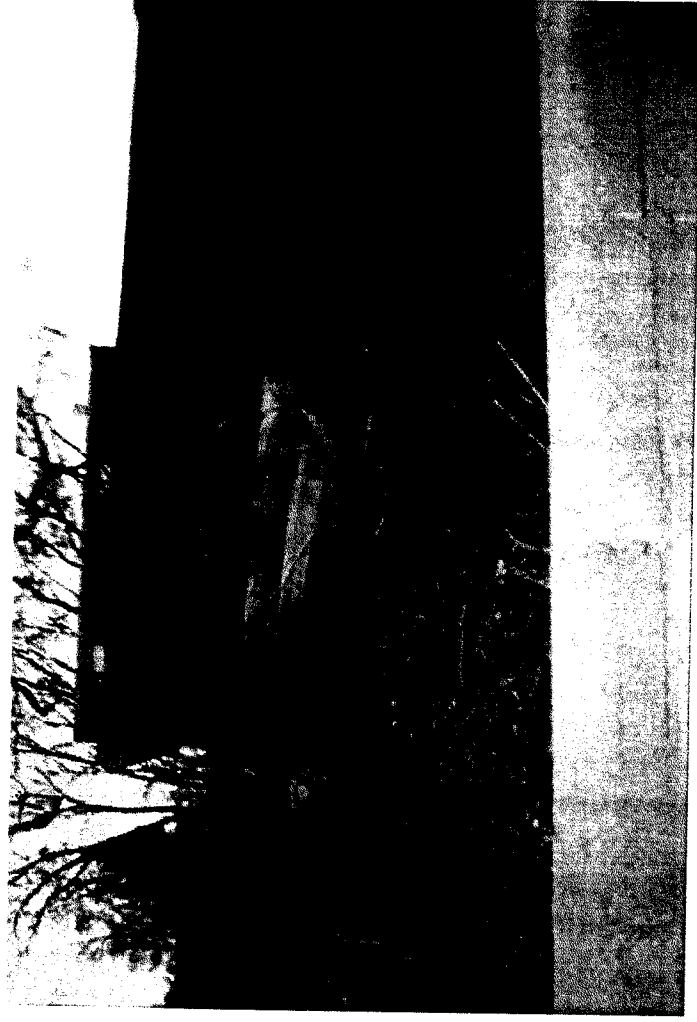
1989 – 1990-- Photos of existing grade on north side of 494 Camino Don Miguel (abutting south facing backyard of 486 Camino Don Miguel) as existed before Mercado purchased property and while then existing cinder block retaining wall (5' 7" tall) between 486 and 494 Camino Don Miguel in place.



1989 - 1990 -- continued



November 8th, 2012 -- Post-Mercado purchase of 494 Camino Don Miguel, photos showing one of multiple occasions Mercado bulldozed existing slope and raised grade of entire north side portion of 494 Camino Don Miguel abutting 486 Camino Don Miguel (no permit). In addition to raising 494's north side grade in 2012, Mercado's activities undermined the common retaining wall between 486 and 494 Camino Don Miguel.



November 8th, 2012 -- continued



November 8th, 2012 -- continued



2014-2015 – Owners of 486 and 494 agree to share the expense of fully replacing the existing retaining wall. Casey-Domres obtain HRB approval and building permit to demolish and replace wall to height of 7'1" from 486 grade.

Mercado has bulldozer operator excavate (unpermitted) an approximately 12' x 20' portion of Mercado northeast property. Mercado builds dry stack rock retaining wall in his yard (no HRB approval \un-permitted). Mercado bulldozer operator destroys existing slope and breaks through existing cinder block retaining wall while excavating portions of 494 north east side (without permit).



2014-2015 – continued –Mercado obtains HRB approval for construction\additions to existing property (including free standing “pergolas”) and primary elevation changes done 2012-2015 with no application for HRB approval or permits. Includes a 128 sq.ft. addition . No building permits applied for or obtained for additions\structures requiring same. Mercado does not obtain any approval\permit for any grade\slope changes on the north side of 494.



2014-2015 – continued

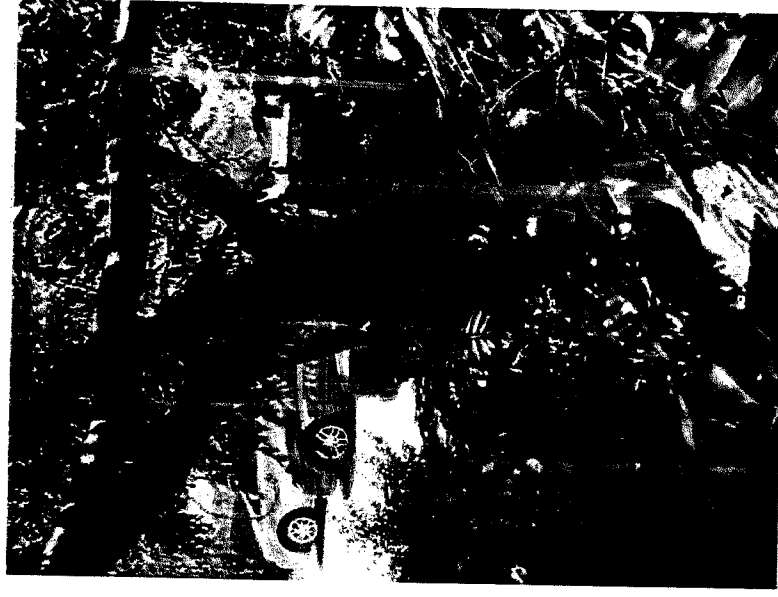
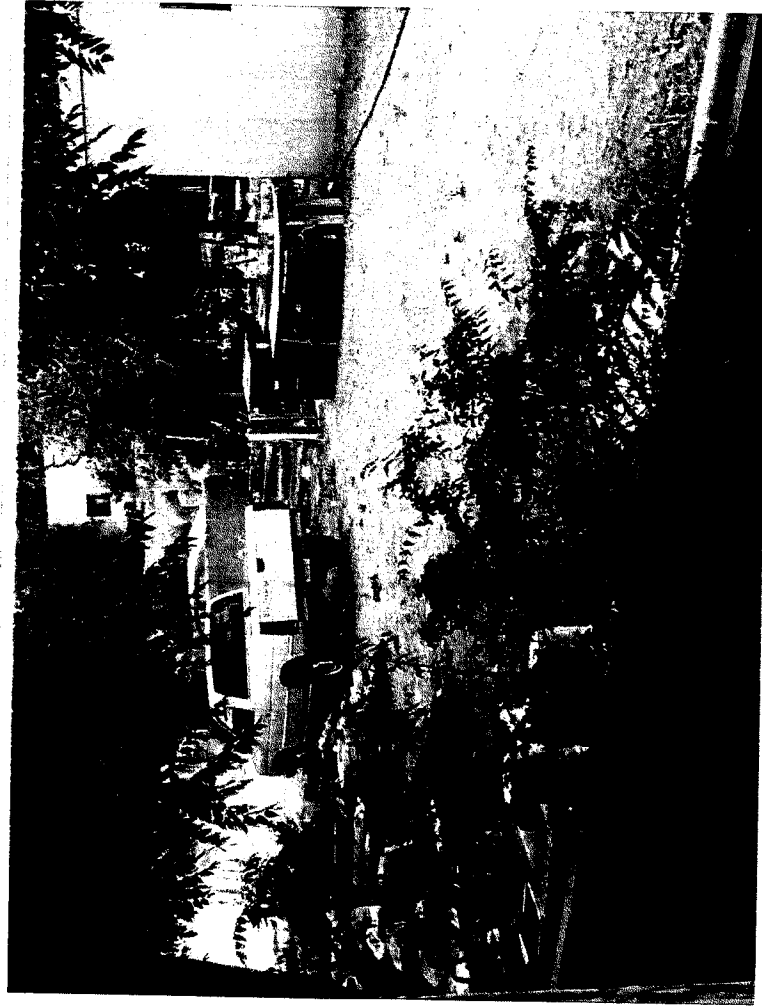


2014-2015 – continued



2016 – Fall-Winter original retaining wall demolished and rebuilt (fully permitted by Casey\Domres) to 7'1". Post-wall construction, Mercado destroys any remaining slope and raises grade 3'-5' on all of north side of 494 (except dry stack walled cut out) to approximate level of existing Mercado house without submittal of application, plan, engineering study etc. No permit is obtained.

Photos show slope from north to south on 494 north side obliterated. 494 grade at 494 side of new retaining wall at 6' plus above 486 grade and approximately 3' – 5' above original grade of north side of 494.

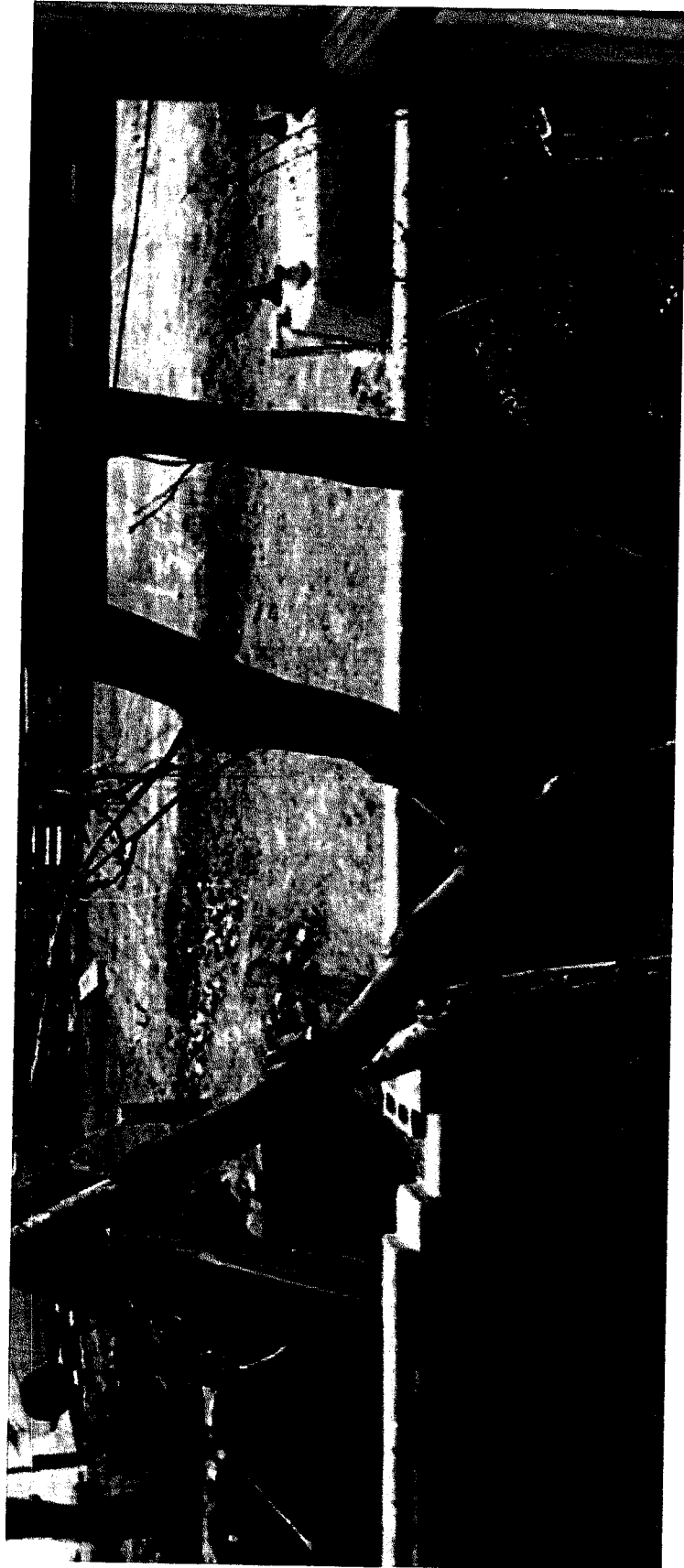


July 31, 2016 -- continued -- Cinder block from old retaining wall (3 ft high above new wall) stacked against new wall preventing plastering required by wall permit and potentially undermining wall . Piles of junk and building materials on Mercado new grade, now six feet plus above Casey\Mercado grade. No more slope from Mercado north side toward new wall .



July 31, 2016 – continued







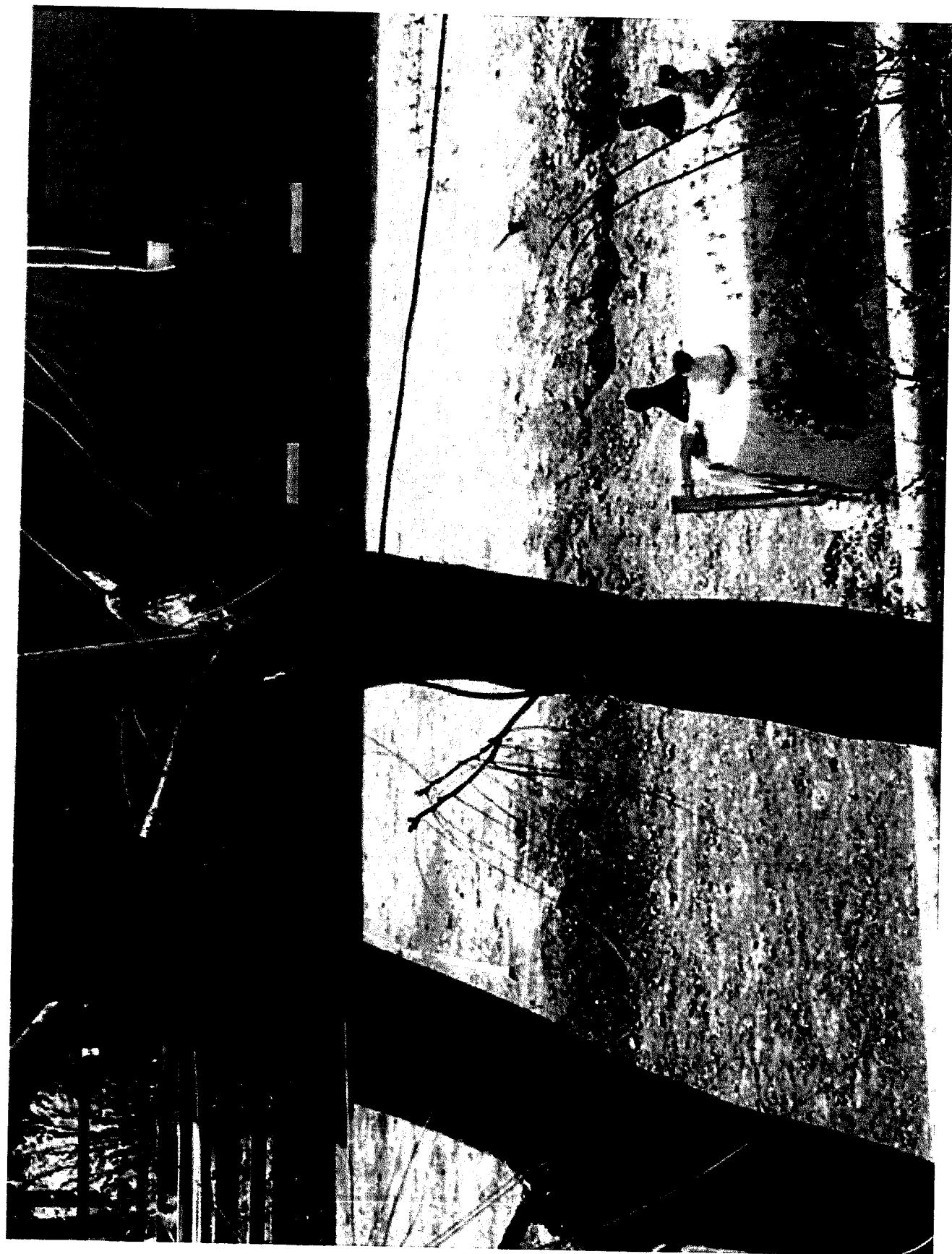




Exhibit "4"