



Agenda

DATE 11/28/12 TIME 9:45
SERVED BY [Signature]
RECEIVED BY [Signature]

BOARD OF ADJUSTMENT
Tuesday, December 18, 2012 at 6:00 P.M.
200 Lincoln Ave. Santa Fe NM
City Council Chambers

- A. ROLL CALL
- B. PLEDGE OF ALLEGIANCE
- C. APPROVAL OF AGENDA
- D. APPROVAL OF MINUTES: September 20, 2012 minutes
- E. FINDINGS/CONCLUSIONS:
 - Case #2012-93. Adventist Academy of Santa Fe Special Use Permit
- F. OLD BUSINESS
- G. NEW BUSINESS

- 1. **Case # 2012-51 Appeal.** Kurt Gilbert and Elicia Montoya, owners, appeal the issuance of Building Permit #2012-338 allowing construction of a fence on an adjacent lot at 1240 Camino de Cruz Blanca. (Kelley Brennan)
- 2. **Case # 2012-99 Appeal.** Kurt Gilbert and Elicia Montoya, owners, appeal the issuance of Building Permit #12-1337 for obstruction and impedance of access onto their property. The subject site is located on an adjacent lot at 1240 Camino de Cruz Blanca. (Kelley Brennan)
- 3. **Case #2012-121. 994 Old Pecos Trail Special Use Permit.** Mark Hogan, Applicant, requests a special use permit to allow office use at 994 Old Pecos Trail. The property is zoned Residential Arts and Crafts (RAC). (Dan Esquibel, Case Manager)
- 4. **Case #2012-126. Ashley Furniture Sign Variance.** Liaison Planning, Agent for Bill Johnson, Owner, requests a variance to Article 14-8-10(G)(8)(a)(d) and (e) SFCC regarding size, height, and setback to allow signage for a new retail establishment. The property is zoned General Commercial (C-2/PUD) and is located on the east side of Cerrillos Road, north of the Santa Fe Auto Park. (Dan Esquibel, Case Manager)

- H. BUSINESS FROM THE FLOOR
- I. STAFF COMMUNICATIONS
- J. MATTERS FROM THE COMMISSION
- K. 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, December 18, 2012**

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CALL TO ORDER AND ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved [amended]	1-2
APPROVAL OF MINUTES – SEPTEMBER 20, 2012	Approved	2
FINDINGS/CONCLUSIONS – CASE #2012-93. ADVENTIST ACADEMY OF SANTA FE SPECIAL USE PERMIT	Approved	2
OLD BUSINESS	None	2
<u>NEW BUSINESS</u>		
<u>CASE #2012-51. APPEAL. KURT GILBERT AND ELICIA MONTOYA, OWNERS, APPEAL THE ISSUANCE OF BUILDING PERMIT #12-1337 FOR ALLOWING CONSTRUCTION OF A FENCE ON AN ADJACENT LOT AT 1240 CAMINO DE CRUZ BLANCA</u>	Appeal denied	2-24
<u>CASE #2012-99. KURT GILBERT AND ELICIA MONTOYA, OWNERS, APPEAL THE ISSUANCE OF BUILDING PERMIT #12-1337 FOR OBSTRUCTION AND IMPEDANCE OF ACCESS ONTO THEIR PROPERTY. THE SUBJECT SITE IS LOCATED ON AN ADJACENT LOT AT 1240 CAMINO DE CRUZ BLANCA</u>	Appeal granted	2-25
<u>CASE #2012-121. 994 OLD PECOS TRAIL SPECIAL USE PERMIT. MARK HOGAN, APPLICANT, REQUESTS A SPECIAL USE PERMIT TO ALLOW OFFICE USE AT 994 OLD PECOS TRAIL. THE PROPERTY IS ZONED RESIDENTIAL ARTS AND CRAFTS (RAC)</u>	Approved w/condition	25-32

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CASE #2012-126. ASHLEY FURNITURE SIGN VARIANCE. LIAISON PLANNING, AGENT FOR BILL JOHNSON, OWNER, REQUESTS A VARIANCE TO ARTICLE 14-8-10(G)(8)(a), (d) AND (e) SFCC REGARDING SIZE, HEIGHT AND SETBACK TO ALLOW SIGNAGE FOR A NEW RETAIL ESTABLISHMENT. THE PROPERTY IS ZONED GENERAL COMMERCIAL (C-2/PUD) AND IS LOCATED ON THE EAST SIDE OF CERRILLOS ROAD, NORTH OF THE SANTA FE AUTO PARK	Postponed to 01/14/12	32-33
BUSINESS FROM THE FLOOR		33-34
STAFF COMMUNICATIONS	Information/discussion	34
MATTERS FROM THE COMMISSION	Welcome new members	34
ADJOURNMENT		34

**MINUTES OF THE MEETING OF THE
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
SANTA FE, NEW MEXICO
Tuesday, December 18, 2012**

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, December 18, 2012, in the Council Chambers, City Hall, Santa Fe, New Mexico.

MEMBERS PRESENT:

Gary Friedman, Chair
Coleen Dearing
Rachel L. Winston, Vice-Chair
Patricia Hawkins
Douglas Maahs
Daniel H. Werwath
[Vacancy]

OTHERS PRESENT:

Kelley Brennan, Assistant City Attorney
Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division
Tamara Baer, Planning Manager, 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

Ms. Baer noted that Item G(4) Case #2012-126, is postponed to the January meeting.

MOTION: Commissioner Winston moved, seconded by Commissioner Werwath, to approve the Agenda as amended.

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

D. APPROVAL OF MINUTES – SEPTEMBER 20, 2012

MOTION: Commissioner Winston moved, seconded by Commissioner Werwath, to approve the minutes of the meeting of September 20, 2012, as presented.

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

E. FINDINGS/CONCLUSIONS – CASE #2012-93. ADVENTIST ACADEMY OF SANTA FE SPECIAL USE PERMIT

A copy of the Findings of Fact and Conclusions of Law in Case #2012-93, Adventist Academy of Santa Fe Special Use Permit, is incorporated herewith to these minutes as Exhibit "1."

MOTION: Commissioner Winston moved, seconded by Commissioner Werwath, to approve the Findings of Fact and Conclusions of Law in Case #2012-93, 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 #2012-51. APPEAL. KURT GILBERT AND ELICIA MONTOYA, OWNERS, APPEAL THE ISSUANCE OF BUILDING PERMIT #12-1337 FOR ALLOWING CONSTRUCTION OF A FENCE ON AN ADJACENT LOT AT 1240 CAMINO DE CRUZ BLANCA. (KELLEY BRENNAN)**

Items G(1) and G(2) were combined for purposes of presentation, public hearing and discussion, but were voted upon separately.

A letter dated December 14, 2012, to the Board of Adjustment, Kelley A. Brennan, Assistant City Attorney, regarding Case #2012-51, Appeal of Construction Permit No. 12-338, 1240 Camino Cruz Blanca Fence, is incorporated herewith to these minutes as Exhibit "2."

A letter dated December 14, 2012, to the Board of Adjustment, Kelley A. Brennan, Assistant City Attorney, regarding Case #2012-99, Appeal of Construction Permit No. 12-1337, 1240 Camino Cruz Blanca Gates, is incorporated herewith to these minutes as Exhibit "3."

A letter dated December 14, 2012, with attachment, to City of Santa Fe Board of Adjustment, from John F. McCarthy, Jr., Cuddy & McCarthy, attorneys for the Appellees, regarding Case No. 2012-51 and Case No. 2012-99, entered for the record by staff, is incorporated herewith to these minutes as Exhibit "4."

A power point presentation used by the Appellants in presenting their case, is incorporated herewith to these minutes as Exhibit "5." ***[STENOGRAPHER'S NOTE: At the time the minutes were submitted, the power point had not been submitted. However, I was advised by Land Use and the City Attorney's Office, that in the absence of the power point presentation being submitted by the Appellants, the minutes could be postponed for approval until that is submitted.]***

Staff Report

Ms. Brennan said there are two separate cases involving the same parcels of land and the same parties, so we will hear them together, but they should voted on separately. She said she had hoped to have a copy of the plat so the Board could see it enlarged. However, their office is being carpeted, and everything is in boxes, and she can't find anything.

Kelley Brennan presented information from her letter of December 14, 2012, with attachments, regarding Case #2012-51, the fence. Please see Exhibit "2," for specifics of this presentation.

Kelley Brennan presented information from her letter of December 14, 2012, with attachments, regarding Case #2012-99, the gate. Please see Exhibit "3," for specifics of this presentation. Ms. Brennan said the issue before the Commission is whether those gates unreasonably restrict the right of passage over the easement to reach Lot 4.

Questions from the Board

Chair Friedman reviewed, for the new members, the process followed by this Board for an appeal as opposed to the cases the Board hears for a variance or a special use exception.

Public Hearing

Elicia Montoya and Kurt Gilbert, Appellants, and Kimball Udall, and Jimmy and Jennifer Day, Appellees, were sworn. Jack McCarthy, Attorney for the Appellants was sworn.

Presentation by the Appellants

Ms. Montoya presented information regarding this matter via power point [Exhibit "5"]. Please see Exhibit "5" for further detail of this presentation.

Ms. Montoya said, "I first want to apologize that we're here and say we tried to work something out and that wasn't possible and we're here, and I know many of you know my husband and I are both attorneys, but have never been in a proceeding like this before. Never had any need to, never been in any issue like this before, so we appreciate your time, and know the important job that you serve."

Ms. Montoya continued, "We are appealing as you know, two permits. And as Ms. Brennan said, they are really intertwined and I'll tell you why. The first is that the Days seek to place fences in a City approved open space protected zone between our homes. And it wasn't until we objected to the placement of a fence in this restricted zone, that they then sought to put a gate across our driveway, blocking our access to our home, and those are the two things that we are appealing here. And it is our contention that the permits were issued in error."

Ms. Montoya continued, "I thought first I would give you sort of a lay of the land. This is the plat as you saw from Ms. Brennan in your packet, and Lot 2, as she discussed is the lot where the Days reside. They have now also purchased Lot 1. We live down here on Lot 4, and these are arrows that you can see, on the City approved plan, the building restricted area that we're talking about, sorta like this. And if you impose a Google Map Earth over it, this is sort of what it looks like. You can see 1240 is where the Days reside. 1244 is where we reside, and this is our driveway, this is our easement to our home. This is where they seek to put the gate blocking our driveway. And this is the area where they propose to fence within the open space restricted area."

Ms. Montoya continued, "It is our contention that the City granted the permits in violation of two things. One, the Development Review Committee's direction and condition when they approved the subdivision. The person who owned our home before ours was Mr. Stewart Udall who owned all 4 of these lots that you saw, and he, himself subdivided them. When he subdivided the lots, a condition of the subdivision was that they have this restriction, and it was reviewed on two different occasions before the DRC and in violation of the subsequent enforcement document, known as the split plat of the survey prepared for Mr. Udall, you have as well in your packet. And it is our view, that if it's not enforceable, if these conditions are not enforceable by this Board, that it sets a precedent that all approvals and restrictions are meaningless if they won't be enforced by all City development review authorities."

Ms. Montoya continued, "This is sort of hard to see and I apologize, but these are from the meeting minutes back in May 1990. Back in May of 1990, when they approved this subdivision, here's the area where it's discussed, Mr. Udall. And what they said was that there would be a quote restriction on the construction outside the building envelopes and that they would be placed on the plat. And staff assured the DRC that any limitations placed on the plat would be reviewed and would be at record at the time a permit is issued. And what that translated to, was the building restricted area on the plat. Here are those minutes. *Ms. Molly Roybal asked if there can be a restriction on construction outside the building envelopes, and Mr. Smith replied in the affirmative. He said yes, stating this can be indicated on the plat. Ms. Roybal then asked if this would be possible to track at the building permit stage, and in fact it was in this case. When they issue a permit they go out and look at the plats to see what was there. Mr. Hunt who was director back in 1990, addressed the Committee and suggested that any limitations be placed on the plat as there is a check on the lot of record at the time of building permit issuance. This is the DRC's granting of the building restricted area.*"

Ms. Montoya continued, "And then there was a subsequent meeting reviewing the Subdivision Plat, and what these minutes show, just that, as Ms. Brennan said in her report, typically the Board and the City doesn't look at covenants and restrictions. But there are instances, not all cases, but some cases where it is helpful and informative, and here, *Ms. Robertson Lopez stated that she would like the condition*

placed on covenants. So there is an example of the City having things go into covenants so that they can be checked. Again, conditions can be placed on covenants, so that purchasers of the property will be aware of the condition. Just like when we purchased our property about a year ago, that was our understanding of it as it was when the Days purchased their property that was reported. And what the covenants and restrictions say, and this was entered into just the day after that meeting with the DRC. And on the covenants and restrictions, they say *The covenants and restrictions are all for the purpose of preserving and enhancing the value of amenities of all our lives.* It wasn't just to benefit the lot that we now own, that Mr. Udall owned. It was for everyone. Everyone followed the same rules and everybody could live together in harmony and follow the same rules."

Ms. Montoya continued, "In the covenants and restrictions there is in fact an open space restricted area. And it reads *The natural meadow area [that's the area that you saw in between our two houses] that is generally located in the northern portion of Lot 4 [we're Lot 4] and in the southern part of Lots 1 and 2 and which is designated as the building restricted area on the plat [That's the City approved plat that's being referenced there in this covenant] will be left as an open space and none of the lot owners shall build a dwelling or other structure in the building restricted area.* And just as Ms. Brennan said in her report on page 3 that *in consultation of the declaration the City is not enforcing private covenants, but is instead using them to clarify the intentions of the lot owners at the time they signed the plat. As noted above, the declaration provides none of the lot owners shall build a dwelling or other structured in the restricted area.* And again, that is all we were talking about. And in the City Code, and that's the final covenants signed by Mr. Udall, in Chapter 4 of the City Code, it defines structure, and remember it says, *no building or structure, Structure is anything that is constructed or erected with a fixed location on the ground, including buildings, mobile homes, walls, fences, swimming pools, spas, tennis courts, signs, flag poles, microwave satellite receiving dishes, tv antennas and communication devices.* It is what is explicitly prohibited in the building restricted area, and again, that's Article 14, Section 12, Definitions of the City Code."

Ms. Montoya continued, "When we advised the Days that we objected to them, we first walked outside, saw stakes in the building restricted area, and objected to any building of any kind, didn't know what was going to go in there, but objected to anything going in the building restricted area. We received this email, it's sorta hard to see. I have copies if anybody wants to look at it, but in this email, what Mr. Day says is *If it's not acceptable, that is to build a fence, then we have come with 3 other ways to go, none of which meet any definition of a structure. One, form a nature habitat hedge grove which would consist of a 4 foot high perimeter of brush that would be harvested from out land. The birds and rabbits would love it. Two, create an outdoor art project in and around the space. We could use sticks and rocks and metal. Three, these 5 gallon buckets with posts set in cement and string panels between them. We can move them into new configurations on a regular basis.* And four, what that says if we have to resort to using any of these methods then they will revisit the configuration of the driveway. That's when this first issue came up, that if we objected to the fence, we wouldn't have a driveway."

Ms. Montoya continued, "And those weren't empty threats, they came to fruition, after we objected to the issues of the permits, came in and followed the procedure for objection. This is the meadow area, or was the meadow area between our two houses. After it was red-tagged and the notice was provided to stop work, trees were cut down, they used to be living, but they were there so long they eventually died. And they lined them all up along the property where the fence was that they decided to go. The Days

weren't living there at the time, so they didn't mind. And it was in the middle of the summer up on the mountain and we said it's a fire hazard. It didn't matter. That's what they did. They promised to build that fence, and you see it right there. This fence is dead trees. Our house is right over here, this is their house, and all along the fence, all along the property, were dead trees."

Ms. Montoya continued, "And next came the blocking of our driveway. As you saw on the plat, since 1991, Mr. Udall had access to his home, 18 foot ingress/egress access to his home. The day that we filed our objection to the issuance of the permit, our driveway was blocked, and it was continuously blocked from April 24, 2012 until June 26, 2012. To get to our house, we were forced to use their driveway, which oftentimes, we couldn't even get through, because they would have vehicles parked on both side. What happened on June 26, 2012, was I'd had enough. I was on my way to pick my kids up at school, and I couldn't get out of our driveway, so our lawyer contacted their lawyer and said, move some cars, or we're calling the police. He moved the cars, but it didn't stop there."

Ms. Montoya continued, "That's when they applied for the gate permit. And what they seek with the gate permit, is a City sanctioned manner to interfere with our ability to be safe and to go to and from our home. And now my husband is going to talk to you a little bit about the case law surrounding easements."

Kurt Gilbert continued the presentation. Mr. Gilbert said, "Just going back to this picture. What you see here, of course are the Days' vehicles blocking our driveway in an attempt to obstruct our access and impede our access after we objected to them attempting to build a fence where it didn't belong. We've all heard the expression that where there is a will, there's a way. Well they had a will to block our driveway and attempted to do it this way when the threat of calling the City Police caused them to move their vehicles. They found another way to block our access and that was by applying for a gate permit."

Mr. Gilbert continued, "I'd like to show you that the cars were moved on June 26, 2012. Well if you look in your Board packet at the application that they submitted for the gate, it was on June twenty-ninth, just 3 days later that they had their architect to draw up this plan to block our driveway and our easement with a 20 foot horse gate. And what the permit requests this committee to do and the City to do is to sanction the blockage of our easement and the unreasonable interference with the access to our home. What they are asking the City and the Board to do however, is go against established New Mexico law governing the use of gates across easements. New Mexico law is clear that gates cannot be installed across an easement after the easement has been granted and used for 20 years without a gate or other access restrictions."

Mr. Gilbert continued, "The only New Mexico case to address this specific issue, prohibited gates and ordered the removal of gates because they were deemed an unreasonable restriction of access. This was in a case called Huff v. McClanahan, 89 N.M. 762. And I have copies of case if anybody would like to see it. But the facts of that case are strikingly similar to the facts here. In that case, the plaintiffs had purchased their property in 1953, and the easement was granted to the plaintiffs in 1953. The defendants moved to that property in 1963, and then in 1973, some 20 years later, they put up these gates. The plaintiffs moved the Court to have the gates taken down and the Court agreed with the plaintiff's position, and stated, in the decision, the Court of Appeals stated, *The trial concluded that the easement grant, when*

considered with the conditions surrounding the grant and use of the road makes it unlawful to obstruct the right of way with gates or other obstructions. The trial court in this case, found the gates prevented proper and reasonable use of the easement granted in the placing of the gates in the right of way was unreasonable.”

Mr. Gilbert continued, “And that’s exactly the situation that we have here. Mr. Udall created this easement back in 1991. It was in continuous and uninterrupted use for that entire time. There was never any gate, any impediment to access, never any obstacle whatsoever, until we objected to the Days’ fence. And after that, we have been forced to put up with the obstruction created by those vehicles and then, of course, with the current attempt to obstruct our access with a gate. There have never been any published New Mexico decisions that allowed the installation of a gate across an existing access easement. And that’s really important, because it shows how different some of the other cases in New Mexico are that have addressed gates and easements. There were other cases addressing gates and easements in New Mexico, but all of those cases involved instances where the gates existed before the easement was granted. That is true of the [inaudible] case which involved a locked gate. And in that case, the Court determined that all of the parties had consented to this locked gate before the easement was ever granted, so it was there when the easement was created.”

Mr. Gilbert continued, “The same is true of the Dyer case in which the gate in dispute was in existence long before the easement was granted. And it’s true also of the Kennedy case, in which the condition of the entry way to this easement, which had a cattle guard and a fence and various shrubs and bushes. It was that way before the easement was ever granted. So in all these cases, the Court was addressing an instance where these obstacles and barriers to access existed before the easement was created. Huff is the only case that addresses someone’s intent to create a new obstacle, an obstacle that didn’t exist at the time the easement was granted and did not exist for over 20 years after the easement had been issued, granted and put into use.”

Mr. Gilbert continued, “New Mexico case law makes clear that in order to determine the nature and the extent of an easement, you look at the purpose of the easement, and the history and circumstances surround its use. Here, the analysis of the purpose of this easement is clear. Stewart Udall who originally owned the 9.4 acre parcel and then subdivided it, created this easement to provide himself free and unfettered access to and from the property that he kept after he sold the other 3 lots. It was created by him for his benefit, and for the benefit of the successors who would come after him on that same lot, including us. It was created to benefit and serve the property he retained. The installation of a gate at the entry of our driveway, our easement is inconsistent with that purpose, and therefore should be denied.”

Mr. Gilbert continued, “We also looked to evidence in the history and the circumstances of the past use. Of course, this all is evidence before the gates were applied for and before the Days tried to block our driveway with their cars. You look at 21 years of unfettered access since this easement was granted. The easement has been in continuous and uninterrupted use since April 1991. There have never been gates, there have never been barriers. There have never been other restrictions to access. Mr. Udall never blocked, locked or otherwise obstructed the easement, and neither did anybody else before we objected to the Days’ fence. Mr. Udall created for his benefit and the benefit of the future landowners.”

Mr. Gilbert continued, "Now the gate would unreasonably impede our access to our home, and it would create a danger to all those that use Camino de Cruz Blanca which is the road we turn off of to get into our roadway. I just want to bring to the Board's attention the difference between what has always existed and what the Days are proposing. Since 1991, the way you would get to our house would be to turn into the driveway, drive to the house. Simple as that. What the Days are proposing now is something vastly different. Now, in order to get to my house, I would have to pull up to the gate on busy Camino de Cruz Blanca, stop my car, get out of the car. My wife or I would have to get our kids out of their seats in the back seat of the car, because we're not going to leave them sitting in the car on Cruz Blanca as we get out, try to come open this gate. Then open this massive 20 ft. gate. What they've applied for is a 20 foot gate. I just wanted the Board to see, visually, the size of that gate."

At this time Mr. Gilbert, with the assistance of Ms. Montoya, used a tape measure to demonstrate a 20 foot gate.

Mr. Gilbert continued, "So, my wife would get out of the car, walk with the kids over to this gate, unwind it, unlock it or whatever mechanism they have for fastening, open it, and there's not even room to do it in here because it's such a long gate. But essentially, open this gate, walk back to the car, put the kids back in the car, get back into the car, pull the car forward. Now the gate has to be closed again, so now, she gets out of the car, walks back to the gate, closes the gate. And I will spare you a second demonstration of what that would entail with this 20 foot gate. Now I walk back to the car, get back into the car and drive home. So what used to be as simple as turning onto our driveway and driving home, now requires 13 steps and a large amount of time. And that's why it's such an enormous inconvenience. Here for the last 21 almost 22 years, these kinds of measures were never necessary and this would vastly restrict our access and inconvenience us, because we go in and out of our house as many as 10 to 15 times a day, between taking the kids to school, going to work, going for errands, going for grocers. And not just us, but our family members, my mother-in-law, my parents, our friends, our guests. People coming into the house would have to go through this process every single time to get to the house."

Mr. Gilbert continued, "This is not the way Mr. Udall intended it, and this is not the way it's ever been. And when we went to the house for the first time to look at it, we turned onto that driveway and arrived at the home seconds later. And when we decided to make an offer on the house, it was as simple as turning onto the driveway and going home when we closed on the house and spent money to become owners of it, that's what we did. We turned onto the driveway and arrived at the home. We would not have a bought a house where someone else controls our access or blocks our access. I'm going to turn the microphone back over to my wife to talk about some of the other dangers associated with this gate."

Chair Friedman asked Ms. Montoya how long they have lived at this place.

Ms. Montoya said it was a year in November, noting they purchased it prior to that time, but had renovations made and moved into the house in November 2011.

Ms. Montoya said, "My husband talked to a little bit about the dangers. As you know, Cruz Blanca is a two lane road. It doesn't have a center stripe. Where the fence is proposed, we'd have to stop on Cruz Blanca to get out of the car and open the gate. And even if we turned, it is still an enormous

inconvenience. And what, you might say, is the problem with the gate. Lots of people have them. Maybe it's for safety, maybe it's for security. What's the big deal. The problem is that when it is used like it has been used, it creates a danger. And the danger isn't to the traffic coming and going. We talked about how we are lawyers. I do catastrophic injury cases. I see what happens when emergency vehicles don't get to places on time. I see what happens when people can't get to the hospital on time. I've seen it over and over again, so my unique ability as a lawyer here is only in the sense that we can do something now before somebody is injured. When I call an ambulance, when I need an ambulance for my kids or my family, I want them to get to my house in a timely manner."

Ms. Montoya continued, "And you look at the history, and these are just some photos where both driveways are blocked. And when both driveways are blocked, I have to get out of my house. I have to go find somebody. I have to get them to come and move their cars. And you'll see, time and time again, both driveways are blocked, and blocked, and blocked. And how you can tell whether or not somebody can be charged with taking care of our ability to get in and out of our own house is history, and these pictures, many of them were taken after we objected [inaudible] stopped having a continuous blocking of our driveway, the pattern and conduct continued of us not being able to get out of our house, or back into it when we returned home. Another one of me trying to turn into our house. You see semi trucks back in that aerial photo, a google map. It just happens to have a semi truck. This is the road where we have to stop."

Ms. Montoya continued, "And there's a solution. If the Days really want a gate for safety or security for themselves, rather than block our driveway, see they have this other driveway right here. So they come in, this whole thing is their driveway. This is our driveway. This is their RV, this is their cars. But if they're really worried about security, they can put a driveway right there and we can get home. They can have their driveway blocked on both ends. They can have a gate here. They can have a gate here. We can get home. An ambulance can get to us. A fire truck can get to us. We can get to the hospital. My mom can come and visit us in the night. We know there's a pedestrian path right in front of here, and if every night we come home, we have to get out of the car. Who knows. There are people walking. I'm sure most of them are fine, but it creates another danger."

Ms. Montoya continued, "Chapter 14 of the Code says when you're looking at the Code and you are determining the issuance of permits and the issuance of appeals, your goal, what is supposed to happen with the Code is to accomplish *a coordinated, adjusted and harmonious development of Santa Fe that will best promote health, safety, order, convenience, prosperity and the general welfare and create conditions that are favorable to the health, safety, convenience, prosperity and the general welfare of the residence of Santa Fe*. Allowing a gate and a City sanctioned blocking of our driveway whenever they're dissatisfied or upset or something, would allow an effort to harass, violate both of those provisions of the Code."

Ms. Montoya continued, "It is our hope that this Board of Adjustment will grant our appeal, as Ms. Brennan said, with regard to the fence, that we've met our burden and recommend that the Board grant our appeal with regard to the fence. And with regard to the gate, we ask that the Board find that we've met our burden in showing that it is an unreasonable blocking of our access to our home, allow it to continue how it's been since 1991, allow how it was when we first viewed our house, when we first purchased our

house, and then how it was until we objected to that fence, so that we can get home and leave our home. The most fundamental property right is to be able to get to your property in a safe and timely manner, and we ask that the Board allow us to do so. Thank you so much for your time."

Chair Friedman asked Ms. Montoya if she has witnesses, or if Mr. Simon will be speaking on your behalf.

Mr. Simon said no.

Ms. Montoya said Mr. Kim Udall can speak during public comment or now.

Chair Friedman said if he is a witness for the Appellants, it is okay to call him as a witness so we can hear his testimony.

Ms. Montoya asked if he can just talk without her asking questions and the Chair said that is fine.

Kimball Udall, 26 General Sage, Santa Fe 87505 [previously sworn]. Mr. Udall said he and his wife moved to Santa Fe in 1971, the year after Stewart Udall purchased this property. In the summer of 1972, Stewart Udall paid them a visit, and they walked on his property. He said, "He was so proud of it. He was so proud of this tract of land, which he had bought, which he envisioned for a future family compound of sorts. We walked the boundaries of the property, we walked to several different places on the property, several different building sites."

Mr. Udall continued, "And Mr. Friedman, I apologize, I recognize this is hearsay, but he would say to me, he would remark on the beautiful vistas, that we could see the Jemez from this point. That we could see Tetilla Peak from this point, and so forth. We could look down on the community from these points. To him, the notion of open space meant exactly what was placed on the plat at his direction, that it was an area to be left open and free for people to walk through there. In fact on numerous occasions, he consented to people hiking across his property. He didn't care. It was part of his philosophy that he should have open space."

Mr. Udall continued, "I remember going to a book signing of Stewart's when he had written "An Inland . Free for people. Consented to people hiking across the property. Went to a book signing when he had written *To the Inland Empire*, and he made the comment that he and his son Tom had wanted to trace the track of the early Spanish Explorers as they came into New Mexico, but they couldn't because of all these goldam fences that were in their way. Fences and gates were an anathema to him. He had no interest in fencing off his property, or any other property, and that is the reason that he had this open space declared when he prepared the covenants and when he applied to the City for these restrictions."

Mr. Udall continued, "I worked with Stewart in the mid-1980's on the development of the property. He did most of the legal work, I did some of the leg work. And I remember the next instance when he and I were up there on the property at the wedding of one of his children. And again, he was proud of this property and we had the wedding right in that area that you saw in the pictures called The Meadow, which

was his idea of an open space that, he said, if I could, I'd love to look out my kitchen window and see a buffalo, but I know that's not possible these days. But hopefully, we can leave the land as close to the way it is as God intended."

Mr. Udall continued, "The after the subdivision, he invited me on many occasions to his house. We had many family get togethers. Stewart was not only my uncle, but his wife was my wife, not only by marriage, but she's my mother's little sister, so we were very close to them, and spent many holidays with them and always were out on the veranda looking out over the open space, over the areas that Stewart treasured so much and valued so much. He had tried to return to Arizona after he got out the cabinet, and was fed up with the population and crowded conditions of Phoenix and Tucson, and he told me that's why he had previously purchased this property, so he could retire to God's country and be in the open spaces. Thank you for your attention."

Chair Friedman asked if the Appellant has anything further to add and they said no.

Presentation by Appellee

Jack McCarthy, Attorney for the Appellee, said, "Frankly, I'm very surprised to hear some of the comments made by Mr. Gilbert and Ms. Montoya. We've been trying to resolve this matter, ever since they filed their appeal. We've had a mediation which we got fairly close, but not quite. As of last week, last Monday, I believe it was, I met with her attorney Mr. Simons and I informed him that the Days were modifying their request for a fence to eliminate a substantial portion of it and only to request a short leg of the fence, about 172 feet along the back side, which would be primarily in the trees. What you saw here tonight was the initial presentation by the Days, or the application, and it is not what was submitted to Mr. Simons last week."

Mr. McCarthy continued, "I further informed Mr. Simons last week to confirm if and when a gate was built, that it would be built in such a fashion that it would be automatic and that the controls for the automatic gate would be given to the Gilberts. Apparently, that information never got to his clients, because tonight they gave you an entirely different story as to what the Days' intent was. The days' home is very close to one of the easements, the only dedicated easement that is on the plat. And Stewart Udall, then owner of Lot 2, entered into an agreement to relocate the road, but they never described the road by legal means so that the definition of an easement in the new relocated are never really came into play."

Mr. McCarthy continued, "The Days applied for permits for two gates. One for their road right next to their home and a second one. They recognized that any gate had to be set back so far so that a car coming off Cruz Blanca would not stop on Cruz Blanca, but would get beyond Cruz Blanca to a point where it would not be blocking traffic on Cruz Blanca. Tonight, we're hearing that the gate is immediately on Cruz Blanca. Any of you have driven up Cruz Blanca, there's a lot of gates there ladies and gentlemen, all up and down Cruz Blanca, but they are all set back. And this is what the Days intended to do was to set back those gates."

Mr. McCarthy continued, "But let's go for a moment to the issue of the matters before you tonight."

Your role tonight is to determine whether or not the permit granted by the City in both instances met City Code. You have no right to try to interpret a Declaration of Covenants that only is to be interpreted by a court of law and you are not a court of law. So you're limited very much as to whether or not the City granted a permit properly. And we respectfully submit that the City did. There is a basic principle here in law that covenants are not favored by the courts, because they impose burdens on private property. But to the extent that covenants are imposed on property, they must be reasonably interpreted. And if there is any ambiguity, the Court will set them aside."

Mr. McCarthy continued, "If you will look at the covenants, apparently you're going to do so, so I'm going to direct your attention to Article 1, Section 1, which describes and interprets permitted structures. It talks about a [inaudible] single family dwelling, a private garage, recreational facilities, solar heating, the devices or coolers and improvements incidental to residential use. Then it goes on under Section 2, to Prohibited Structures. What are they. Modular homes, mobile homes, pre-fabricated structures, trailers or other temporary structures. What Stewart Udall intended to do was to limit the back area to the construction of dwellings, occupancies that would be in the open area there."

Mr. McCarthy continued, "The language on his plat refers to building restricted area. Not building or other structures, building. A fence is not a building. Section 5 of Article 1, states that *No fences or walls may be closer than 10 feet to any lot line*. It doesn't say any lot line other the building restricted area. This is any lot line. The lot line goes to the back of the property. The lot line does not stop up there at the building restricted area, it goes further to the back. Even though the City Code includes in its definition of structure, a fence, you are limited, if you are going to try to utilize the intent of Stewart Udall in this declaration to what he intended there. There is nothing that said he intended that no fence could be constructed within the building restricted area."

Mr. McCarthy continued, "Now, I'd like to go for just a moment to the issue of the fence. You heard from Mr. Gilbert a number of cases. Attorneys are great. You can find a case to just about support any position you want, and I think the attorneys on the Board will recognize that. He referred to the Huff versus Callahan case, and I would like to quote to you from that particular case. That case adopts, with an affirmative statement, the language of the Dyer case and talks about the one holding an easement in the land of another are measured by the nature and purpose of the easement. And so long as its consistent therewith, the owner of fee may make any reasonable use desired of the land in which the easement exists. Then the question the Court posed: How does this rule apply to gates across the right-of-way. The Court goes on to interpret and to state from an annotation, the general rules at the grant of a right-of-way, without reservation of the right to maintain gates, does not necessarily preclude the servient estate owner from having such gates. And unless it is expressly stipulated in the grant that the way shall be an open one, or unless a prohibition of gates is implied from the circumstances, the servient owner, that's the Days, may maintain a gate across the right-of-way, if necessary for the use of the servient's estate, and if the gate does not unreasonably interfere with the right of passage."

Mr. McCarthy continued, "I submit to you that you cannot find that having to open a gate with an electric control is an unreasonable interference with it. If it is, there's a lot of places in Santa Fe that are unreasonably being interfered with. So, I submit that what you must do is look to your Code to determine if the parameters of both the fence and gate are within, and consistent with, the City Code. Not whether or

not there is some extraneous interpretation of the language of the declaration.”

Mr. McCarthy continued, “There’s no question but that there was some obstruction of the right-of-way during a period of time that the Days were remodeling their home. You know how construction trucks are. You tell them not to park in the driveway, they’ll park in the driveway. You tell them to move off the driveway, they’ll move part way off. Ms. Montoya several times was coming in, there was a construction truck there. The construction truck moved. The Days put up a big sign, Do Not Block Driveway. Sometimes it happened, but during construction of their home, the remodeling of their home, there were times when construction trucks did somewhat impede, but not block, except on one occasion that we’re aware of, the Gilberts or Montoyas from getting into their home. They may have not been able to zoom through the property as they sometimes do. They may have had to slow down a little bit and get around the truck, but they were never blocked except, as far as we know, on one occasion.”

Mr. McCarthy continued, “And I’d like to have Ms. Day come up and testify as to her discussion with Mr. Gilbert, concerning a gate across the property.”

Jennifer Day, Appellee [previously sworn] said, “I think that what we’re referring to is the very first time that I met Mr. Gilbert, I was standing out in our driveway and he came down the easement. I kind of waved him down, because I wanted to introduce myself, which I did, and we had a friendly discussion, but then he looked at me and he said, ‘We’d really like to have a gate here.’ And I said, ‘Well, okay, we can talk about it at a future point in time. You do know that that is our property right there and that this is an easement. And he really didn’t say anything at that point, but I guess the reason that I’m standing here is to ask you to ask him if he remembers telling me that he wanted a gate the very first time I met him.’”

Mr. McCarthy said, “Ms. Day would you please relay to the Board, the circumstances that were about the driveway and the obstruction of the driveway.”

Ms. Day said, “There was one time that... our house was under construction, not because we chose for it to be, but because.... you remember the big freeze we had two years ago and everybody’s pipes broke... one of our pipes broke, they came in and repaired the home, but somebody forgot to fix the pipe, and so it leaked for the following 11 months. What resulted in that was that my home basically was destroyed from the interior. So, it has taken us 11 months to put the project back to rights. And I moved in this past week, or I’m attempting to move in this past week. Because we had so many vehicles there..... by the way it was a \$1 million insurance claim, so it was a big project. The one time that she was blocked, the porta-potty truck was there emptying the porta-potties. And she stopped, she got out of the car, she came, I was in the driveway again, she came up and it was an extremely unpleasant conversation from her perspective. I mean she was yelling and screaming, and finally said, you know, I can’t go to get my kids. And I said, ‘Well the porta potty truck just left.’ And I actually offered to sit down and have a glass of wine and discuss this whole issue, and she jumped back in her truck and drove off. But, that is the only time that I know of, that she was ever physically blocked, from being able to get in and out of the driveway. All of the rest of the times, there are two roads there and we have tried very very hard to keep one of them completely open.”

James "Jimmy" Day, Appellee [previously sworn]. Mr. Day said, "My name on the agenda is James Day, but I go by Jimmy Day. I just wanted to make a couple of real quick points. We're not monster neighbors. We're the neighbors you want. We're the people who take your Fed Ex packages, your UPS package and receive them for you and get them over when you get home from work. We're the folks who pick up your newspapers and check your house when you're out of town. We're the people that walk around and make sure everything is secure when you're gone. I'm sure when this goes to District Court and I'll bet it will, all of the neighbors, except for the ones that are sitting right here, are going to show up and say, those Days are the neighbors you want. We're not the monsters that were portrayed on that power point. I will acknowledge that my vehicles were in one of the accesses, but that was because there was a huge misunderstanding. That was because of what Mr. McCarthy said. There were two easements and we didn't know which one was the right easement, and the one that is on file at the City shows the one that goes through my driveway, so I was merely making the points to the Gilberts that if we're going to adhere to covenants, we're going to adhere to all of the covenants. And it wasn't for very long, it was for a few days, and they were able to come and go. We made... so, like John said, we had two nice signs made to make sure that nobody blocks access to the drive. We understand that. We're not trying to hurt anybody. We understand how people need to live, so I just wanted to make that point."

Mr. Day continued, "And I also want to make point, what's the reason you guys need or want a fence. What's all that about. Chubb Insurance relocated us a house about ½ mile away. Some of you may know it. It was build by the McCormicks, of the McCormick spice people. It's a nice fenced, gated two acre estate, directly across the street from Rio Grande Elementary and Atalaya. It's the one with the green roof that you can see back in the woods back up in there."

Mr. Day talked about a late in life surprise 10 years ago when Jennifer was 48 and gave birth to Carson, now 9 ½ years old, is a healthy active boy and has his healthy active boys over from school to play. He said, "We're in this gated, fenced, McCormick Estate and it is so nice to know where your kid and his friends are. We've got that St. John's Arroyo right off the back of our property and my worst fear is it's going to be four thirty on a winter evening and we can't find Carson and his little buddies, and we're down in that arroyo. And you guys that hike it you know it goes all the way up to [inaudible], that's a lot of ground to cover. And we think that we're entitled to a fence and that's the reason want it. Carson's got a great big friendly, have you ever seen an Old English Sheepdog, you've got a great big old friendly Old English Sheepdog, but we sure would like to keep him at home. And the neighbors have two pretty aggressive big black Labs who greeted me at my back door just a week ago, growling and snarling. And you know, I'd kind of like to not have those black Labs at my back door. I think, in New Mexico, you're obligated to fence animals out, is that right. Well, you know that's something that I'd like to accomplish."

Mr. Day continued, "So this is not a trivial thing, we didn't just dream this up, we need this fence. We have a legitimate reason for wanting the fence."

Mr. Day continued, "I want to address just briefly.... we just bought the house next door. It belonged to Dr. Morrie Blitman. He was one of our oncologists here in Santa Fe. He moved to Seattle. He's been trying to sell it, and then rent it, sell it and we finally bought it out of a short sale a month ago, not even a month ago. But it has a coyote fence around the back. And I want to tell you, I personally met Stewart Udall in that driveway when that fence was under construction and it is partially in the building

restricted area. And Stewart Udall was so proud. He said, you know they didn't get a permit, but I don't care. And he said part of it's in the building restricted area. And he said, you know what they're going to do for me, they're putting two loads of dirt on my driveway. That was the conversation we had. I'm sure Morrie Blitman's going to testify to that in District Court, and I'm sure his fence contractor will be there too. So, if these fences were such a big deal, it certainly wasn't that day."

Mr. Day continued, "And the last thing, I'd just reiterate what Jack said. I printed this right before I came down here. This is straight off the City of Santa Fe website. And you flip back through it. And this is the frequently asked questions of the City of Santa Fe. Will the City enforce my subdivision's covenants. Answer: No. Covenants are private agreements that will remain enforced by your homeowners association. You know, unless we're going to rewrite the website tonight, that's what it says and that's what the citizens expect. Thanks."

Mr. McCarthy said, "I do have a couple of questions of Mr. Stewart [Kim?] Udall that I would direct to you later."

Chair Friedman said he can go ahead and do that. He said, "And I think the appropriate thing would be to direct the questions to the Board and a sense, and we'll give Mr. Udall the opportunity to either have the mike, and respond or you can switch places, but I think it probably would be easier if we just gave them the mike and you could ask the questions and then he can respond. Go ahead Mr. McCarthy."

Mr. McCarthy said, "The first question I would pose is whether or Kim Udall was aware that there was construction of a fence within the building restricted area that Stewart Udall was aware of and had approved."

Chair Friedman said, "Mr. Udall you can respond."

Kim Udall said, "I was not aware of the, as been described, the coyote fence."

Mr. McCarthy asked, "Was Mr. Kim Udall aware of the fact that Stewart Udall had built into the building restricted area, some sort of extension by what I would call... there was a basketball goal there at one time. It looked like it was on the now Gilbert property. And there was a wall with creosote railroad ties into a portion of that building restricted area north of the property line of the Stewart Udall property."

Chair Friedman said, "Do you want to answer the question?"

Kim Udall said, "Again, I am not aware of any of that being in existence."

Mr. McCarthy said, "And third, it's not the view from the Stewart Udall home to the southwest, and not to the north toward the Day property."

Kim Udall said, "I'm sorry Jack. I didn't understand the question."

Chair Friedman said, "I don't understand that question either."

Mr. McCarthy said, "Mr. Udall was testifying about sitting on the veranda with Stewart looking out into the open view. Is not that veranda and the open view to southwest on the other side of the Stewart Udall home and not to the north."

Chair Friedman said, "You mean is it facing south rather than north."

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

Chair Friedman, "Mr. Udall."

Mr. Udall said, "My best estimate and my recollection is it faces west, but it is in a westerly direction and it does not look directly at their home."

Chair Friedman asked Mr. McCarthy if he has further questions and Mr. McCarthy said no.

Chair Friedman said, "When you were talking about the basketball court area, what lot is that."

Mr. McCarthy said, "Well, I'm not sure if it was a basketball court as such. There was a basketball goal lying down when I was there and saw it. And that is on the Gilbert Lot."

Chair Friedman said, "We all have this drawing, it's a small drawing of the plat."

Mr. McCarthy said, "It is on Lot 4. And the extension to which I refer with the railroad ties, was north of that property line and into the building restricted area on Lot 2, which has since been removed by the Gilberts."

Chair Friedman said, "Okay. Thank you Mr. McCarthy. Do the Appellants have any questions of the Appellees."

Mr. Gilbert and Ms. Montoya said no.

Chair Friedman asked, "Do you folks have any questions of staff, either the Appellees or the Appellants."

Mr. McCarthy said, "Aside from the issue of the declaration of the covenants, did the permits... the applications for the permits for both the fence and the gate meet City Code."

Chair Friedman said, "Who wants to answer that."

Ms. Brennan said, "I assume Chair and Board members that that means, technically did they comply with Code, and I assume they did or they would not have issued."

Speaking to the Request

Stefanie Beninato, P.O. Box 1601, Santa Fe, New Mexico, was sworn. She said she is here to speak during petitions from the floor, and she has been listening to this debate. She said she thinks New Mexico law provides that you can't prevent access or make a property inaccessible. However, there is a great dispute of facts, about how accessible or not this property is because of the gate and because of construction vehicles. She thinks the real issue is covenants, and covenants typically are put on plats. So if you're going say we're going to enforcing what is on the plat, you will be enforcing covenants. It is her understanding that the law prevents you from enforcing covenants, and that covenants are the purview of the Court and not this Board. She said, "I have come in front of you with a recorded solar easement, and some of you were members at that time."

Chair Friedman asked Ms. Beninato to wrap up her remarks.

Ms. Beninato said, "I'm talking about precedents by this Board and the precedent is that this Board would not hear that covenant even though the Historic Ordinance for the South Capital area which is called the Don Gaspar Historic Neighborhood, even though that was to promote and encourage solar use and this easement was being violated, the Board refused to hear anything about that easement, even though it was a condition of the issuance of a permit by the Historic Board. So this seems to be really an anomaly, that the City Attorney, the same City Attorney who heard my case, is now reversing her position saying that somehow because it's on the plat you should be able to enforce the covenant. I think it would set a very bad precedent and that you will be enforcing many more covenants. Or maybe it's a good precedent, because then people don't have to go to Court to get covenants enforced.

The public testimony portion of the public hearing was closed

Commissioner Hawkins asked Mr. Gilbert and Ms. Montoya what was their objection to the fence originally last Spring, whenever this started.

Mr. Gilbert asked permission to answer the question and the Chair told him to proceed.

Mr. Gilbert said, "When we bought this property, I looked at the covenants. I looked at the plat. I sad that that beautiful meadow was open space, and that was one of the biggest draws of that property, that's why we fell in love with that property. And I talked to the Realtor who represented Mr. Udall's estate, Terry Smith, and we looked at those documents together. I said, is that really open space. Is that beautiful meadow really going to remain that way forever. And he said that's what is provided for in the covenants, and you look at the plat building restricted area. And we bought that property, because when you pull into it, you see that open space, and I knew that nothing would ever interfere with that, because that's the way it was written in the City plat, the City approved Subdivision Plat. It's a beautiful entry into our property, it's a beautiful space. I can't imagine why anybody ever would want to put a fence throughout it."

Mr. Gilbert continued, "So it was a morning in February I woke up. We were getting the kids ready to go to Albuquerque to a birthday party. And I went out to the car because we left, I think their jackets, or

something in the car that I needed to get, and in the light of the day, for the first time, I saw these stakes all throughout that building restricted area. And frankly, I didn't know what they were, but I knew from the dead trees that had been cut, from the stakes that were lining the entire building restricted area, from the evidence of construction that was going on, I saw for the first time that the neighbors were trampling on the City-approved plat and upon the covenants and restrictions. And I know that whatever they were building was not allowed, so we raised that objection with them, and that's all of these events that you've heard about began."

Mr. Gilbert continued, "But truly my objection is because this was exactly how Stewart Udall created the subdivision. With restrictions prohibiting anybody from building any fences in that area. That's what it says in the plot with the building restriction designation, that's how it's defined in the covenants and restrictions. That's what City Code said. I couldn't believe that they were attempting to circumvent that. So that was our objection from the start and our objection has remained since then."

Mr. Gilbert said, "And I want to point out, that I have no problem with them putting a fence on their side of the building restricted area where it belongs. To hear them talk about the need that they have to have an enclosed space. Well, there is an enormous closed space on there property that is outside that building restricted area. And, in fact, when this first came up, and we raised our objection, I can tell you, Mr. Day didn't say to me, 'Oh, Stewart told me it was fine to build this fence here. He said I will build it on the building restriction line upon our property. So on the side closest to their home, where it is supposed to be built, he said to me that he would do that. And then, days later, I found out that he'd actually come into the City and asked for a permit that would encompass that building restriction area where it's not allowed. So our objection has been that since the beginning, ma'am."

Ms. Montoya said, "I think he provided a lengthy response, and I think I want to add again, it's not that we objected to a fence anywhere, it's just in the building restricted area. And if you remember the aerial photos, if there is a giant fence, first of all it blocks the view and makes the property much different than it was when we bought it. But when you talk about putting fence on 2 acres of theirs and their dogs, what happens is, you keep the coyotes right next to our driveway, their dog right next to our driveway, far away from their house, but we will the dog barking at the coyote on the other fence of our fence. It will now be in our driveway, if the fence is allowed to come all the way across into the building restricted area as submitted."

Commissioner Winston said she has a question of Mr. Simons, asking if he is representing the Appellants, and Mr. Simons said, "I am, indeed."

Commissioner Winston said, "I think you'll understand why I'm asking you this particular question. If I recall correctly, I attended a CLE given by you as one of the presenters. And if I recall correctly, at that CLE I was taught that interpretation of covenants is subject to adjudication by the district courts. And so, I guess my question for you, is do you feel that this is an appropriate venue for us to be interpreting covenants. It makes me extremely uneasy."

Mr. Simons said, "That must have been another one of the presenters in a seminar, because usually I give seminars on easements, not on restrictive covenants. And I do give a seminar in which I say

essentially the things that Kurt was saying about the gates. I do say that. But in terms of this, I think that the question really is, has the City, by requiring this to be on a plat, and then have it end up in restrictive covenants, has the City actually gone beyond just ordinary private, restrictive covenants, and have they, themselves, sort of participated in the establishment of this open space, so that it can then be interpreted. And, in this kind of case, there is what I hear here, is that there is an ambiguity as to the word 'structures.' And what I hear is, as to the resolution of that ambiguity, Stewart Udall saying loud and clear that that included fences. And a minor encroachment by one coyote fence, I don't think is what they're talking about at all when they talk about this meadow. So that's all I can add. Thank you."

Commissioner Winston said, "I have the same question for staff. I'm really surprised that this is being presented here tonight."

Ms. Brennan said, "Typically, the City as a matter of practice, does not grant permits on platted easements, or when we have notice of something shown on a plat. So there is a building restricted area shown on the plat. And when I looked at it, I said I thought the word building could be a building, or it could be building in the sense of construction or development. And I think that... so, because it is City practice, we don't issue, for instance, a permit for a wall across a platted access easement and say 'go duke it out.' There is what I would call a rule of reason here. And so, looking at that, as to whether building meant a building, as a dwelling, or building as in building a bridge. The word, without saying we'll go to court and enforce your covenant, the word building and the way the open space was described in the covenant seemed to shed light on the word building, as used in the building restricted easement. And so it was a matter of looking what the plat said, and aligning with City practice not to issue permits for obstructions to platted easements or rights."

Commissioner Winston said she guesses her reading of the covenants didn't clear up the ambiguity. She said, "My opinion should be irrelevant in this case, because I think it's a district court matter."

Ms. Baer said, the City does not, in fact enforce covenants and these were not meant to be.... once it's on a plat, it's a condition of development. And so, this is not a matter of the City enforcing the covenant. This was a condition of approval of the subdivision, which is why it was put on the plat."

Commissioner Winston said, "But it is a matter of interpreting a covenant."

Ms. Baer said, "I'm just making a different point, that the covenant doesn't arise. It might also be a covenant, but it doesn't take away that it was a condition of approval of the subdivision, which made it a condition on the plat, whether it's a covenant or not. So I think that part should not be one of the issues -- whether it's a covenant."

Chair Friedman said he sees Jeanne Price's signature on the plat, so the City looked at it and approved it, and said there was building restriction. However, what does that mean.

Commissioner Winston said, "Right. There's no additional language, right. That's the only demarcation."

Chair Friedman said, "The other language is in Article 2, Open Space. That... it says more than dwellings. It says you shouldn't build a dwelling or other structure in the building restricted area."

Commissioner Winston said, "My personal opinion, which I also think is irrelevant, is there's an essential ambiguity. I also, more importantly, think this is in fact something that should be adjudicated in District Court."

Commissioner Maahs said, "A question was posed, if I remember correctly, by Ms. Day directed to Mr. Gilbert, that they had a conversation about his requesting of a gate. And I would like to have that question directed to him for an answer."

Mr. Gilbert said he had a conversation with Ms. Day and they talked about several things – their vehicles on the driveway, the RV that did park there and subject of a gate came up. He said, "I did not request that we put a gate there. And frankly, I do remember that we talked about, although I'm not sure which of us brought it up first. I am not opposed to entry gates. I'm opposed to entry gates that are used to block access, and that is the problem that we face here. Is a gate being used as a means to prohibit us from coming in and out of our property. Just like the cars that were parked there for 3 months, were used to block our access in and out of the property. If you look at what is requested in that permit, that gate is exactly on the entry of Cruz Blanca. There is no setback. There is no indication the gate is automated. And I do not believe the easement permits them to put a gate that unreasonably interferes with our access like the one that has been applied for."

Commissioner Winston asked if there is any agreement between the parties regarding what easement exists, because the original easement wasn't vacated. The new easement was never defined, noting there are many legal questions at issue here.

Ms. Montoya said, "My understanding is, the original easement after it was put in place, was relinquished, or abolished or whatever is the right word in property terms, and that the easement in 1991 was, in fact recorded. The easement that Mr. Udall used from 1991, and was using at the time he Days purchased their property and was used at the time ours, since we provided the Days with a copy of the relocation agreement, we've never heard that they've disputed that we had that easement, or the right to that easement."

Commissioner Winston would like to know if there is agreement between the parties as to where the easement lies at this point, because the original was never vacated and the new one was never defined.

Mr. McCarthy said there is no question but that initially, the Days were not aware that Stewart Udall and the then owner of Lot 2 had agreed to relocate the driveway. And the document itself, talks about consent to relocation of easement. But nowhere in there does it really describe the relocation of the easement to the new spot and the Days were not aware of this. He said, "I found out about it... I think someone, Mr. Gilbert or somebody sent me a copy of this."

Chair Friedman asked what he is holding.

Mr. McCarthy said, "It's called a Consent to Relocate of Easement, and it is entered into between Stewart Udall."

Chair Friedman said that document is in the packet. He asked about the plat which has hand drawings, and asked if everyone is in agreement with respect to that identifying the new location of the easement.

Mr. McCarthy said we recognize that the driveway has been relocated. He said, "Legally, technically it should be surveyed out and put on a plat. And the other one should be vacated, but that's not what Mr. Udall, I guess, when he was playing lawyer, did. But we recognize that. And the Days are sorry that they didn't realize it initially and Jimmy had parked his RV on the so called relocated driveway

Commissioner Maahs said he has a second part to his question. He said, "Directed to Mr. Gilbert, reference to the vehicles that were consistently blocking the driveway, whether those are construction vehicles or vehicles belonging to the Days."

Mr. Gilbert said, "The vehicles that blocked our driveway were vehicles owned by the Days. There was a Mercedes RV, a Porsche SUV, a Toyota the large SUV, at least 2-3 Toyota Priuses. There may have been other vehicles, but all those vehicles were the Days' vehicles, not construction vehicles. And they weren't there just during construction vehicles. They were there day and night for 3 entire months, and you can see it in the pictures."

Commissioner Winston said, based on the case that you cited, it seems like the standard we're supposed to use is unreasonable interference. She said, "My question then would be, although I think it's a District Court question, I did want to address Mr. McCarthy's point that they have offered to electrify the gate and give you guys the equipment that you would need to operate it, set it back off the street, and if that is something you would consider."

Chair Friedman said, "Obviously without prejudice to any of your claims in the future."

Ms. Montoya, said, "To me, it just depends. We would have to see the permit. As you can tel from our history, it's not been a relationship where there is an element of trust between myself and the neighbors. If they submitted an application for a permit that in fact, included that it was automatic, that in fact gave us access, that in fact gave us a code. That would be a different question that we'd have to evaluate, but that in fact has not yet been submitted."

Chair Friedman said, "Mr. McCarthy when he was explaining this, said that the Days would be willing to do a number of things, which was as Ms. Winston said, move back the gate, do a mechanical gate with a clicker, and also Mr. McCarthy was talking about shortening the length of the fence. Now, that's not before us. What's before us are the, correct me if I'm wrong, the actual permits that were presented, and those actual permits, don't have those concessions. So, unless the Appellee wanted to withdraw those permits and submit new ones, it's really not an issue for us at this point in time. Correct. We have to deal with the existing permits which were submitted, which is a 20 foot gates without a mechanical device, that's set on the road, and a fence that extends the length of the lot lines. Is that

correct.”

Ms. Brennan said, “That is correct. You are considering the permits as issued, and the gate locations for the revised permits are shown on page 36 and the original on page 25.”

Chair Friedman asked the Appellant, since they went first, “Is there any other fences between Lot 1 and either Lot 2 and Lot 1 or Lot 1 and Lot 4, because there’s a no building zone for lot one, and secondly, who lives on Lot 1. Is that occupied right now.”

Ms. Montoya said, “I don’t know the answer to that, oh Lot 1 is Mr. Tom Udall, is that right. Oh, Lot 1 is the one we just purchase, I apologize.”

Chair Friedman asked Ms. Montoya if there is any other fencing that exists in that subdivision.

Ms. Montoya said, “If I may, Mr. Chair, members of the Committee, I have a photograph that would show you the aerial of any other fences in the area. And I can show it to you. What they contend is a fence that’s in the building restricted area. I’m just going to toggle through this, if I may. Could you dim the lights. If you look, the fence that they’re talking about, this Coyote fence that they say is in the building restricted area. Here’s Lot 1, this is the house they just bought. This is the fence to which they refer as being within the building restricted area. We don’t think it’s in the building restricted area, but if it is, it’s probably by a foot or two and probably was by mistake.”

Ms. Montoya continued, “The second thing that they were talking about with the...”

Chair Friedman asked, “Could you show us how far down south Lot 1 extends. Where’s the southern boundary line of Lot 1. I see it on my plat, but I’m not sure where it is on that aerial.”

Ms. Montoya said, “On the aerial, let’s see if I can go backwards...”

Chair Friedman said, “That’s the southern boundary line of Lot [inaudible because Ms. Montoya was talking at the same time.”

Ms. Montoya said, “Yes. Oops. It’s right here. I apologize Mr. Chair.

Chair Friedman said, “That’s what I understood, the north orange line is the building restricted zone, right.

Ms. Montoya said, “Yes, and so that fence, in fact shows, and they could have built, if this restricted area didn’t restrict fences, they might have built a fence all the way down here, but they didn’t. They stopped at the building restricted area. And the other thing that they raise with these railroad ties, they call it a basketball court, but what was down here, and this is our house, and right here, it’s actually between these trees, there was a railroad configuration.”

Chair Friedman asked, “Railroad ties.”

Ms. Montoya said, "Railroad ties. And I don't know what it used for before we bought it, but the Days told us it extended 12 inches into the building restricted area and immediately removed it the very next day. Those are the only two structures in the building restricted area that I'm aware of."

Chair Friedman asked, "Ms. Brennan, when Mr. McCarthy was talking about what he believes to be the standard of review for this board, in either upholding or not upholding the City staff decision, he mentioned that he believed the standard was: was the permit granted consistent with the City Code. Is that our standard of review?"

Ms. Brennan said, "I think we always say that Boards and Commission look at the Code and the application and see if the application conforms with the Code. But that's not as simple. When I said technically, I believe it conformed, or it would not have issued, meaning that the fence was not 15 feet high, that it presumably met height requirements, that it complied with City setback requirements, if any, and any other structural things, that the footings were indicated properly on the plans and those kinds of things. As I said before, City practice also figures in these things, and we don't, as a matter of practice, issue permits for things that obstruct platted rights, I would say."

Chair Friedman said, "In assisting the Board I trying to reach a determination on this, what's counsel's view of what our standard of review should be, in terms of looking at an appeal."

Ms. Brennan said, "Well, with an appeal, in terms of standard of review, you are looking at whether the permit properly issued, and in determining that, you are looking at what the rules are, and I've outlined for you the City practice, and also my believe that, technically, the application conformed to Code."

Chair Friedman asked the pleasure of the Board since there is no further discussion, and asked for a motion.

Ms. Brennan said two motions are needed, one for the fence and one for the gate, and Chair Friedman asked to take a motion on the first case which is the fence.

Winston, move to deny the appeal, and should be properly. Seconded by Hawkins.

MOTION: Commissioner Winston moved, seconded by Commissioner Hawkins, with respect to Case #2012-51, Appeal of Construction Permit #12-338, 1240 Camino Cruz Blanca, Fence, to deny the Appeal in this case on the basis that it properly should be adjudicated before the District Court.

VOTE: The motion was approved on a voice vote, with Commissioners Winston, Hawkins and Deering voting in favor of the motion, and Commissioners Werwath and Maahs voting against.

Responding to Ms. Helberg, Committee Stenographer, Chair Friedman said he generally chooses to vote only in situations where there is a tie vote.

2. **CASE #2012-99. KURT GILBERT AND ELICIA MONTOYA, OWNERS, APPEAL THE ISSUANCE OF BUILDING PERMIT #12-1337 FOR OBSTRUCTION AND IMPEDANCE OF ACCESS ONTO THEIR PROPERTY. THE SUBJECT SITE IS LOCATED ON AN ADJACENT LOT AT 1240 CAMINO DE CRUZ BLANCA. (KELLEY BRENNAN)**

MOTION: Commissioner Werwath moved, seconded by Commissioner Deering, to grant the appeal in Case #2012-99, Kurt Gilbert and Elicia Montoya, Owners, appeal of Building Permit #12-1337 in reference to the placement of the gate and the permit as currently structured, finding that there are concerns of public safety and welfare, and the placing of an unreasonable restriction on access to an easement that is recorded on a City Plat,

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

Ms. Brennan asked the Appellants and Appellees in Case #2012-51 and #2012-99, to please provide copies of their power point presentations and other submittals to the Board Stenographer so they can be included for the record, saying multiple copies would be good.

Chair Friedman thanked the Board for its well reasoned decision and for its good questions. He thanked all those who appeared this evening.

3. **CASE #2012-121. 994 OLD PECOS TRAIL SPECIAL USE PERMIT. MARK HOGAN, APPLICANT, REQUESTS A SPECIAL USE PERMIT TO ALLOW OFFICE USE AT 994 OLD PECOS TRAIL. THE PROPERTY IS ZONED RESIDENTIAL ARTS AND CRAFTS (RAC). (DAN ESQUIBEL, CASE MANAGER)**

A Memorandum prepared December 11, 2012, for the December 18, 2012 Board of Adjustment meeting, with attachments, to the Board of Adjustment, from Dan Esquibel, Land Use Planner Senior, is incorporated herewith to these minutes as Exhibit "6."

A letter dated December 12, 2012, to Gary Friedman, Board of Adjustment, from William P.C. Deuschle, President OSFTNA, in regard to Case #2012-121, entered for the record by Dan Esquibel, is incorporated herewith to these minutes as Exhibit "7."

A letter dated December 18, 2012, to the Board of Adjustment, from Cordelia Thomas Snow, indicating her support for the proposed project, entered for the record by Mark Hogan, is incorporated herewith to these minutes as Exhibit "8."

Chair Friedman said with respect to Case #2012-121, for the record he is recusing himself from hearing and being present for this case, because Mr. Hogan is a client and has done work with regard to 994 Old Pecos Trail, which is a condominium that he helped form. He said it would be incorrect for him to be involved in this case, and turned the Chair to Ms. Winston and left the meeting.

Staff was sworn.

1. This approval will only extend to the period of building ownership of the applicant.

Staff Report

The staff report was presented by Dan Esquibel which is contained in Exhibit "6."

Staff recommendation: The Land Use Department has found no adverse impacts associated with the proposed use change. The Land Use Department recommends approval with conditions identified below and outlined in this report [Exhibit "6"].

1. This approval will only extend to the period of building ownership of the applicant.
2. No more than 5 persons, including owner of the building as owner of the company will be allowed to regularly engage in business on the premises.
3. Hours of business operation shall be limited to the hours of 8 M through 7 PM on weekdays and 9 AM to 7 PM on weekends.
4. The exterior appearance of the building shall maintain a residential character.
5. Signage area shall not exceed 6 square feet.
6. No on-street parking for business purposes is permitted.
7. Nothing incidental to the Office Use shall be constructed, installed, placed, parked or stored outside of the building of the premises regulated by the Special Use Permit.
8. No increase in exterior lighting except for signage as restricted by Code in the Historic District.
9. Exterior drainage shall be as allowed by City Code.

Questions from the Board

Commissioner Hawkins said a special use permit goes away when the person to whom it is granted is no longer using it, or does it stick with the property.

Mr. Esquibel said, "It depends. In the event a special use permit was granted to somebody, let's say a school for instance, and another school came in, bought the property and want to operate a school. if that school were to accept the conditions of approval previously granted, we would allow that switch-over. However, in this case, if a business wanted to come in and change that business from what is being presented now to a philanthropic organization, which might have bigger parties and a bunch of other stuff. That would be a completely different use of the property, and would have to reappear before this body for approval. One of the conditions that was imposed by the Applicant that was accepted was that if he no longer owns the property, the special use also goes away."

Commissioner Hawkins asked what happens if the applicant owns it, but he is no longer operating his business, and he leases it to someone who will also operate a business.

Mr. Esquibel said as long as the individual wanted to abide by these restrictions, he doesn't think staff would have objections to allowing the conversion to go forward, so long as it fell within the approvals that might be granted by this Board.

Ms. Baer said, "What Mr. Esquibel says is correct. I would just call to your attention that the condition says the approval will extend only to the period of building ownership of the applicant. If the Board wants to further restrict this in some way, that is your prerogative.

Public Hearing

Presentation by the Applicant

Mark Hogan and William Deuschle were sworn.

Mark Hogan, 994 Old Pecos Trail, Applicant, previously sworn. Mr. Hogan said, "I'm Mark Hogan, 994 Old Pecos Trail. He said this application is simple. The space we're talking about, (424), was constructed and functioned as an office for over 5 years since it was constructed. I built that compound with the intention of having my office adjacent to my house, and the whole thing was sorta constructed in that manner. That was 5 years ago. Since that time, architecture has taken a hit along with the economy, and also both my children left for college, so I was in a house that was bigger I needed, and I was also looking at ways of paring down my expenses. So I rented my house, but maintained my office there."

Mr. Hogan continued, "During another presentation before the City Council, I became aware through that presentation, that I was actually out of conformance with my home occupation because I had rented the property and moved. So that's what gave rise to his application, and I thought I would go through and touch on a couple of points."

Mr. Hogan continued, "In the 5 years that I've used that as an office, we've never had any issues regarding traffic. We've never had a noise problem. We've never had complaints from neighbors. What we have provided is a good buffer from Old Pecos Trail and some of the other uses that come along with the foot traffic and auto traffic up and down Old Pecos Trail, namely noise and also, there's a certain amount of vagrant population that sort of migrates up and down there, and that used to sort of occupy that field and that no longer happens. So we're kind of a buffer to the neighborhood there."

Mr. Hogan continued, "We've kept the street clean, we've kept it from debris and provided nice landscaping and yards contributing to the neighborhood. We've been very active in engaging our neighbors, so we look out for each other, and we like to think that we provide a daytime presence, which adds to the security of that property as well as to the surrounding neighbors."

Mr. Hogan continued, "There's a concern anytime you're going for a commercial use in a residential neighborhood that is going to open the door for more commercial encroachment. It's not the case here. This is a specific application for specific property, and as we have already heard, the approval would run with the use and with my ownership, so it doesn't really create an opportunity for somebody else to come in and copycat, or create a new non-residential use in a residential neighborhood. So what we're

asking for is a special use permit to allow the existing use that's been compatible and complementary to remain. The use was permitted as a home occupation and now we request to be continued as a permitted special use as anticipated in the RAC zoning."

Mr. Hogan continued, "We've communicated with our neighbors. We've followed up since the ENN meeting and added the restrictions that you saw in the cover letter, agreeing to the things that would eliminate the neighbors concerns. So we'd like to think we've addressed those. I think Mr. Deuschele might address those. My closest adjacent neighbor, Dee Dee Snow was unable to make the meeting tonight, so I'm just going to read a letter into the record that she provided." Mr. Hogan handed out copies of the letter [Exhibit "8"], and read Ms. Snow's letter of support of the project into the record. Please see Exhibit "8" for the text of Ms. Snow's letter.

Commissioner Winston asked Mr. Hogan if he would accept a condition of approval which provides: *This approval only extends to the period of building ownership of the Applicant and use by the Applicant's business.*

Mr. Hogan said that is a mirror of what he stated, so he will agree to that, noting that the letter he submitted to the Board is in the packet, and read the 10 restrictions he proposes in his letter of October 10, 2012, commenting that he believes #1 answers her question. Please see Mark Hogan's letter of October 10, 2012, for the 10 restrictions.

Vice-Chair Winston said, "No really. And my question to the staff, should you decide to move your business elsewhere, but still own the building, I think it should be clearly stated that the special use permit will not be granted to the building, but to your business in the building."

Mr. Hogan said there is a difference between the two, and they talked about at the ENN. He said, "We'd like the use to be office use as requested, but it doesn't necessarily need to be my office. Again, times are difficult in architecture these days, and so my goal is to maintain ownership of the building, and keep the use the same as what I'm asking for now. So, if for instance and engineering company wanted to take over my use of the space for a couple of years because we couldn't sustain keeping the lights on through our architectural business, I would like the freedom of being able to do that. If it's a use that's any different than an office use, then I would ask, and I think Dan clarified this before that then that use would have to come back before this Board to be approved. So that's how I would like to have the conditions approved."

Commission Maahs then his question is whether or not Association it willing to accept that as well.

Vice-Chair Winston said we would hear that when they give their presentation. She asked, "Is the Association here, and are they speaking for or against, and could I have you come up and address that question."

Bill Deuschele, President, Old Santa Fe Neighborhood, and Don Gaspar Neighborhood Association [previously sworn]. Mr. Deuschele said he is speaking on behalf of both Associations, noting the OSFTNA sent a letter to the Board. [Exhibit "7"] .

Mr. Deuschele said, "I believe you all have a copy of our letter, which is very much in agreement with what Mr. Hogan is requesting. I would like to address a couple of issues, one of them being the issue you just brought up, which was a concern of ours and of the Neighborhood Association. However, I think, I believe it can be addressed in the manner of requiring Mr. Hogan to contact the Neighborhood Association if he is going to rent the office space to another entity or individual. We would not have a problem with the use being by an engineering firm or something like that. There is a myriad of other possibilities, which I think the Neighborhood Association would like to be aware of. And we have established a relatively good relationship with Mr. Hogan. He has certainly been a good neighbor since he moved in. There were some issues at the beginning when he wanted to have a home occupation, which I'll address those, because I think they're important at this point, to the history of this."

Mr. Deuschele continued, "We were concerned about commercial sprawl when he asked for that, although a home occupation is not that, we were concerned about precedence being set. Since that time, and that's on record when he went for his Home Use Occupation Permit. Since that time, living across the street from Mr. Hogan which we do, I can attest to the quality of neighbor he has done, what he has done with the property, and he has certainly adhered to and followed all the rules and guidelines and regulations that are part of Chapter 14 home occupation use. So, with that said, going back to your question and concern. It's a question of ours and I believe with some form of stipulation that the neighborhood association, Don Gaspar and Old Santa Fe Trail Association be notified by Mr. Hogan of attempt to rent to somebody and I believe it could be handled, that if we had a problem, then we could come to the City with that."

Mr. Deuschele said, "Other than that, our blessing would be in writing and move forward. I think here could be some possibility of certain types of businesses that would not be desirable in the area."

Responding to the Vice-Chair, Mr. Deuschele said examples of business which would not be desirable, are business such as a psychologist or psychiatrist, where there is heavy traffic on a daily basis with clients coming in by the hour and creating an undesirable situation by increasing traffic and exposure to the neighborhood, and potentially create an undesirable situation. He said it would be any business which has regular appointments, which engineering and architectural firms do not have clients coming and going on a regular basis.

Vice-Chair Winston said she can't think of a condition which would be enforceable.

Mr. Deuschele suggested language as follows: *Business use for other than owner's individual business is subject to the Old Santa Fe Trail Homeowners Association and Don Gaspar.*

Vice-Chair Winston asked staff to address this suggestion.

Ms. Brennan said, "The City cannot impose a condition requiring them to make a contractual commitment with another. We can impose a condition to address the concern, but we can't propose a condition delegating this Board's authority elsewhere where it does not belong."

Vice-Chair said Staff Condition of Approval No. 2, provides: *No more than 5 persons, including*

owner of the building as owner of the company will be allowed to regularly engage in business on the premises, and asked if this addresses the concerns, which seems to eliminate hourly clients..

Mr. Deuschele said, "We certainly don't want to be adversarial here. I spoke with Mr. Hogan in the hall and we thought this would go very easily, and we hope it does. I think I our later letter we stipulate we understand the economy, the need to do this, and we're in favor of it, so long as it doesn't impact the neighborhood in a negative way, so long as it's something that's really not going to be used as precedent. We're going on record and we'll certainly be back if it did. I know our Board, speaking on behalf of the Board, they would probably discuss this at length and they would reject anything like that. I'm here, they're not here. I don't know that addresses our concerns, but I feel confident, and I'm going to stick my neck out here that Mr. Hogan... if there is a major question, that he would come to us and say, what do you think about this. And I'll leave it at that. I have no guarantees on that, but I do know that Mr. Hogan is willing to put a deed restriction that this would not go with a property transfer ever. If you put that restriction on, that's even better as a condition. So, at this point, I would accept that."

Commissioner Werwath asked if anything would trigger the need for a new special use permit.

Mr. Esquibel said, "Unfortunately now. When we're looking at the kinds of uses that are allowed in the Arts & Crafts District, offices are allowed. Certainly, if there was an office use that was different from the approvals granted by this body, the inspectors would come up and that would trigger it. But in terms of just a basic office, how do I say this, your approval here is very specific to what he's applied for. It isn't a rezoning of the property, it doesn't change the character of the property. What he's applied for is what he's getting, and there's a certain amount of intensity that is going along with this approval, based on the conditions that's agreed to and you may or may not impose upon that, that's what we can enforce."

Ms. Brennan said the conditions that you proposed Chair, and used by the applicant's business, is quite specific. If that condition were attached, if that phrase were added, to do another business in that space would require returning to the Board of Adjustment.

Mr. Deuschele said, "I believe this could be addressed by restricting medical use which Mr. Hogan just spoke to me about. That is a different use. Restricting medical use, restricting retail on the property and leaving it at that, that it is approved as an office use, which is similar to the use today. Perhaps some kind of condition like that could be imposed and allow Mr. Hogan to go ahead."

Vice-Chair Winston asked staff if this already is a restriction.

Ms. Baer said, "As Ms. Brennan said, if the use changes... it depends on what your condition states and the specific language of the condition. If the use were to change, a new special use permit would typically be required. If you wanted to broaden that and define what you mean by use, it's in your power to do that. Medical office is one of the special use permits. If you want to put restrictions on it, other than to say it's only good for whatever you want to grant it for.

Commissioner Werwath said, "To clarify. A medical office use would be considered a different special use than the office special use that we're approving today."

Ms. Baer said it is a use that's permitted as a special use permit. If a doctor was asking for a medical office, you could approve it, but you might have completely different conditions.

Commissioner Werwath said his question is the clarification of whether it would be considered a change of use if a medical office was using that office.

Ms. Baer said her personal opinion is that it would be a different use, but she's hearing a different opinion.

Vice-Chair Winston said, "Since there's some question about that, perhaps a motion which excluded medical office use specifically."

Ms. Baer said the Code does distinguish that there is a medical, which is apothecary shops or pharmacies, medical and dental offices or clinics, and then there's offices, business and professional and then there's offices, business and professional, business and professional offices excluding medical and dental and financial services. So by specifically limiting it to this provision, you should be addressing the..."

Vice-Chair Winston asked if we should cite to that provision.

Ms. Brennan said, "I think that probably that the use is specifically office, businesses and professional use."

Ms. Baer said one of the reasons for that is that the parking requirements are more intense for the medical use.

Commissioner Hawkins said she wants to make sure that the Homeowners Association understands that we can't require Mr. Hogan to come and ask you if you approve.

Mr. Deuschle said, "I do understand that. I would like to say one more thing on behalf of Mr. Hogan that I believe he failed to mention, and I believe it's important for it to go on record. Our letter states that all the conditions and regulations of a home owned owner occupation, be part of the conditions. Mr. Hogan has a list of 6 or 7 conditions that he has offered to place on this. Here is one item that is required in a home occupation permit that Mr. Hogan did present at the ENN, and there was some resistance to it. However, speaking with him tonight, I understand the need for this. I don't believe with the limitations of the number of people that can be there, with the limitation on the type of business that can be operated, etc., that his desire to use all of 994, the entire building is an issue. Although, if you go to the regulations governing home occupations, you are only allowed to use, I believe it's, 25% of the actual home space, or up to 1,000 sq. ft. I believe it reads something like that. At any rate, if Mr. Hogan were to use the full premises of 994, including the basement, he would exceed that restriction. And we do not have a problem with that, but I believe it needs to be addressed in the approval tonight, for his sake and our sake, when somebody says, he's using the whole building."

Mr. Said for record, letter conditions and regulations, list of 6-7 conditions offered. One item required at ENN, understand desire to use all of 994 is an issue. If go. Only 25% of the home space or up

to 1,000 sq. feet. If to use full premises, including basement would exceed, no problem. Needs to be addressed.

Commissioner Maahs said, "A question to staff. Any Special Use Permit should be subject to the rules governing home based businesses to begin with, is that not correct, if it's going to be inspected and licensed."

Ms. Baer said, "No. Actually that's the reason that they're here this evening, is that they cannot comply with the home occupation ordinance."

Commissioner Maahs said, "But if the Special Use Permit is given, then it would still be subject to the other regulations for home based businesses."

Ms. Baer said, "Well no, because it does not comply with several of those regulations, including the number of employees, including the percentage of the total space. So it would no longer be a considered a home occupation."

Speaking in Favor of the Request

Stefanie Beninato, P.O. Box 1601, Santa Fe, New Mexico [previously sworn]. Ms. Beninato said, "I'm really speaking to a point of law, and that is this condo association started out as a residential condo, with a home occupation in it. And home occupation is significantly less of the building and has only I believe three other people allowed at any one time. So what you basically are doing, is taking what was a home occupation and allowing it to become commercial. And it is an expansion of what was there. It's different, and I would say it's not whether the neighborhood association thinks it's okay, but that doesn't mean they don't want you set precedent with it. You will be setting precedent with it if you vote for it. I'm sorry but it is public record. It would be used as precedent. And it's in fact almost asking for a rezoning by calling it a special use. And I believe it would be appropriate and actually probably necessary to remit it to the owner's use and not the rental of it. And again, I'm not that familiar with special use criteria, but does it really meet the special use criteria, give the history of it as a home occupation that may have been out of conformance with home occupation, but that it was starting as. And I ask you to look at that carefully." She spoke about a case involving the Oil and Gas Association before the Planning Commission dealing with a home occupation. She said I can be limited to medical and asked if you can restrict the use to the kind of office where people are coming only once a day and leaving once a day, commenting that the number is above what is allowed for home occupation. So you are increasing the intensity of use.

The public testimony portion of the public hearing was closed

Ms. Brennan said the Table of Permitted Uses is Table 14-6.1-1, and that use is office, business and professional use.

Werwath, approval, restriction to seconded by Maahs.

MOTION: Commissioner Werwath moved, seconded by Commissioner Maahs, with respect to Case

#2012-121, 994 Old Santa Fe Trail Special Use Permit, to approve this case with conditions as outlined by staff, and an explicit restriction to Special Use Category 14-6.1-1, the office, business and special use provision.

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

4. **CASE #2012-126. ASHLEY FURNITURE SIGN VARIANCE. LIAISON PLANNING, AGENT FOR BILL JOHNSON, OWNER, REQUESTS A VARIANCE TO ARTICLE 14-8-10(G)(8)(a), (d) AND (e) SFCC REGARDING SIZE, HEIGHT AND SETBACK TO ALLOW SIGNAGE FOR A NEW RETAIL ESTABLISHMENT. THE PROPERTY IS ZONED GENERAL COMMERCIAL (C-2/PUD) AND IS LOCATED ON THE EAST SIDE OF CERRILLOS ROAD, NORTH OF THE SANTA FE AUTO PARK. (DAN ESQUIBEL, CASE MANAGER)**

A Memorandum prepared December 14, 2012, for the December 18, 2012 Board of Adjustment Meeting, to the Board of Adjustment, from Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division, indicating the Applicant is requesting postponement of this case to the January 14, 2012 Board of Adjustment meeting, is incorporated herewith to these minutes as Exhibit "9."

This case is postponed to the January 14, 2012, meeting of the Board of Adjustment.

H. BUSINESS FROM THE FLOOR

Stefanie Beninato [previously sworn] said, "I would have eaten dinner if I'd known it was going to be a 2½ hour meeting. I'm here to bring your attention to 610 Galisteo Street, Unit B, which is adjacent to my property. And it's a Condo Association. This particular condo was sold to an owner who was not the developer. And they had problems with drainage, and then part of the permit, the original permit, which was issued in 2011, was [inaudible] going to what I call curbs, but are also called bump-outs. There's part of an adobe house where it comes out further than the house, to prevent the water splashing up on the wall. This is a zero lot line building. It was approximately 4 to 4 ½ feet back from the lot line, rather than the standard 5 feet. Problem with drainage. They had put an addition on before it was sold. That addition actually was illegally placed, because 3 surveys have shown it to be 4 ½ feet from the lot line. And the surveyor who did my lot split survey, told me he had actually been asked by Mr. Jack Hiatt to come out and see if that new addition was actually 5 feet back. So the City actually asked some official who was a Land Use official at the time had knowledge that it wasn't."

Vice-Chair Winston asked Ms. Beninato if she would summarize you point.

Ms. Beninato said, "Sure. I waited a long time too, so I'm trying to be as detailed as I can be without boring you totally to death. That was a violation of the setback. It made the whole structure non-conforming. However, the City wasn't going to anything about that. When the permit in 2011 was issued to repair the bump outs or curbs, a new curb or a new bump out was added to that new addition, making it

even yet closer and it is a clear violation of the non-conformity of the building, placement of the building. I alerted Mr. O'Reilly about this issue, and he told me his new [inaudible] called for an inspection on the permit, which I don't think has ever happened. In addition there has been common open space that only has been fenced-in, which I understand that you can fence-in 50% of the common open space that is fenced in and walked off and is only for one person's use."

Vice-Chair Winston said, "Ms. Beninato, I'm sorry, it's really quite late, and if you could just summarize your...."

Ms. Beninato said, "And now my very last point, thank you very much for your time, is that since I complained about this bump-out, the [inaudible] and it was a 5 ½ foot wall was approved by the City. Recently, in order to not vary I guess with the bump-out at all, they have now added something like 2½ feet of dirt between the house and the wall that's obscuring the bump-out. So if you are standing on both sides, the wall is up to their waste. I'm concerned about this. There's no permit to do that. And I'm concerned about that, because the walls are really not designed to hold that weight and they're not designed to [inaudible] the earth as a dam. And I can't seem to get this [inaudible] to really be enforcing the law as it's written. And this property. And also there is no permit for this huge amount of dirt and a rock wall that was also added as a retaining wall there."

Vice-Chair Winston said, "Ms. Beninato, thank you."

Ms. Beninato said, "Okay. So, I'm hoping maybe you could direct staff to look into that."

I. STAFF COMMUNICATIONS

Ms. Baer said the next meeting will be on Monday, because it was the only time we could get the chambers – January 14, 2013. There will be an appeal and they will get the packet out timely for the Commissioners to be able to review that case.

J. MATTERS FROM THE COMMISSION

Vice-Chair Winston welcomed the new members to the Board.

K. ADJOURNMENT

There was no further business to come before the Board, and the meeting was adjourned at 8:45 p.m.

Gary Friedman, Chair



Melessia Helberg, Stenographer

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

Case #2012-93 – Adventist Academy of Santa Fe Special Use Permit
Owner – Texico Conference Association of Seventh-Day Adventists
Applicant – Allen Steele

THIS MATTER came before the Board of Adjustment (Board) for hearing on September 20, 2012 (Hearing) upon the application (Application) of Allen Steele as agent for the Texico Conference Association of Seventh-Day Adventists (Applicant).

The Applicant seeks a special use permit to operate a private school serving a total of no more than twenty (20) students in grades 1-8 (Project) at 702 Bishops Lodge Road (Property) for five (5) years while the Applicant seeks a permanent location for the school. The Property is zoned R-1 (Residential – 1 dwelling unit/acre).

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 and members of the public interested in the matter.
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 Santa Fe City Code (Code).
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 Code 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 Code Chapter 14; or to deny special use permits when not in harmony with the intent and purpose of Code Chapter 14.
4. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled “Table of Permitted Uses”, private elementary and secondary schools are permitted Educational uses in R-1 districts if reviewed and approved as special use permits in accordance with the review procedures of §14-3.6.
5. The Property is located in an R-1 district.
6. 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

Exhibit "1"

- (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)].
- 7. 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)];
 - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(a)]; and
 - (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)].
- 8. 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.
- 9. 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)].
- 10. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
- 11. An ENN meeting was held on June 25, 2012 at the gymnasium at the Property.
- 12. The ENN meeting was attended by the Applicant, City staff, and other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).
- 13. 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.
- 14. Board staff provided the Board with a report dated September 10, 2012 for the September 20, 2012 Meeting (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).
- 15. Granting the special use permit for the Project will not adversely affect the public interest in that the Property has historically been used for a school; the Project will utilize the existing two-story gymnasium on the Property and will require the addition of limited new facilities, specifically a one-story 28-foot by 60-foot modular classroom, which will be located adjacent to the gymnasium, where it will have limited visual impact; existing parking and ingress and egress is sufficient to serve the Project; drop-off and pick-up hours will be staggered to minimize traffic impacts on the neighborhood; enrollment will be capped at twenty (20); and the Project will operate on the Property no more than five (5) years.
- 16. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project in that new development will be similar in color, style and scale to the existing buildings on the Property and on other properties in the neighborhood, and that existing walls, fences, mature trees and other landscaping provide sufficient buffering to adjacent residential properties to the north and south.

CONCLUSIONS OF LAW

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

1. The Board has the power and authority under Code §§14-2.4(C)(2) and 14-3.6(B) and Code §14-6.1(C) Table 14-6.1-1 to grant the special use permit applied for.
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 _____ OF OCTOBER 2012 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 and to the following additional conditions:
 - (a) That the area to the northeast of the modular unit to the property line be restricted to parking for faculty and staff only and not be used as a play area; and
 - (b) That a fence of at least four (4) feet high be constructed from the northwest corner of the modular unit to the arroyo to discourage use of the area for play.
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 Commission, 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 one hundred eighty (180) days.

Gary Friedman
Chair

Date:

FILED WITH THE CITY CLERK:

Yolanda Y Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Kelley Brennan
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

David Coss, *Mayor*

Councilors:

Rebecca Wurzbarger, Mayor Pro Tem, Dist. 2

Patti J. Bushee, Dist. 1

Chris Calvert, Dist. 1

Peter N. Ives, Dist. 2

Carmichael A. Dominguez, Dist. 3

Christopher M. Rivera, Dist. 3

Bill Dimas, Dist. 4

Ronald S. Trujillo, Dist. 4

Memorandum

To: Board of Adjustment Members

From: Kelley Brennan

Assistant City Attorney *KAB*

Via: Geno Zamora

City Attorney *GZ*

Re: Case No. 2012-51

Appeal of Construction Permit No. 12-338

1240 Camino Cruz Blanca Fence

Date: November 13, 2012 for the November 20, 2012 Meeting
Of the Board of Adjustment

Kurt Gilbert and Elicia Montoya (collectively, the Appellants) appeal the issuance by the City of Santa Fe (City) Land Use Director (Director) of construction permit #12-338 (the Permit) to Jimmy and Jennifer Day (Owners) to permit the construction of a 6-foot-high coyote fence set back approximately 10 feet from and parallel to their property line (the Fence) at their property at 1240 Camino Cruz Blanca (the Lot 2). The Permit was issued on April 20, 2012 and posted at Lot 2 within 24 hours of issuance in accordance with Santa Fe City Code (SFCC) §14-3.10(B)(5) requirements. This appeal was timely filed on April 25, 2012. A copy of the Appellants' Verified Appeal Petition (Petition) is attached as **Exhibit A**.

Basis for Appeal

SFCC §14-3.17(C)(1)(b) provides for appeals from final actions of the Director, including the issuance of permits, to be filed within 15 days of the final action appealed from. Appeals may be filed only "...to contest noncompliance of a final action with Chapter 14 or Sections 3-21-1 through 3-21-14 NMSA 1978; ...to contest the application of Chapter 14; or...to appeal a decision lacking substantial evidence to support it." [SFCC §14-3.17(A)(2)(a)-(c)]

The Appellants own the property adjacent to Lot 2 on the south identified as 1244 Camino Cruz Blanca (Lot 4). They claim that the Permit violates the conditions and requirements shown on a plat entitled “Lot Split Plat of Survey Prepared for Stewart L. Udall” prepared by Smith Williamson & Associates dated February 1990 and filed for record with Santa Fe County, New Mexico, on July 23, 1990 and recorded in plat book 212, page 19 (the Plat) and the covenants and restrictions contained in a “Declaration of Covenants, Conditions and Restrictions” (the Declaration) binding Lots 2 and 4, as well as Lots 1 and 3 in the subdivision shown on the Plat. Copies of the Plat and the Declaration are attached as **Exhibits B** and **C** respectively.

Standing

An appellant must have standing. Here, the Appellants apply under SFCC §14-3.17(B)(5), “*any person who has a recognized property interest under New Mexico law.*” We assume for the purposes of this appeal hearing before the Board that the Appellants have standing.

Jurisdiction

The Board of Adjustment has jurisdiction to hear appeals of final actions of the Director applying the provisions of Chapter 14, unless jurisdiction is otherwise specifically reserved to any other Land Use Board [SFCC §14-2.4(C)(1)].

Background

Lot 2 and Lot 4, together with Lots 1 and 3, make up the 4-lot subdivision shown on the Plat. The southern-most portion of Lot 2 is shown on the Plat as a “Building Restricted Area” (the Restricted Area). The Declaration provides that “[t]he natural meadow area that is generally located in the northern portion of Lot 4 and the southern part of Lots 1 and 2 and which is designated as the ‘Building Restricted Area’ on the Plat will be left as open space and none of the Lot owners shall build a dwelling or other structure in the ‘Building Restriction Area.’”

The Permit allows construction of the Fence in the Restricted Area. As a result, the Appellants claim that the Permit issued in error.

Discussion

The Declaration is a private contract between and among the owners of the 4 lots that make up the subdivision shown on the Plat. The City is not a party to the Declaration. However, the City, by approving the Plat, had notice of the existence of the Restricted Area. In addition, the Owners submitted with the application for the Permit a copy of the Declaration.

In determining whether a building permit could issue for a fence in the “Building Restricted Area” shown on the Plat, LUD staff referred to the definition of “building” contained in SFCC §14-12.1, which defines “building” as “[a] structure or parts of a structure covered and connected by a permanent roof and intended for shelter, housing or enclosure.” A “structure” is

defined as “[a]nything that is constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground, including buildings, mobile homes, walls, fences...”

According to these SFCC definitions, a fence is a structure, but it is not a building, because it is not covered and connected by a permanent roof. As a result, LUD staff issued the Permit, since it was not for a building, interpreting the Plat restriction as limiting construction of buildings, but not of fences. LUD staff did not consider the Declaration because the City does not enforce contracts between private parties.

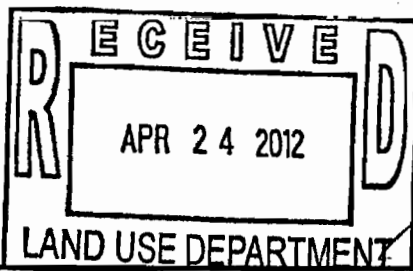
However, the Declaration rather than the SFCC is a better source for the meaning of the word “building”, since the Declaration indicates the intentions of the owners of the lots shown on the Plat at the time the Plat was approved. In consulting the Declaration, the City would not be enforcing the Private Covenants, but would instead be using them to clarify the intentions of the lot owners at the time they signed the Plat. As noted above, the Declaration provides that “...none of the Lot owners shall build a dwelling or other structure in the [Restricted Area].”

A fence is an “other structure”.

Conclusion

Code Section 14-3.17(H)(4) provides that “...the appellant has the burden of proof under [SFCC §14-3.17(A)]”, which establishes the basis for appeal.

The City Attorney’s Office believes that the Appellants have met their burden and recommends that the Board grant the Appellants’ appeal.



Case # 2012-51

VERIFIED APPEAL PETITION

Parcel Information

Project Name: _____

Address: 1244 Camino de Cruz Blanca Santa Fe NM 87506

Case Number: _____ Permit Number (if applicable): 12-338

Appeal to:

Board of Adjustment ☒ Planning Commission ☐ Hearing Examiner ☐ Governing Body ☐

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

Section 14-3.17(B)(5): Person with recognized legal interest. Owner of adjacent lot in subdivision band
by the subdivision plat, conditions, and restrictions.

Appeal: The facts were incorrectly determined ☒ Ordinances/laws were violated and/or misrepresented ☒

Property Owner Information

Company Name: _____

Name: Gilbert, Kurt and Montoya, Elicia
Last First M.I.

Address: 1244 Camino de Cruz Blanca
Street Address Suite/Unit #
Santa Fe NM 87506
City State ZIP Code

Phone: (505) 820-0557 E-mail Address: k.gilbat@rodeyo.com

Applicant/Agent Information (if different from owner)

Company Name: _____

Name: _____
Last First M.I.

Address: _____
Street Address Suite/Unit #
City State ZIP Code

Phone: () E-mail Address: _____

Correspondence Directed to: ☐ Owner ☐ Applicant ☐ Both

Agent Authorization (if applicable)

I am/We are the owner(s) and record title holder(s) of the property located at: _____

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

Signed: _____ Date: _____

Signed: _____ Date: _____

Subject of Appeal

Description of the final action appealed from, and date on which final action was taken:

We appeal from a building permit, # 12-338, dated April 20, 2012.

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

☐ Check here if you made a diligent search, and have been unable to obtain information regarding the address, case number, or permit number.

Explain the nature and extent of your search:

Description of Harm

Describe the harm that would result from the action appealed from:

The building restricted area required to be left as open space will be irreparably damaged and/or destroyed. Trees will be removed. Landscape will be damaged.

Explain the Basis for Appeal

Please detail the basis for Appeal here:

The permit violates the conditions and requirements of the subdivision plat and the covenants and restrictions binding these properties. These documents prohibit the placement of any structure in the Building Restricted Area. City code defines a fence as a structure. Therefore, the structure at issue in the permit is prohibited. The permit should be denied.

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: Ant B. Pittman Date: 4/25/12
Agent Signature: _____ Date: _____

State of New Mexico)
) ss.
County of Santa Fe)

I/We Kurt Gilbert, being first duly sworn, depose and say/s: 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:

Ant B. Lillhat
Signature

Signature

Kurt B. Gilbert
Print Name

Print Name _____

Subscribed and sworn to before me this 25th day of April, 2012

NOTARY PUBLIC

My commission expires:

2-21-15

****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.****

DECLARATION OF COVENANTS, CONDITIONS

AND

RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter "Covenants") is made on July 13th, 1990 by Stewart L. Udall and Lee Udall, husband and wife, (hereinafter "Declarants") for consideration duly paid.

WHEREAS, Declarants are the owners of 9.413 acres of land located south of Camino Cruz Blanca Norte, within the City and County of Santa Fe, New Mexico (the "Property"), as set forth on the Lot Split Plat of Survey Prepared for Stewart L. Udall of Lands Within the Santa Fe Grant, City of Santa Fe, Santa Fe County, New Mexico, by Richard E. Smith M.M.P.S. No. 5837, dated February, 1990 and recorded on July 23rd, 1990, in the land records of Santa Fe County in Book 212 at Page 219 (the "Plat"); and

WHEREAS, Declarants are now subdividing said Property into four (4) Lots; and

WHEREAS, all said Lots are adjacent to each other such that the Declarants have agreed to subject all of said Property, and each Lot thereof, to these covenants for the purpose of preserving and enhancing the value and the amenities of each tract;

NOW, THEREFORE, Declarants hereby declare that all of said Property shall be held, sold, conveyed, occupied, developed and redeveloped subject to the following restrictions, covenants and conditions which are all for the purpose of preserving and enhancing the value and amenities of all of the said Lots, and which covenants shall run with the Property and shall be binding on the Declarants and on all parties having any right, title, or interest therein, their heirs, successors, and assigns and shall inure to the benefit of all such parties, their heirs, successors and assigns.

ARTICLE I
Restrictions on Structures, Walls, Fences
and Other Design Elements

Section 1. Permitted Structures. No structure shall be erected or permitted to remain on any lot or building site other than one single-family dwelling for residential use, a private garage, recreational facilities, solar-heating devices or coolers, and improvements incidental to residential use of the premises. "Single-family dwelling" means a structure containing no more than six-thousand (6,000) square feet of heated floor space, including guest quarters. Guest quarters must be attached to the principal dwelling or, if separate, must be architecturally allied with the principal dwelling.

Section 2. Prohibited Structures. No modular homes, mobile homes, prefabricated structures, trailers or other temporary structures may be placed on or kept on arid Lots, except for a construction trailer which may be placed on a Lot during actual construction, but in any event for no longer than one year.

Section 3. Height Limitations. No structure shall exceed sixteen (16) feet in height. Height shall be measured from the highest point on the site on which the main residential building is built and only chimneys may exceed the height limitation described above.

Section 4. Architectural Style. All dwelling units shall be constructed in Repeat Santa Fe Style as defined in Section 14-70.9 of the Santa Fe City Code. Pitched roofs are acceptable as long as the ultimate architectural solution remains wall-dominated.

Section 5. Fences and Walls. No fences or walls may be closer than ten (10) feet to any lot line. All walls shall consist of stuccoed adobe or stuccoed masonry and shall be "earth color" as that term is defined in the H-District ordinance of the City of Santa Fe. No chain link fences will be permitted. All fences should be constructed of natural colored materials.

Section 6. Utilities. All electrical service, telephone lines and other utilities shall be placed underground.

Section 7. Towers and Equipment. Satellite dishes and solar equipment shall be ground-mounted and/or walled in or concealed at all times so that they may not be seen from any point beyond the building site on which they are located.

Declaration of Covenants, Conditions
 and Restrictions 4920P - Page 2

ARTICLE II Open Space

Section 1. The natural meadow area that is generally located in the northern portion of Lot 4 and in the southern part of Lots 1 and 2 and which is designated as the "Building Restriction Area" on the Plat will be left as open space and none of the Lot owners shall build a dwelling or other structure in the "Building Restriction area."

ARTICLE III Easement

Section 1. The eighteen (18) foot ingress and egress easement across parts of Lots 1 and 2 is a nonexclusive easement appurtenant to Lot #4. The twenty (20) foot ingress, egress and utility easement across Lot 1 is a nonexclusive easement appurtenant to Lot 3 and certain other real estate not included in the Property, as set forth in the Plat. Each roadway shall be created and maintained by the owner of the appurtenant lot.

ARTICLE IV Subdivision

Section 1. Termination of Prior Covenants. All prior restrictive covenants relating to the Property are hereby terminated and are of no further force and effect. This includes, without limitation:

A. restrictions, reservations, and conditions as contained in Warranty Deed from Margretta S. Dietrich to Henriette Harris Callin, dated August 7, 1958 and recorded in Book 147, Misc., at page 54 and in Deed from Henriette Harris Callin and Eugene W. Callin her husband to Robert C. Koeber and Mela S. Koeber, his wife, dated November 8, 1961 and recorded in Book 184 Misc., at page 410; Amendment recorded in Book 444 at page 277; Amendment recorded in Book 445 at page 141; Release and Amendment of Reservation recorded in Book 639 Misc., at page 948, records of Santa Fe County, New Mexico; and

B. restrictions, reservations, and conditions as contained in the agreement between Henriette Harris Callin and Robert C. Koeber and Mela S. Koeber, dated September 20, 1958 and recorded in Book 148 at page 244, records of Santa Fe County, New Mexico.

Section 2. Restrictions on Subdivision. No resubdivision of the Property shall be permitted during the period in which these covenants and restrictions are in effect.

Declaration of Covenants, Conditions
and Restrictions 4920P - Page 3

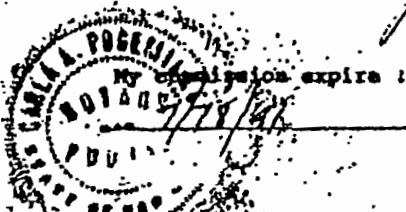
A-6

STATE OF NEW MEXICO
COUNTY OF SANTA FE

ss.

688501

The foregoing instrument was acknowledged before
me this 13th day of July, 1990, by Lee Udall.



NOTARY PUBLIC

712988
COUNTY OF SANTA FE
STATE OF NEW MEXICO
I hereby certify that this instrument was filed
for record on the 13th day of July, A.D.
1990, at 3:58 o'clock P.M.
and was duly recorded in book 688
page 497-501 of this records of
Santa Fe County.

Witness my Hand and Seal of Office
Joni G. Armita

County Clerk, Santa Fe County, N.M.

Christina Lopez
Deputy



Declaration of Covenants, Conditions
and Restrictions 4920P - Page 5

City of Santa Fe
Cashiers Office
Santa Fe, NM 87504
(505)955-4333

04/25/2012 12:05:00 PM
Your cashier was LORRAINE
B002507112116 T86

Development Review
KURT GILBERT
11001.431470

\$100.00

Total

\$100.00

Visa

\$100.00

XXXXXXXXXXXXXXXXX8367

Customer Signature

Change

\$0.00

Thank you!

DECLARATION OF COVENANTS, CONDITIONS

AND

RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter "Covenants") is made on July 13th, 1990 by Stewart L. Udall and Lee Udall, husband and wife, (hereinafter "Declarants") for consideration duly paid.

WHEREAS, Declarants are the owners of 9.413 acres of land located south of Camino Cruz Blanca Norte, within the City and County of Santa Fe, New Mexico (the "Property"), as set forth on the Lot Split Plat of Survey Prepared for Stewart L. Udall of Lands Within the Santa Fe Grant, City of Santa Fe, Santa Fe County, New Mexico, by Richard E. Smith M.M.P.S. No. 5637, dated February 1990 and recorded on July 23rd, 1990, in the land records of Santa Fe County in Book 212 at Page 019 (the "Plat"); and

WHEREAS, Declarants are now subdividing said Property into four (4) Lots; and

WHEREAS, all said Lots are adjacent to each other such that the Declarants have agreed to subject all of said Property, and each Lot thereof, to these covenants for the purpose of preserving and enhancing the value and the amenities of each tract;

NOW, THEREFORE, Declarants hereby declare that all of said Property shall be held, sold, conveyed, occupied, developed and redeveloped subject to the following restrictions, covenants and conditions which are all for the purpose of preserving and enhancing the value and amenities of all of the said Lots, and which covenants shall run with the Property and shall be binding on the Declarants and on all parties having any right, title, or interest therein, their heirs, successors, and assigns and shall inure to the benefit of all such parties, their heirs, successors and assigns.

EXHIBIT

C

ARTICLE I
Restrictions on Structures, Walls, Fences
and Other Design Elements

Section 1. Permitted Structures. No structure shall be erected or permitted to remain on any lot or building site other than one single-family dwelling for residential use, a private garage, recreational facilities, solar-heating devices or coolers, and improvements incidental to residential use of the premises. "Single-family dwelling" means a structure containing no more than six-thousand (6,000) square feet of heated floor space, including guest quarters. Guest quarters must be attached to the principal dwelling or, if separate, must be architecturally allied with the principal dwelling.

Section 2. Prohibited Structures. No modular homes, mobile homes, prefabricated structures, trailers or other temporary structures may be placed on or kept on said Lots, except for a construction trailer which may be placed on a Lot during actual construction, but in any event for no longer than one year.

Section 3. Height Limitations. No structure shall exceed sixteen (16) feet in height. Height shall be measured from the highest point on the site on which the main residential building is built and only chimneys may exceed the height limitation described above.

Section 4. Architectural Style. All dwelling units shall be constructed in Spanish Santa Fe Style as defined in Section 14-70.9 of the Santa Fe City Code. Pitched roofs are acceptable as long as the ultimate architectural solution remains wall-dominated.

Section 5. Fences and Walls. No fences or walls may be closer than ten (10) feet to any lot line. All walls shall consist of stuccoed adobe or stuccoed masonry and shall be "earth color" as that term is defined in the R-District ordinance of the City of Santa Fe. No chain link fences will be permitted. All fences should be constructed of natural colored materials.

Section 6. Utilities. All electrical service, telephone lines, and other utilities shall be placed underground.

Section 7. Towers and Equipment. Satellite dishes and solar equipment shall be ground-mounted and/or walled in or concealed at all times so that they may not be seen from any point beyond the building site on which they are located.

Declaration of Covenants, Conditions
 and Restrictions 4920P - Page 2

ARTICLE II Open Space

Section 1. The natural meadow area that is generally located in the northern portion of Lot 4 and in the southern part of Lots 1 and 2 and which is designated as the "Building Restriction Area" on the Plat will be left as open space and none of the Lot owners shall build a dwelling or other structure in the "Building Restriction area."

ARTICLE III Easement

Section 1. The eighteen (18) foot ingress and egress easement across parts of Lots 1 and 2 is a nonexclusive easement appurtenant to Lot #4. The twenty (20) foot ingress, egress and utility easement across Lot 1 is a nonexclusive easement appurtenant to Lot 3 and certain other real estate not included in the Property, as set forth in the Plat. Each roadway shall be created and maintained by the owner of the appurtenant lot.

ARTICLE IV Subdivision

Section 1. Termination of Prior Covenants. All prior restrictive covenants relating to the Property are hereby terminated and are of no further force and effect. This includes, without limitation:

A. restrictions, reservations, and conditions as contained in Warranty Deed from Margretta S. Dietrich to Henriette Harris Callin, dated August 7, 1958 and recorded in Book 147, Misc., at page 54 and in Deed from Henriette Harris Callin and Eugene W. Callin her husband to Robert C. Koeber and Mela S. Koeber, his wife, dated November 8, 1961 and recorded in Book 184 Misc., at page 410; Amendment recorded in Book 444 at page 277; Amendment recorded in Book 445 at page 141; Release and Amendment of Reservation recorded in Book 639 Misc., at page 948, records of Santa Fe County, New Mexico; and

B. restrictions, reservations, and conditions as contained in the agreement between Henriette Harris Callin and Robert C. Koeber and Mela S. Koeber, dated September 20, 1958 and recorded in Book 148 at page 244, records of Santa Fe County, New Mexico.

Section 2. Restrictions on Subdivision. No resubdivision of the Property shall be permitted during the period in which these covenants and restrictions are in effect.

Declaration of Covenants, Conditions
and Restrictions 4920P - Page 3

ARTICLE V
Miscellaneous

Section 1. Duration. These covenants shall be effective for a term of fifty (50) years from the date the same are recorded in the office of the County Clerk of Santa Fe County unless they are sooner terminated by unanimous vote of the owners of all the Lots.

Section 2. Attorney's Fees. In any court proceeding brought to enforce provisions of these covenants, the losing party shall pay the attorney's fees of the prevailing party in such a reasonable amount as may be fixed by the Court.

DATE:

July 13, 1990.

Stewart L. Udall
STEWART L. UDALL

Lee Udall
LEE UDALL

STATE OF NEW MEXICO
COUNTY OF SANTA FE

ss.

The foregoing instrument was acknowledged before me
this 13th day of July, 1990, by Stewart L. Udall.

Robert L. Hull
NOTARY PUBLIC

My Commission expires:



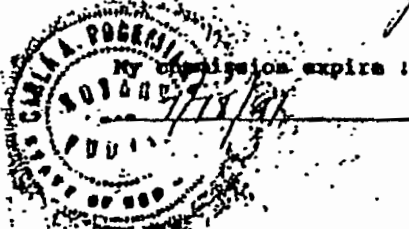
Declaration of Covenants, Conditions
and Restrictions 4920P - Page 4

STATE OF NEW MEXICO
COUNTY OF SANTA FE

ss.

688501

The foregoing instrument was acknowledged before
me this 13th day of July, 1990, by Las Urdall.



NOTARY PUBLIC

712988
COUNTY OF SANTA FE
STATE OF NEW MEXICO
I hereby certify that this instrument was filed
for record on the 13th day of July, A.D.
1990, at 3:58 o'clock P.M.
and was duly recorded in book 632
page 187-301 of the records of
Santa Fe County.

Witness my Hand and Seal of Office
Jorie G. Arriaga
County Clerk, Santa Fe County, N.M.

Christina Garcia
Deputy



Declaration of Covenants, Conditions
and Restrictions 4920P - Page 5



City of Santa Fe, New Mexico

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

www.santafenm.gov

David Coss, Mayor

Councilors:

Rebecca Wurzbarger, Mayor Pro Tem, Dist. 2

Patti J. Bushee, Dist. 1

Chris Calvert, Dist. 1

Peter N. Ives, Dist. 2

Carmichael A. Dominguez, Dist. 3

Christopher M. Rivera, Dist. 3

Bill Dimas, Dist. 4

Ronald S. Trujillo, Dist. 4

Memorandum

To: Board of Adjustment Members

From: Kelley Brennan *KAB*
Assistant City Attorney

Via: Geno Zamora *GZ*
City Attorney

Re: Case No. 2012-99
Appeal of Construction Permit No. 12-1337
1240 Camino Cruz Blanca Gates

Date: November 13, 2012 for the November 20, 2012 Meeting
Of the Board of Adjustment

Kurt Gilbert and Elicia Montoya (collectively, the Appellants) appeal the issuance by the City of Santa Fe (City) Land Use Director (Director) of construction permit #12-1337 (the Permit) to Day [sic] (Owners) to permit the installation of two (2) temporary vehicle entry gates, one identified as an "Emergency Vehicle Access" gate (Main Gate) and the other identified as a "Secondary/Non-Emergency Vehicle Gate" (Secondary Gate) (collectively, the Gates) at their property at 1240 Camino Cruz Blanca (Lot 2). The Permit was issued on July 18, 2012 and was revised on August 1, 2012. This appeal was timely filed on August 2, 2012. A copy of the Appellants' Verified Appeal Petition (Petition) is attached as **Exhibit A**.

Basis for Appeal

SFCC §14-3.17(C)(1)(b) provides for appeals from final actions of the Director, including the issuance of permits, to be filed within 15 days of the final action appealed from. Appeals may be filed only "...to contest noncompliance of a final action with Chapter 14 or Sections 3-21-1 through 3-21-14 NMSA 1978; ...to contest the application of Chapter 14; or...to appeal a decision lacking substantial evidence to support it." [SFCC §14-3.17(A)(2)(a)-(c)]

The Appellants own the property adjacent to Lot 2 on the south identified as 1244 Camino Cruz Blanca (Lot 4). They claim that the Gates will block the easement of record giving them access to Lot 4.

Standing

An appellant must have standing. Here, the Appellants apply under SFCC §14-3.17(B)(5), “*any person who has a recognized property interest under New Mexico law.*” We assume for the purposes of this appeal hearing before the Board that the Appellants have standing.

Jurisdiction

The Board of Adjustment has jurisdiction to hear appeals of final actions of the Director applying the provisions of Chapter 14, unless jurisdiction is otherwise specifically reserved to any other Land Use Board [SFCC §14-2.4(C)(1)].

Background

Lot 2 and Lot 4, together with Lots 1 and 3, make up a 4-lot subdivision of 9.413± acres of land (the Original Parcel) shown on a plat entitled “Lot Split Plat of Survey Prepared for Stewart L. Udall” prepared by Smith Williamson & Associates dated February 1990 and filed for record with Santa Fe County, New Mexico, on July 23, 1990 and recorded in plat book 212, page 19 (the Plat). A copy of the Plat is attached as **Exhibit B**. The Plat shows an 18-foot ingress and egress easement cutting at an angle across the northeast corner of Lot 2 and continuing through Lot 1 to Lot 4 (the Original Easement). A copy of the Plat showing the Original Easement was submitted by the Owners with their application (the Application) for the Permit.

The Original Easement shown on the Plat was created by a “Declaration of Covenants, Conditions and Restrictions” (the Declaration) executed by the owners of the Original Parcel on July 13, 1990 which subjected the Original Parcel and each of Lots 1, 2, 3 and 4 to its provisions. A copy of the Declaration is attached as **Exhibit C**. Article III, Section 1 of the Declaration provides in relevant part that “[t]he eighteen (18) foot ingress and egress easement across parts of Lots 1 and 2 is a nonexclusive easement appurtenant to Lot #4...” An “easement appurtenant” is defined by Black’s Law Dictionary as “[a]n easement created to benefit another tract of land, the use of the easement being incident to the ownership of that other tract...” Thus the Original Easement was created to benefit Lot 4 and the right to its continued use is a corollary to ownership of Lot 4. The Declaration was filed for record with Santa Fe County, New Mexico, on July 24, 1990 and recorded in book 688, page 497-501.

Subsequently, on April 5, 1991, the then-owners of Lot 2 (Udall) and its prospective purchasers (Wattles) entered into a “Consent to Relocation of Easement” (Relocation Agreement) to “*move the existing roadway*” which had been constructed over the Original Easement by Udall to a new location as shown on Exhibit A to the Relocation Agreement (RA Ex-A). Under the Relocation Agreement Udall specifically relinquished and released “...any rights granted to Udall by the

[Declaration], and/or the owner of Lot 4 to the [Original Easement]...” RA Ex-A shows a hand-drawn line roughly parallel and adjacent to the boundary between Lots 1 and 2 extending from Camino Cruz Blanca to where the Original Easement crossed from Lot 2 to Lot 1 and is marked “New Road” (New Easement) and initialed “TGW, JGW/CNB, DCB”. Based upon the language of the Relocation Agreement, it appears that the intention of the parties was to relocate the Lot 4 access across Lot 2 as far away from the dwelling unit located on Lot 2 as possible, while assuring continued access to Lot 4 via the New Easement. A copy of the Relocation Agreement, including RA Ex-A is attached as **Exhibit D**.

The Permit as originally granted included installation of the Main Gate across part of the Original Easement at Camino Cruz Blanca and of the Secondary Gate across the New Easement generally where the New Easement crosses the boundary between Lots 1 and 2. The Owners subsequently revised the Permit to relocate the Secondary Gate to where the New Easement meets Camino Cruz Blanca. A copy of the original and revised drawings submitted with the Application is attached as **Exhibit E**. Thus the Gates impede the Appellants’ access to Lot 4 via both the Original Easement and the New Easement, although as long as they are not locked, they do not preclude that access.

Discussion

The issue before the Board is whether both or one of the Gates will unreasonably interfere with the Appellants’ right of passage over the Old Easement and/or the New Easement.

Before answering this question, the Board must determine the location and extent of the easement based upon the intention of the parties as expressed in the language of the Declaration, the Plat and the Relocation Agreement¹ (collectively, the Record Documents), using the following rules outlined by the New Mexico Court of Appeals in *Dethlefsen v. Weddle*, ___ NM ___, 284 P.3d 452 (2012):

1. An easement is distinguished from fee simple ownership and is a liberty, privilege, right or advantage which one has in the land of another.
2. It is created by express agreement, prescription or by implication.
3. The existence of an express easement and its scope, i.e., its location and extent, are determined according to the intent of the parties.
4. In determining intent, “heavy emphasis” is given to the written expressions of the parties.
5. The written language of an easement should be conclusive and the consideration of extrinsic (outside) evidence is generally inappropriate.
6. If, however, the written language of the grant of easement is ambiguous, the parties’ intentions must be determined from the language of the document as well as from the surrounding circumstances.

¹ The Board should also consider any other recorded documents that the parties may produce in conjunction with this appeal.

If the Board concludes based on these rules that the Declaration and Plat created the Original Easement and that the Relocation Agreement moved that easement generally to the area identified on Relocation Agreement Exhibit A as shown more specifically on the drawings submitted with the Application and labeled “Existing Driveway”, then the Board should then consider whether installation of the Secondary Gate will unreasonably interfere with the Appellants’ right of passage over the New Easement.

If the Board finds that the Record Documents are ambiguous, they may consider evidence outside those documents that clarifies the intention of the parties to the Record Documents, such as letters, the existence of gates at the time the Record Documents were signed by the parties, or similar relevant information.

Land Use Department (LUD) staff issued the Permit because they did not believe that the installation of the Gates would unreasonably block Appellants’ right of passage to and from Lot 4 and Camino Cruz Blanca. LUD staff has been advised that an easement is a privilege or right to use land, rather than outright ownership, and that the landowner has a right to use the easement land in a manner that is not inconsistent with the grant of easement. This includes the installation of gates to regulate unauthorized traffic and for security where the grant of easement doesn’t expressly require that the easement remain open. LUD staff issued the Permit in the belief that opening and closing a gate did not impose an unreasonable burden on the Appellants.

In addition, with the exception of the Original Easement shown on the Plat, none of the information pertaining to Lot 4 access rights is clearly evident from the Permit application (the Application) submitted by the Owners. While the general locations of the Original Easement and the New Easement² are shown on the drawings submitted to indicate where the Gates are to be located (see Exhibit E), they are labeled “Asphalt Driveway” and “Existing Driveway” respectively, rather than as easements benefiting Lot 4. While it is possible to infer from the drawings that the “Existing Driveway” serves a lot other than Lot 2, the drawings do not explicitly show that it does. Although the Plat shows the Original Easement, it does not show the New Easement and the Relocation Agreement, with its Exhibit A (see Exhibit D, page D-4) showing the hand-drawn “New Road”, was not submitted with the Application.

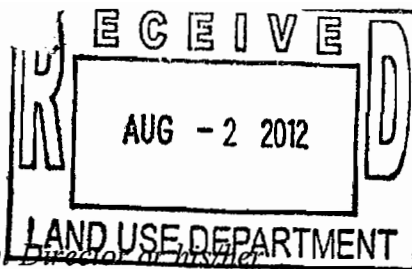
Conclusion

If the Board concludes that either or both of the Gates will unreasonably interfere with the Appellants’ right of passage to and from Lot 4, the Board should grant the Appellants’ appeal with respect to either or both of the Gates.

If the Board concludes that either or both of the Gates will not unreasonably interfere with the Appellants’ right of passage to and from Lot 4, the Board should deny the Appellants’ appeal with respect to either or both of the Gates.

² It does not appear from the record that the New Easement has been platted. As a result, we have assumed that the “Existing Driveway” shown on the drawings submitted with the Application is within the New Easement.

Verified Appeal Petition



[Two originals of this form must be filed. The Land Use Department designee will enter the date and time of receipt and initial both originals. See 14-3.17(D) for procedure.]

To (Check one)

- ☐ Board of Adjustment
- ☐ Planning Commission
- ☐ Hearing Examiner
- ☐ Governing Body

LAND USE DEPARTMENT USE ONLY

Date filed: 8/2/12
Time filed: 10:00 ☒ a.m. ☐ p.m.
Fee paid: \$100.00
Receipt attached ☒

Appellant:

Name Kurt Gilbert & Elicia Montoya
Address 1244 Camino de Cruz Blanca
Santa Fe NM
87505

Telephone 505 - 440 - 4917

Basis of

Standing [See 14-3.17(B) - Standing Required to Appeal]
Section 14-3.17(B)(5) - Person with
a recognized legal interest under
New Mexico Law

Describe the harm that would result to you from the action appealed from:

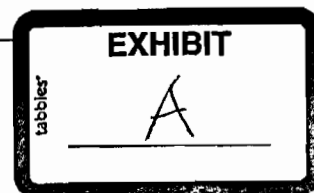
We have a legal right-of-way easement through the subject
property. The proposed gate will block and/or impede our legal, rightful
access to our property.

Subject of Appeal:

Applicant Name Jimmy and Jennifer Day
Address/Location
of Subject Site 1240 Camino de Cruz Blanca
Santa Fe NM
87505

Permit No.: 13 - 1337
Case No. _____

☐ [Check here if you have made diligent search, but have been unable to obtain the above information.] Explain the nature and extent of your search: _____



Description of the final action appealed from: Issuance of Permit No 12-1337
to place "gates" across our legal right-of-way easement.

Date on which final action was taken: _____

☐ [Check here if you have attached a copy of the final action appealed from]

Basis for Appeal:

☒ The facts were incorrectly determined.

☐ Ordinances/laws were violated and/or misrepresented.

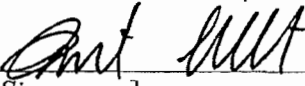
Explain [Be specific] The placement of gates across our easement will block or
otherwise impede access to our property.

Verification

State of New Mexico)
) ss.
County of Santa Fe)

I/We Kurt Gilbert, being
first duly sworn, depose and say/s: 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:


[Sign name]

[Sign name]

Kurt Gilbert
[Print name]

[Print name]

Subscribed and sworn to before me this 2nd day of August 20 12


NOTARY PUBLIC

My commission expires:

3-31-15

A-3

City of Santa Fe
Cashiers Office
Santa Fe, NM 87504
(505)955-4333

08/02/2012 10:03:58 AM
Your cashier was LEONA
B002202112213 T17

Development Review
KURT GILBERT / ALICIA MONTOYA
11001.431470 \$100.00

Total \$100.00

\$100.00

Change \$0.00

Thank you!

DECLARATION OF COVENANTS, CONDITIONS

AND

RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter "Covenants") is made on July 13th, 1990 by Stewart L. Udall and Lee Udall, husband and wife, (hereinafter "Declarants") for consideration duly paid.

WHEREAS, Declarants are the owners of 9.413 acres of land located south of Camino Cruz Blanca Norte, within the City and County of Santa Fe, New Mexico (the "Property"), as set forth on the Lot Split Plat of Survey Prepared for Stewart L. Udall of Lands Within the Santa Fe Grant, City of Santa Fe, Santa Fe County, New Mexico, by Richard E. Smith M.M.P.S. No. 5837, dated February, 1990 and recorded on July 23rd, 1990, in the land records of Santa Fe County in Book 212 at Page 019 (the "Plat"); and

WHEREAS, Declarants are now subdividing said Property into four (4) Lots; and

WHEREAS, all said Lots are adjacent to each other such that the Declarants have agreed to subject all of said Property, and each Lot thereof, to these covenants for the purpose of preserving and enhancing the value and the amenities of each tract;

NOW, THEREFORE, Declarants hereby declare that all of said Property shall be held, sold, conveyed, occupied, developed and redeveloped subject to the following restrictions, covenants and conditions which are all for the purpose of preserving and enhancing the value and amenities of all of the said Lots, and which covenants shall run with the Property and shall be binding on the Declarants and on all parties having any right, title, or interest therein, their heirs, successors, and assigns and shall inure to the benefit of all such parties, their heirs, successors and assigns.

EXHIBIT

C

ARTICLE I
Restrictions on Structures, Walls, Fences
and Other Design Elements

Section 1. Permitted Structures. No structure shall be erected or permitted to remain on any lot or building site other than one single-family dwelling for residential use, a private garage, recreational facilities, solar-heating devices or coolers, and improvements incidental to residential use of the premises. "Single-family dwelling" means a structure containing no more than six-thousand (6,000) square feet of heated floor space, including guest quarters. Guest quarters must be attached to the principal dwelling or, if separate, must be architecturally allied with the principal dwelling.

Section 2. Prohibited Structures. No modular homes, mobile homes, prefabricated structures, trailers or other temporary structures may be placed on or kept on said lots, except for a construction trailer which may be placed on a lot during actual construction, but in any event for no longer than one year.

Section 3. Height Limitations. No structure shall exceed sixteen (16) feet in height. Height shall be measured from the highest point on the site on which the main residential building is built and only chimneys may exceed the height limitation described above.

Section 4. Architectural Style. All dwelling units shall be constructed in Spanish Santa Fe Style as defined in Section 14-70.9 of the Santa Fe City Code. Pitched roofs are acceptable as long as the ultimate architectural solution remains well-dominated.

Section 5. Fences and Walls. No fences or walls may be closer than ten (10) feet to any lot line. All walls shall consist of stuccoed adobe or stuccoed masonry and shall be "earth color" as that term is defined in the N-District ordinance of the City of Santa Fe. No chain link fences will be permitted. All fences should be constructed of natural colored materials.

Section 6. Utilities. All electrical service, telephone lines and other utilities shall be placed underground.

Section 7. Towers and Equipment. Satellite dishes and solar equipment shall be ground-mounted and/or walled in or concealed at all times so that they may not be seen from any point beyond the building site on which they are located.

Declaration of Covenants, Conditions
 and Restrictions 4920P - Page 2

ARTICLE II Open Space

Section 1. The natural meadow area that is generally located in the northern portion of Lot 4 and in the southern part of Lots 1 and 2 and which is designated as the "Building Restriction Area" on the Plat will be left as open space and none of the Lot owners shall build a dwelling or other structure in the "Building Restriction area."

ARTICLE III Easement

Section 1. The eighteen (18) foot ingress and egress easement across parts of Lots 1 and 2 is a nonexclusive easement appurtenant to Lot #4. The twenty (20) foot ingress, egress and utility easement across Lot 1 is a nonexclusive easement appurtenant to Lot 3 and certain other real estate not included in the Property, as set forth in the Plat. Each roadway shall be created and maintained by the owner of the appurtenant lot.

ARTICLE IV Subdivision

Section 1. Termination of Prior Covenants. All prior restrictive covenants relating to the Property are hereby terminated and are of no further force and effect. This includes, without limitation:

A. restrictions, reservations, and conditions as contained in Warranty Deed from Margretta S. Dietrich to Henriette Harris Callin, dated August 7, 1958 and recorded in Book 147, Misc., at page 54 and in Deed from Henriette Harris Callin and Eugene W. Callin her husband to Robert C. Koeber and Mela S. Koeber, his wife, dated November 8, 1961 and recorded in Book 184 Misc., at page 410; Amendment recorded in Book 444 at page 277; Amendment recorded in Book 445 at page 141; Release and Amendment of Reservation recorded in Book 639 Misc., at page 948, records of Santa Fe County, New Mexico; and

B. restrictions, reservations, and conditions as contained in the agreement between Henriette Harris Callin and Robert C. Koeber and Mela S. Koeber, dated September 20, 1958 and recorded in Book 148 at page 244, records of Santa Fe County, New Mexico.

Section 2. Restrictions on Subdivision. No resubdivision of the Property shall be permitted during the period in which these covenants and restrictions are in effect.

Declaration of Covenants, Conditions
and Restrictions 4920P - Page 3

ARTICLE V
Miscellaneous

Section 1. Duration. These covenants shall be effective for a term of fifty (50) years from the date the same are recorded in the office of the County Clerk of Santa Fe County unless they are sooner terminated by unanimous vote of the owners of all the Lots.

Section 2. Attorney's Fees. In any court proceeding brought to enforce provisions of these covenants, the losing party shall pay the attorney's fees of the prevailing party in such a reasonable amount as may be fixed by the Court.

DATE:

July 13, 1990.

Stewart L. Udall
STEWART L. UDALL

Lee Udall
LEE UDALL

STATE OF NEW MEXICO
COUNTY OF SANTA FE

ss.

The foregoing instrument was acknowledged before me
this 13th day of July, 1990, by Stewart L. Udall.

NOTARY PUBLIC

My Commission expires:



Declaration of Covenants, Conditions
and Restrictions 4920P - Page 4

C-4

STATE OF NEW MEXICO
COUNTY OF SANTA FE

ss.

688501

The foregoing instrument was acknowledged before
me this 13th day of July, 1990, by Lee Udall.



NOTARY PUBLIC

712988
COUNTY OF SANTA FE
STATE OF NEW MEXICO
I hereby certify that this instrument was filed
for record on the 13th day of July, A.D.
1990, at 3:00 o'clock P.M.
and was duly recorded in book 688
page 497-301 of the records of

Santa Fe County.
Witness my Hand and Seal of Office
June 11, 1990

County Clerk, Santa Fe County, N.M.

Christina Garcia
Deputy



Declaration of Covenants, Conditions
and Restrictions 4920P - Page 5

C-9

CONSENT TO RELOCATION OF EASEMENT

STEWART L. UDALL and ERMALEE UDALL, husband and wife ("Udall"), hereby agree and consent as follows:

1. Udall is the owner of Lot 4 as shown on that certain plat of survey entitled "Lot split of survey prepared for Stewart L. Udall of lands within the Santa Fe Grant, City of Santa Fe, Santa Fe, New Mexico" by Richard E. Smith, N.M.P.S. No. 5837, dated February, 1990 and filed for record on July 23, 1990, in Plat Book 212, at Page 019, records of Santa Fe County, New Mexico (the "Property").

2. The Property is subject to certain Declaration of Covenants, Conditions and Restrictions dated July 13, 1990, and filed for record in Book 688, Pages 497-501, records of Santa Fe County.

3. The Declaration provides for an 18 foot ingress and egress easement across parts of Lots 1 and 2 which is a non-exclusive easement appurtenant to Lot 4. An existing roadway over and across the easement has been constructed by Udall. The location of the existing roadway across Lots 1 and 2 is as shown on the attached plat of survey attached hereto and incorporated herein by reference as Exhibit "A".

4. Thomas G. and Joan G. Wattles ("Wattles") have entered into a contract for the purchase of Lot 2. Wattles desires to move the existing roadway from its present location as shown on Exhibit "A" to a new location. The expense of relocation of the road shall be borne entirely by Wattles.

Page 19 of the original plat of survey attached hereto as Exhibit "A" is hereby incorporated by reference into this instrument and shall be deemed to be a part hereof. The original plat of survey is on file in the records of Santa Fe County, New Mexico, Book 212, Page 019.

EXHIBIT

D

5. Udall hereby agrees and consents to the relocation by Wattles of the 18 foot easement for ingress and egress across Lot 2 and hereby relinquishes and releases any rights granted to Udall by the Declaration of Covenants, Conditions and Restrictions, and/or the owner of Lot 4 to the easement in its present location as shown on Exhibit "A"; provided that Wattles and Udall shall mutually agree to the new location of the easement.

6. Except as is hereinabove provided, the terms, conditions and provisions of the Declaration of Covenants, Conditions and Restrictions, and more particularly Article III, Section 1, thereof remain in full force and effect.

Stewart L. Udall
STEWART L. UDALL

Emalee Udall
EMALEE UDALL

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

The foregoing instrument was acknowledged before me this 5th day of April, 1991 by Stewart L. Udall.

James T. Chavez
Notary Public

My commission expires:
1/21/94



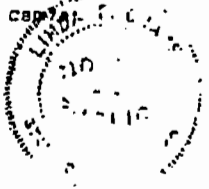
RECEIVED
NOTARY PUBLIC
JAMES T. CHAVEZ
SANTA FE, N.M.
6-5-91

D-2

this 2 day of April, 1991 by Ermalee Udall.

Frank T. Lindsey
Notary Public

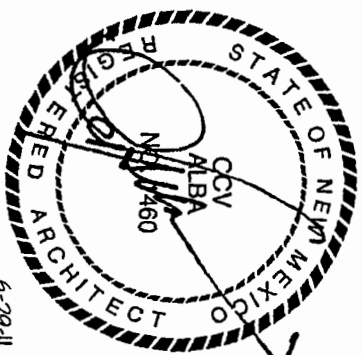
My commission expires: 1/1/94



740.709
COUNTY OF SANTA FE 199
STATE OF NEW MEXICO
I hereby certify that the foregoing was filed
for me on 12/19/91 at 10:00 A.M.
and the same is now on file in my office.
page 403-406 of 733 sheets.
Witness my hand and the Seal of Office
at Santa Fe, New Mexico
County Clerk, Santa Fe County, N.M.
Glenn Sanchez
Deputy

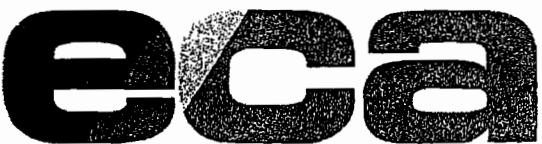


GATE 12Db



6-29-11

EU Calle Colon 78 | Valencia 46004 Spain | Tel. +34 963 940 529 | Cell +34 699 160 261



ENVIRONETICS / CONSTRUCTION ANALYTICS INC.

USA PO Box 31808 | Santa Fe, NM 87594 | Tel. +1 (505) 988-4115 | Cell +1 (505) 570-4115

DAY RESIDENCE - TEMPORARY VEHICLE GATE
1240 CAMINO CRUZ BLANCA | SANTA FE, NEW MEXICO 87505

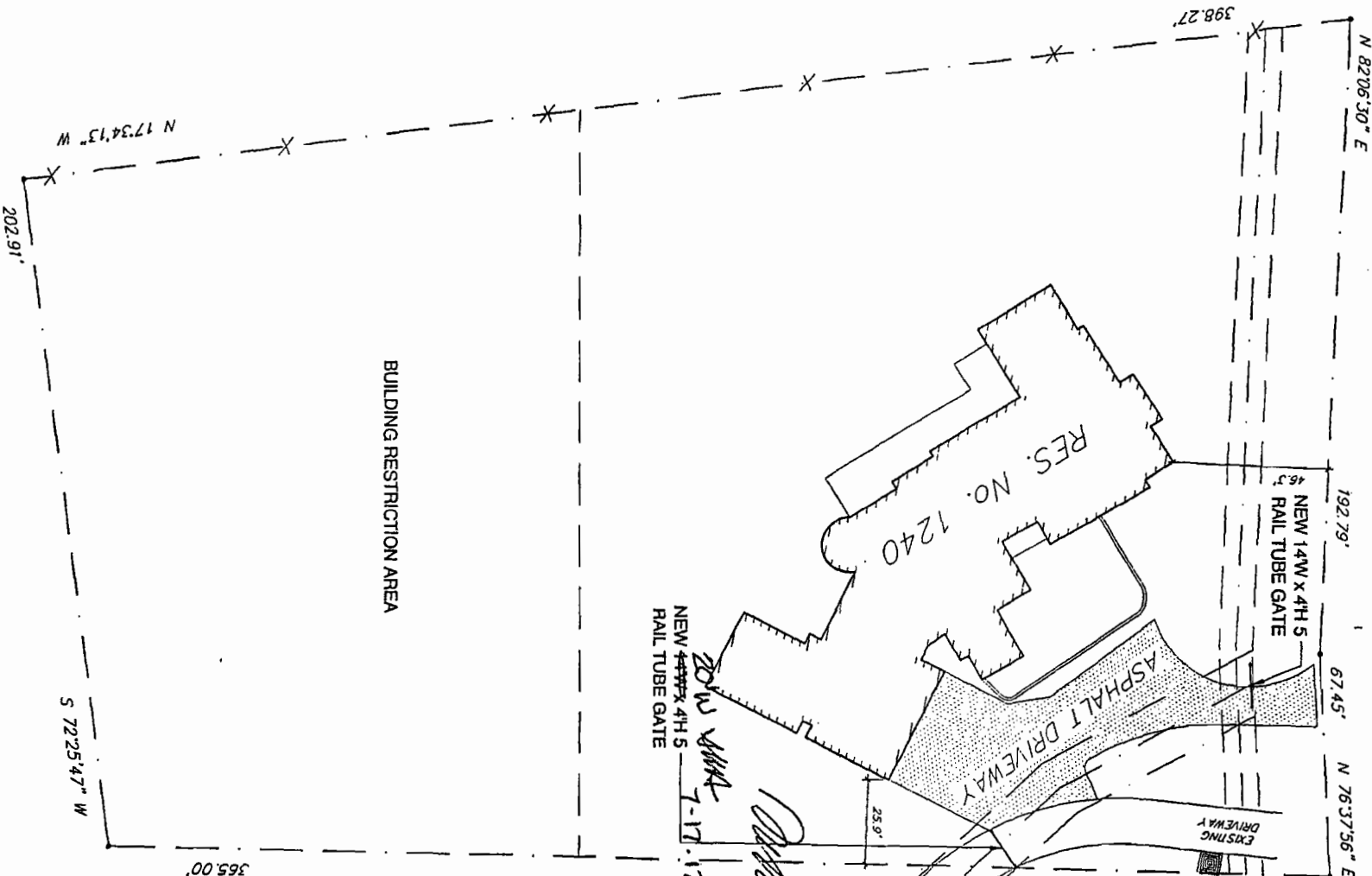
ORIGINAL

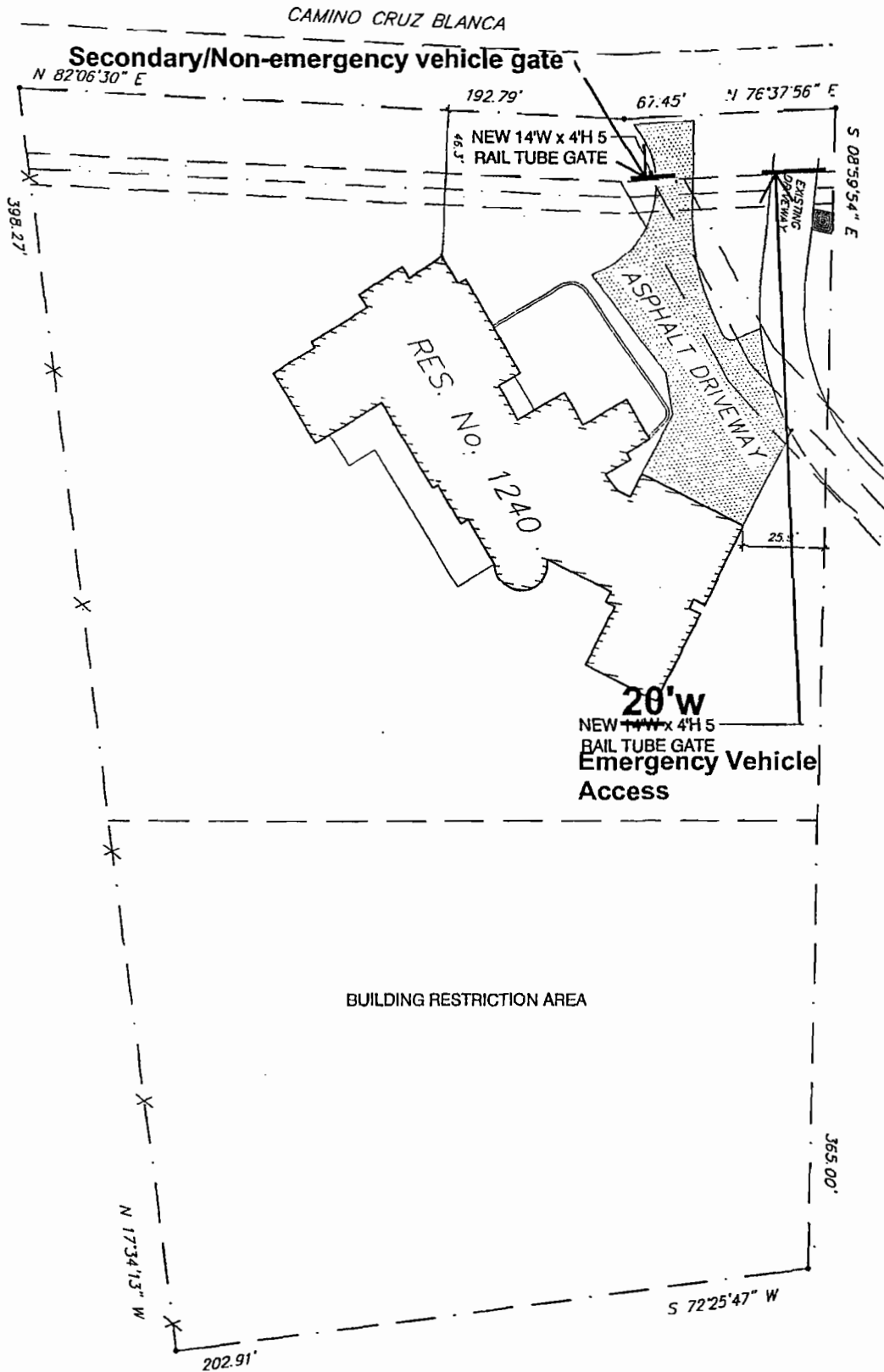
SITE PLAN

EXHIBIT

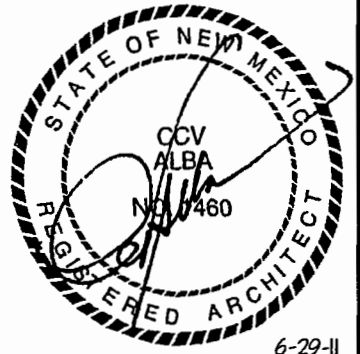
tabbies

E





GATE 12Db



6-29-11

EU Dalia Colon 78 | Valencia 46004 Spain | Tel. +34 963 940 529 | Cell +34 699 160 261



ENVIRONETICS / CONSTRUCTION ANALYTICS INC.

USA PO Box 31608 | Santa Fe, NM 87594 | Tel. +1 (505) 988-4115 | Cell +1 (505) 570-4115

DAY RESIDENCE - TEMPORARY VEHICLE GATE
1240 CAMINO CRUZ BLANCA | SANTA FE, NEW MEXICO 87505

REvised
E-2

SITE PLAN

06-29-2012

XIAN
CCVA

C1.2

03
of
04

1:50

SITE PLAN
Page 56 of 59

City of Santa Fe, New Mexico

memo

DATE: December 11, 2012 for the December 18, 2012 Board of Adjustment Meeting

TO: Board of Adjustment

VIA: Matthew S. O'Reilly, P.E., Director, Land Use Department *MSO*
Tamara Baer, Planner Manager, Current Planning Division *TB*

FROM: Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division *DE*

994 OLD PECOS TRAIL SPECIAL USE PERMIT

Case #2012-121. 994 Old Pecos Trail Special Use Permit. Mark Hogan, Applicant, requests a special use permit to allow office use at 994 Old Pecos Trail. The property is zoned Residential Arts and Crafts (RAC). (Dan Esquibel, Case Manager)

I. RECOMMENDATIONS

The Land Use Department has found no adverse impacts associated with the proposed use change. The Land Use Department recommends APPROVAL WITH CONDITIONS identified below and outlined in this report.

1. This approval will only extend to the period of building ownership of the applicant.
2. No more than 5 persons, including owner of the building as owner of the company be allowed to regularly engage in business on the premises.
3. Hours of business operation shall be limited to the hours of 8 AM through 7 PM on weekdays and 9 AM to 7 PM on weekends.
4. The exterior appearance of the building shall maintain a residential character.
5. Signage area shall not exceed 6 square feet.
6. No on-street parking for business purposes is permitted.
7. Nothing incidental to the Office Use shall be constructed, installed, placed, parked or stored outside of the building of the premises regulated by the Special Use Permit.
8. No increase in exterior lighting except for signage as restricted by code in the Historic District.
9. Exterior signage shall be as allowed by City Code.

**CUDDY
&
McCARTHY**
A Limited Liability Partnership

JOHN F. MCCARTHY, JR.
JOHN F. KENNEDY
M. KAREN KILGORE
SANDRA J. BRINCK
PATRICIA SALAZAR IVES
AARON J. WOLF
REBECCA DEMPSEY
JACQUELYN ARCHULETA-STAEHLIN
JULIE A. WITTENBERGER
CHERTL D. FAIRBANKS
RAMON VIGIL, JR.
ANDREW M. SANCHEZ
PATRICK T. ORTIZ
CHARLES V. GARCIA
ARTURO L. JARAMILLO

EVELYN A. PETTON
YOUNG-JUN (JUN) ROH
MATTHEW L. CAMPBELL
IAN DOUGLAS
SHANA S. BAKER
TIMOTHY W. FOSTER

REPLY TO SANTA FE OFFICE

December 14, 2012

City of Santa Fe Board of Adjustment
c/o Kelley A. Brennan
Assistant City Attorney
City of Santa Fe, New Mexico

Via Email – **kabrennan@ci.santa-fe.nm.us**

Re: Case No. 2012-51 and Case No. 2012-99

Ladies and Gentlemen:

We represent Mr. and Mrs. James Day, who have been granted building permits Nos. 2012-51 and 12-1337, both of which are on appeal and subject to be heard by the Board on December 18, 2012. Please be informed that Mr. and Mrs. Day have agreed to a modification of Permit No. 2012-51 for the construction of the fence at 1240 Camino de Cruz Blanca. The proposed fence will be limited to being constructed 10 feet north of the common property line of Mr. and Mrs. Gilbert and will run from the southeast corner of the Day property, approximately 172 feet, in an easterly direction. Attached as Exhibit A hereto is a copy of a preliminary survey plat showing generally the location of the proposed fence.

As to Permit No. 12-1337 (Case No. 2012-99), Mr. and Mrs. Day will agree that, if, and when they construct a gate across the easement utilized by Mr. Kurt Gilbert and Ms. Elicia Montoya, the Days will install, at their expense, an electronic gate to meet City codes and will provide means to open the automatic gate to Mr. Gilbert and Ms. Montoya.

It is the Days' position that the issue of enforcement of the Declaration of Covenants and Restrictions applicable to both the Day and the Gilbert/Montoya properties is not within the jurisdiction of the Board of Adjustment. Any alleged violation or interpretation of the Declaration is subject to adjudication by the local District Court. It is our position that the Board's authority on the appeal is to determine whether or not the proposed fence meets applicable provisions of the City code. If so, then the appeal must be denied. We respectfully submit that granting of the permit for the fence must be upheld.

Exhibit "4"

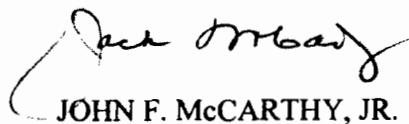
City of Santa Fe Board of Adjustment
December 14, 2012
Page 2

I am advised that the Board may review the Declaration in its deliberations. If so, then I would point out that the Declaration executed by Stewart L. Udall and Lee Udall, his wife, incorporated the definition of "structures" in Article 1, Sections 1 and 2, to include "single family dwellings, a private garage, recreational facilities, solar heating devices or coolers and improvements incidental to residential use of the premises". Prohibited structures included "modular homes, mobile home, pre-fabricated structures, trailers or other temporary structures". It is clear that the Udalls considered structures to encompass improvements directly related to occupancy.

Article 1, Section 5 of the Declaration provides that fences or walls may not be closer than 10 feet to any lot line. The absence of "fences" within the definition of "structures" is an affirmative recognition that fences are allowed on the Lots, except that they must not be constructed within 10 feet of a lot line. Although the City Code includes "fences" within the definition of "Structures", the intent of the Udalls as expressed in the Declaration controls. The Udalls did not define fences or walls to be structures, and it is clear from the intent of the Declaration that only structures such as dwellings are prohibited within the Building Restriction Area. In fact, as shown on Exhibit A, the owner of Lot 1 installed a fence six foot nine inches in height within a portion of the Building Restricted Area without any objection from the Udalls.

Your favorable decision in rejecting both appeals and approving the permits as modified above will be appreciated.

Very truly yours,



JOHN F. McCARTHY, JR.

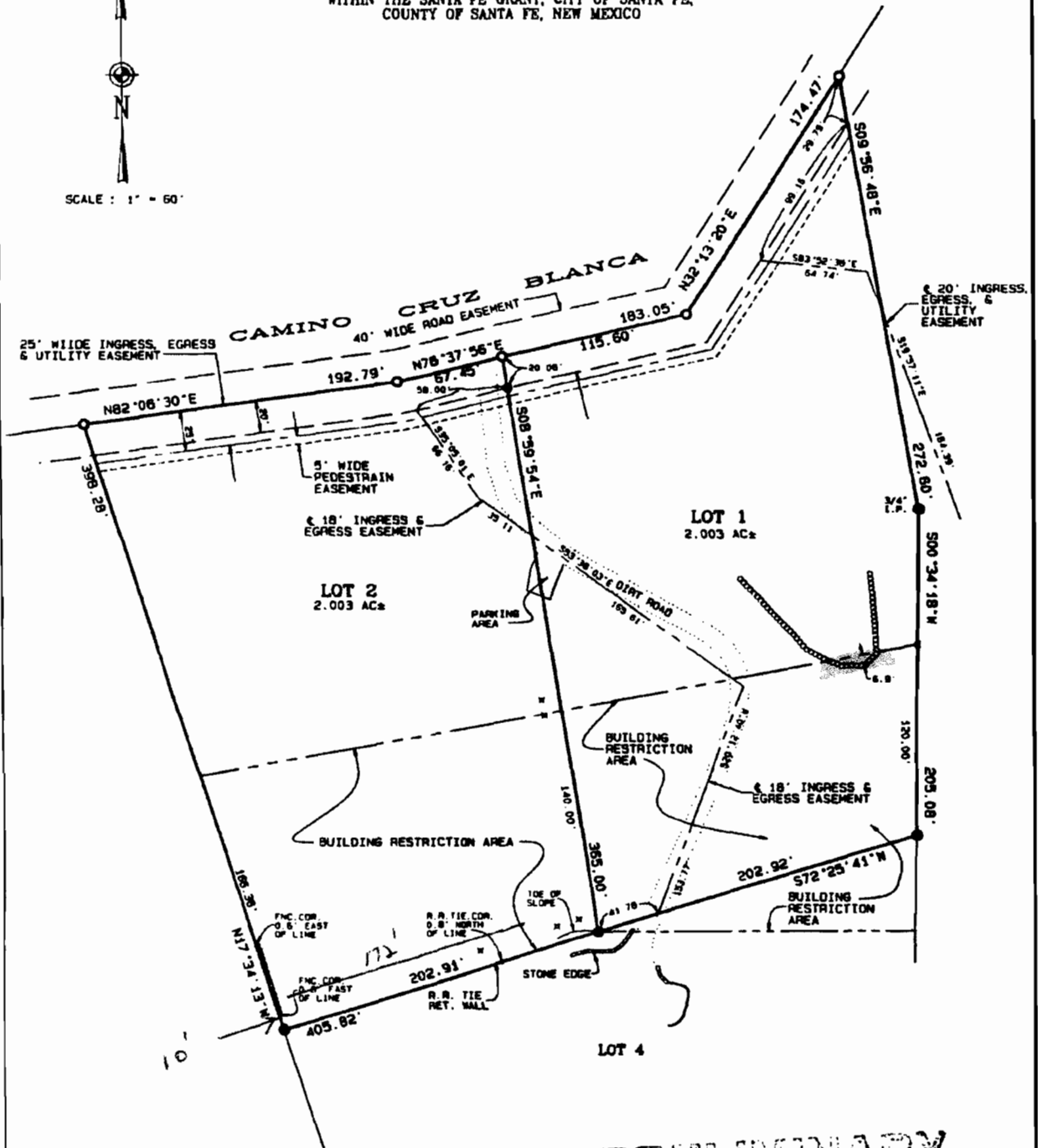
JFM/gn

Cc: Mr. & Mrs. James day

EXHIBIT A
SHOWING LOTS 1 & 2
OF THE STEWART L. UDALL PLAT
RECORDED IN PLAT BOOK 212, PAGE 019
WITHIN THE SANTA FE GRANT, CITY OF SANTA FE,
COUNTY OF SANTA FE, NEW MEXICO



SCALE : 1" = 60'



LEGEND

- DENOTES FOUND POINT (1/2" RBR. W/ALUM CAP 5837, UNLESS NOTED)
- DENOTES CALCULATED POINT
- x DENOTES POST HOLE
- DENOTES COYOTE FENCE
- ... DENOTES EDGE DIRT ROAD

PRELIMINARY

MORRIS
 surveying | engineering

1218-A PARKWAY DRIVE
 SANTA FE, NM 87507
 PHONE: (505) 438-9150
 FAX: (505) 474-6723

CAMINO CRUZ BLANCA

PROJECT NO. 12710

Appellants' power point

Power Point

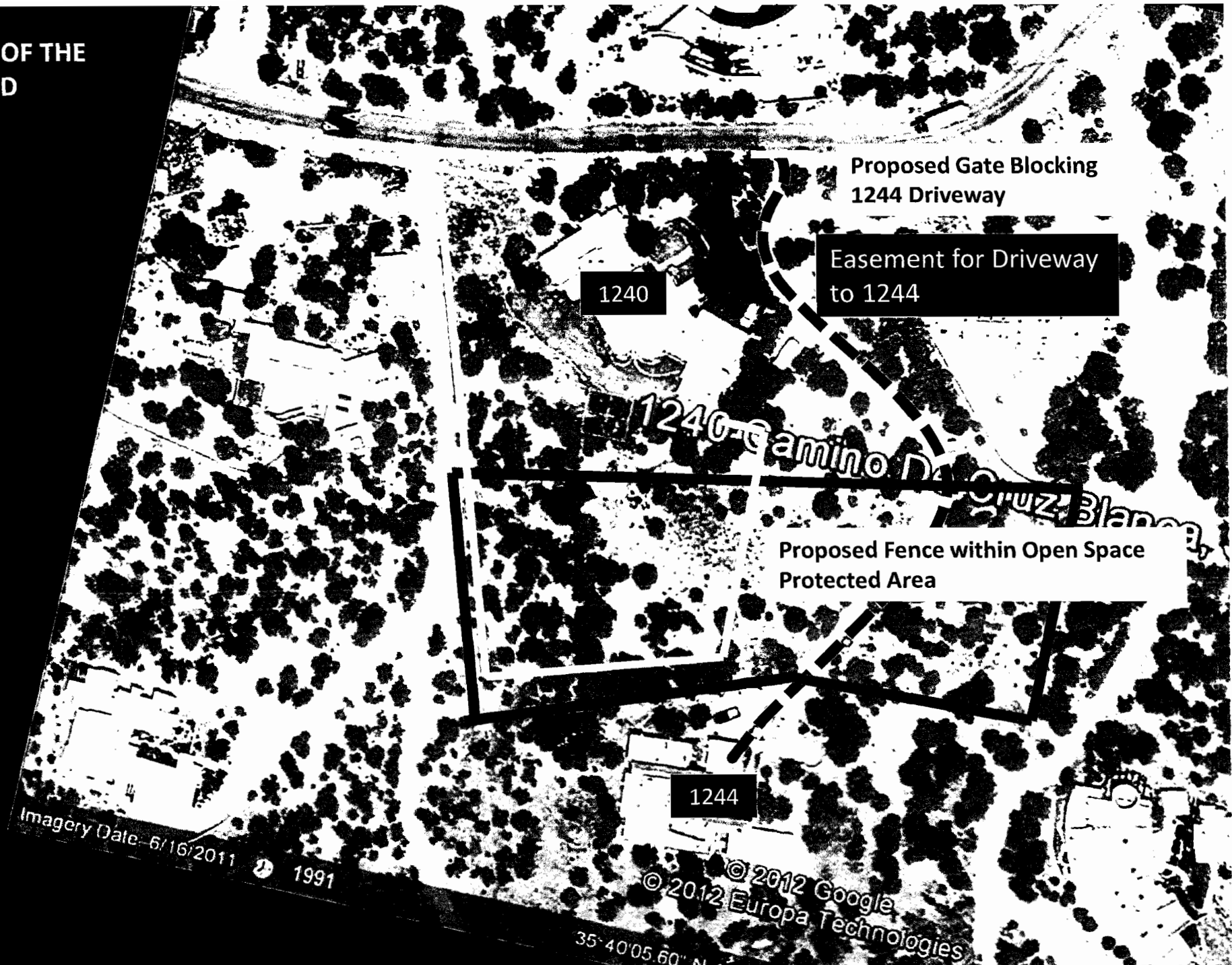
Exhibit "5"

Appeal involves issuance of two permits

1. Days seek to place fences in a City approved open space protected zone between our houses.
2. Days seek to put a gate across our driveway, blocking reasonable access to our house.

Permits issued in error

LAY OF THE LAND



Open Space Building Restriction

City Granted Permit is in violation of:

- (1) Development Review Committee's (DRC) direction and condition of subdivision approval reviewed on 2 occasions

and

- (2) subsequent enforcement document known as Lot Split Plat of Survey Prepared for Steward L. Udall.

Requesting Board consider by granting these permits-setting precedent for all City Development Review authorities that any conditions place on subdivision approvals are meaningless because conditions will not be enforced

Open Space Building Restriction

Since 1990 - Building Restriction in Effect
(component of subdivision approval process)

May 3, 1990 Meeting Minutes re DRC review of subdivision application :

Approved Application Specifically
Promoted, Encouraged, and Received Protection of
Open Space:

- "restriction on construction envelopes" be "placed on the plat, as there is a time of building permit

- Translated to the area labeled as **"building restricted area"** shown on enforcement documents

DRC Minutes/May 3, 1990 p. 18, Case 5 1990-31, Stewart L. Udall. Request subdivision approval of 4 lots on 9.413 acres).

[illegible]

Open Space Building Restriction

Since 1990 - Building Restriction in Effect

(component of subdivision approval process)

DEVELOPMENT REVIEW COMMITTEE

-18-

May 3, 1990

drainage from other areas, adding that there was also a problem in setting a precedent. Mr. Smith reiterated that all the building sites were less than 10% slope and added that the owner has agreed to retain additional storm water on site, which can be addressed at building permit stage.

Ms. Molly Roybal asked if there can be a restriction on construction outside the building envelopes and Mr. Smith replied in the affirmative, stating that this can be indicated on the plat. Ms. Roybal then asked staff if this would be possible to track at the building permit stage and Mr. Gonzales responded that it would be hard to enforce.

Mr. Dean Hunt then addressed the Committee and suggested that any limitations be placed on the plat, as there is a check on lot of record at the time of building permit issuance. He added that the rest of the area, outside the building envelopes could be placed in a resource protection zone.

restricted area shown on enforcement document
subdivision plat

DRC Minutes/May 3, 1990 p. 18, Case S 1990-31, Stewart Udall. Request subdivision approval of 4 lots on 9.413 acre

DEVELOPMENT REVIEW COMMITTEE

-19-

May 3, 1990

drainage from other areas, adding that there was also a problem in setting a precedent. Mr. Smith reiterated that all the building sites were less than 10% slope and added that the owner has agreed to retain additional storm water on site, which can be

Ms. Robertson-Lopez then moved denial of the variance to section 14-90.6, Terrain Management Regulations. The motion was seconded by Ms. Leopold and passed by unanimous voice vote.

Addressing the Committee on this item was Mr. Steven Farber, 1603 Camino Cruz Blanca, who stated that it was not true that there was any agreement on the road, as yet. He stated that he would agree with Mr. Smith that it would create problems to just have one section of the road improved and that there was no agreement of the neighbors as to what should happen. Mr. Farber stated that there was a consensus that there should be a trail alongside the road, either on the north, south, or both sides. He noted that Mr. Udall's property is on the south side of the road and the natural place to put the trail would be on the north side of the road, but this could be a problem, because that property owner will object, because of the narrowness of the lot.

July 12, 1990 Meeting Minutes re DRC
review of subdivision application :

10/10/90

minutes

DEVELOPMENT REVIEW COMMITTEE

-2-

July 12, 1990

5) The applicant submitted a set of plans for a 100 ft. wide of park
dedication space, which is shown on the plan.

Mr. Gonzalez referred to the fact that the dedication of 100 ft. has been
completed by the applicant and that the applicant has agreed to provide
to provide road paving and tree eas.

Ms. Robertson-Lopez stated that she would like the condition to be placed
in covenants so that purchasers of the property will be aware of the condition.

Mr. Smith stated that it can be noted on the plat.

Ms. Robertson-Lopez stated that she would like the condition to be placed
in covenants so that purchasers of the property will be aware of the condition.

Mr. Gonzalez suggested that it could be placed in covenants and cross-referenced on
the plat.

Mr. Smith informed the Committee that there would have to be a line of trees
that was feasible to remove this property and that it would have to go up the
boundary line of the property. Ms. Robertson-Lopez stated that she would like the
condition to be placed in covenants and cross-referenced on the plat.

Ms. Robertson-Lopez stated that she would like the condition to be placed
in covenants so that purchasers of the property will be aware of the condition.
Mr. Smith stated that it can be noted on the plat.

The motion was seconded by Mr. Gonzalez and passed by voice vote. With Ms.
Robertson-Lopez voting "Aye".

Ms. Robertson-Lopez stated that she would like the condition to be placed
in covenants so that purchasers of the property will be aware of the condition.
Mr. Smith stated that it can be noted on the plat.

Ms. Long then amended her motion to read:

6) Applicant agree to connect to Gravity Pick Sewer when available in
the future and this shall be noted on the plat.

DECLARATION OF COVENANTS, CONDITIONS

AND

RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter "Covenants") is made on July 13th, 1990 by Stewart L. Udall and Lee Udall, husband and wife, (hereinafter "Declarants") for consideration duly paid.

WHEREAS, Declarants are the owners of 9.413 acres of land located south of Camino Cruz Blanca Norte, within the City and County of Santa Fe, New Mexico (the "Property"), as set forth on the Lot Split Plat of Survey Prepared for Stewart L. Udall of Lands Within the Santa Fe Grant, City of Santa Fe, Santa Fe County, New Mexico, by Richard E. Smith N.M.P.S. No. 5837, dated February, 1990 and recorded on July 23rd, 1990, in the land records of Santa Fe County in Book 212 at Page 019 (the "Plat"); and

WHEREAS, Declarants are now subdividing said Property into four (4) Lots; and

WHEREAS, all said Lots are adjacent to each other such that the Declarants have agreed to subject all of said Property, and each Lot thereof, to these covenants for the purpose of preserving and enhancing the value and the amenities of each tract;

NOW, THEREFORE, Declarants hereby declare that all of said Property shall be held, sold, conveyed, occupied, developed and redeveloped subject to the following restrictions, covenants and conditions which are all for the purpose of preserving and enhancing the value and amenities of all of the said Lots, and which covenants shall run with the Property and shall be binding on the Declarants and on all parties having any right, title, or interest therein, their heirs, successors, and assigns and shall inure to the benefit of all such parties, their heirs, successors and assigns.

DECLARATION OF COVENANTS, CONDITIONS
AND
RESTRICTIONS

DECLARATION OF COVENANTS, CONDITIONS
AND
RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter "Covenants") is made on July 13th, 1990 by Stewart L. Udall and Lee Udall, husband and wife, (hereinafter "Declarants") for consideration duly paid.

Property, and each Lot thereof, to these covenants for the purpose of preserving and enhancing the value and the amenities of each tract;

NOW, THEREFORE, Declarants hereby declare that all of said Property shall be held, sold, conveyed, occupied, developed and redeveloped subject to the following restrictions, covenants and conditions which are all for the purpose of preserving and enhancing the value and amenities of all of the said Lots, and which covenants shall run with the Property and shall be binding on the Declarants and on all parties having any right, title, or interest therein, their heirs, successors, and assigns and shall inure to the benefit of all such parties, their heirs, successors and assigns.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

and

ARTICLE IV

WITH PROVISIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS
HEREIN, THE DECLARANTS HEREBY DECLARE THAT THE PROPERTY
HEREIN IS TO BE USED AND OCCUPIED, DEVELOPED AND REDEVELOPED
SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, the Declarants are the owners of certain lots of
land located within the County of Santa Clara, State of
California, and certain of said lots are now being developed
or are to be developed and the Declarants desire to impose
certain covenants, conditions and restrictions upon the use
of said lots, and the County has agreed to record the same

NOW, THEREFORE, Declarants hereby declare that all of
said Property shall be held, sold, conveyed, occupied,
developed and redeveloped subject to the following restric-
tions, covenants and conditions which are all for the
purpose of preserving and enhancing the value and amenities
of all of the said Lots, and which covenants shall run
with the Property and shall be binding on the Declarants
and on all parties having any right, title, or interest
therein, their heirs, successors, and assigns and shall
inure to the benefit of all such parties, their heirs,
successors and assigns.

PROVISIONS OF COVENANTS, CONDITIONS

AND

RESTRICTIONS

THIS INSTRUMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS was made and executed by and in favor of the City of Santa Fe, New Mexico, by its Mayor, Richard L. Smith, on this 1st day of May, 1954.

WHEREAS, the Declarants are the owners of certain lots of land located within the City of Santa Fe, New Mexico, which lots are situated in the County of Santa Fe, New Mexico, and are more particularly described in the Declaration of Trust, made by the Declarants, on this 1st day of May, 1954, and which Declaration of Trust is on file in the County of Santa Fe, New Mexico, by Richard L. Smith, Mayor of Santa Fe, New Mexico, on this 1st day of May, 1954.

NOW, THEREFORE, the Declarants hereby declare that all of said Property shall be held, sold, conveyed, occupied, developed and undeveloped subject to the following restrictions, covenants and conditions which are all for the purpose of preserving and enhancing the value and amenities of all of the said Lots, and which covenants shall run with the Property and shall be binding on the Declarants and on all parties having any right, title, or interest therein, their heirs, successors, and assigns, and shall inure to the benefit of all such parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the Declarants have hereunto set their hands and seals, at Santa Fe, New Mexico, this 1st day of May, 1954.

688498

ARTICLE I
Restrictions on Structures, Walls, Fences

Section 1. No structure shall be erected or placed on the site other than for residential use, a private heating device, or a private residential use means a structure (6,000) square feet or less, quarters. Guest principal dwelling naturally allied with

Section 2. No mobile homes, or temporary structures on Lots, except for placed on a Lot for no longer than

Section 3. No structure shall exceed sixteen feet measured from the main residential lot exceed the height

Section 4. No structure shall be constructed in Section 14-70 roofs are acceptable solution remains

Section 5. No structure shall be closer than ten feet shall consist of earth H-District ordinary link fences will constructed of natural

Section 6. No phone lines and ground.

Section 7. No solar equipment in or concealed from any point located.

Declaration of Covenants and Restrictions

ARTICLE II
Open Space

Section 1. The natural meadow area that is generally located in the northern portion of Lot 4 and in the southern part of Lots 1 and 2 and which is designated as the "Building Restriction Area" on the Plat will be left as open space and none of the Lot owners shall build a dwelling or other structure in the "Building Restriction area."

ARTICLE III
Easement

Section 1. The eighteen (18) foot ingress and egress easement across parts of Lots 1 and 2 is a nonexclusive easement appurtenant to Lot #4. The twenty (20) foot ingress, egress and utility easement across Lot 1 is a nonexclusive easement appurtenant to Lot 3 and certain other real estate not included in the Property, as set forth in the Plat. Each roadway shall be created and maintained by the owner of the appurtenant lot.

ARTICLE IV
Subdivision

Section 1. Termination of Prior Covenants. All prior restrictive covenants relating to the Property are hereby terminated and are of no further force and effect. This includes, without limitation:

A. restrictions, reservations, and conditions as contained in Warranty Deed from Margretta S. Dietrich to Henriette Harris Callin, dated August 7, 1958 and recorded in Book 147, Misc., at page 54 and in Deed from Henriette Harris Callin and Eugene W. Callin her husband to Robert C. Koerber and Mala S. Koerber, his wife, dated November 8, 1961 and recorded in Book 184 Misc., at page 410; Amendment recorded in Book 444 at page 277; Amendment recorded in Book 445 at page 141; Release and Amendment of Reservation recorded in Book 639 Misc., at page 948, records of Santa Fe County, New Mexico; and

B. restrictions, reservations, and conditions as contained in the agreement between Henriette Harris Callin and Robert C. Koerber and Mala S. Koerber, dated September 20, 1958 and recorded in Book 148 at page 244, records of Santa Fe County, New Mexico.

Section 2. Restrictions on Subdivision. No resubdivision of the Property shall be permitted during the period in which these covenants and restrictions are in effect.

Declaration of Covenants, Conditions and Restrictions 4920P - Page 3

688499

ARTICLE I
Restrictions on Structures, Walls, Fences

ARTICLE II
Open Space

Section 1. The natural meadow area that is generally located in the northern portion of Lot 4 and in the southern part of Lots 1 and 2 and which is designated as the "Building Restriction Area" on the Plat will be left as open space and none of the Lot owners shall build a dwelling or other structure in the "Building Restriction area."

main residential
exceed the height

Section 4. p
shall be constru
in Section 14-70
roofs are accept
solution remains

Section 5. F
be closer than t
shall consist of
shall be "earth
H-District ordin
link fences wil
constructed of na

Section 6. U
phone lines and
ground,

Section 7. 5
and solar equipm
in or concealed
from any point b
located,

**Declaration of Co
and Restrictions**

ARTICLE IV
Subdivision

Section 1. Termination of Prior Covenants. All prior restrictive covenants relating to the Property are hereby terminated and are of no further force and effect. This includes, without limitation:

A. restrictions, reservations, and conditions as contained in Warranty Deed from Margretta S. Dietrich to Henriette Harris Callin, dated August 7, 1950 and recorded in Book 147, Misc., at page 54 and in Deed from Henriette Harris Callin and Eugene W. Callin her husband to Robert C. Koeber and Mela S. Koeber, his wife, dated November 8, 1961 and recorded in Book 184 Misc., at page 410; Amendment recorded in Book 444 at page 277; Amendment recorded in Book 445 at page 141; Release and Amendment of Reservation recorded in Book 639 Misc., at page 948, records of Santa Fe County, New Mexico; and

B. restrictions, reservations, and conditions as contained in the agreement between Henriette Harris Callin and Robert C. Koeber and Mela S. Koeber, dated September 20, 1958 and recorded in Book 148 at page 244, records of Santa Fe County, New Mexico.

Section 2. Restrictions on Subdivision. No resubdivision of the Property shall be permitted during the period in which these covenants and restrictions are in effect.

**Declaration of Covenants, Conditions
and Restrictions 4920P - Page 3**

ARTICLE IV

SECTION 1

Except on land the subject of this plat which is generally located in the north east portion of lot 10 and in the southern part of lots 11 and 12 and which is designated as the "Building Restriction Area" on the Plat will be left as open space and none of the Lot owners shall build a dwelling or other structure in the "Building Restriction area."

SECTION 2

SECTION 3

SECTION 4

SECTION 5

SECTION 6

SECTION 7

SECTION 8

SECTION 9

SECTION 10

SECTION 11

SECTION 12

SECTION 13

698500

ARTICLE V
Miscellaneous

Section 1. Duration. These covenants shall be effective for a term of fifty (50) years from the date the same are recorded in the office of the County Clerk of Santa Fe County unless they are sooner terminated by unanimous vote of the owners of all the Lots.

Section 2. Attorney's Fees. In any court proceeding brought to enforce provisions of these covenants, the losing party shall pay the attorney's fees of the prevailing party in such a reasonable amount as may be fixed by the Court.

DATE:

July 13, 1990.

STEWART L. UDALL

LEE UDALL

STATE OF NEW MEXICO
COUNTY OF SANTA FE

ss.

The foregoing instrument was acknowledged before me this 13th day of July, 1990, by Stewart L. Udall.

NOTARY PUBLIC

My commission expires:



Declaration of Covenants, Conditions
and Restrictions 4920P - Page 4

No Dwelling or “Structure”

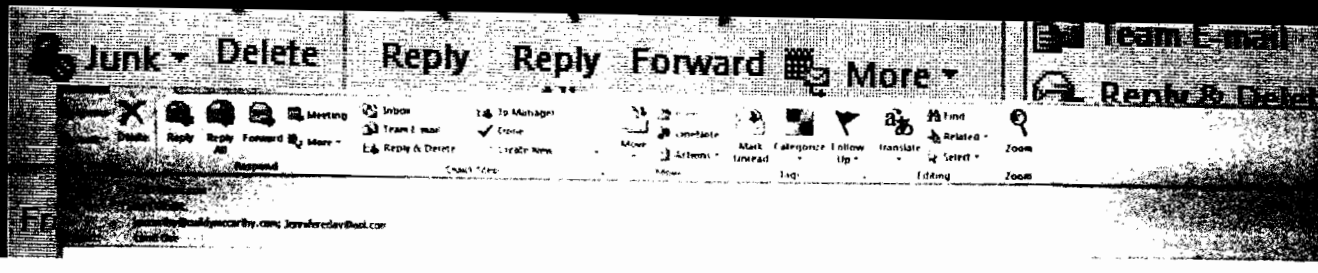
“Structure” =

“Anything that is constructed or erected with a fixed location on the ground, including buildings, mobile homes, walls, fences, swimming pools, spas, tennis courts, signs, flag poles, microwave satellite receiving dishes, TV antennas and communication devices.”

Article 14-12-Definitions

Why does it matter?

Day Response to Objection to Structure Building



If that is not acceptable, then we have come up with three other ways to go, none of which meet any definition of a structure

1. Form a nature habitat hedgerow. This would consist of a four foot high perimeter of brush that would be harvested from our land. The birds and rabbits would love it and it would be functional for our purposes
2. Create an outdoor art project in and around the space. We could arrange rocks, logs, and metal in such a fashion as to be both visually interesting and functional as well
3. Use five gallon buckets with posts set in cement and string parallel chords between them. We could reuse them into new configurations on a regular basis

We can legally use any of these methods. None of them is a structure. We are presently evaluating them to see which of them best suits our lifestyle and needs. If we have to resort to using any of these three methods, we will revisit the configuration of our driveway.

On another note, my contractor tells me to expect twenty to thirty construction related vehicles on peak days. We will just have to sort that out as best we can, all the while being mindful to allow your vehicles some access to the property.

Day Response to Objection to Structure Building

“If not acceptable, then we have come up with three other ways to go, none of which meet any definition of a structure:

1. Form a nature habitat hedgegrow...would consist of a four foot high perimeter of brush that would be harvested from our land. The birds and rabbits would love it and it would be functional for our purposes.”

2. Create an outdoor art project in and around the space...we could use sticks and rocks and metal...

3. Use five gallon buckets with posts set in cement and string panels between them. We could move them into new configurations on a regular basis.

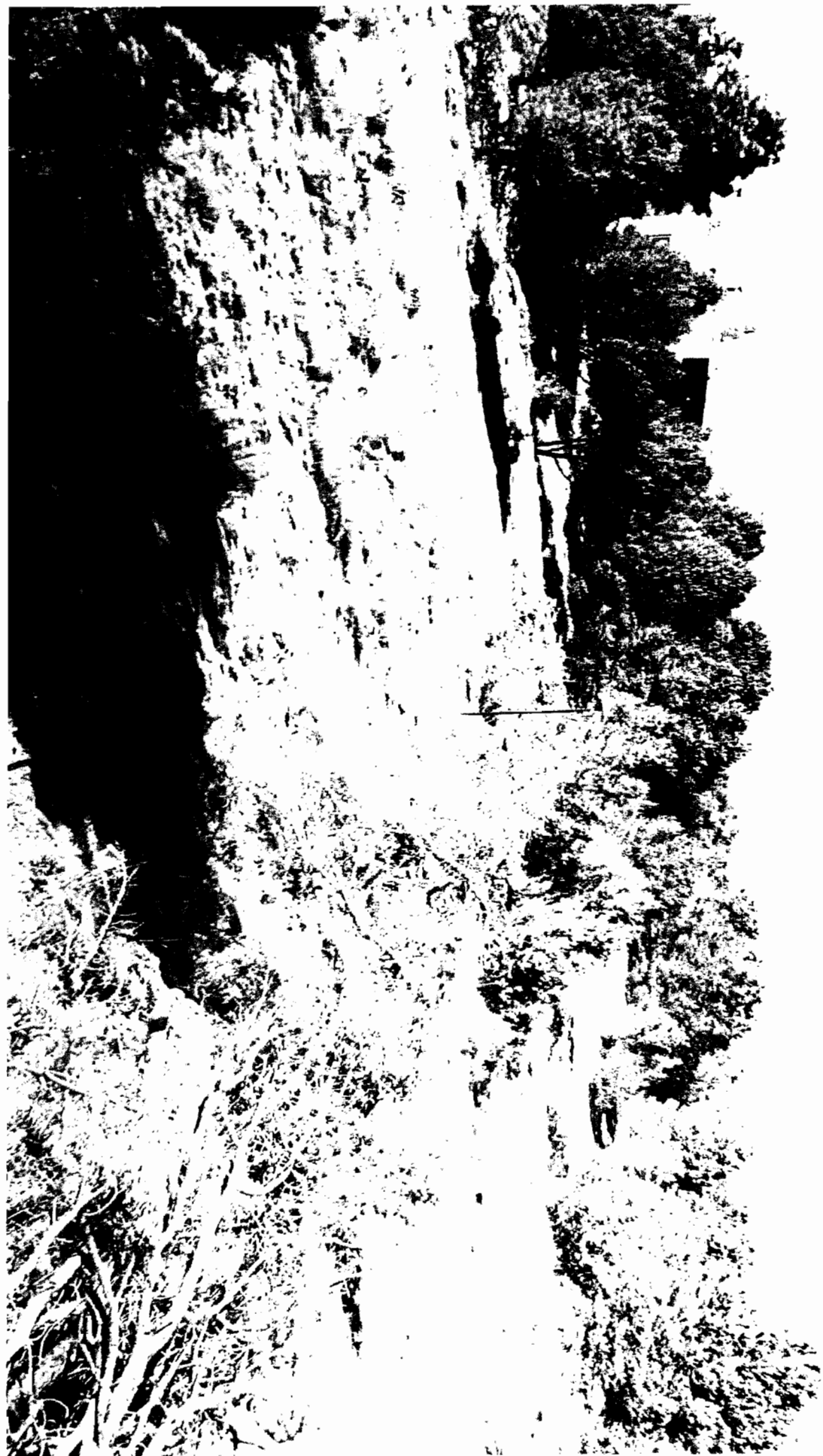
...

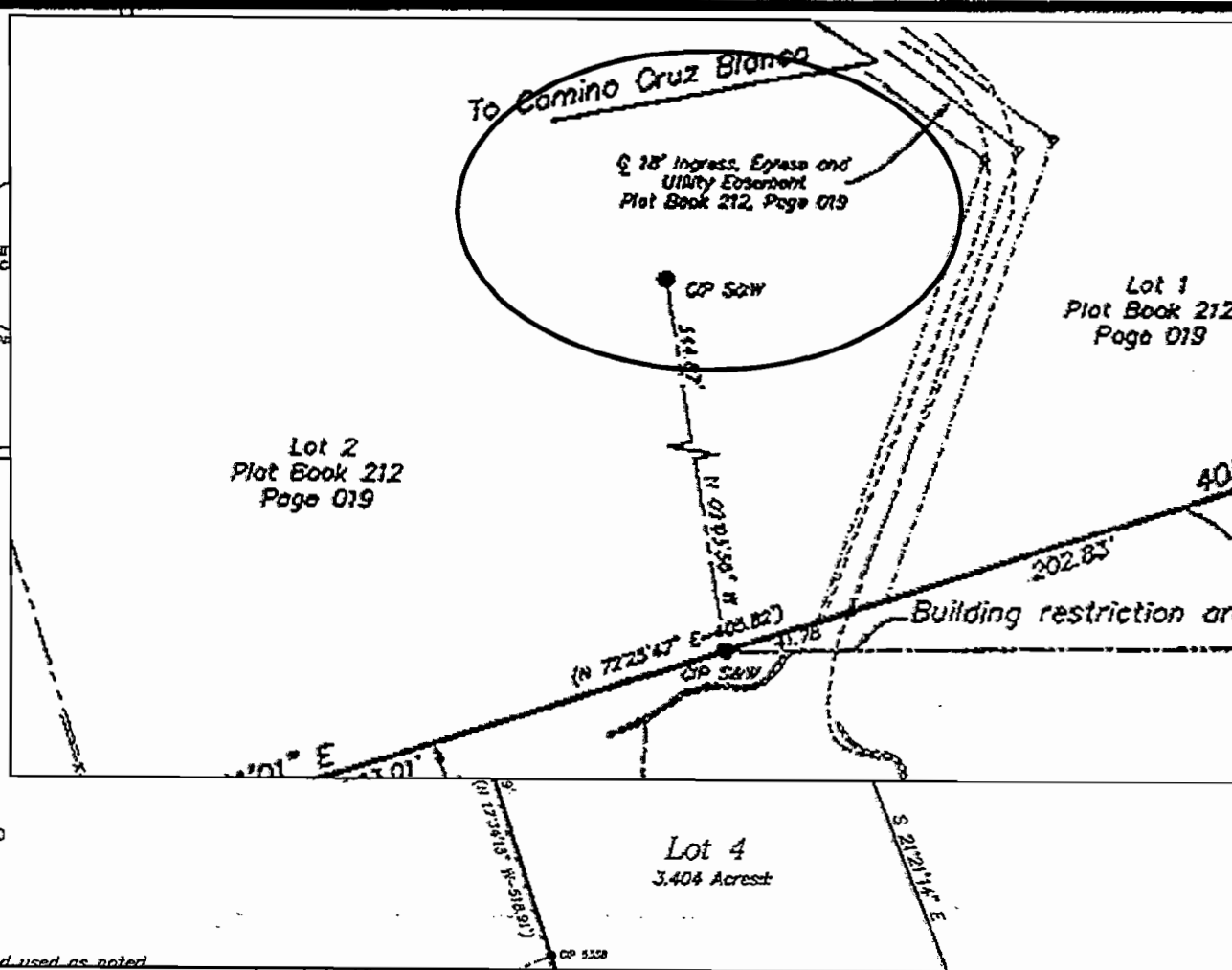
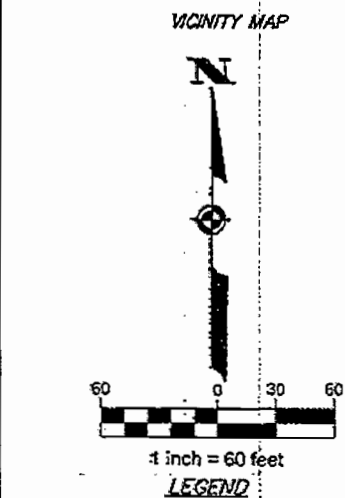
4. If we have to resort to using any of these three methods, we will revisit the configuration of our driveway.”

Current open space view
from 1244 toward 1240



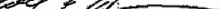






C E R T I F I C A T E

And return to the best of my knowledge, information and belief.
This is a boundary survey of an existing tract or tracts and it is not a
land division or subdivision as defined by the New Mexico Subdivision Act.

 June 10, 2010

David E. Cooper/ P.S. No. 9052

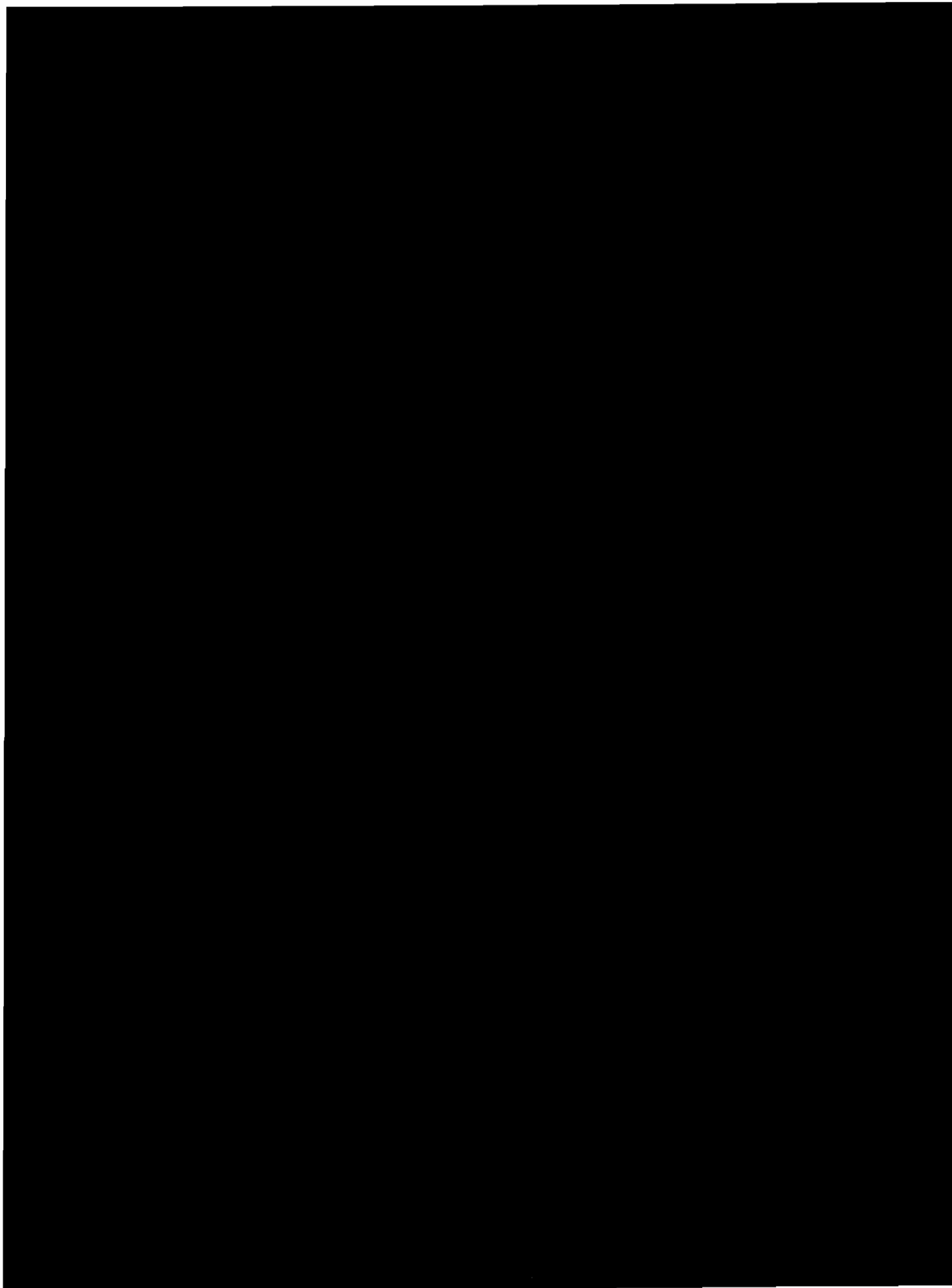


The City of Santa Fe has not reviewed this plat of survey before its filing in the Office of the County Clerk. This survey is based on those statements noted herein. City of Santa Fe Staff must approve all documents submitted with an application for building permit and may require additional documentation to prove legal lot of record. This statement does not in any way represent official approval of this plat.

SIERRA LAND SURVEYING, INC.		
1452 South St. Francis Drive		DWP, DEC FM 505-983-5932
Project No. C-008-0810	Santa DEC	Ck. DTC
	File: n/a	Bk. 91
INDEXING INFORMATION FOR COUNTY CLERK		
NAME	LOCATION	SUBDIVISION
Stewart L. Udall	Sec.29 T.17N. R10E.	n/a
U.P.C. Number: 1-036-098-155-002		



Blocked our Driveway from Date of our Appeal on Fence
Continuously from April 24, 2012-June 26, 2012



Sought & obtained City Sanctioned Manner to interfere with
ability to be safe to and from our home

Gates cannot be installed across an easement after easement granted and used for over twenty years without gate or other access restrictions

Only New Mexico case to address this issue **prohibited** gates and **ordered removal** because they were an **unreasonable restriction of access**

Huff v. McClannahan, 557 P.2d 1111, 89 N.M. 762 (Ct. App. 1976)

Gates cannot be installed across an easement after easement granted and used for over twenty years without gate or other access restrictions

-No published NM decision **has allowed installation of gate across an existing access easement**

-NM Cases involving gates across easements involve gates that existed before or pre-dated easement

(Dethlefsen, Dyer, and Kennedy)

* *Dethlefsen v. Weddle* (NM Ct. App. 2012)-involved locking a gate consented to by all landowners and in place long before easement granted.

* *Dyer v. Compere*, 41 NM 716 (NM 1937)-Gate in dispute in existence long before easement granted

* *Kennedy v. Bond* NM 734 (NM 1969)- Condition of entry was same before grant of easement

Gates cannot be installed across an easement after easement granted and used for over twenty years without gate or other access restrictions

ALL involved disputes where the use complained of was “substantially the same” as the use when the easement granted.

Gates cannot be installed across an easement after easement granted and used for over twenty years without gate or other access restrictions

Look at:

- (1) Purpose of Easement; and
- (2) History and Circumstances Surrounding its Use

Gates cannot be installed across an easement after easement granted and used for over twenty years without gate or other access restrictions

Purpose:

1. To provide unfettered access to and from property
2. Created by subdivider to benefit and serve property he retained after subdivision
3. Installation inconsistent with that purpose

Gates cannot be installed across an easement after easement granted and used for over twenty years without gate or other access restrictions

History & Circumstances of Past Use (*pre-appeal of fence*)

1. Unfettered Access;
2. Easement continuous and uninterrupted use since April 1991;
3. Never been gates;
4. Never been barriers;
5. Never been restriction to access;
6. Mr. Udall never blocked, locked or otherwise obstructed easement (or anyone else pre Day)
7. Mr. Udall created it for his benefit and benefit of future landowners

Gate would unreasonably impede access to our home and a Danger to all who use Cruz Blanca

How?

1. Pull up to Gate on busy Camino de Cruz Blanca
2. Stop car
3. Get out of car
4. Get kids out of seats and out of car
5. Open massive 20 foot gate
6. Put kids back into car
7. Get into car
8. Pull car forward
9. Get out of car
10. Walk back to gate
11. Close massive gate
12. Get back into car
13. Drive home

Dangers to Ourselves and All of Others on Camino de Cruz Blanca



Imagery Date: 6/16/2011 2 1991

35°40'05.60" N 105°54'19.83" W elev 7449 ft

© 2012 Google
© 2012 Europa Technologies
Google Earth
Lycall 8407 ft

1240 Camino De Cruz Blanca, Santa Fe, NM





1240

Proposed Gate Blocking
1244 Driveway
Easement for Driveway
to 1244

1244

Imagery Date: 6/16/2011

© 2012 Google

© 2012 Europa Technologies

35 40'05 60" N

Camino de la Cruz Blanca

City of Santa Fe, New Mexico

Appeal of Land Use Decision

Chapter 14 of City Code

14-1.3

Allowing Gate and City Sanctioned blocking of driveway:

- (A) accomplishing a coordinated, adjusted and harmonious development of Santa Fe that will best promote health, safety, order, convenience, prosperity and the general welfare and**
- (B) Create conditions favorable to the health, safety, convenience, prosperity and general welfare of the residents of Santa Fe**

End

City of Santa Fe, New Mexico

memo

DATE: December 11, 2012 for the December 18, 2012 Board of Adjustment Meeting

TO: Board of Adjustment

VIA: Matthew S. O'Reilly, P.E., Director, Land Use Department *MSO*
Tamara Baer, Planner Manager, Current Planning Division *TB*

FROM: Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division *DE*

994 OLD PECOS TRAIL SPECIAL USE PERMIT

Case #2012-121. 994 Old Pecos Trail Special Use Permit. Mark Hogan, Applicant, requests a special use permit to allow office use at 994 Old Pecos Trail. The property is zoned Residential Arts and Crafts (RAC). (Dan Esquibel, Case Manager)

I. RECOMMENDATIONS

The Land Use Department has found no adverse impacts associated with the proposed use change. The Land Use Department recommends APPROVAL WITH CONDITIONS identified below and outlined in this report.

1. This approval will only extend to the period of building ownership of the applicant.
2. No more than 5 persons, including owner of the building as owner of the company be allowed to regularly engage in business on the premises.
3. Hours of business operation shall be limited to the hours of 8 AM through 7 PM on weekdays and 9 AM to 7 PM on weekends.
4. The exterior appearance of the building shall maintain a residential character.
5. Signage area shall not exceed 6 square feet.
6. No on-street parking for business purposes is permitted.
7. Nothing incidental to the Office Use shall be constructed, installed, placed, parked or stored outside of the building of the premises regulated by the Special Use Permit.
8. No increase in exterior lighting except for signage as restricted by code in the Historic District.
9. Exterior signage shall be as allowed by City Code.

Exhibit "C"

I. APPLICATION SUMMARY

The HoganGroup an architectural practice, located at 994 Old Pecos Trail, was approved as a Home Occupation (HO) in 2005 and received their Certificate of Occupancy (CO) in 2006. The owner no longer resides at the residence which is a required condition of the HO ordinance. The HO Ordinance (14.3-6(D)(2)) requires that residency be maintained on the premises where the HO is established. The owner is requesting a Special Use Permit, which if approved, will allow the business to continue without the requirement of residency on the premises. The Special Use Permit is limited to a portion of the property Identified in Exhibit D1 and will also increase the number of employees over the number permitted as a home occupation.

No concerns were raised by the City Traffic Division. The Land Use Department has reviewed this request and has determined that the proposed use with included conditions is harmonious with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity.

ENN

On October 02, 2012 an Early Neighborhood Notification (ENN) meeting was conducted at the Unitarian Universalist Church at 107 Barcelona Road. At the meeting the applicant agreed to restrict the proposed office use to many of the existing standards and conditions established under the HO. The recommended conditions of approval are based on those proposed by the applicant.

III. CONCLUSION

In sum, subject to the agreed upon conditions, the impacts of the proposed office use will not adversely affect the public interest or intensify existing conditions beyond that of the existing HO.

IV. EXHIBITS

Exhibit A - DRT comments

1. Traffic Engineering Division

Exhibit B- ENN and correspondence

Exhibit C- Applicant's Data

Exhibit D- Vicinity Map

D1 – Special Use Permit boundaries

Packet Attachment -Plans and Maps

December 18, 2012
Board of Adjustment
Case # 2012-126

**994 OLD PECOS TRAIL SPECIAL USE
PERMIT**

EXHIBIT A

DRT comments

ESQUIBEL, DANIEL A.

From: KASSENS, SANDRA M.
Sent: Sunday, November 04, 2012 3:23 PM
To: ESQUIBEL, DANIEL A.
Cc: ROMERO, JOHN J
Subject: 994 Old Pecos Trail spec use

Dan,
The Traffic Engineering Division has no comments on the application for a special use permit for 994 Old Pecos Trail. (Case #2012-121.)

**Sandra Kassens, Engineer Assistant
Public Works Dept., Traffic Engineering
City of Santa Fe
PO Box 909
Santa Fe, NM 87504**

**(505) 955-6697
fax (505) 955-6439
smkassens@ci.santa-fe.nm.us**

December 18, 2012
Board of Adjustment
Case # 2012-126

**994 OLD PECOS TRAIL SPECIAL USE
PERMIT**

EXHIBIT B

ENN



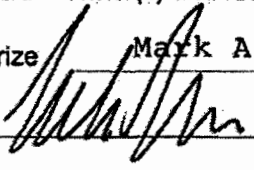
EARLY NEIGHBORHOOD NOTIFICATION MEETING

Request for Staff Attendance

Project Information	
Project Name:	Mark Hogan requests special use permit for office only
Address:	994 Old Pecos Trail Parcel Size:
Zoning:	RAC Future Land Use:
Preapplication Conference Date:	August 23, 2012
Detailed Project Description:	Board of Adjustment - Special Use Permit

Property Owner Information	
Name:	Mark A. Hogan
Address:	994 Old Pecos Trail
Phone:	988-1913 E-mail Address: mark@hogangroupinc.com

Applicant/Agent Information (if different from owner):	
Name:	
Address:	
Phone:	E-mail Address:

Agent Authorization (if applicable):	
I am/We are the owner(s) and record title holder(s) of the property located at: 994 Old Pecos Trail	
I/We authorize Mark A. Hogan to act as my/our agent to execute this application.	
Signed: 	Date: 8/27/12
Signed:	Date:

Proposed ENN Meeting Dates:		
Provide 2 options:	Preferred Option	Alternative
DATE:	September 26, 2012	October 2, 2012
TIME:	5:30 p.m.	5:30 p.m.
LOCATION:	Unitarian Universalist Congregation 107 W. Barcelona Rd Santa Fe, NM 87505	Unitarian Universalist Congregation 107 W. Barcelona Rd Santa Fe, NM 87505

EARLY NEIGHBORHOOD NOTIFICATION MEETING

September 10, 2012

Dear Neighbor:

This letter is sent as notice of a neighborhood meeting to discuss an applicant for Special Use Permit for Office Use. This subject property, located at 994 Old Pecos Trail, and is zoned RC.

ARCHITECTS

PLANNERS

INTERIORS

LANDSCAPES

In accordance with the requirements of the City of Santa Fe's Early Neighborhood Notification regulations, this is to inform you that a meeting is scheduled for:

Time: 5:30 PM
When: Tuesday, October 2, 2012
Where: Unitarian Universalist Church – Fellowship Hall
107 West Barcelona
Santa Fe, NM 87505

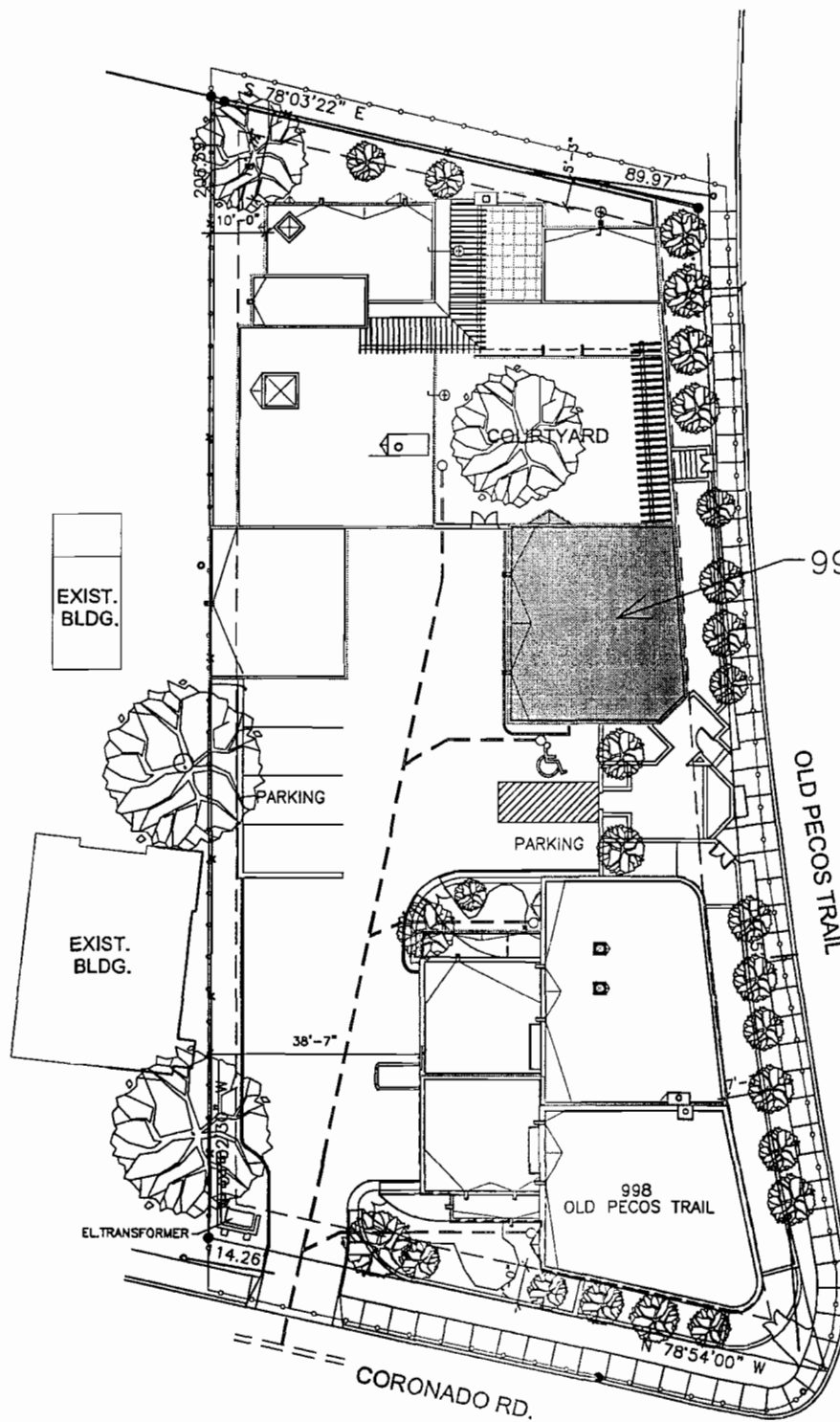
Early Neighborhood Notification is intended to provide for an exchange of information between prospective applicants for development projects and the project's neighbors before plans become too firm to respond meaningfully to community input.

Attached, please find a vicinity map and proposed site plan. If you have any questions or comments, please contact Deanna Mascareñas at 505-988-1913 or deannam@hogan-group-inc.com.

Sincerely,

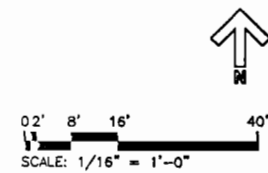
Mark A. Hogan, AIA
President, Hogan Group Inc.

Attachments:
Vicinity map
Site plan



VICINITY MAP

NOT TO SCALE





City of Santa Fe Land Use Department Early Neighborhood Notification Meeting Notes

<i>Project Name</i>	994 Old Pecos Trail Special Use Permit
<i>Project Location</i>	994 Old Pecos Trail Special Use Permit
<i>Project Description</i>	Requests a special use permit to allow office use at 994 Old Pecos Trail
<i>Applicant / Owner</i>	Mark Hogan
<i>Agent</i>	Mark Hogan
<i>Pre-App Meeting Date</i>	N/A
<i>ENN Meeting Date</i>	10/2/12
<i>ENN Meeting Location</i>	Unitarian Universalist Church, 107 W, Barcelona Rd
<i>Application Type</i>	Early Neighborhood Notification Meeting (ENN)
<i>Land Use Staff</i>	Dan Esquibel
<i>Other Staff</i>	
<i>Attendance</i>	7

Notes/Comments:

The applicant introduced his project followed by questions from the attendees. The applicant agreed to keep the intensity of the Home Occupation to that of the Home Occupation. There was not concerns with the proposed use.

ENN Meeting – Sign-in Sheet

Mark Hogan requests Special Use Permit for Office Only at 994 Old Pecos Trail
October 2, 2012 @ 5:30 p.m. at Unitarian Universalist Church

Name	Address	Phone #
1. BRUCE Cynthia Bolene	326 E. CORONADO Rd	983 810-57 BBOLENE@aol.com
2. Abby and Marian Silver	222 E. Coronado Rd.	982-130-3 FAX 820-0933
3. Ken Heldmeyer	3256 Benji	922-3968 Kheld@earthlink.net
4. Peter B Komis	610 Don Harper Ave	983-1166 pbkomis@aol.com
5. Pierre HIROND	544 E. Coronado Rd	982-4748 hironp@msn.com
6. Bill & Linda Deuschle	501 E. Coronado Rd.	982-5087 deuschlebb@aol.com
7. Roger Lacy	318 E. Coronado Rd	505-216-7913 roger@rogerlacy.com
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		

Page 46 of 59

FOIA

Daniel A. Esquivel

in OH - 10/2/12



ENN GUIDELINES

Applicant Information

Project Name: Hogan Special Permit for Office Use at 994 Old Pecos Trail

Name: Hogan Mark A
Last First M.I.

Address: 994 Old Pecos Trail
Street Address Suite/Unit #
Santa Fe NM 87505
City State ZIP Code

Phone: (505) 988-1913

E-mail Address: mark@hogangroupinc.com

Please address each of the criteria below. Each criterion is based on the Early Neighborhood Notification (ENN) guidelines for meetings, and can be found in Section 14-3.1(F)(5) SFCC 2001, as amended, of the Santa Fe City Code. A short narrative should address each criterion (if applicable) in order to facilitate discussion of the project at the ENN meeting. These guidelines should be submitted with the application for an ENN meeting to enable staff enough time to distribute to the interested parties. For additional detail about the criteria, consult the Land Development Code.

- (a) EFFECT ON CHARACTER AND APPEARANCE OF THE SURROUNDING NEIGHBORHOODS** *For example: number of stories, average setbacks, mass and scale, landscaping, lighting, access to public places, open spaces and trails*

There will be no physical or visual change to the property or the surrounding neighborhood. The special permit for office use will only allow the current use that is in operation as a home occupation to continue.

- (b) EFFECT ON PROTECTION OF THE PHYSICAL ENVIRONMENT** *For example: trees, open space, rivers, arroyos, floodplains, rock outcroppings, escarpments, trash generation, fire risk, hazardous materials, easements, etc.*

No change. The property is already attractively landscaped and maintained by the applicant. That will continue without change or interruption to the maintenance.

- (c) IMPACTS ON ANY PREHISTORIC, HISTORIC, ARCHAEOLOGICAL OR CULTURAL SITES OR STRUCTURES, INCLUDING ACEQUIAS AND THE HISTORIC DOWNTOWN** *For example: the project's compatibility with historic or cultural sites located on the property where the project is proposed.*

No Change.

- (d) RELATIONSHIP TO EXISTING DENSITY AND LAND USE WITHIN THE SURROUNDING AREA AND WITH LAND USES AND DENSITIES PROPOSED BY THE CITY GENERAL PLAN** *For example: how are existing City Code requirements for annexation and rezoning, the Historic Districts, and the General Plan and other policies being met.*

No Change. An office use already exists at this location. This use is quiet and compatible with the surrounding neighborhood. There are other existing non-residential uses on the street in the direct vicinity of the subject property. Those uses include a dry cleaner, a law office, a property management company and a liquor store. These uses are found on the same immediate block as the proposed architectural office.

- (e) EFFECTS ON PARKING, TRAFFIC PATTERNS, CONGESTION, PEDESTRIAN SAFETY, IMPACTS OF THE PROJECT ON THE FLOW OF PEDESTRIAN OR VEHICULAR TRAFFIC AND PROVISION OF ACCESS FOR THE DISABLED, CHILDREN, LOW-INCOME AND ELDERLY TO SERVICES** *For example: increased access to public transportation, alternate transportation modes, traffic mitigation, cumulative traffic impacts, pedestrian access to destinations and new or improved pedestrian trails.*

No Change;

- (f) IMPACT ON THE ECONOMIC BASE OF SANTA FE** *For example: availability of jobs to Santa Fe residents; market impacts on local businesses; and how the project supports economic development efforts to improve living standards of neighborhoods and their businesses.*

There will be a positive impact on the economic base of Santa Fe in that it will allow the continued operation of a long established local company providing services in and for the Santa Fe community. This company employs local residents which also contributes to the economic health of the community.

- (g) EFFECT ON THE AVAILABILITY OF AFFORDABLE HOUSING AND AVAILABILITY OF HOUSING CHOICES FOR ALL SANTA FE RESIDENTS** *For example: creation, retention, or improvement of affordable housing; how the project contributes to serving different ages, incomes, and family sizes; the creation or retention of affordable business space.*

No Change. However the proposed Special Use for Office supports the retention of affordable business space.

- (h) EFFECT UPON PUBLIC SERVICES SUCH AS FIRE, POLICE PROTECTION, SCHOOL SERVICES AND OTHER PUBLIC SERVICES OR INFRASTRUCTURE ELEMENTS SUCH AS WATER, POWER, SEWER, COMMUNICATIONS, BUS SYSTEMS, COMMUTER OR OTHER SERVICES OR FACILITIES** *For example: whether or how the project maximizes the efficient use or improvement of existing infrastructure; and whether the project will contribute to the improvement of existing public infrastructure and services.*

No Change. A change from a residential water rate to a non-residential rate will be the only impact on existing infrastructure.

- (i) **IMPACTS UPON WATER SUPPLY, AVAILABILITY AND CONSERVATION METHODS** *For example: conservation and mitigation measures; efficient use of distribution lines and resources; effect of construction or use of the project on water quality and supplies.*

No Change.

- (j) **EFFECT ON THE OPPORTUNITIES FOR COMMUNITY INTEGRATION AND SOCIAL BALANCE THROUGH MIXED LAND USE, PEDESTRIAN ORIENTED DESIGN, AND LINKAGES AMONG NEIGHBORHOODS AND RECREATIONAL ACTIVITY AND EMPLOYMENT CENTERS** *For example: how the project improves opportunities for community integration and balance through mixed land uses, neighborhood centers and/or pedestrian-oriented design.*

No Change. However the proposed continued use of the existing premises will maintain the compatible land use, social balance and pedestrian oriented access to existing business. While this block on Old Santa Fe Trail cannot really be called a neighborhood center it certainly presents a non-residential node on a busy route into the downtown and conveys a positive architectural character and pedestrian scale.

- (k) **EFFECT ON SANTA FE'S URBAN FORM** *For example: how are policies of the existing City General Plan being met? Does the project promote a compact urban form through appropriate infill development? Discuss the project's effect on intra-city travel and between employment and residential centers.*

No Change. The property and the use already effects a positive image on Santa Fe's urban form. This property presents a good example of how a sensitively designed mixed use infill project can be an asset to the neighborhood and demonstrate how other properties can contribute in a positive way to intra-city travel between employment and residential uses.

ADDITIONAL COMMENTS (optional)

This is a positive application and will protect an existing use by providing flexibility in the terms that allow office use which are not available under the home occupation rules and guidelines. Specifically, the provision that prevents a user not related to the resident from providing services there. Given the difficult economic times this flexibility is imperative to maintain the economic feasibility of the property.

(i) IMPACTS UPON WATER SUPPLY, AVAILABILITY AND CONSERVATION METHODS *For example: conservation and mitigation measures; efficient use of distribution lines and resources; effect of construction or use of the project on water quality and supplies.*

(j) EFFECT ON THE OPPORTUNITIES FOR COMMUNITY INTEGRATION AND SOCIAL BALANCE THROUGH MIXED LAND USE, PEDESTRIAN ORIENTED DESIGN, AND LINKAGES AMONG NEIGHBORHOODS AND RECREATIONAL ACTIVITY AND EMPLOYMENT CENTERS *For example: how the project improves opportunities for community integration and balance through mixed land uses, neighborhood centers and/or pedestrian-oriented design.*

(k) EFFECT ON SANTA FE'S URBAN FORM *For example: how are policies of the existing City General Plan being met? Does the project promote a compact urban form through appropriate infill development? Discuss the project's effect on intra-city travel and between employment and residential centers.*

(l) ADDITIONAL COMMENTS (optional)

December 18, 2012
Board of Adjustment
Case # 2012-126

**994 OLD PECOS TRAIL SPECIAL USE
PERMIT**

EXHIBIT C

Applicant Data

October 10, 2012

City of Santa Fe
PO Box 909
Santa Fe, NM 87504

RE: Special Use Permit for Office Use
994 Old Pecos Trail

ARCHITECTS

Dear Board Members,

PLANNERS

INTERIORS

LANDSCAPES

Please accept this application for a Special Use Permit to allow limited office use for my property at 994 Old Pecos Trail. The property is zoned RAC which allows Office Use by approval of the Board of Adjustment. I have met with neighbors and discussed their concerns at the required ENN meeting held on October 2, 2012 and propose certain restrictions on the requested approval to address concerns voiced at that meeting.

During the last five years I have operated my architectural practice from this location as a home occupation and lived next door. Given the current state of the building market and both of my children leaving home for college, I have chosen to rent my house to reduce my financial overhead. I would however, like to maintain my offices at its current location which requires this Special Use Permit to stay within the City's zoning requirements.

There are six off street parking spaces supporting this use and we have had minimal impact on the neighborhood as an office other than maintain a daytime presence that we feel has generally improved security during the hours that the adjacent residences are not typically occupied.

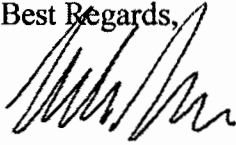
The restrictions on this use requested by neighbors include the following:

1. This approval will only extend to the period that I am in ownership of the building.
2. No more than 5 persons, including myself as owner of the company be allowed to regularly engage in business on the premises.
3. Hours of business operation be limited to 8 AM to 7 PM on weekdays and 9 AM to 7 PM on weekends.
4. The exterior appearance will not be modified to look more like a non-residential use.
5. Signage area will not exceed 6 sf..
6. No on-street parking for business purposes be allowed.

7. Permitted Office Use must comply with General Environmental Standards as defined in Section 10-4 SFCC
8. Nothing incidental to the Office Use shall be constructed, installed, placed, parked or stored outside the premises.
9. No increase in exterior lighting except for signage as restricted by code in the Historic District.
10. No exterior signage except as allowed by Code in the Historic District (may not exceed 6 sf.)

We hope to present this application for approval at the Board of Adjustment meeting on December 18, 2012. We appreciate your time in reviewing this application and respectfully request your approval at that meeting.

Best Regards,



Mark A. Hogan AIA
President, Hogan Group Inc.

Special Use Permit Approval Criteria:

Granting this Special Use Permit will not adversely affect the Public Interest.

The Public Interest not being adversely affected by this request for Office use is best demonstrated by the fact that the use has been in effect for the last five years as a Home Occupation with no adverse affect of the Public Interest. This office is a quiet use with minimal ingoing and outgoing traffic and does not attract undesirable activity to this neighborhood. It is located on a relatively busy street that hosts other non-residential uses and presents itself in a compatible manner within the streetscape.

This use is compatible with uses of the abutting properties and other properties in the vicinity of the premises under consideration.

The use is compatible with the abutting properties and is architecturally integrated with those properties. The proposed office has and will increase daytime presence which improves security and presents no noise or other adverse impacts on those properties and buffers adjacent properties to the west from traffic noise and transient foot traffic common on Old Pecos Trail.

The proposed Office Use is also compatible with other properties in the vicinity. The properties directly across the street include a dry cleaner and legal offices. No adverse impact will be created by allowing this use to continue as an office use.

December 18, 2012
Board of Adjustment
Case # 2012-126

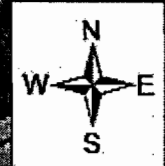
**994 OLD PECOS TRAIL SPECIAL USE
PERMIT**

EXHIBIT D

Vicinity Map

RC5AC

Vicinity 994 Old Pecos Trail



Site
Zoned RAC

R10

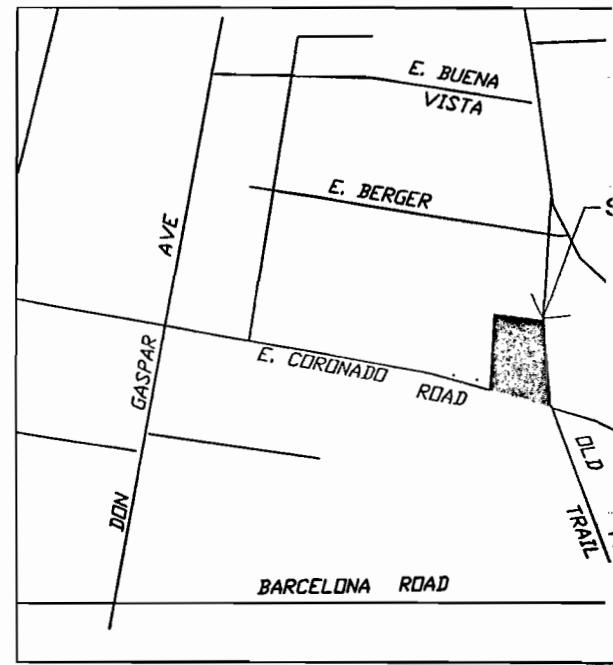
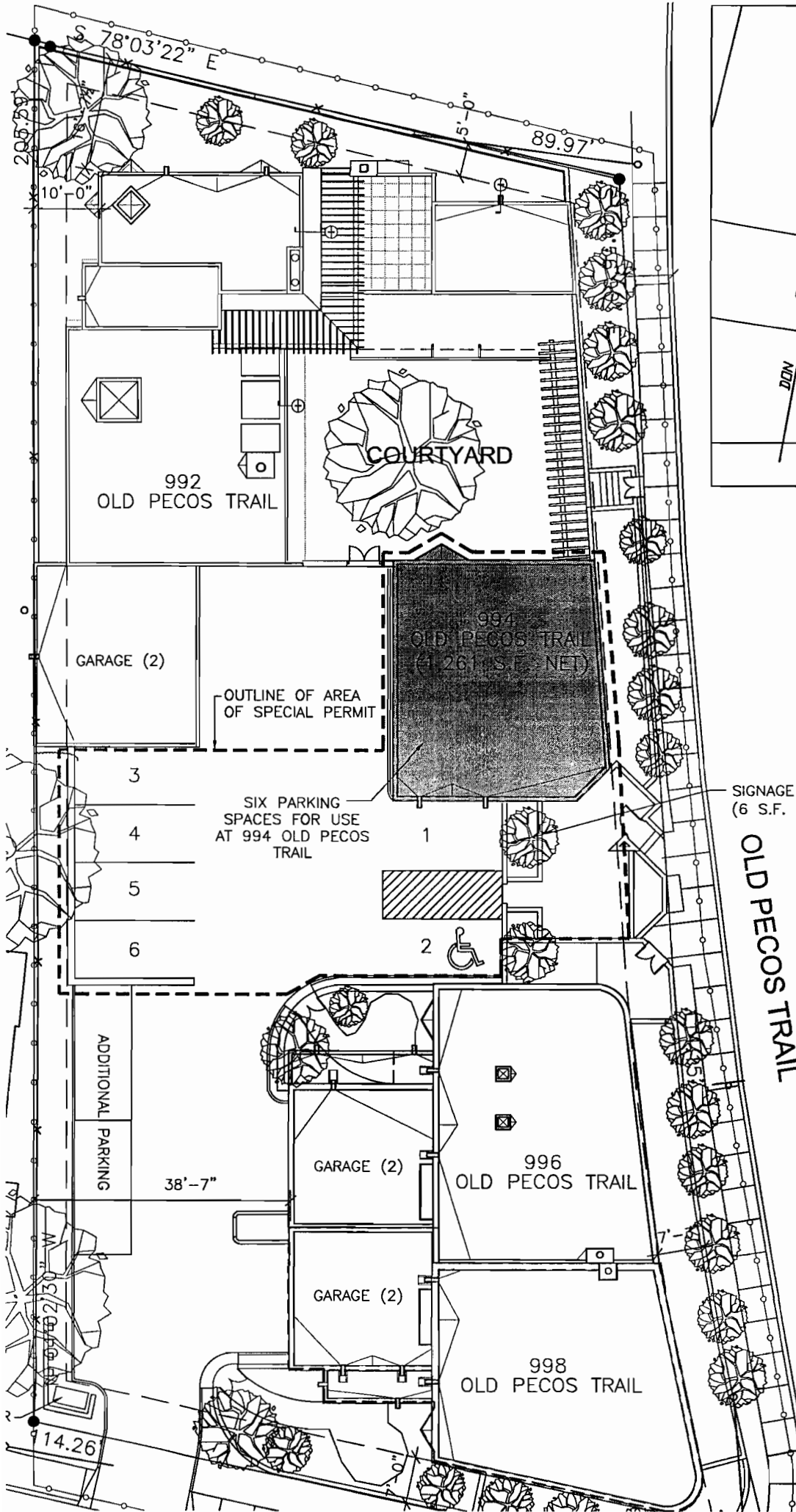
R12PUD

ECORONADO RD

ex RAC

R3

OLD PECOS TRAIL



1. LANDSCAPE AS EXISTING (NO)
 2. SITE LIGHTING AS EXISTING (N
- LOT SIZE.....0.452 ACRES (19
TYPICAL OFFSTREET PARKING DIM
8'-6" X 19'-0"

December 18, 2012
Board of Adjustment
Case # 2012-126
**944 OLD PECOS TRAIL SPECIAL USE
PERMIT**

ATTACHMENT

Applicant's Attachment

HOGAN GROUP INC. 994 OLD PECOS TRAIL SANTA FE NEW MEXICO 87505 505-988-1913 FAX-988-5094

HOGANGROUPINC.COM

October 10, 2012

City of Santa Fe
PO Box 909
Santa Fe, NM 87504

RE: Special Use Permit for Office Use
994 Old Pecos Trail

ARCHITECTS

Dear Board Members,

PLANNERS

INTERIORS

LANDSCAPES

Please accept this application for a Special Use Permit to allow limited office use for my property at 994 Old Pecos Trail. The property is zoned RAC which allows Office Use by approval of the Board of Adjustment. I have met with neighbors and discussed their concerns at the required ENN meeting held on October 2, 2012 and propose certain restrictions on the requested approval to address concerns voiced at that meeting.

During the last five years I have operated my architectural practice from this location as a home occupation and lived next door. Given the current state of the building market and both of my children leaving home for college, I have chosen to rent my house to reduce my financial overhead. I would however, like to maintain my offices at its current location which requires this Special Use Permit to stay within the City's zoning requirements.

There are six off street parking spaces supporting this use and we have had minimal impact on the neighborhood as an office other than maintain a daytime presence that we feel has generally improved security during the hours that the adjacent residences are not typically occupied.

The restrictions on this use requested by neighbors include the following:

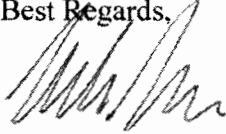
1. This approval will only extend to the period that I am in ownership of the building.
2. No more than 5 persons, including myself as owner of the company be allowed to regularly engage in business on the premises.
3. Hours of business operation be limited to 8 AM to 7 PM on weekdays and 9 AM to 7 PM on weekends.
4. The exterior appearance will not be modified to look more like a non-residential use.
5. Signage area will not exceed 6 sf..
6. No on-street parking for business purposes be allowed.

HoganGroup

7. Permitted Office Use must comply with General Environmental Standards as defined in Section 10-4 SFCC
8. Nothing incidental to the Office Use shall be constructed, installed, placed, parked or stored outside the premises.
9. No increase in exterior lighting except for signage as restricted by code in the Historic District.
10. No exterior signage except as allowed by Code in the Historic District (may not exceed 6 sf.)

We hope to present this application for approval at the Board of Adjustment meeting on December 18, 2012. We appreciate your time in reviewing this application and respectfully request your approval at that meeting.

Best Regards,

A handwritten signature in black ink, appearing to read 'Mark A. Hogan', written over the printed name.

Mark A. Hogan AIA
President, Hogan Group Inc.

Special Use Permit Approval Criteria:

Granting this Special Use Permit will not adversely affect the Public Interest.

The Public Interest not being adversely affected by this request for Office use is best demonstrated by the fact that the use has been in effect for the last five years as a Home Occupation with no adverse affect of the Public Interest. This office is a quiet use with minimal ingoing and outgoing traffic and does not attract undesirable activity to this neighborhood. It is located on a relatively busy street that hosts other non-residential uses and presents itself in a compatible manner within the streetscape.

This use is compatible with uses of the abutting properties and other properties in the vicinity of the premises under consideration.

The use is compatible with the abutting properties and is architecturally integrated with those properties. The proposed office has and will increase daytime presence which improves security and presents no noise or other adverse impacts on those properties and buffers adjacent properties to the west from traffic noise and transient foot traffic common on Old Pecos Trail.

The proposed Office Use is also compatible with other properties in the vicinity. The properties directly across the street include a dry cleaner and legal offices. No adverse impact will be created by allowing this use to continue as an office use.

CORRECTED SPECIAL WARRANTY DEED

YHA, LLC, a New Mexico limited liability company, for distribution of Limited Liability Company interests, grants to Mark A. Hogan, Trustee of the Mark A. Hogan Revocable Trust, whose address is 992 Old Pecos Trail Santa Fe, NM 87505 the following described real estate in Santa Fe County, New Mexico:

Unit 3 of Old Pecos Place Condominiums, as created by the "Condominium Declaration for Old Pecos Place Condominiums", recorded November 1, 2007, as Instrument No. 1504972, and as shown on condominium plat filed October 30, 2007, Plat Book 668, Page 017, as No. 1504630, records of Santa Fe County, New Mexico.

SUBJECT TO: taxes and assessments for 2008 and subsequent years.

SUBJECT TO: matters described in Exhibit "A" attached hereto.

with special warranty covenants.

Witness our hands this 30 day of April, 2008.

YHA, LLC
a New Mexico limited liability company

Richard Yates
Richard Yates, Member
Mark A. Hogan
Mark A. Hogan, Member

ACKNOWLEDGMENT FOR CORPORATION
STATE OF *New Mexico*
COUNTY OF *Santa Fe*

This instrument was acknowledged before me on April 30, 2008 by Richard Yates, Member of YHA, LLC, a New Mexico limited liability company, on behalf of said limited liability company.



Beverly J. Lang
Notary Public
My Commission Expires: 10-18-09

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
CORRECTED SP WARRANTY.
PAGES: 1

I Hereby Certify That This Instrument Was Filed for Record On The 1ST Day Of May, A.D., 2008 at 14:39 And Was Duly Recorded as Instrument # 1524292 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office:
Valerie Espinoza
Deputy *Valerie Espinoza* County Clerk, Santa Fe, N





Certificate Of
OCCUPANCY
CITY OF SANTA FE, NEW MEXICO

This certifies that the appropriate departments of the City of Santa Fe have inspected this building and found it in compliance as a Group R Division 3 Occupancy for the portion of the building herein described: Single Family Dwelling

Building Permit #: 06-1892 Name of Owner: Mark Hopew

Building Address: 794 Old Pecos Trl unit #3

Date: 8-31-07 Building Inspector: Michael Rundo

THIS CERTIFICATE IS FOR USE OF RECORD PURPOSES ONLY.

BI028.PMD-01/06

City of Santa Fe

Zoning Inspectors Office

CERTIFICATE OF OCCUPANCY INSPECTION HOME OCCUPATION BUSINESS

Owner ☒ Tenant of Dwelling ☐

Mark Hogan

Business Address

994 Old Redos Trail

Business Phone

(505) 988-1913

Applicant's Signature

[Signature]

Date:

9-25-07

FOR OFFICE USE ONLY

1. RESIDENTIAL ZONING DISTRICT:

SINGLE FAMILY RESIDENTIAL

- | | |
|---|--|
| <input type="checkbox"/> R-1 through R-9 | <input checked="" type="checkbox"/> AC/RAC |
| <input type="checkbox"/> RM-1 through RM-10 | <input type="checkbox"/> BCD |
| <input type="checkbox"/> RC-5 or RC-8 | <input type="checkbox"/> Other _____ |

2. HOME OCCUPANCY USE:

SERVICE ESTABLISHMENT

- | |
|---|
| <input type="checkbox"/> 1. Repair and Amusement Services |
| <input type="checkbox"/> 2. Health and Medical Offices |
| <input checked="" type="checkbox"/> 3. Engineering and Professional Offices |
| <input type="checkbox"/> 4. Educational |
| <input type="checkbox"/> 5. Miscellaneous Services _____ |
| <input type="checkbox"/> 6. Mail & Phone Use - No customers on site |

3. PARKING REQUIREMENTS

- | | |
|--|---------------|
| <input checked="" type="checkbox"/> 1-2 Spaces required on site for business | <u>5</u> |
| <input checked="" type="checkbox"/> 1 Handicapped space required | <u>spaces</u> |

4. ☒ OWNER SHALL COMPLY WITH CITY OF SANTA FE HOME OCCUPATION ORD. # 14-6.3(C)

5. OCCUPANCY OF DWELLING & PROPERTY USE:

- | |
|--|
| <input checked="" type="checkbox"/> Shall not exceed 25% of total gross floor area of dwelling, including accessory buildings |
| <input checked="" type="checkbox"/> No storage of materials associated with the business shall be visible from adjacent properties or C.R.O.W. |
| <input checked="" type="checkbox"/> A.D.A requirements <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> No commercial vehicles related to business shall be parked on street or on property |

6. PRIVATE DAYCARE NURSERIES, FACILITIES AND KINDERGARTENS:

- | | |
|--|---|
| <input type="checkbox"/> 1 - 6 Children enrolled | <input type="checkbox"/> 7 - 15 Children enrolled |
| <input type="checkbox"/> Over 15 children enrolled (Requires B.O.A. approval) | |
| <input type="checkbox"/> Off-street parking req: <input type="checkbox"/> 1-2 spaces <input type="checkbox"/> 3+spaces | |

7. APPLICANT HAS COMPLIED WITH ALL REQUIREMENTS OF THE HOME OCCUPATION ORDINANCE:

- | | |
|---|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|-----------------------------|

FOR OFFICE USE ONLY

Remarks:

meets all requirements for home occupation. no opposition during 15-day waiting period.

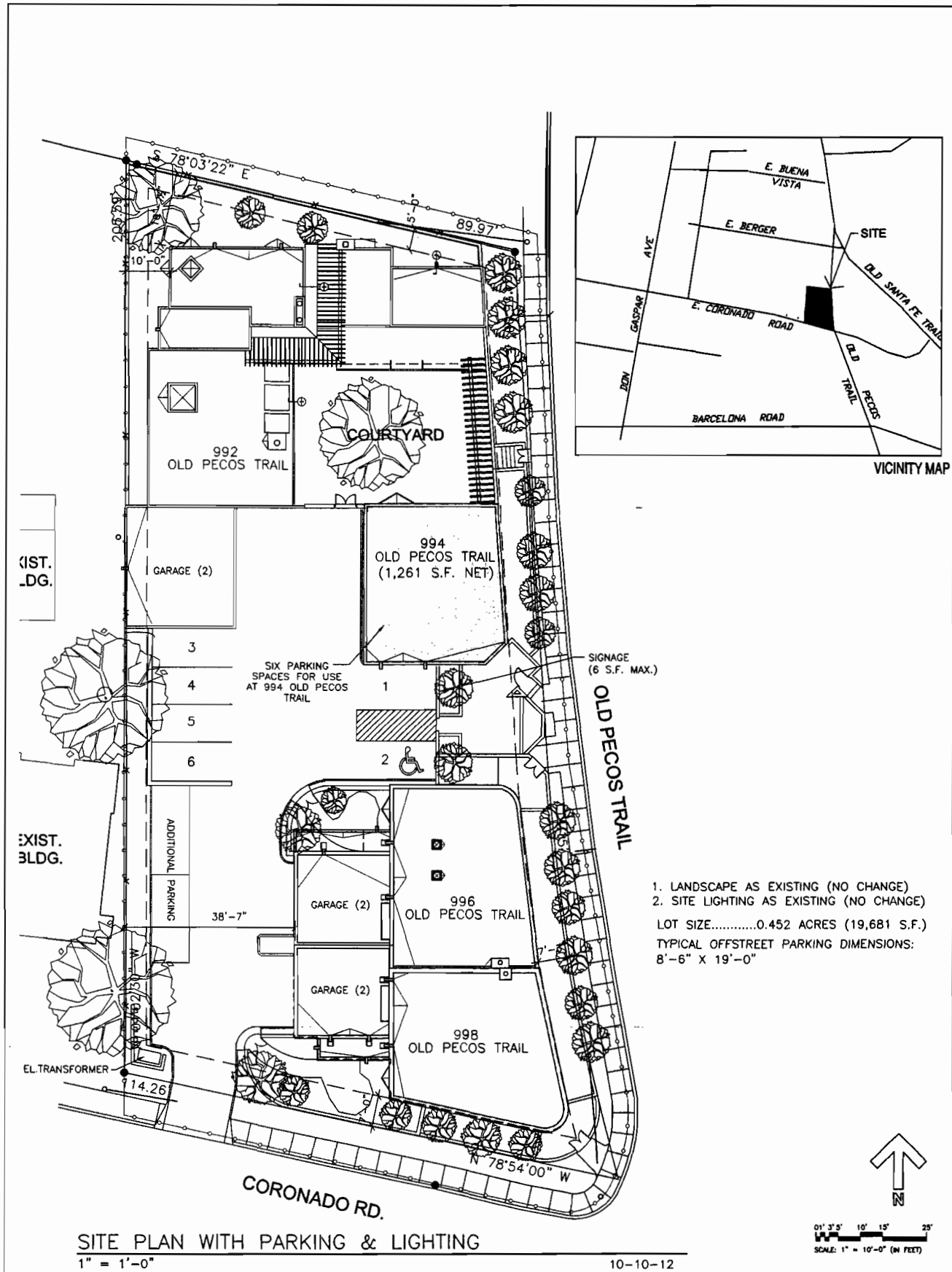
☒ APPROVED ☐ DISAPPROVED ☐ CONDITIONAL APPROVAL

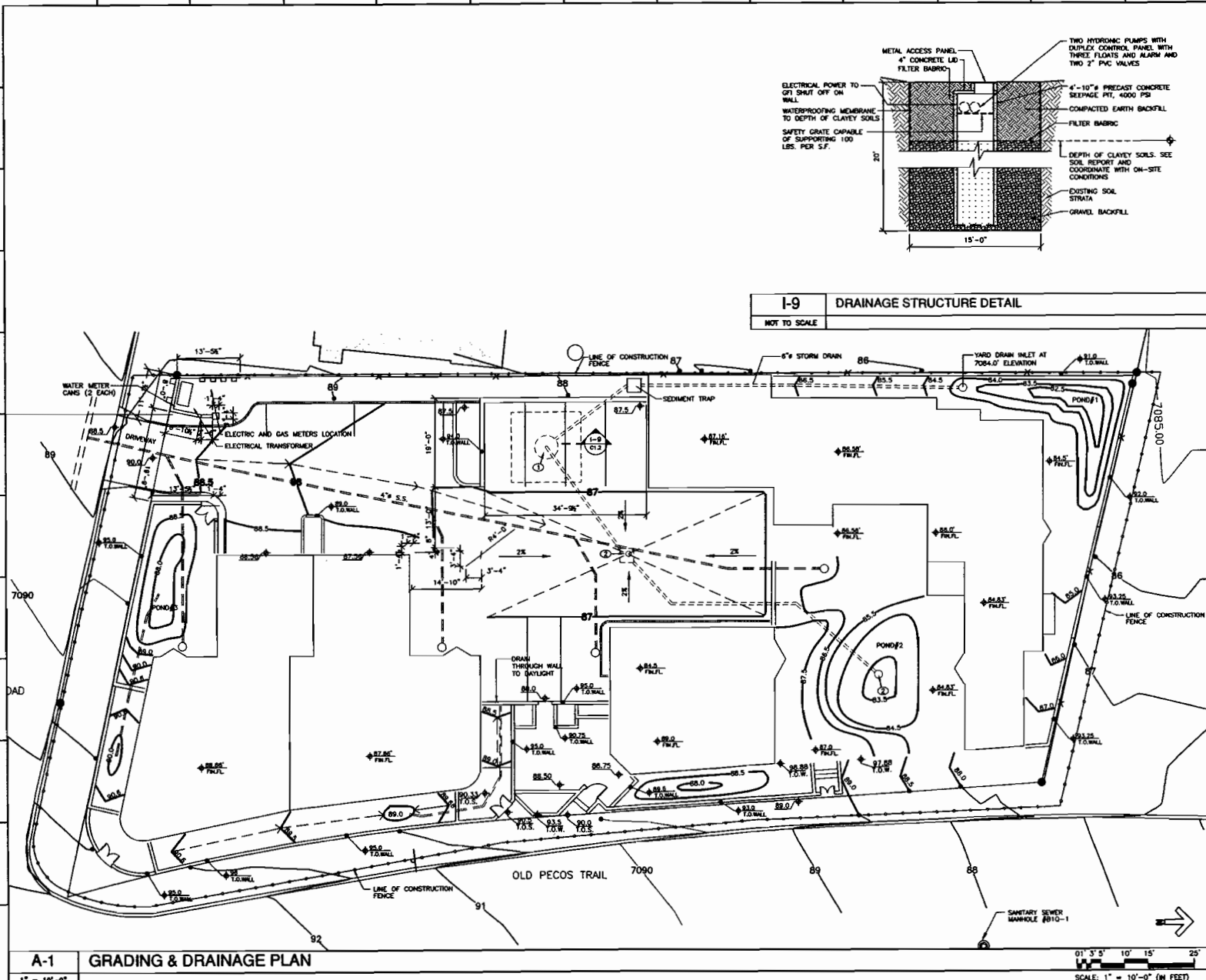
Zoning Inspector:

Georgia Winstle

Date:

5/21/08





I-9 DRAINAGE STRUCTURE DETAIL
NOT TO SCALE

KEYED NOTES

- 4'-10" PRECAST CONCRETE SEEPAGE PIT TO 30" BELOW GRADE. PLACE PERFORATED SECTIONS OF PIT BELOW CLAYEY SOILS AND BACKFILL WITH GRAVEL. PLACE FILTER FABRIC ON TOP OF GRAVEL AT LINE OF CLAYEY SOILS. PLACE NON-PERFORATED SECTIONS OF CONCRETE PIT ABOVE THIS POINT AND BACKFILL WITH COMPACTED EARTH.
- DRAIN OVER SEDIMENT TRAP

NOTES

CONSTRUCTION FENCING = APPROX. 846 LINEAR FEET

POND #1 AREA = 246 S.F. (DEPTH 1.5 FT.)
VOLUME = 369 C.F.

POND #2 AREA = 529 S.F. (DEPTH 1.5 FT.)
VOLUME = 793 C.F.

POND #3 AREA = 253 S.F. (DEPTH 1.5 FT.)
VOLUME = 377.5 C.F.

TOTAL POND VOLUME = 1,543.5 C.F.

COVER WITH GRAVEL
COVER REINFORCED WITH
OUTLET GRAVEL

F-13 TYPICAL POND DETAIL
NOT TO SCALE

PERMIT & CONSTRUCTION DRAWINGS

ALL REVISIONS, PLANS, SPECIFICATIONS AND OTHER DOCUMENTS PREPARED BY HOGAN GROUP INC. ARE HEREBY RELEASED AND SHALL REMAIN THE PROPERTY OF HOGAN GROUP INC.

HoganGroup

HOGAN GROUP INC. 800-885-1913 FAX 800-885-0094

PLANNERS • ENGINEERS • LANDSCAPERS

424 ACESIA DRIVE SANTA FE, NEW MEXICO 87501

Old Pecos Place Residential Compound

Coronado Rd. • Old Pecos Trail
Santa Fe, New Mexico

DRAWING NAME: **Grading & Drainage Plan**

DATE: 09-22-08

PROJECT #: 0522

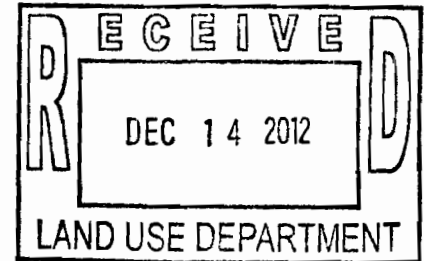
C1.2

Old Santa Fe Trail Neighborhood Association



December 12, 2012

Gary Friedman, Manager
Santa Fe County Board of Adjustment
c/o Daniel Esquibel, Land Use Senior Planner
200 Lincoln Avenue
Santa Fe, NM 87504



Subject: Proposed Special Use Permit – Mark Hogan Applicant
Re: Special Use Permit, Case Number 2012-121
OSFTNA Position & Conditions of Approval

Dear Mr. Friedman, Mr. Esquibel and
Members of the Santa Fe Board of Adjustment:

The Board of the Old Santa Fe Trail Neighborhood Association (OSFTNA) has reviewed the applicant's (Mark Hogan's) request for a Special Use Permit to allow office use at 994 Old Pecos Trail. Furthermore, representatives of the OSFTNA attended the ENN meeting held at the Unitarian Universalist Church, 107 West Barcelona. At the meeting, concerns of the OSFTNA as well as those of the Don Gaspar Neighborhood Association were stated regarding the request for a Special Use Permit and conditions of approval were suggested at this meeting, moderated by (Dan Esquibel, Case Manager) for the Board of Adjustment of the City of Santa Fe.

The Old Santa Fe Trail Neighborhood Association herewith submits an Association statement that represents the position of the Association Board and "Conditions of Approval" for the proposed requested Special Use Permit as submitted to the Santa Fe BOA.

The formal position of the Old Santa Fe Trail Neighborhood Association regarding the request by Mark Hogan for a Special Use Permit at 994 Old Pecos Trail as referenced above is as follows.

We hereby request the BOA to impose the following conditions on any approval of the subject requested Special Use Permit – Case # 2012-121.

All existing rules and regulations governing the Home Occupation Ordinance as stated in Chapter 14 of the Santa Fe Code which allows for Mr. Hogan's current legal use of the residence at 994 Old Pecos Trail as a Home Office for his Architectural Firm; remain applicable to any future use of the property as an office and be a condition of approval of the proposed Special Use Permit. The exception to the rules and conditions for use of the existing residence (as originally approved by City Council) as one of four units in a residential condominium complex is the requirement for the property owner to reside at the property; as Mr. Hogan currently does not reside nor does he intend to reside at the property; thus the need for a Special Use Permit.

We further state our concern with the approval of the requested Special Use Permit that others may attempt to use this as a precedent resulting in commercial sprawl in the existing primarily residential neighborhood at the entrance to Historic Santa Fe. The OSFTNA is not in favor of

commercial growth / sprawl in this primarily residential area. This position was stated when Mr. Hogan requested approval for his Home Occupation use of the same property several years ago.

In these difficult economic times we do not want to create a hardship for Mr. Hogan by requesting full denial of the requested Special Use Permit required for the continued legal use of this "residential" unit as his office in the future. However, we do believe it appropriate to request our "Conditions of Approval" as herein stated be included with BOA's recommendation of approval.

If indeed the stated conditions are not part of the Special Use Approval; the OSFTNA asks that the Special Use Request be denied and the subject unit remain residential as was the original use approved by City Council at the time of the project's initial approval.

At the ENN meeting held on Tuesday, October 2, 2012, Mr. Hogan stated that he did not have a problem with the approval of the requested Special Use Permit being subject to the requested conditions of approval as stated herein with the reassurance that he wanted to work with the neighborhood and their desires.

The existing character of this current predominately residential neighborhood in historic Santa Fe needs to be maintained and approval of the proposed request should not be a precedent for future commercial development.

Thank You in advance for including the foregoing "Position" of the OFTNA and stated "Conditions of Approval" in your review and possible approval of the requested Special Use Permit for 994 Old Pecos Trail.

Sincerely,

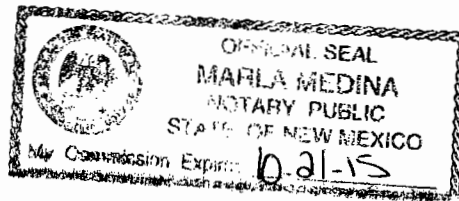


William PC Deuschle
President
For: OSFTNA

Subscribed and sworn to before me
this 14 day of December, 2012
By William Deuschle

Notary Public for the state of New
Mexico, county of Santa Fe.
My commission expires: 10-21-15

cc: file, Board of Directors OSFTNA
Gary Friedman, Manager
Santa Fe County Board of Adjustment
Daniel Esquibel, Land Use Senior Planner
Mark Hogan
Matt O'Reilly, Land Use Department Director
Mayor David Coss
City Manager Robert Romero
Councilor Rebecca Wurzberger
Councilor Peter Ives



CORDELIA THOMAS SNOW
425 East Coronado Road
Santa Fe, NM 87505

E-mail: ctsnow@cybermesa.com

December 18, 2012

Board of Adjustment
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501

Re: Case # 2012-121, 994 Old Pecos Trail Special Use Permit

Mr. Chairman and members of the board:

I apologize for not appearing in person before the committee, but because prior commitments prevent me from attending the meeting tonight I've asked Mark Hogan to read this letter for me.

As one of Mr. Hogan's nearest neighbors—I have lived in the rental property at 425 East Coronado Road immediately adjacent to 994 Old Pecos Trail to the west since 1997—I fully support his request to allow office use at 994 Old Pecos Trail. Given the location of the building with ample off-street parking, commercial use of the property would be less obtrusive than either the dry-cleaning establishment or liquor store across the street. Further, since Mr. Hogan is an architect, commercial use of his property will be confined to regular working hours Monday through Friday and will not create a public nuisance.

Thank you for allowing me to comment,

Sincerely,

/s/

Cordelia Thomas Snow

Exhibit "8"

City of Santa Fe, New Mexico

memo

DATE: December 14, 2012 for the December 18, 2012 Board of Adjustment Meeting

TO: Board of Adjustment

VIA: Matthew S. O'Reilly, P.E., Director, Land Use Department *MSO*
Tamara Baer, Planner Manager, Current Planning Division *TB*

FROM: Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division *DE*

ASHLEY FURNITURE SIGN VARIANCE

Case #2012-126. Ashley Furniture Sign Variance. Liaison Planning, Agent for Bill Johnson, Owner, requests a variance to Article 14-8-10(G)(8)(a)(d) and (e) SFCC regarding size, height, and setback to allow signage for a new retail establishment. The property is zoned General Commercial (C-2/PUD) and is located on the east side of Cerrillos Road, north of the Santa Fe Auto Park. (Dan Esquibel, Case Manager)

RECOMMENDATIONS

The applicant is requesting postponement to the January 14, 2012 BOA meeting to continue design modifications and to work with the Land Use Department on the variances requested.

II. EXHIBITS

Exhibit A - Applicant's Correspondence

ESQUIBEL, DANIEL A.

From: Jeremy Dreskin <jdreskin@studioswarch.com>
Sent: Thursday, December 13, 2012 5:23 PM
To: ESQUIBEL, DANIEL A.
Cc: Dolores I. Vigil
Subject: Ashley Furtiture SF - sign design

Dan-

I'm concerned that all of the parties required to make a decision on the sign design are not getting enough involvement in the process, due to the limited amount of time. Because this is a very important factor to the Owner, we would like to postpone our hearing until January, in order to have a better opportunity to work with City staff and provide a better understanding for the Owner, to produce a design that is acceptable to all necessary parties.

Please contact me if you need anything else.

Thank you,

Jeremy Dreskin, AIA
(AZ reg. #50355)

Studio Southwest Architects, Inc.
2101 Mountain Road, NW
Albuquerque, New Mexico/87104
505-843-9639 phone/505-843-9683 fax
jdreskin@studioswarch.com
www.studioswarch.com

