

**MINUTES OF THE**  
**SANTA FE COUNTY**  
**DEVELOPMENT REVIEW COMMITTEE**

**Santa Fe, New Mexico**

**April 21, 2011**

This meeting of the Santa Fe County Development Review Committee (CDRC) was called to order by Chair Maria DeAnda, on the above-cited date at approximately 4:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

**Members Present:**

Maria DeAnda, Chair  
Juan José Gonzales, Vice Chair  
Phil Anaya  
Frank Katz  
Susan Martin  
Ivan Pato  
Sef Valdez

**Member(s) Excused:**

[None]

**Staff Present:**

Jack Kolkmeier, Planning and Development Division Director  
Shelley Cobau, Building and Development Manager  
Wayne Dalton, Building and Development Services Supervisor  
Vicki Lucero, Residential Development Case Manager  
Jose Larrañaga, Commercial Development Case Manager  
Linda Trujillo, Assistant County Attorney  
Buster Patty, Fire Marshal  
Colleen Baker, Open Space and Trails

**III. APPROVAL OF AGENDA**

Shelly Cobau announced CDRC Case #V 11-508, the Santa Fe County sign variance, is being withdrawn from the agenda. With that change Member Martin moved to approve the agenda.

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Joseph Karnes asked to be heard about tabling one of the cases, Assistant Attorney Linda Trujillo suggested it would be more appropriate to hear Mr. Karnes request as part of the testimony.

Member Anaya seconded and the motion carried unanimously. [7-0]

#### **IV. APPROVAL OF MINUTES: March 17, 2011**

Member Katz moved to approve the March minutes as submitted. Member Martin seconded and the motion passed by unanimous [7-0] voice vote.

#### **VI. OLD BUSINESS**

The Tierra Bello Case remained tabled.

#### **VII. NEW BUSINESS**

The Teresa Martinez and Linda Finkelstein cases were both tabled.

- C. CDRC CASE # V 11-5070 Joya de Hondo Road Variance. Gray-Hall, LLC (Damion Terrell), Applicant, Jenkins/Gavin Design and Development, Agent, request a variance of Article XV, Section 6.E (Community College District Road Standards) of the County Land Development Code to allow an off-site Living Priority Lane with a Right-of-Way ranging in size from 20 to 30 feet and a driving surface of 16 feet for a portion of the roadway (approximately 640 feet) for the purpose of creating a four-lot Summary Review Subdivision on 43.8 acres. The property is located off of Old Galisteo Way, within Section 15, Township 16 North, Range 9 East within Commission District 4**

Vicki Lucero read the case caption and gave the following staff report:

“The subject property is an existing 43.8-acre tract located off of Old Galisteo Way which lies within the Community College District. The lot is currently vacant.

“On April, 14, 2009, the Applicant submitted an application to Santa Fe County to create a four-lot Summary Review Subdivision on the 43.8 acres. As part of this submittal the Applicant was proposing to construct a 20-foot wide driving surface on Old Galisteo Way from Los Tapias Lane to the entrance of his property. County Staff reviewed the application and determined that it met the requirements

of the County Land Development Code. The Land Use Administrator was prepared to approve the plat when several of the neighbors filed an appeal of his decision claiming that as a result of a court order filed in 1970 the road surface could not be increased beyond the existing 16-foot wide driving surface on Old Galisteo Way from Los Tapia Lane south for approximately 640 feet.

“Upon review of the court documents, County Staff determined that the easement precludes widening of the road as required by Code.

“Article XV, Section 6.E.7.a.iv of the County Land Development Code provides that a Living Priority Lane shall consist of a 34-foot right-of-way with two 10-foot driving lanes. The Applicant states that because of the Court Order they are unable to make improvements that meet County standards to that 640-foot portion of road where only a 20’ easement exists. Therefore, a variance is requested for the width of ROW and width of road surface (16 feet). In addition, the ROW outside of the 640-foot portion is a maximum of 30 feet however on this portion of the roadway the Applicant will be able to construct the required improvements for a 20-foot driving surface so a variance is only needed to allow a ROW width of 30 feet for a length of approximately 470 feet.

“Article II, Section 3.1 (Variances) of the County Code states, ‘Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other non-self-inflicted conditions or that these conditions would result in inhibiting in achievement of the purposes of the Code, an applicant may file a written request for a variance.’

“The Applicant states that the 16-foot wide road surface within the 20-foot access easement is non-self-inflicted. Additional access was previously available through the Santiago Subdivision to the north, however, in 1985 the Board of County Commissioners vacated these easements which eliminated the additional means of access to the subject parcel.

“This request was submitted to the County Transportation Planner for review. The County Transportation Planner states that the proposed project lies in the vicinity, east of the conceptual alignment of the proposed Southeast Connector. Planning Staff analyzed the potential for connectivity between Old Galisteo Way and the Southeast Connector, which should be constructed within the next ten years. Planning Staff supports the proposed four-lot summary review subdivision and requested variance and believes that any further division of the remaining acreage should require that traffic be diverted onto the proposed Southeast Connector.”

Ms. Lucero stated staff believes that the creation of four proposed lots will not significantly increase the traffic on Old Galisteo Way. As part of the proposed subdivision, the Applicant will construct an approved fire turn-around within the subject

property. At the current time there are no Fire Marshal approved turnarounds on Old Galisteo Way. The construction of the turnaround provided by this development would benefit the entire neighborhood.

It is staff's position that the variance requested is unavoidable due to the ruling in the Court Order that would prohibit the Applicant from doing the required road improvements on the access road. This could constitute an extraordinary hardship to the Applicant as stated in Article II, Section 3.1 of the Code. Therefore, staff recommends approval of the variance requested subject to the following condition:

1. Any further subdivision of land will require a secondary point of access. This shall be noted on the plat.

Ms. Lucero stated a letter of concern from a neighbor had also been submitted. *[Exhibit 1]*.

Referring to the Sam Hitt letter received in the previous days *[Exhibit 1]*, Member Gonzales asked if notice requirements had been met. Ms. Lucero said the letter refers to the Melton-Robinson property that was not sent notice. She said that according to the Assessor's Office, that property is not within 100 feet. She added there is a sign posted on the property that would be seen by those neighbors. Staff felt that was adequate notice.

Duly sworn, Jennifer Jenkins, agent for the applicant, gave a presentation demonstrating the location of the property in the Community College District, the proposed lots and the roadways in question. She stated the 43.8-acre property is part of a larger parcel purchased by Mr. Terrell's grandfather in 1933. She showed the section of Old Galisteo Way under adjudication, which the County Attorney determined should be retained in its current condition rather than bringing it up to County standards, thus necessitating the variance request. She said other sections of the road will be improved.

Chair DeAnda asked what the plans were for the 36-acre parcel. Ms. Jenkins said there are no current plans.

Ms. Jenkins stated there were historically two other points of access/easements which were vacated in 1985, creating a neighborhood with one way in/one way out. She outlined possible future connectors contemplated for the Community College District.

Jeremy Damion Terrell, under oath, reiterated that he inherited the land as part of his grandfather's original 160 acres. He described his personal history, including his family falling apart, his time in foster care in Los Alamos and ultimately his working his way through college, something almost unheard of among foster kids. He said he feels a responsibility to the land and wants to leave a legacy. He has worked on covenants that will minimize impact and plans to leave 42 percent of the land as open space.

Those wishing to speak about the case were placed under oath.

Under oath, Sam Hitt, 48 Old Galisteo Way, distributed a proposal for converting the property to open space. [A copy was not made available for the record.] There were

attempts to have COLTPAC purchase the property but this was not economically feasible. Mr. Hitt described his vision for the land as being in an agricultural conservation easement with parcels leased out to growers from the farmers' market. He said this is an important floodplain with major ruins and a wildlife corridor. He stressed food security is a goal of the new Sustainable Growth Plan. He said he would like to continue to work with Mr. Terrell to place the land in a conservation easement.

Referring to the planned roads, Mr. Hitt said they are far in the future. He said the current traffic situation is unsustainable and "a disaster". The road is maintained by the neighbors. Touching on the issue of hardship, he said he did not see any financial documents in the packet material; Mr. Terrell should be required to prove hardship beyond a reasonable doubt. Since the easement issue has always been well known it cannot be called a non-self-inflicted condition.

Mr. Hitt said the Tapias did not know about the meeting as there was no posting and no certified mailing. He said the section of roadway under discussion is perhaps half a mile away from the proposed development. In the past the Tapias, who have been on the land for generations, were notified.

Chair DeAnda asked if the appeals referred to in Exhibit 1 had been resolved. Mr. Hitt said they had been but the situation is still unclear. Chair DeAnda asked for clarification on the 100-foot notification provision and Ms. Lucero stated notice is required for all property owners within 100 feet of the subject property boundary, excluding roadways and rights-of-way. With the exception of Mr. Melton all owners were notified by certified mail. The Tapia property is not within 100 feet.

Ms. Jenkins indicated when the original permit was requested the Tapias were notified because there would be construction activity adjacent to the land. In this case the intent is to leave that road alone.

Member Anaya asked if the owner had agreed to sell the land for open space. Mr. Hitt said a price was not agreed upon and the County did not have the funds to make the purchase. Member Anaya asked if Mr. Hitt's road would be affected, and he said he did not know. Ms. Jenkins said necessary improvements will be made to the remainder of Old Galisteo Way to ensure a minimum driving surface.

Member Katz asked about the extent of the property to be designated open space under Mr. Hitt's plan and Mr. Hitt said it was the entire property. He added the certified letter did not mention anything about road improvements.

Shelley Cobau stated detailed engineering plans are not required until after a variance is approved. Mr. Hitt said two variances are under consideration – one for 640 feet and another for 470 feet. The neighbors know nothing of the 470-foot variance request.

Member Valdez asked to see a copy of the certified letter.

In response to questions by Member Pato, Mr. Hitt said he has lived on his

property for 24 year and his house has been substantially improved. Prior to that the land was open space.

Returning to the notice issue, Mr. Hitt said the Melton land touches the Terrell property and this is the third time they have not been notified. Ms. Lucero indicated according to the Assessor's records that property is 280 feet away from the subject property.

Member Valdez asked when the new road was scheduled for. Land Use Administrator Jack Kolkmeier said staff is currently working on the transportation plan. He expects the southeast connector will be built within the next three to five years. Regarding the notice issue, Mr. Kolkmeier says the Assessor's map does not show the driveway access as being part of the Melton-Robinson property, and they rely on the Assessor's information.

Mr. Hitt provided a copy of the Melton-Robinson plat showing the driveway access as deeded land as required by the County.

Ms. Jenkins noted that applicants are not required to do research on the plats and said she would be happy to add Melton and Robinson to their mailing list.

Duly sworn, James Molkris, 19-year resident of 27 Old Galisteo Way asked how many of the committee had driven on Old Galisteo Way. He referred to the blind corners, creeping vegetation, and dips in the dirt/caliche road. He said if there is an oncoming vehicle one must stop to get by. He said the area is quiet and did not want to see any collector roads coming in, as this would make the area less safe. He said he was suspicious of the scale of the map provided. He doubted four lots would constitute a legacy for Mr. Terrell and asked the committee to consider the maximum potential for development and the impact it could have on the residents' quality of life. He pointed out there has been a trend toward dividing the lots into smaller pieces. He added everyone lives in a house that was once on open space.

Ken Mock, duly sworn, 60 Old Galisteo Way, explained he grades and plows the road for the Old Galisteo Way Road Association. He said the road is fine if people go slow. He said if there was a gate at the west it would alleviate the problem quite a bit without letting in crime.

Carl Tapia, under oath, said he owns five acres in the area. His grandfather purchased the property at great sacrifice, and his father lived on the property for 80 years. He has witnessed people using Old Galisteo Way for 59 years. He suspected there would be further subdivision after these lots are approved which will lead to more and more traffic.

Duly sworn, Greg Tapia, 34 Los Tapias Lane clarified that Old Galisteo Way is not a County road and never has been, since it runs through 640 feet of Tapia property. "We've given up a lot in our lifetimes...and we're not willing to give any more." He said

the traffic was now obscene and there was no reason to add more. He believed a connector road would bring in vandals, and that Mr. Terrell was trying to find loopholes.

A resident of the area for over 32 years, Tony Tapia, under oath, expressed her concern about what would be done with the 36-acre lot. She is worried about the aquifer and the road conditions. There are parts of the road where it is difficult for cars to pass safely and it would be difficult to get emergency vehicles in. Four more lots would affect the water and the traffic. "As the County knows, we're not going to give an inch on either side."

Duly sworn, Carl Tapia stated he was born and raised in the area and opposes the subdivision because it would create crime, dust and litter, and would affect the water table. If the subdivision proceeds his five-year old daughter would not be able to ride her bike on the road.

Under oath, Manual Pinon, a member of the Tapia family, said he has small children and it now unsafe due to people driving out of control. He said his shop has recently been broken into twice and the new lots would make it even more unsafe. He believed it would not stop with four lots and recommended that Mr. Terrell find other access.

Heidi Vittiger, duly sworn, from Rabbit Road said Old Galisteo Road is her favorite place to bike-ride. She asked what the current road width requirement was.

Ms. Cobau first reminded the audience that the question under discussion was not density or water availability but a road variance. The code currently requires a 20-foot driving surface for a local lane, the definition of which is based on traffic counts. She indicated the upcoming code contemplates narrower road standards to promote a village-type feel. This will call for a 14-foot driving surface for purposes of traffic-calming. She added this is the type of variance that is allowed by the code.

Ms. Vittiger said, morally speaking this is a no-brainer. As she understood it he proceeded without solving the access problem and is now claiming a hardship. "Well, whose fault is that?" She wondered if the new residents would chip in for road maintenance. She said the proposal pitted one man against a whole community that had lived in the area for a long time. "Either you can make a far-sighted, moral, eco-savvy, sustainable decision here, or you can accommodate this one man in his as he called it, vision." She said there would be grave repercussions for the people on the road.

Ms. Jenkins noted that the application is conditioned on the fact that any division of the fourth lot would require alternative access to the west, probably via the Southwest Connector. The Greer-Girard Family was contacted regarding securing access now but it was not financially feasible, and other means of access were pursued.

Regarding the road, she reiterated that where necessary and possible they will be improving the road. The new landowners will be required to contribute to road maintenance. While no one wants to see more traffic in their neighborhood she doubted three new lots would make a big difference. "Change is hard." She agreed it was a moral

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issue in that people are allowed to develop their property within the limitations set forth in the code. At least 20 new lots have been created recently and none were required to come in for a variance. She pointed out that on the original 160-acre Tapia property just south of I-25 there are now 48 lots.

Member Katz asked about the original access to the 40 acres. Ms. Jenkins showed the historic route of Old Galisteo Way before it was realigned. Potential access easements through the Santiago Subdivision were vacated.

Member Katz asked if the new access would still have to go through the Greer property. Ms. Jenkins said the County will be involved in future negotiations.

Greg Tapia clarified that when Mr. Terrell's grandfather purchased his property it was landlocked and as a neighborly gesture, Filiberto Tapia granted an easement through his property, which resulted in his family being taken advantage of.

The public hearing was closed.

Member Anaya moved to approve the variance in Case #V 11-5070. Member Pato seconded and the motion carried 6-0 with Chair DeAnda abstaining. The motion was remade to include the condition.

Attorney Trujillo clarified that substantial compliance with notice requirements is called for and she recommended the motion include that the Melton-Robinson property owners be notified of any future meetings.

Member Anaya rescinded his previous motion and restated it to read: Approval of CDRC Case 11-5070 to include recommendations by staff. Further subdivisions of the land require secondary points of access, to be included on all plats, and also to include notice to all landowners specifically including Melton and Robinson. Member Pato seconded and the motion passed by unanimous 6-0 voice vote with Chair DeAnda abstaining.

Ms. Lucero stated the case will be heard by the BCC in June or July.

**D. CDRC CASE # V 11-5030 Ivan Salcido Variance. Ivan Salcido, Applicant, requests a variance of Article II, Section 4.3.2c (Family Proper) of the Land Development Code to allow a Family Transfer Land Division of 2.8 acres into two 1.4-acre lots from sibling to sibling. The property is located at 17 Corral Blanco Road off the East Frontage Road, South of the N.M. 599/I-25 Intersection, within Section 4, Township 15 North, Range 8 East, within Commission District 5**

Wayne Dalton gave the following presentation:

"The Applicant requests a variance of Article II, Section 4.3.2c of the Land Development Code in order to divide 2.8 acres into two 1.4-acre lots. The Applicant states he would convey 1.4 acres to his brother who originally helped him purchase the



property. The Applicant claims, that his brother and his brother's family have been residing with him for nearly eight years and it is time his brother resides in his own home. The division will also enable his brother to leave his children something in the future.

"There is currently a residence and conventional septic system on the property. The property is served by an off-site shared well. The property is located within the Basin Hydrologic Zone. Article III, Section 10 of the Land Development Code states that the minimum lot size in this Hydrologic area is 10 acres and can be reduced to 2.5 acres with water restrictions. Lot size may be further reduced to 1.25 acres via Small Lot Family Transfer Article II, Section 4.3.5. The property has been in lawful possession of the Family Proper for over five years, therefore the Applicant can apply for a Small Lot Family Transfer if the proposed variance is approved by the Board of County Commissioners. Family Proper is described in Article II, Section 4.3.2c, as 'lineal relations up to and including the third degree, i.e., grandparent, parent, child. Step relations shall count as natural relationships so long as the step relationship is legally existent at the time of the transfer, including legal guardians who have performed the function of grandparent or parent to the person who is receiving the transferred lot.'"

Mr. Dalton gave the following recommendation: Staff has reviewed this Application and has found the following facts not to support this submittal: Article II, Section 4.3.2c of the Land Development Code states: lineal relations up to and including the third degree, i.e., grandparent, parent, child, lineal in definition is the direct line of descent from an ancestor or hereditary; the Applicant is requesting the variance to allow for a Small Lot Family Transfer Land Division to be deeded from sibling to sibling, which is not considered a line of descent per Code; the purpose of the Code would be nullified; the Applicant has not justified a hardship which is contemplated by the Code therefore staff recommends denial of the Applicant's request.

If the decision of the CDRC is to recommend approval, staff recommends the following conditions be imposed:

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for both lots this shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. The Applicant shall enter into a shared well agreement with the owners of Tract B and Tract C.
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
4. No further division of either tract shall be permitted. This shall be noted on the Plat.
5. The Applicant shall connect to the County Water System when it becomes available within 200 feet of the property line.

Duly sworn, Ivan Salcido, 17 Corral Blanco Road, stated when he purchased his property he was told he could split his property in five years. Both he and his brother bought the property but at the time his brother didn't have papers and the land could not

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be put in his name. His brother got his papers in order and they want to have the property put in both names and his brother can build a home on the second lot. (Mr. Larrañaga translated on behalf of the applicant.)

There was no one in the audience wishing to speak about this case.

Member Katz asked if they would be allowed to build a second dwelling or guesthouse on the property as it is now. Mr. Dalton said they would not.

Member Anaya asked if the current documents say he can split the property, and Mr. Dalton said there is nothing on the plat of survey to that effect.

Referring to the well agreement, Member Gonzales asked if the applicant understood that. Mr. Dalton said they translated the agreement and the conditions of approval, so he is aware of them. Member Gonzales asked if they were aware only one house was allowed per lot. Mr. Dalton said that condition could be added. Condition #4 specifies no further division is allowed. Member Gonzales asked when County water would be available in that area and Mr. Dalton speculated it could be ten or twenty years.

Member Pato moved to approve Case #V 11-5030 with conditions and Member Valdez seconded. The motion passed by unanimous [7-0] voice vote.

- E. CDRC CASE # V 11-5090 Suzanne Teng Variance. Suzanne Teng, Applicant, Santa Fe County Open Space and Trails, (Colleen Baker), Agent, requests a variance of Ordinance # 2007-2 (Village of Agua Fria Zoning District), Section 10.6 to allow a land division of 2.55 acres into two lots; one lot consisting of 1.51 acres and one lot consisting of 1.04 acres and to allow two dwelling units on 1.51 acres. The property is located at 1673 Camino McMillin, West of Siler Road, within Section 32, Township 17 North, Range 9 East, (Commission District 2)**

Mr. Dalton read the caption and gave the staff report as follows:

“The Applicant requests a variance of Ordinance # 2007-2, Village of Agua Fria Zoning District, Section 10.6 to allow a land division of 2.55 acres into two lots; one lot consisting of 1.51 acres, Lot 5-A, and one lot consisting of 1.04 acres, Lot 5-B, and to allow two existing dwelling units on Lot 5-A. There is currently a residence, guesthouse, RV garage, a detached two-car garage and two conventional septic systems on the property. The property is served by an on-site well which serves the two existing dwelling units. The property is located within the Village of Agua Fria Low Density Urban Zone (AFLDUZ). Ordinance # 2007-2 states the minimum lot size in this area is 2.5 acres per dwelling unit. Lot size can be reduced to one acre with community water or sewer and can be further reduced to 0.5 acres with both community water and sewer.

“The proposed land division would divide the current 2.55-acre parcel. The Applicant would retain 1.51 acres, Lot 5-A, with all existing structures and the Santa Fe County Open Space and Trails Program would purchase the remaining 1.04 acres, Lot 5-B, encompassing the Santa Fe River floodplain.

“The Applicant states the proposed land division is solely for the purpose of creating public open space along the Santa Fe River. The land division will not be recorded until and unless the purchase of Lot 5-B is completed by the County. The proposed (Lot 5-B) will be used exclusively for open space, river restoration, habitat enhancements, public trails and related amenities such as benches and drinking fountains. There is also a historic windmill on Lot 5-B that the Open Space and Trails Program plans to improve and maintain.

“The Applicant also states that the Open Space and Trails Program is working to implement a long-range plan to acquire land along the Santa Fe River in order to create a greenway of public open space and trails from downtown Santa Fe to the Waste Water Treatment Plant. The proposed land division is necessary for the County to purchase this portion of the river.”

Mr. Dalton indicated staff has reviewed this Application and has found the following facts to support this submittal: Ordinance # 2007-2 states the density in this area is 2.5 acres per dwelling unit; however, density on this property was established prior to the adoption of Ordinance # 2007-2; density in this area prior to the adoption of Ordinance # 2007-2 was 0.75 acres per dwelling unit; the land division would preserve distinctive natural features such as the Santa Fe River, and primary open space corridors; and clustering of structures is encouraged to preserve natural open space areas as stipulated within Ordinance # 2007-2; therefore staff recommends approval of the Applicant’s request subject to the following conditions:

1. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
2. Water use shall be restricted to 0.50 acre-feet per year for Lot 5-A. Water meters shall be installed on both homes this shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk’s Office.
3. No further division of either tract shall be permitted. This shall be noted on the Plat.
4. Prior to Plat recordation, the Applicant shall submit documentation from the City of Santa Fe granting an ingress and egress easement across the City owned parcel in order to provide legal access to Lot 5-A.
5. Lot 5-B shall be designated as open space, development other than open space amenities on this lot is prohibited; this shall be noted on the Plat.
6. The Applicant shall connect to community water and sewer when it becomes available within 200 feet of the property line.
7. The Applicant shall provide updated liquid waste permits from the New Mexico Environment Department prior to Plat recordation.

Colleen Baker, Program Manager for Santa Fe County Open Space, under oath, stated she was representing the landowner. She said the purpose of the lots split is to help accomplish the long-range plan of having a public greenway of open space and trails along the Santa Fe River. The landowner is willing to sell a portion of her property which can only be done through a lot split.

Member Gonzales asked how much of the trail is already in existence. Ms. Baker said the City of Santa Fe has nearly completed the portion from downtown to Frenchie's Field. Some county sections have the river restoration completed but not the trail. In the county portion approximately two mile-long sections are completed with four miles to go, then there is a further section from 599 to the wastewater treatment plant. She estimated there were 40 landowners affected in the stretch from Siler Road to San Ysidro Crossing, and another five or six larger landowners in the southern portion. She said there are multiple approaches to acquiring the property. Where substantial restoration has to be done it is more appropriate to purchase the land rather than having it in a conservation easement. She explained a \$3.5 million bond just sold and that will go a long way toward completing the project.

Chair DeAnda asked if all of the landowners mentioned are in the county. Ms. Baker said they are currently, but some will be annexed. Those in the Village of Agua Fria will remain in the county. Coordination with the City will be required.

There was no one in the audience wishing to speak and the public hearing was closed.

Member Anaya asked if a joint powers agreement between the City and County was required for this project. Attorney Trujillo said no building was occurring; this was only a variance for a lot split.

Member Martin moved to approve Case #V 11-5090 with the seven conditions from staff. Member Pato seconded and the motion carried unanimously [7-0].

[The committee recessed from 6:15 to 6:20.]

**G. CDRC CASE # APP 10-5270 Windmill Water Business License Appeal. Leon And Diana Richter, Appellants, Joseph M. Karnes (Sommer, Karnes & Associates, LLP), Agent, Request an Appeal of the Land Use Administrators Decision to Deny a Modification of a Home Occupation Business License. The Property is Located at 2042 Highway 333 in Edgewood, within Sections 34 & 35 Township 17 North, Range 7 East, within Commission District 3**

Jose Larrañaga read the caption and gave the staff report as follows:

“On December 21, 1995, the Land Use Administrator approved a home occupation business license, subject to conditions, for Windmill Water, Inc. Prior to approval of the home occupation business license it was determined that the

Application met requirements set forth in Ordinance 1992-3, Article III, Section 3 and Article II, Section 2.3.1.a.

“On March 2, 2010, a notice of violation was issued to Windmill Water, Inc. for exceeding the home occupation business license criteria. On May 6, 2010, Leon and Diana Richter submitted a letter of intent and documents requesting a modification of the existing home occupation business license.

“On May 18, 2010, the Land Use Administrator denied the request by Windmill Water Inc. for modification of the existing home occupation based on the following criteria: a discrepancy was found between the site plan submitted by the applicant, which illustrates the square footage of the residence as 3,269 square feet and the Santa Fe County Assessors summary of improvements, which describes the square footage of the residence as being 2,366 square feet; a 2008 aerial photo shows vehicles, trailers and trucks that are not illustrated on the site plan outdoor storage, customer and employee parking used by a business shall be included in calculating the area used by a business as a home occupation; the outdoor storage, parking and the square footage of the structures being used for the business clearly exceeds fifty percent of the square footage of the residence; Land Use Policy states: ‘a home occupation may use up to 50 percent of the square footage of the residence’ a twenty four hour self serve facility is utilized by the business; Land Use Policy states: ‘a home occupation will be allowed eight appointments per day’ residential zoning allows for a home occupation business license which shall be clearly incidental and subordinate to its use for residential purposes by its occupants; staff’s interpretation of Article III, Section 3.2 of the Code is that a twenty-four hour self serve water vending facility, the traffic created by this venue and the square footage of the structures and outdoor storage used by the current business practice is not considered subordinate and/or incidental to the use of the residential property.

“In a letter, dated May 26, 2010, the Agent on behalf of the Appellants requested an appeal of the LUA decision, to deny the modification of the existing home occupation business license, to the CDRC. The Appellants base the appeal on criteria set forth in Ordinance No. 2002-2. This ordinance is exclusive to the San Pedro Contemporary Community Zoning District. The property, on which Windmill Water is located, is not within the boundaries of this ordinance, therefore the criteria set forth in Ordinance 2002-2, referenced in the appeal letter, does not apply.

“The Appellants state: ‘the decision references a Land use Policy stating a home occupation may use up to 50 percent of the square footage of the residence and concludes that the existing use exceeds the allowable square footage.’

“Staff response: as a condition of approval, of the home occupation business license issued in 1995, the Appellants acknowledged the use of 50 percent of the square footage of the residence for the business.

“The Appellants state: ‘the decision also takes issue with the Applicant’s representation of the square footage of the residence and the decision does not contest the Applicant’s representation that the use of existing structures in conjunction with operation of the business occupies 1,462 square feet.’

“Staff response: a discrepancy was found between the site plan submitted by the Appellants, which illustrates the square footage of the residence as 3,269 square feet and the Santa Fe County Assessor’s summary of improvements, which describes the square footage of the residence as being 2,366 square feet; the Appellants state the operation of the business occupies 1,462 square feet, which exceeds 50 percent of the square footage of the 2,366 square foot residence (1,183 square feet); a 2008 aerial photo shows vehicles, trailers and trucks that are not illustrated on the site plan; outdoor storage, customer and employee parking used by a business shall be included in calculating the area used by a business as a home occupation.

“The Appellants state: ‘the decision states that the 24 hour self serve water vending facility, the traffic created by this venue and the square footage of the structures and outdoor storage used by the current business practice would not be considered subordinate and/or incidental to the residential use; the Code does not contain any requirement or limitation on traffic generation; the appearance of such structures if used for residential use would not be any different from the appearance in relation to the business.’

“Staff response: an increase in traffic to a residential property is not considered incidental to the residential use; a 24-hour self serve water vending facility on a residential property is not considered subordinate to the residential use; there are three structures on the property that were not sited on nor approved with the original home occupation business registration, the 50 square foot self serve structure, the 224 square foot job trailer and the 1,188 square foot plant structure, these structures have an impact on the residential appearance of the property; the Appellants have failed to produce documentation for permits for these structures; staff has not found any record of application for development permits for these structures; the residential appearance has been altered in direct relation with the business with the addition of these structures.

“Article III, Section 3.2.2 states: ‘The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 50 percent of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation.’

“Article III, Section 3.2.3 states: ‘There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation.’

“Ordinance 1992-3, Section 4 states: ‘Before a business license is granted, the County Land Use Administrator may review the Application and shall inform the applicant of any further requirements pursuant to life, health, welfare, and safety considerations. If after review of the business registration or license application, it is determined that a development permit, as defined in the Santa Fe County Land Development Code is also required, the registration or license shall not be issued until the development permit is obtained.’

“Article II, Section 2.3.1.a states: ‘The Code Administrator may approve or deny development permit applications for the following types of development without referring the application to the County Development Review Committee or the Board.’ The following types of development may be approved administratively; business license.

“Article II, Section 2.3.4.b states: ‘Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five working days of the date of the Code Administrator’s decision. The County Development Review Committee shall hear the appeal within sixty calendar days of the date the appeal is filed. The County Development Review Committee shall make and file its decision approving or disapproving the application or approving the application with conditions or modifications.’”

Mr. Larrañaga stated the following facts support the Land Use Administrator’s decision to deny the modification of the home occupation business license for Windmill Water, Inc.: as a condition of approval, of the home occupation business license issued in 1995, the Appellants acknowledged the use of 50 percent of the square footage of the residence for the business; outdoor storage, customer and employee parking used by a business shall be included in calculating the area used by a business as a home occupation; the outdoor storage, parking and the square footage of the structures being used for the business clearly exceeds 50 percent of the square footage of the residence; the residential appearance has been altered in direct relation with the business; a twenty-four hour self-serve water vending facility, the traffic created by this venue and the square footage of the structures and outdoor storage used by the current business practice is not considered subordinate and/or incidental to the use of the residential property; after review of the proposed modification of the business license it is determined that a development permit, as defined in the Santa Fe County Land Development Code, is required.

The Land Use Administrator’s interpretation of the Land Development Code and applicable ordinances has established findings that Windmill Water Inc. is not in compliance with Ordinance 1992-3 Business Registration and Licensing, Article III, Section 3.2.2 and 3.2.3 Home Occupations, and Article II, Section 2 Development Permits. In support of the Land Use Administrators decision staff recommends denial of the Appellants request and solicits the support of the County Development Review Committee to deny the appeal.

Member Gonzales asked if when they initially applied in 1995 they were doing anything that didn't qualify as a home occupation. Mr. Larrañaga referred to the initial application in the packet. At that time they submitted a floor plan which has been added to since that time. Member Gonzales asked what advice they were given initially, and Mr. Larrañaga said using less than 50 percent of the residence qualifies as a home occupation, however, if they came in today he would look at such things as water use, parking, etc. The County has guidelines on what is incidental and subordinate to residential use. Member Gonzales asked how the discrepancy in the size of the buildings arise. Mr. Larrañaga said he went out with the code enforcement officer and he checked with the Assessor's office, who had measured the residence. He added there is nothing in the code regarding a modification to a home occupation permit.

Member Anaya verified that at the time they applied for the permit Edgewood was not incorporated and that renewals of home occupation licenses are normally mailed in automatically. Member Anaya asked how Windmill Water would find out about any changes to the rules. Mr. Larrañaga said had they come in for permits for the additional structures they would have been apprised of non-compliance. As it happened the County responded to a complaint.

Member Anaya commended the degree of documentation in the file. He noted the owners are well respected in the community. He recommended there be greater clarification in the new code and speculated many residents were in violation of the rules. Member Anaya stated he would support this business.

Member Valdez asked if a certain percentage of growth was allowed home occupations. Mr. Larrañaga stated home occupations are normally very small and stay that way. In cases where they grow substantially they can get a commercial license or do a master plan and rezone.

Chair DeAnda asked about measures for coming into compliance and Mr. Larrañaga stated he outlined the options available to the applicant. Variances are rarely granted since a variance runs with the property. He listed the structures that are not permitted.

Joseph Karnes, legal counsel for the applicants, explained the violation was discovered last May and the appeal filed shortly thereafter. In the interim the Town of Edgewood annexed the property which would give them jurisdiction. Subsequently the Municipal Boundary Commission filed suit. District Court upheld the annexation and the Municipal Boundary Commission appealed. The briefing is substantially complete and should be decided soon. He understood the matter would be tabled until jurisdiction was decided.

Ms. Trujillo indicated that the appeal of the County's decision is supposed to be heard within 60 days, after being filed May 26, 2010 and she had heard nothing about a waiver of the time period. She clarified that the Boundary Commission denied the annexation, and this was overturned by the District Court. It is now in Appellate Court.



She said Santa Fe County's position is that the County continues to provide road maintenance, fire and police services. "There has been no passing of the baton."

Chair DeAnda said she was disinclined to table due to the length of time passed.

Member Katz asked how the County would feel about a delay pending a decision. Mr. Larrañaga said there is a notice of violation on the property, and there are a number of other properties with violations in the annexation area.

Mr. Karnes reiterated that in January the County was willing to wait for the appeal.

Member Katz moved to table pending a decision from the Court of Appeals. Member Pato seconded and the motion carried 4-3 with Members Katz, Pato, Gonzalez and Martin voting in favor and Members Valdez, Anaya and DeAnda voting against.

Ms. Trujillo said it is generally preferable to have given the members of the audience a chance to be heard prior to tabling.

#### **VIII. PETITION FROM THE FLOOR**

Thomas George from Edgewood said he had come to speak to the Windmill Water case which has been tabled three times in the past. He stated he owns a business next door to the applicant and is in compliance with the law and has been subject to harassment from the applicant. Citizens have a responsibility to find out about the law.

Member Anaya stated changes need to be made to the code and all of Route 66 should be commercial. He apologized for the audience not being able to speak.

#### **VIII. COMMUNICATIONS FROM THE ATTORNEY**

None were presented.

#### **IX. COMMUNICATIONS FROM STAFF**

The next meeting was scheduled for May 19, 2011.

**X. ADJOURNMENT**

Having completed the agenda and with no further business to come before this Committee, Chair DeAnda declared this meeting adjourned at approximately 7:10 p.m.



COUNTY CLERK

Approved by:

*Maria DeAnda*

Maria DeAnda, Chair  
CDRC

5/19/11

TEST TO:  
*Valerie Espinoza* by vt

Before me, this \_\_\_ day of \_\_\_\_\_, 2011.

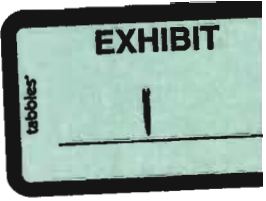
My Commission Expires: \_\_\_\_\_  
Notary Public

Submitted by:  
*Debbie Doyle*  
Debbie Doyle, Wordswork



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss  
CDRC MINUTES  
PAGES: 21  
I Hereby Certify That This Instrument Was Filed for  
Record On The 23RD Day Of May, 2011 at 11:12:00 AM  
And Was Duly Recorded as Instrument # 1635587  
Of The Records Of Santa Fe County  
Witness My Hand And Seal Of Office  
Valerie Espinoza  
County Clerk, Santa Fe, NM  
Deputy *Marcelle*

SEC. CLERK RECORDED 05/23/2011



Sam Hitt  
48 Old Galisteo Way  
Santa Fe, New Mexico  
505-438-1057  
sam@wildwatershed.org

April 20, 2011

Mr. Jack Kolkmeier  
Santa Fe County Land Use Administrator  
102 Grant Avenue  
Santa Fe, New Mexico 87504-0276

Dear Mr. Kolkmeier,

This letter documents my concerns with CDRC case number V 11-5070 Joya de Hondo Road Variance. As shown below, proper notice has not been posted, interested parties have not been notified via certified letters and the extent of the variance request is not fully disclosed.

Applicant Grey-Hall LLC (Mr. Damion Terrell) is requesting a variance of Article XV, Section 6.E (Community College District Road Standards) of the County Land Development Code to allow less than the required driving surface for a portion of Old Galisteo Way for the purpose of creating a 4-lot Summary Review Subdivision on 43.8 acres. The property is within Commission District 4 Section 15, Township 16 North, Range 9 East.

First, the Applicant failed to send certified letters to all property owners within one hundred feet of subject property. The County Code Section 2.4.2a.ii requires applicants for variance to mail certified letters to all property owner within one hundred feet of subject property.

A certified letter was not mailed to Keith Melton and Carol Robinson at 54 Old Galisteo Way. Their property is directly adjacent and within one hundred feet of the proposed Joya de Hondo development. (see attached plat).

Second, notice was not posted nor were certified letters<sup>1</sup> sent to the property owners of the 640 foot section of the roadway that is subject of this variance request. As a result, Mr. Greg Tapia and his relatives were not informed of the April 21 CDRC hearing affecting their property. This clearly violates County Code Section 2.3.2c requiring

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<sup>1</sup> County attorney Shelley Cobau had earlier directed Applicant to notify the Tapia family via certified letters concerning road activities on their property (see attached April 14, 2009 letter from Jennifer Jenkins to Emilio Gonzales, p. 2).

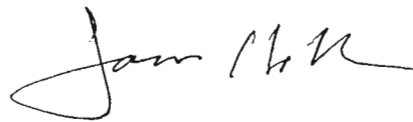
REC CLERK RECORDED 05/23/2011

variance applications be prominently posted to give reasonable notice to interested persons.

Third, the staff memorandum for CDRC case number V 11-5070 discusses another variance of approximately 470 feet of the roadway to allow a right-of-way width of 30 feet. This variance is not mention in the notice letter we received or the notice posted across from our house at 48 Old Galisteo Way.

For these reasons, this variance hearing before the CDRC must be postponed until proper notice is posted, interested parties notified via certified letters and the extent of the variance request fully disclosed.

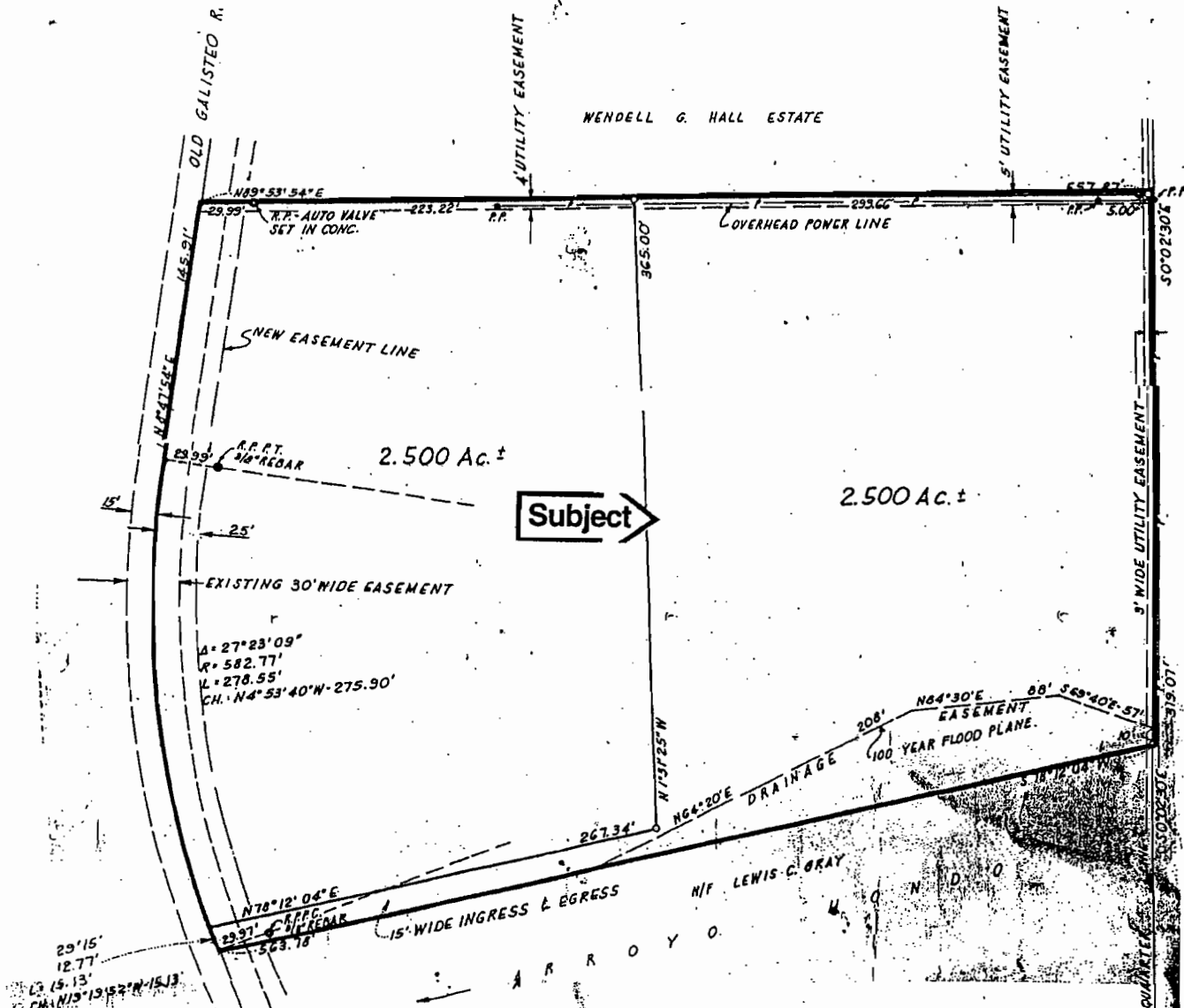
Sincerely,

A handwritten signature in black ink, appearing to read "Sam Hitt", with a stylized flourish at the end.

Sam Hitt

cc: Honorable Commissioner Kathy Holian  
Vicky Lucero, Residential Development Case Manager  
Old Galisteo Way Road Association members

WENDELL G. HALL ESTATE



Subject

2.500 Ac.±

2.500 Ac.±

$A = 27^{\circ}23'09''$   
 $R = 582.77'$   
 $L = 278.55'$   
 $CH. N4^{\circ}53'40''N-275.90'$

- INDICATES POINTS FOUND & USED THIS SURVEY
- INDICATES 1/2" REBAR SET THIS SURVEY
- INDICATES NAIL SET IN ROADWAY

AFFADAVIT:

THE PROPOSED SUBDIVISION LIES WITHIN THE PLANNING OR PLATTING JURISDICTION OF THE CITY OF SANTA FE.

*Keith Melton*  
 KEITH MELTON

STATE OF NEW MEXICO } SS  
 COUNTY OF SANTA FE }

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 25<sup>th</sup> DAY OF April, 1978.

MY COMMISSION EXPIRES 9-29-80 *Gleason W. Ricketts*  
 NOTARY PUBLIC

CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT IS AN ACCURATE DELINEATION OF A SURVEY DONE BY ME ON 7 APRIL 1978.

LANDMARK SURVEYS

*James D. Medrano*  
 JAMES D. MEDRANO  
 N.M.L.S. NO 5217

COUNTY RECORDS 15/23/2011