

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

Santa Fe, New Mexico

October 15, 2009

This regularly scheduled meeting of the Santa Fe County Development Review Committee (CDRC) was called to order by Chair Jon Paul Romero, on the above-cited date at approximately 4:05 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:

Jon Paul Romero, Chairman
Susan Martin, Vice Chair
Don Dayton
Maria DeAnda
Charlie Gonzales [departs from 6:50 - 7:40]
Juan José Gonzales
Jim Salazar

Member(s) Excused:

None

Staff Present:

Shelley Cobau, County Building and Development Services Manager
Jack Kolkmeier, Land Use Administrator
Rachel Brown, Deputy County Attorney
Ted Apodaca, Assistant County Attorney
Jose Larrañaga, Commercial Development Case Manager
John Michael Salazar, Development Review Team Leader
Wayne Dalton, Building and Development Services Supervisor

Elected Officials Present:

Kathy Holian, Commissioner District 4
Jeff Ludwig, County Surveyor

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

CDRC MINUTES
PAGES: 85

I Hereby Certify That This Instrument Was Filed for
Record On The 1ST Day Of December, 2009 at 11:03:33 AM
And Was Duly Recorded as Instrument # 1584625
Of The Records Of Santa Fe County



Witness My Hand And Seal Of Office

Deputy *J. Salazar* Valerie Espinoza
County Clerk, Santa Fe, NM

III. APPROVAL OF AGENDA

Ms. Cobau requested the following changes:

New Business Items

- Table item C, CDRC MIS 09-5390, Malczewski
- Move item F, CDRC APP 09-5380 Mine Shaft to B
- Move item G, CDRC APP 09-5210 Saddleback Ranch Estates to A

Member Martin moved to approve the agenda as amended and Member C. Gonzales seconded. The motion carried unanimously.

IV. APPROVAL OF MINUTES: September 17, 2009

Member Martin moved approval of the minutes as published and Member Dayton seconded. The motion passed by unanimous voice vote.

V. OLD BUSINESS

CDRC CASE # V09-5160 Hume Variance. Jane Hume, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 5.00 acres into two lots. The property is located at 48 Apache Plume Road, within Section 29, Township 16 North, Range 10 East, (Commission District 4)

John Michael Salazar read the caption and said the case was heard at the CDRC's September meeting resulting in a tie vote. The case is being heard this evening for deliberation and vote only. Mr. J.M. Salazar provided a summary of the case as follows:

"Jane Hume, applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 5.00 acres into two lots. Article III, Section 10 states the minimum lot size in the area 20 acres per dwelling unit; lot size may be reduced to 5.00 acres with community water. The applicant requests this variance so that she may leave property to her son.

"There are currently two homes and a studio on the property. The applicant occupies one residence with a studio, and her son occupies the second residence. The property is served by Sunlit Hills Water System and a second meter is available should the variance be granted."

Mr. J.M. Salazar indicated that one of two living dwellings is a mobile home and was erroneously permitted by staff. The studio structure is used as a studio and not a dwelling unit.

Member DeAnda moved to deny the variance request based on inadequate lot size. Member Dayton seconded. The motion failed by majority [3-4] voice vote.

Member Salazar moved to approve the variance request for V 09-5160. The motion was seconded by Member C. Gonzales. The motion passed by majority [4-3] voice vote as follows: Voting for were members Romero, JJ Gonzales, C. Gonzales and Salazar; voting against were members Dayton, Martin and DeAnda.

Mr. J.M. Salazar said the CDRC's recommendation will be forwarded to the BCC for final action.

VI. NEW BUSINESS

- A. CDRC Case #APP 09-5210 Saddleback Ranch Estates. Saddleback Ranch Estates, LLC (Owner), Sommer, Karnes & Associates, Joseph Karnes, Agent, request an appeal of the Land Use Administrator's decision to deny administrative application 08-3179 (lot line adjustment for 39 lots, subsequently amended to 29 lots, on 3,129.495 acres). The project is located on County Road 41 within Sections 13, 23, 25 and 26 of Township 14 North, Range 9 East and Sections 7, 8, 9, 26, 27, 28, 29, 20, 21 and 29 Township 14 North, Range 10 East, near the villages of Galisteo and Lamy (Commission District 3)**

Exhibit 1: Staff report dated 10/15/09 – staff report exhibits on file with Land Use Department

Exhibit 2 Santa Fe County Land Use Administrator letter to applicant dated 5/6/09

Exhibit 3: Applicant - MOU re: Thorton Ranch and Santa Fe County March 2000

Exhibit 4: Applicant - Affidavit of Mitchel K. Noonan

Exhibit 5: Applicant - Santa Fe County Land Development Code Ordinance 1989-5 [portion]

Exhibit 6: Applicant - Affidavit of Gilbert Chavez

Exhibit 7: Applicant – series of plats reviewed during Gilbert Chavez' testimony

Exhibit 8: Applicant – Four CDs County recorded plats from 1987 to 1994

County Building and Development Manager Shelley Cobau read the case caption and reviewed the staff report as follows:

“The decision to deny the referenced administrative application was rendered by the Land Use Administrator on May 6, 2009 and the applicant's agent subsequently filed an appeal of this decision.

“The subject 3,129.495-acre parcel, known as Saddleback Ranch Estates, was submitted for review as a lot line adjustment in late 2008. The original application proposed radically rearranging lot lines to create 39 40-acre or larger lots served by two points of access taken from Highway 41 just southwest of SR84/285.

"The existing property has a main ranch house with numerous outbuildings, wells, stables, windmills and other appurtenant structures. The property is bisected by the Galisteo Creek, and portions of the property are encumbered by a FEMA designated 100-year special flood hazard area.

"Saddleback Ranch Estates was originally submitted to the Building and Development Service Department as a lot line adjustment for 39 lots. Following a detailed review and numerous meetings with County staff and the applicant's agent the determination was made by the Land Use Administrator that the application was not in fact a lot line adjustment but, in fact, that the application was a subdivision and could not be reviewed and approved administratively.

"The New Mexico Subdivision Act provides very little exception from subdivision regulations for a division in land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased...The applicant's representatives read the last clause of the sentence as controlling and assert that as long as the aggregate number of parcels are not increased the transaction is exempt from regulations as a subdivision. County staff believes this is a misreading of the statute.

"A lot line adjustment is a procedure whereby parcel boundaries are altered. The applicant seeks to move the entirety of each parcel within the boundaries designated as the limits of the proposed development. This is not an alteration of parcel boundaries because the parcel boundaries are destroyed in the process and the parcels are moved, in some cases, many thousands of feet from the original location. The limitation statute that prevents a lot line adjustment from being used to increase the number of parcels cannot be used as a tool to defeat the objective of the statutory exemption. A less obvious problem is the number of lots that is the basis for the lot line adjustment is quite overstated...parcels are included in the proposed lot line from the Jarrot Ranch, McKee and Hacienda Tranquillas subdivision. These pre-existing subdivision lots may only be adjusted through resubdivision procedure which requires approval by the Board of County Commissioners, not through a lot line adjustment."

Prefacing her comments, Ms. Cobau said the Land Use Administrator cannot administratively create nor reconfigure nonexistent lots. She said creation of lots in Santa Fe County requires the approval of the BCC, she acknowledged there were a few exemptions from this process: 29 lots would not be an exemption, she stated.

Ms. Cobau referred to a 1989 boundary survey prepared for the Jo-Bar Ranch signed by the Land Use Administrator showing a 2,413-acre parcel. The survey of record indicated that within that overall boundary there were six discrete parcels. The parcel was subsequently conveyed as a single 3,219-acre tract with the survey prepared in June 2007 and recorded in the Office of the County Clerk. The six parcels are shown without metes and bounds nor deed references.

On June 23, 2008 the entire 3,219-acre tract was transferred to Saddleback LLC with the exclusion of three 40-acre tracts. Ms. Cobau referred the Committee to the warranty deeds within the staff report. She distributed tax records indicating that at least 2,013.4 acres of the property is taxed as a single agricultural parcel. [A copy was not made available for this record.]

Ms. Cobau continued with the staff report as follows:

“The parcel was owned for many years by Jo Bar Land and Cattle Company. Jo Bar filed a Plat of Survey on December 15, 1989 that showed a single parcel of 2,412 acres, coinciding with the tax records. The survey was approved at that time by the County Land Use Administrator. That survey plat was not disclosed to the County by the applicant at the time the application was made, even though the proposed lot line adjustment was prepared by the same surveyor who prepared the 1989 plat showing a single 2,412-acre parcel.

“Subsequently, Fisher and Fisher-Landau repeatedly treated the Jo Bar, rot Ranch and McKee Hacienda Traquilas property as a single 3,219-acre parcel, eventually recording a boundary survey depicting a single 3,219-acre parcel which was recorded in June of '07... At least since the recordation of the Plat of Survey by Jo Bar Land and Cattle Corp. in 1989, the property has never been treated as individual parcels.

“Mrs. Fisher-Landau transferred most of the 3,219 acres to Saddleback Ranch Estates, LLC, a New Mexico Limited Liability Company on June 23, 2008... Ms. Fisher-Landau withheld three 40-acre parcels and transferred parcels to William P. Verkin and James Scarborough...

“The applicants failed to provide the most current Special Warranty Deed, filed on June 23, 2008 which conveyed the property from Landau to Saddleback, LLC, and this deed indicates property was conveyed to Saddleback, LLC in three distinct tracts as recited in the staff report ... These deeds and boundary survey are the most current information and this information further solidifies the Land Use Administrator’s position that non-existent lots cannot be resurrected to create a subdivision administratively.”

Referring to the destruction of lot lines, Ms. Cobau said County staff and the Land Use Administrator are asserting that there are not 29 lots to be adjusted. The lot line adjustment process should be used to correct minor errors – rights-of-way, easements, encroachments, etc. – that were not discovered in the original platting of the property. The County considers the requested changes as a replatting.

Ms. Cobau read the following from the staff report:

“The applicant improperly uses the lot line adjustment to create the proposed parcels. This is because a lot line adjustment is a procedure whereby parcel

boundaries are altered. The application seeks to move the entirety of each parcel within the boundaries designated as the limits of the proposed development. This is not an alteration of parcel boundaries, because the parcel boundaries are destroyed in the process and the parcels are moved, in some cases, many thousands of feet from the original location. The limitation in the statute that prevents a lot line adjustment from being used to increase the number of parcels cannot be used as a tool to defeat the objective of the statutory exemption.

“Further, pre-existing subdivision lots may only be adjusted through a resubdivision procedure, not a lot line adjustment. Some lots referred to are in fact lots that have been previously consolidated by plat from numerous lots into a single lot. In addition, some lots are federal lots that were purchased from the federal government at the same time by the same person. These lots are a single lot, not multiple lots.

“The applicant seeks to create a very large subdivision through the methodology of a lot line adjustment. After several meetings with Development Review staff of the County, the County surveyor, and representatives of the surveying firm, it has become apparent that the applicants’ objective is to reconfigure lots that no longer exist into a form that strongly resembles a subdivision with large reserved tracts. It is apparently presented in this way to avoid the review processes that the County has established with large developments to avoid the requirements that such a development would normally be required to meet and to avoid relevant zoning and other ordinances protective of the public health, safety and welfare.”

Ms. Cobau said the County is asserting this request is a common promotional plan. She characterized this development as the poster child for the common promotional plan. It is demonstrated through the group of owners collectively designing roads, drainage facilities, parks, open space, trails and creating lots under the same name for the purpose of sale. The review application instructs the Land Use Administrator to determine whether this is a common promotional scheme. She referred to Article V, subdivision regulations, of the Code. She noted that a common promotional plan is defined in the Code (Article X) as “any plan or scheme of operation undertaken by a single subdivider or a group of subdividers acting in concert to offer for sale or lease parcels of land where such land is contiguous to or part of the same area of land or is known, designated or advertised as a common unit or by a common name.” This development, stated Ms. Cobau, appears to meet these criteria.

The property was recently owned by a single owner who in simultaneous transactions dividing and mortgaged the property without disclosing those transactions to the County. Instead, stated Ms. Cobau, they relied on deeds from many decades past. She noted that the individuals and companies – many sharing the same Texas address – are apparently acting in concert to develop the property without proper approvals. The development being presented as Saddleback Ranch Estates includes many common facilities and the patent lots referred to have been consolidated.

Ms. Cobau said the factors pointed out by staff clearly argue in favor of the more rigorous review process set forth in the current code beginning with master plan.

Ms. Cobau discussed why the designation of subdivision mattered stating a market analysis which is required in the subdivision process determines viability of the project. Disclosures required of subdivisions protect future buyers and HOA documentation provides for long-term maintenance and other facilities. There are archaeological sites and riparian areas that through the subdivision process would require proper review and consideration resulting in protection of these areas. Infrastructure is also reviewed through the subdivision process. Ms. Cobau discussed the necessity for the County to rely on the code adherence; otherwise the protection of its citizens would be jeopardized.

Ms. Cobau emphasized that the applicant seeks to avoid all the critical code protections.

Referring to why the administrative process is not appropriate in this case, Ms. Cobau set out the following points: the Land Use Administrator has the discretion, as given by the Code to require governing body approval of any application presented; the public process is not served through administrative approval – instead, the master plan approval assures public notice and input, governing body notice and input and furthers all long-term goals of the existing and future General Plan, especially health, safety and welfare of the citizens.

Ms. Cobau said the only class of development that is capable of administrative approval is a lot line adjustment. She repeated that “this is not a lot line adjustment.”

Land Use Administrator Jack Kolkmeier displayed maps that locate the subject property within the new land development plan. The County is working from three maps: tiers, sustainable development areas and the future land use plan map. These maps provide a broad geographic sweep of the location of certain land types, timing for capital planning and public infrastructure and future uses. The tiers map shows three broad categories: agricultural, rural, and communities. Saddleback Ranch falls within the rural and agricultural tiers and there is no infrastructure or CIP funding proposed. Future land uses are not anticipated and low density is continued within the Saddleback area.

The maps were displayed throughout the hearing.

Concluding her comments, Ms. Cobau said the Saddleback Ranch submittal to create 29 lots served by a network of common infrastructure is clearly a subdivision and should be submitted, reviewed and considered as such. Staff recommends that the request for an appeal of the Land Use Administrator’s decision to deny the applicant’s request to CDRC to overturn the Land Use Administrator’s decision and allow staff to process the Saddleback Ranch Estates application administratively be denied by the CDRC. Staff recommends that this case be treated as a subdivision based on the reasons cited during the staff report and as outlined to the applicant in correspondence from the County dated May 6, 2009 correspondence from the County Land Use Administrator to the applicant [Exhibit 2] and the reasons identified in this report. Staff recommends this application go through the master plan subdivision process proposed in Santa Fe County.

Chair Romero asked how many legal lots of record does the County recognize on the entire property. Ms. Cobau responded that with a public survey notice and the recognition the property is taxed as a single piece of property and as indicated on the boundary survey it is a single piece of property. Staff may ask the CDRC to recognize it as a legal lot of record. She said through staff research, there appears there could be at most six parcels.

Chair Romero observed that the tax records depict 2,013.4 acres and the application the amount is 3,420 acres. Ms. Cobau said staff reviewed the tax records and could only find 2,004 acres – and the County Tax Assessor will investigate whether they are being taxed appropriately.

County surveyor Jeff Ludwig said he briefly reviewed the project in March 2009 and he suggested to the applicant that they submit a composite showing and clarifying their patent claim. The applicant did provide a composite plat that Mr. Ludwig said he briefly reviewed yesterday and without making comparisons with the legal records documents and plat he was not prepared to state the number of legal lots on the property. He then stated, that based on his preliminary examination they do have 29 parcels/ patents.

Chair Romero asked if Mr. Ludwig's expert opinion was there were 29 platted and recorded parcels on the property. Mr. Ludwig said the 29 parcels have "nothing to do with recordation."

Chair Romero said the CDRC has a practice of requiring applicants to hold town/community meetings within the area to advise the residents of the development. He asked whether Saddleback has conducted such a meeting. Ms Cobau said other than the required posted public notice and notifying adjoiningers within 100 feet of the appeal, she knew of none.

Attorney Karl Sommer, PO Box 2476, Santa Fe, 87504, said he was appearing on behalf of Saddleback Ranch Estates, a New Mexico limited liability company formed by four individuals who acquired this property after two years of investigation. He identified the four individuals as Gabriel Bethel, Mike Skladany, Billy Berkin and Dan Silvestre.

Mr. Sommer said there was only one thing his clients agreed with per Ms. Cobau's statements that under the Land Development Code the only kind of application that can be approved administratively is a lot line adjustment. He said it should be approved if the criteria are met. The code allows that the Land Use Administrator may approve or deny an application or he may refer that application to the CDRC. In this case, the Land Use Administrator denied the application and did not refer it to the CDRC.

Mr. Sommer clarified for the CDRC that the applicants were "present for an appeal of a denial of an application that should have been approved because the conclusion is inescapable" that this is a lot line adjustment with 29 lots.

Mr. Sommer previewed his line-up of persons providing testimony: Gab Bethel, principal in the company; Victoria Dalton, planner with Jim Siebert; Mitch Noonan,

surveyor; Colin Holloway, Southwest Mountain Survey; Gilbert Chavez former County Land Use Administrator, who will clarify the 1989 plat that current staff asserts consolidated the parcels.

Mr. Sommer referred to the lot line adjustments that have occurred within the Thornton Ranch that have created hundreds of lots under "the same administrative procedure" that this case presents. He noted that Thornton Ranch had two more applications for the same consideration that are "indistinguishable" from the application he presents, that were signed by Ms. Cobau and her predecessor. In fact, Mr. Sommer said the County allows for patent parcels to be moved around in "exactly" the format presented with Saddleback and further the County is conducting lot line adjustments on its own property in the County Business Park that obliterate and destroy the lot lines.

Mr. Sommer said this application should have been approved in December 2008 a month after it was submitted. He said this was clearly a misapplication of the law resulting in delay and financial burden to the property owners.

Duly sworn, Gabriel Bethel, 77 Saddleback Ranch, Galisteo, stated he was in New Mexico, his home state, visiting his grandmother in October 2005 when he first became aware of the Saddleback Ranch property. At that time he was working as a land development opportunity researcher for investors. Saddleback Ranch exhibited a great deal of potential with the existing roads/infrastructure and he contacted Santa Fe County employee Emilio Gonzales for assistance in completing a due diligence on the property. Mr. E. Gonzales suggested conducting research on legal lots of record and advised him the property was in the Homestead Zone where the minimum lot size is 40 acres. Mr. Bethel stated that he understood from his meeting with Mr. E. Gonzales that he had from the patent legal lots and warranty deeds predating 1981 code.

Mr. Bethel said he obtained patent parcels and warranty deeds from the title company and met with Mr. E. Gonzales who said the papers looked valid and advised Mr. Bethel to obtain a map to better discern how the parcels relate to the boundaries of the property. To complete that task, Mr. Bethel stated he hired Jim Siebert and Associates to develop a patent parcel map.

Mr. Bethel said he obtained an appraisal based on the legal lots of record and for the next few years he worked through a myriad of banks and investors to obtain financing. Conducting their due diligence, the prospective investors went to Jim Siebert's office and Mr. E. Gonzales' office at the County. Mr. Bethel stated that Mr. E. Gonzales verified the parcels existed and that they could do a lot line adjustment which would take 60 days. Mr. Bethel claimed that he relied on that comment and would not have purchased the property had he "believed for one moment...this was not the truth."

Mr. Bethel maintained that the value of the collateral the bank used as well as the presales was all based on the 90-day timeline. "We have suffered" over \$1.5 million in carry-cost since the application was submitted and the loss of over \$10 million in presales, stated Mr. Bethel.

Mr. Sommer interrupted and asked his client what he meant by the term "presale." Mr. Bethel said they had contracts with deposits for purchase of 40-acre parcels following the completion of the lot line adjustments. At this point, only one contract remains.

Mr. Bethel said the plan was to have a 3-acre building envelope within a 40-acre parcel with the remaining 37 acres going into a conservation easement.

Mr. Sommer then summarized Mr. Bethel's testimony stating that the project didn't happen overnight. Further, Mr. Sommer stated the original application was for 39 lots because the County's policy was to recognize lot descriptions within patents that were part of an overall patent. The applicant chose to reduce the lots to avoid any question or argument regarding the validity of the requested lots.

Mr. Sommer referred to an agreement the County entered into in a dispute regarding Thornton Ranch [*Exhibit 3*] to bolster his assertion that this has been the County's policy in recognizing dozens of lots described within a single patent.

Assistant County Attorney Apodaca suggested the CDRC may wish to decide whether it is appropriate to consider a settlement in a disputed matter in determining what policies are generally implemented by the County. The settlement agreement was a unique matter and the CDRC should consider what weight it has in relation to the case before them.

Returning to the settlement agreement/MOU, Mr. Sommer pointed out that the County Attorney recognized the same types of legal lots of record that Mr. E. Gonzales had indicated to Mr. Bethel were policy. For every patent, Mr. Bethel is claiming one legal lot of record which Mr. Sommer said is a very conservative application of the County's established policy.

Mr. Sommer reminded the Committee that the denied application was for a lot line adjustment. Further, he stated there are exemptions from the Subdivision Law which include the "division of land that results in the alteration of a parcel boundary where the parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased." He stated that the application adjusts lots within a single area that are legal lots of record, that do not result in more than they started with – in fact, they result in fewer than started with, noted Mr. Sommer. There is no discretion when that requirement is met. He said this application is administratively approvable and the Land Use Administrator exercised his jurisdiction and said "no" and that is why the appeal is before the CDRC.

Using a survey completed by Mitch Noonan, Mr. Sommer identified the three parcels that Mr. Bethel and his partners purchased. The lot line adjustment was for property identified within the Jo Bar Ranch. County staff is asserting there are at most six lots on the property rather than the 29 or 39 the applicant claims; in fact, the County suggests there might only be one lot because of a consolidation.

Mr. Sommer introduced Colin Holloway, the surveyor who “conducted the in-depth research on the property.”

Colin Holloway, Forest Road 83, Flora Colonias, was placed under oath and was questioned by Mr. Sommer. He indicated that he has been a land surveyor with Southwest Mountain Surveyors for 12 years and researched the title to the Jo Bar Ranch. He indicated that he obtained most of the information from the BLM website with the patents granted over a 75-year period from the McKinley to Franklin Roosevelt administration. Land patents are patented parcels signed by the US president and typically granted in 40 acres in mathematical breakdowns of a square mile.

Referring to a plat entitled “lot line adjustment surveyor for Saddleback” that he prepared, Mr. Holloway said the plat represents the patent parcels found through the BLM website. Mr. Holloway said he studied each of the patents, the size of the property, reviewed its location and the patentee and placed all of that information on a composite plat. The lots lacking patent references were created by a surveyor in 1981 prior to the 1982 Subdivision Act, stated Mr. Holloway.

Mr. Sommer asked how many lots would be identified as pre-code subdivision and Mr. Holloway responded five that “deal with two patents...”

Mr. Holloway characterized the property as originally three large accumulated ranches. He said it was rare that more than 120 acre would be granted in the Homestead Act; most patents go as low as 40 acres. He identified the Jo Bar Ranch owned by the Ortiz y Pino family ranchers that accumulated patent parcels. The McKee parcel is not part of the 20 lots and is separated by a road.

Upon Mr. Sommer’s questioning, Mr. Holloway confirmed that the composite plat was prepared in response to the County surveyor’s request, that said composite was presented to the County surveyor and that he [Mr. Holloway] conducted extensive research to verify the accuracy of the patents to the best of his ability and knowledge.

Mr. Holloway confirmed Mr. Sommer’s description of the tracts -- 29 separate parcels.

Mr. Apodaca said it was his understanding that Mr. Holloway would be testifying, not the attorney for the applicant. Mentioning that Mr. Sommer has not been sworn, Mr. Apodaca suggested the Committee may want to let the witness testify rather than having Mr. Sommer question the witness. He said the questions seem to be very leading and feeding answers to the witness.

Mr. Sommer said he was asking questions to facilitate a faster process rather than a narrative. Chair Romero requested less coaching from Mr. Sommer and allowed him to proceed.

Mr. Holloway reviewed the names on the composite plat and isolated Carlos Herrera’s patent which was subsequently subdivided by the government when Highway

41 and the AT&SF Railroad was built directly through it. That patent should be recognized as two lots.

Member DeAnda asked about the Ortiz y Pino ranch and Mr. Holloway said it was originally 2,600 acres; he identified it on the plat.

In response to Mr. Holloway's answer of whether that ranch was considered one parcel, Member DeAnda asked if he was saying the same landowner owned "multiple" lots and Mr. Holloway said yes and that was typical of ranches in the west.

In regards to having separate deeds for the multiple lots, Mr. Holloway said "what often happens in ranch situations is a public notice survey...for lack of a better term, it's a composite survey of the exterior of the boundary...."

Mr. Sommer referenced property mergers in the code and provided the citation at 47-6-9.1.

Member Salazar asked whether the patented parcels divided into legal lots of record were done by legal description prior to 1981. Mr. Holloway said yes, it was conducted through a recorded plat of survey.

Member Salazar asked whether the compilation reflects 29 legal lots of record and if the surveyor was stating the County should recognize those as legal lots. Mr. Holloway said "yeah...anybody could purchase one of those patent parcels separately and should be able to apply for a building permit if they meet all the required codes."

Mr. Holloway described the lot line adjustment survey of Saddleback/Jarrot Ranch put on view by Mr. Sommer as what the applicants want to do. Basically, stated Mr. Holloway, the survey provides a way to create a community of 29 residential lots all 40 acres or larger.

Responding to Chair Romero, Mr. Holloway said the lot line adjustment survey on display was a reconfiguration of the previous composite plat.

Chair Romero observed that the lot line adjustment survey looked like a subdivision. Mr. Holloway said dividing lots clearly makes for a subdivision.

Mr. Holloway dated the two plats he reviewed for the CDRC at April 2009. The boundary survey of the three ranches was completed February 2007.

Responding to a question posed by Member JJ Gonzales, Mr. Holloway offered that the earliest date on the patent was 1851 to Carlos Herrera and was not within a land grant. Mr. Sommer said the property was not part of the Bishop Lamy Spanish land grant.

On further questioning from Member JJ Gonzales, Mr. Holloway reviewed his plats and said it appeared Carlos Herrera was given all of Section 8 equaling 640 acres.

Mr. Holloway testified that generally the parcels within the patent were 160 acres or 150 acres.

Member JJ Gonzales said it appeared that since 1851 the Herrera's tract was one tract and now a 150 years later there is a claim that they are separate parcels within the one tract.

Mr. Holloway said based on the practice used in surveying if "you don't give up your rights, you still got em."

Member Dayton asked whether there was any action taken to formally consolidate into one large tract. Mr. Sommer said it was the applicant's position that no action was taken to consolidate the land and that is why they are legal lots of record.

Directing her question to Mr. Holloway, Member DeAnda asked whether any information regarding the subject lots was recorded at the County Clerk's office. He responded that other than a "funny little subdivision" he could not answer the question.

Mr. Sommer asked where patents are recorded. Mr. Holloway said with the US Government, with the County, and the BLM.

Member DeAnda repeated her question asking whether there was an official county plat or survey regarding the property. Mr. Holloway said there were official surveys done when the land was originally surveyed between 1860 and 1825 by the US Government Land Office.

Mr. Sommer asked County Surveyor Ludwig if the process Mr. Holloway delineated and the composite plat were done correctly and if they accurately identified the parcels properly. Mr. Ludwig said from the surveying perspective he has 29-patented lots. As far as the recognition by the County as being legal lots, that's a different perspective, stated Mr. Ludwig. He defined a patent as something issued by the federal government to a landowner and prior to the issuance of the patent a survey is done.

Mr. Ludwig confirmed Mr. Sommer's statement that "a GLO survey creates a parcel ...and the patent is created on a legally created parcel and transferred through an owner."

Mitchel Noonan, 1114 Hickox Street, Santa Fe was duly sworn.

Mr. Sommer introduced Mr. Noonan's affidavit [*Exhibit 4*] to support his testimony.

Mr. Apodaca advised the Committee that an affidavit was not necessary if the witness was testifying. He said having both is a deviation from normal practice.

Mr. Sommer said that Mr. Noonan would be summarizing his affidavit and the affidavit would be available in the record. He countered that this was not a courtroom, that he did not understand the County's objection and that the rules of evidence do not apply.

The Chair allowed the affidavit and testimony.

In response to Mr. Sommer's questions, Mr. Noonan offered that he was a licensed surveyor having worked in Santa Fe County for 30 years. Regarding the subject property, Mr. Noonan said he has "been out to that lovely place a lot."

Mr. Sommer displayed a plat referred to as the Jo Bar Land & Cattle Corporation plat of survey, and asked Mr. Noonan to describe what the plat intended to do. Mr. Noonan said it was a survey of the exterior boundary of a parcel of land that he did in 1989.

Mr. Sommer asked Mr. Noonan to define and discuss a lot consolidation plat. Mr. Noonan responded mentioning his 30 years of experience and said the plat will state "consolidation" on the title making it clear. There is an owner's consent stating "I hereby agree to the consolidations of the tracts shown hereon..." thus expressing the owner's intent. Historically consolidation plats have shown the old lines being consolidated and are usually labeled "old lot lines." Lastly, a consolidated tract of land receives a brand new designation.

Chair Romero asked whether the plat done by Southwest Mountain Survey (SWMS) in 1989 is a portion of the new plat. Mr. Noonan stated that was correct. Chair Romero asked whether SWMS looked to see how many legal lots were contained in the tract. Mr. Noonan said the survey of 1989 was an exterior boundary plat; however, he did list within the legal description of the tract aliquot parts showing breakdowns of the assorted sections. He pointed out that in some cases patents are made from the aliquot part.

Mr. Sommer asked what is the purpose of a boundary survey and Mr. Noonan answered to determine the boundaries of a parcel of land and also to determine if there are easements and things of that nature.

Mr. Noonan identified a consolidation plat of the McKee subdivision which had five legal lots of record consolidated into two tracts. On Mr. Sommer's direction, Mr. Noonan described the different components – exterior boundary, old lot lines, division of the parcel, the owner's consent, etc. – of the McKee consolidation and replat subdivision plat.

Chair Romero asked why someone would consolidate lots. Mr. Noonan said "there's as many reasons as there is individuals." Sometimes consolidation is necessary to obtain a building permit.

Santa Fe County Land Development Code Ordinance 1989-5 was introduced into the record as Exhibit 5. This states a plat for a division that is not a subdivision (a lot line adjustment or consolidation) contains a certification of title showing that the applicant is the owner of the land and is in accordance with the plat, Mr. Sommer asked whether Mr. Noonan ever did a consolidation plat for the owner of this property. Mr. Noonan responded no.

Mr. Noonan said the Land Use Administrator's signature is on the subject plat tract because there were easements included. It provides a boundary survey and the signature affords official recognition by Santa Fe County. He referred to public notice on plats.

Member C. Gonzales asked whether all of SWMS plats of survey get signed by the Land Use Administrator. Mr. Noonan responded no.

Mr. Sommer introduced Gilbert Chavez, former County Land Use Administrator.

Gilbert Chavez, 997 Camino Consuelo, Santa Fe was duly sworn.

Mr. Sommer introduced Gilbert Chavez' affidavit [*Exhibit 5*].

On behalf of County staff, Mr. Apodaca related their objection to live testimony accompanied by an affidavit as not consistent with typical practices.

Responding to a series of questions presented by Mr. Sommer, Mr. Chavez provided the following information: He worked for the County Land Use Department from 1977 to 1980, 1986 to 1994 and from 1989 to 1994 he served as the Land Use Administrator. He reviewed hundreds of plats as Land Use Administrator; applied the regulations and policies of the County. In 1989 a decision was made that every survey required the approval of the Land Use Administrator or Land Use Department before it could be recorded with the County Clerk. During that time period, 1989, the surveyors' products were being delayed because Land Use Staff was overwhelmed and as a remedy a statement was placed on the plat attesting that it was a boundary survey and not creating a subdivision.

Mr. Sommer asked Mr. Chavez to review and identify a series of plats. Mr. Chavez noted that plats must be labeled to identify what they: consolidation, boundary surveys, corrective, lot line adjustments, etc. Mr. Chavez indicated that he reviewed the subject Jo Bar Ranch survey that was recorded in December 1989 and that he was Land Use Administrator at the time. He said the subject plat does not state "consolidation" and therefore is not a consolidation plat.

Mr. Sommer asked whether there was a reason the County did not require that boundary surveys include the internal lots within the tract that was being surveyed for the boundary. Mr. Chavez said "there's really no purpose for it unless they are consolidating the lot..." He said normally people do not want to consolidate lots and referring to the appeal he noted that 29 individual lots are worth more than one large tract: "It wouldn't make sense."

Member DeAnda asked whether there was such thing as de facto consolidation or de facto merger of property. Mr. Chavez responded by stating he recalled a lot consolidation during his tenure as Land Use Administrator when someone was doing a large commercial development.

Member DeAnda rephrased her previous question and put forward the proposal that an owner of two adjoining lots builds a house pre-1981 that straddles the boundary, that may constitute a de facto consolidation. Mr. Chavez said, "sure, that's part of the consolidation process."

[The Commission recessed from 6 to 6:15]

Observing that the applicant's agent has mentioned the Thornton Ranch as a comparison to this case, Member Martin asked staff whether the settlement agreement was part of the County's trails and open space purchase. Ms. Cobau said she had not reviewed the settlement agreement but pointed out to the CDRC that the Thornton Ranch is going through the master plan development process, lots have not been recorded and to date there is no final plat for the reconfiguration of lots.

Mr. Sommer said across the highway from Saddleback is the Thornton Ranch which has the same patent configurations. Over the past 10 years the patent parcels on the Thornton Ranch were made into one lot and a series of small lots accomplished through the lot line adjustment process in accordance with the County policy. Mr. Sommer disagreed with Ms. Cobau and said the lots were created by lot line adjustments not a master plan process. He noted that the lot line adjustments were conducted in 2006, the same time Mr. Bethel was inquiring with the County as to policy.

Mr. Sommer said the County's assertion that the lots on Saddleback composite plat were "completely obliterated" are no different than the lots shown on Thornton plat. He said the lot creation completed at Thornton Ranch was properly done, relied upon and platted. He said there was no distinction between the process undertaken on the Thornton Ranch and what has been requested by Saddleback; however, the County is asking for a different process.

Mr. Sommer thanked the Chair for the latitude he allowed the applicant in presenting their case.

Mentioning that different jurisdictions have different practices, he understood there was a question raised as to whether he was sworn and he volunteered to be so. The oath was administered and Mr. Sommer affirmed and swore to the veracity of factual matters. Mentioning his duty to tell the truth, Mr. Sommer pointed out that County staff was not sworn.

Mr. Sommer distributed CDs of the County recorded plats from 1987 to 1994 that evidence the policy. During that timeframe surveyors were unable to get boundary surveys recorded. Instead the Land Use Administrator would sign off on boundary surveys, easement boundaries, etc. as indicated earlier during the testimony of former Land Use Administrator Chavez. That policy, stated Mr. Sommer changed in 1994.

Mr. Sommer said the case was easy: "Do we have legal lots of record that are contiguous within a single boundary and are we adjusting those that we do not end up

with any more than we started? That is a lot line adjustment.” He reviewed the legal definition of merger, and while the deed was not recorded with the County Clerk, Mr. Sommer said the applicant has a deed issued by the US government in the form of a patent proving separate ownership. The chain of title to the contiguous parcels demonstrates that they have been considered separate. Prior to transfer into the Jo Bar Ranch, prior to transfer into McKee and prior to transfer to Jarrott Ranch they were held by other parties. Lot consolidation must include the owner’s consent and the plat the County relies on in this case is a boundary survey and as such does not show lots.

In closing, Mr. Sommer stated the owners have taken no action to consolidate the parcels – an action that has a very specific process in the law. There is a lot line adjustment of 29 parcels based on 29 patents and, stated Mr. Sommer, “we comply fully with every requirement of a lot line adjustment application and it should have been administratively approved, not denied.”

Chair Romero asked County Surveyor Ludwig a question regarding the Thornton Ranch survey and Mr. Ludwig said he had not reviewed that plat.

Ms. Cobau reviewed a Thornton plat from four years ago that she verified had her signature on.

Chair Romero asked whether it was fair to compare the Thornton plat she was reviewing with Saddleback and Ms. Cobau responded Thornton did not contain numerous patent parcels for reconfiguration.

Mr. Sommer said the plat is based on aliquot parts found in the patent.

Mr. Ludwig said he agreed with Mr. Sommer that the plat depicts the aliquot parts of sections and referencing existing lots of record.

Directing her question to Mr. Ludwig, Member DeAnda said she understood from his earlier statements that there are clearly 29 patented lots that are not necessarily 29 recorded deeds, surveys or plats in the County Clerk’s Office.

Mr. Ludwig said the 29 patented parcels are filed with BLM-GLO. He verified that they were not filed as an official record at the County Clerk’s Office.

Member JJ Gonzales said the applicant has used dates from 1850s to the 1980s in making their case for the 29 patented lots. He asked whether the County required 29 legal lots of record to conduct a lot line adjustment.

Mr. Apodaca said the applicant is advocating a doctrine in law that does not exist. Patents do not create separate lots. With one owner holding the patented lots, it in fact becomes a de facto consolidation. To create a separate lot from a patent, the correct subdivision procedures must be followed. He mentioned California caselaw that established patents cannot be used to create separate lots, especially where it is held by one owner.

Mr. Apodaca noted that the 1989 survey reviewed by the applicant, clearly shows the owner's intent to show the property as one large tract. The surveyor neglected to mention that the survey does show the location of separate lots as dashed lines.

With respect to Gilbert Chavez' testimony that the 1989 survey was not a lot consolidation, Mr. Apodaca said no one is arguing that any of the maps show lot consolidation. The issue is what does the 1989 survey show and it does not show the 29 lots the applicant now contends exist. The survey of 1989 shows that the owner's intent was to treat the property as one big tract.

Returning to Member JJ Gonzales' original question, Mr. Apodaca repeated that patents do not create lots of record.

Mr. Ludwig distributed a document he had just received from BLM's chief cadastral surveyor of New Mexico [a copy was not made available for this record] speaking to legal lots. He said he asked BLM to define their position on patented parcels. The memo explained how BLM subdivides sections for survey purposes and defined how patented parcels are conveyed to the public and that they are done for the "convenience of BLM and other agencies to administer their land as they see fit...." The memo concluded that once patented into private ownership it is subject to all state, local laws ordinances and regulations.

Chair Romero asked whether Mitch Noonan would have been required to show the BLM quadrants on the 1989 survey he prepared and Mr. Ludwig responded no, adding that the plat did not reflect, indicate or depict a consolidation of any type.

Member DeAnda said the BLM memo defines surveying for the purposes of disposing of public land as determined by the US government. She said the BLM procedures do not create legal lots of record for County purposes.

Member Salazar said the patented lots were created prior to subdivision regulations and he asked whether they could be considered legal lots of record. Mr. Ludwig said they could.

[Member C. Gonzales excused himself at this point.]

Chair Romero invited the public wishing to speak on this case to come forward.

Duly sworn, Roger Taylor a resident of Galisteo, said he opposes the request before the CDRC on a logic perspective. The applicant appears to be making his case based on historical records from 1850 and this is 2009. The applicant should be following the County and State regulations.

Speaking as a retired top-earnings MetLife executive, Mr. Taylor said he wouldn't make a deal without knowing all the contingencies and he opined that this applicant did not explore all the contingencies. This looks like an end run rather than working through the current legalities.

Mr. Taylor said he had environmental concerns about the project.

Galisteo resident and board member of the Galisteo Community Association, Matthew McQueen, duly sworn, apologized for not being prepared for this appeal. He said this has not been a public process and information has been difficult to come by. Mr. Bethel appeared at a Galisteo Community Association meeting only after his application was rejected by the Land Use Administrator.

In regards to the consolidation/merger, Mr. McQueen said in his own discussions with a member of the Ortiz y Pino family they consider their ranch as a single parcel. Mr. Sommer is relying on historic practices to recreate lots and only a modern process to eliminate them. He questioned the practice in the 1850 to consolidate lots.

Referring to the earlier question of why one would consolidate lots, the testimony for the applicant said having multiple lots makes a property more valuable. Mr. McQueen pointed out the property owner would be subjected to higher property taxes and that may be a motivation by a rancher to view the property as one lot.

Regarding what Mr. Bethel referred to as due diligence, Mr. McQueen pointed out that informal communications with County staff is not the same as subdivision approval.

As far as the Thornton Ranch, Mr. McQueen said a settlement agreement is not the same as County policy. If there are 29 lots within Saddleback Ranch, it is still a subdivision by virtue of either the wholesale redistribution of the lots or the common promotional plan of which this property has both.

Mr. McQueen said rejecting the appeal does not reject the subdivision. Instead it asks the landowner to go through the proper process on which there will be public input.

Duly sworn, Muriel Fariello, secretary/treasurer for the Ranchettos de Galisteo Water Users Association and a member of the Community Association stated that another 29 wells will impact the Galisteo water system. She said water and traffic impact studies are needed for this subdivision.

Ms. Fariello suggested the loss of investors in the project that Mr. Bethel referenced has more to do with the economy than the Land Use Administrator's action.

Galisteo resident Steve Tremper was placed under oath and said Mr. Sommer makes an unfair comparison with the Thornton Ranch and Ted Harrison. The people of Lamy and Galisteo as well as County staff were supportive of Harrison's project because what it conceptually represented. The area residents were in fear of what would happen to Thornton's ranch if someone like Harrison did not advance a concept and plan as he has.

Speaking as a rancher, Mr. Tremper said Mr. Ortiz y Pino never put together 29 lots and never wanted to develop a subdivision. "He was a sheep rancher. He wanted to acquire property to run his livestock."

Mr. Tremper said there is a lot of pressure on the Galisteo Basin from developers. The area residents fought hard against the oil and gas industry and the residents feels the same way about residential subdivision. He said the developers would be hard-pressed to

prove a need for their proposal and appear to view the Galisteo Basin as a commodity in terms of development potential. He mentioned that at a recent meeting a representative from DOT said there was great potential to designate Highway 41 as a scenic byway and this type of subdivision would detract from that designation.

Duly sworn, Leslie Gallery-Dilworth a resident of Galisteo and urban planner said there is a significant difference between the Thornton Ranch project and the way it has been handled with the public and regulatory agencies compared to how Saddleback has been handled. She expressed concern that the development has not addressed water usage issues. The quality and uniqueness of the Galisteo Basin is far more significant than the credit the State and County have given it.

In closing Ms. Gallery-Dilworth cautioned that there have been unsuccessful developments in the Galisteo Basin.

That concluded the public hearing and Chair Romero permitted the applicant to rebut the public testimony.

Mr. Sommer said the 29 parcels are 40 acres each and they have .25 acre-feet per-year maximum use of water on each lot. In terms of the conceptual difference between the Thornton Ranch and Saddleback, Mr. Sommer said this ranch will have on each 40 acre lot a 3-acre envelope that can be disturbed. The Thornton Ranch goes down to 2-acre lots.

Mr. Sommer said the MOU the County entered into with Thornton [*Exhibit 3 Recital #6*] clearly states the County will recognize patents as legal lots of record. He said it has always been the County's policy to recognize patents and the settlement further confirms that reliance of County policy.

Mr. Sommer said it ironic that something that happened in 1851 has lost its legitimacy because of the passage of time. He directed the Committee's attention to the mural behind the dais that honors the heritage of the community that relies on events that occurred centuries ago.

Ms. Cobau pointed out that County staff member E. Gonzales of County lacks the authority to approve a plat for a lot line adjustment, a plat for a land division or subdivision. "He does not have signatory authority."

Regarding the subdivision of the lots in the McKee, Hacienda Tranquilla Subdivision that the applicant has asserted are existing, Ms. Cobau said if it is determined that those subdivisions in those lots exist, those lots cannot be destroyed or replatted without the approval of the BCC. Even easements crossing these properties cannot be vacated without BCC approval.

Ms. Cobau said the surveyors appearing for the applicant and the County surveyor have asserted that they are patent lots. She said it was disconcerting that the SWMS started with 39 patent parcels, then it was 35 and finally they decided there were 29 parcels.

Ms. Cobau reminded the CDRC that their decision is to approve or deny the decision of the Land Use Administrator that deemed the application incomplete for administrative approval and required reconfiguration of the application into master plan.

Mr. Apodaca offered the following points: Regarding the alleged policy of the County to recognize patents as creating lots of record is contrary to law. For the CDRC to recognize the said lots would be to perpetuate an illegality. Placing reliance on patents to effectively skirt the subdivision process is not appropriate.

Reliance on the BLM letter Mr. Ludwig brought to the CDRC's attention is "misplaced." The parcel was treated as one big parcel and that is the way it should be handled tonight. He said it was important to note that the contiguous parcels remaining are substantially increased as a result of the lot line adjustment.

Mr. Apodaca noted that "reserved for future use" and "open space" terms used by applicant are clearly subdivision terminology. He said the Subdivision Act cannot be circumvented under the guise of a lot line adjustment.

On behalf of staff, Mr. Apodaca said the Code requirement clearly provides that it is the Land Use Administrator who must determine whether a lot line adjustment meets the requirement of the Code. In this case, it was his determination that it does not and therefore he deemed the application incomplete.

Chair Romero lauded staff for a comprehensive, coherent packet and he also thanked the applicant and the public. He said the public process is very important and the County has demonstrated its devotion to that process through the development of the new Code.

Member JJ Gonzales said he appreciated the presentations by staff, the applicant and the public regarding this case. The comparison with the Harrison subdivision was inappropriate because they have gone through the master plan public meeting process. The applicant is creating a subdivision and the public deserves their say during the course of the public process.

Member Martin asked about the common promotion plan and Ms. Cobau read the definition from the Code: "The common promotional plan as defined in Article X of the Code is any plan or scheme of operation undertaken by a single subdivider or group of subdividers acting in concert to offer for sale or lease parcels of land where such land is contiguous to or part of the same area of land, or it is known, designated or advertised as a common unit by a common name." A common promotional plan requires going through the subdivision requirements.

Member Dayton said the case presents a difficult legal question; however, it appeared to him to be a subdivision.

Based on the testimony of the witnesses presented by the applicant, Member DeAnda said it was not clear to her that there were 29 lots of record based on current state and local laws. Based on the scope and nature of the project she advocated that it go

through the master plan development process. She was not convinced that there was not consolidated use of the land.

Chair Romero pointed out that the CDRC is a recommending body to the BCC.

Member Dayton moved to deny the appeal of CDRC Case APP 09-5210, Saddleback Ranch Estates. Member Martin seconded and the motion passed by unanimous voice vote. [Member C. Gonzales was not present for this action.]

B. CDRC CASE # APP 09-5380 Mine Shaft Properties: Lori Lindsey, applicant, is requesting an appeal of the Land Use Administrator's decision to confine all music events on the property to the interior of the Mine Shaft Tavern and not to allow any activity outside of the Mine Shaft Tavern. The property is within the Traditional Community of Madrid at 2846 State Highway 14, within Section 36, Township 14 North, Range 7 East, (Commission District 3)

Exhibit 9: Land Use Administrator letter dated 8/20/09 re: zoning statement to Mine Shaft

Exhibit 10: 10/14/09 resident letter supporting the Land Use Administrator's decision

Exhibit 11: Appellant's response to Land Use Administrator's decision 8/20/09

Mr. Kolkmeier said this case is about a legal non-conforming use. That designation allows for the use to continue provided there are no expansions or changes to the property. Changes to the property are permissible through the master plan development and/or rezoning process. That process allows for public participation and clarity of the proposed changes.

Mr. Kolkmeier said the Madrid residents and the Mine Shaft owners have been very cooperative but "we have a problem." The County seeks to solve the problem in the fairest way to the residents of the community and the property owner.

Mr. Kolkmeier referred to an August 19, 2009, letter to Lori Lindsey and Mine Shaft Properties, LLC advising her that:

"...the County Land Use Administrator and the County Attorney believe that recent changes to the photography studio, changing it into a saloon, and the addition of seating and entertainment and music on the porch area have, in fact, created changes that affect development standards and the health, welfare and safety of adjacent residential and commercial neighbors. It is our opinion that these changes increase the intensity of development on the property and are, therefore, a violation of the code.

"This zoning statement, therefore, serves to acknowledge that uses outside of the Mine Shaft Tavern itself will be interpreted as conditional uses and subject to special use permits or approval by the CDRC or BCC. Outdoor entertainment, including music and concerts, will need to be evaluated by the Land Use Administrator on a case-by-case basis. Special Use Permits will be required for events and/or concerts held on the property outside of the Mine Shaft Tavern. This includes the patio area adjacent to the Old West Saloon, Formerly the Old West Photography Studio."

Mr. Kolkmeier said expansion of future, non-conforming commercial uses shall be allowed provided the redevelopment or improvements to the site serve to bring the use into conformance with the purposes of the Code. He stated as the Land Use Administrator he has directed Ms. Lindsey that effective immediately, all music events on the property must be confined to the interior of the Mine Shaft Tavern. A special use permit will be required for any further music activities and if that is not adhered to, a Notice of Violation will be issued and penalties levied.

[Member C. Gonzales returned to the proceedings.]

Mr. Kolkmeier emphasized that all the changes and activities the Mine Shaft has discussed with Land Use staff as wanting to offer can be included in a master plan and that process allows for public input. The County believes the master planning process is the most equitable and sure way to proceed. He said it was clear that changes have been made to the property and there has been an intensification of uses.

Mr. Kolkmeier explained that Ms. Lindsay is appealing the decision he made as Land Use Administrator to confine all music events on the property to the interior of the Mine Shaft Tavern and not to allow any activity outside the tavern. He said his decision is not about music; rather it is about a portion of the property was developed without permits on which music is taking place. "The solution is very simple," stated Mr. Kolkmeier, "Ms. Lindsay should come forward with a master plan for her property..." If Ms. Lindsay will develop a master plan within a six-month period, the County will allow grant her three special use permits on her property, thus allowing her to present some of the events she'd like to.

Duly sworn, Lori Lindsey, Highway 14, Madrid, thanked the residents of Madrid for appearing this evening. She attributed the large turnout to the issue which is a "minority voice." Ms. Lindsey said she disagrees with the Land Use Administrator's decision. She said Santa Fe County operates on a complaint-driven agenda "rather than what is best for the majority." Stating she was not a victim but there have been many attempts to "victimize her legitimate business operation in the form of telephone harassment." She asserted that a very few individuals have wasted County resources to try and put her out of business.

Ms. Lindsey said Madrid has been embroiled with the concept of censoring outdoor live events. She purchased the property with Mr. Kutcher and it's important that it be improved and opportunities expanded to meet the rising costs of doing business in Santa Fe County. She said she believes in Madrid and wants to incorporate its historic character with the new history. [see, Exhibit 11]

Ms. Lindsay noted that Madrid has been the location for outdoor music festivals dating back almost 30 years. Main Street Madrid, emphasized Ms. Lindsey, happens to be State Highway 14.

The Mine Shaft Tavern was built in 1947 and with the windows open, music has always wafted out. She mentioned an opera house, old coal mine museum, car dealership, hospital and mining company work shops that were on the property. She assumed

historic use of music was incorporated into the museum. She said she and her partner intend to continue the historic tradition of the Mine Shaft Tavern.

Ms. Lindsey said the people complaining about the music are the minority voice in the community. She said the majority are "offended and simply tired of their misplaced anger..." She reviewed a list of events that are sponsored by the Mine Shaft Tavern.

Ms. Lindsey repeated twice for the record that "if I cannot have events on my property the Oscar Huber Memorial Ballpark cannot have events."

In response to the County's contention that she did not obtain a permit for the patio expansion, Ms. Lindsey said she called twice and never got a call back. She offered witnesses to attest to the fact that she tried to get clarification regarding what could be done on the property. She welcomed obtaining an after-the-fact permit.

Ms. Lindsey reviewed the improvements that have been made on the property explaining that these very old structures were deteriorating and remedy was necessary. With the prohibition of smoking inside the majority of the tavern patrons sit outside. She said the patio renovations included ADA compliance.

Regarding the noise, Ms. Lindsey stated the highway traffic is much greater than any music event conducted on her patio or the Old Coal Mine Museum site. Decibel levels have been measured and they have neither exceeded nor been close to the limit. As an anchor business in Madrid, she and her partner work hard to bring revenues to the County. She mentioned that the property taxes have been increased by 1,000 percent.

Reminding the CDRC that this is a democracy, and the majority of Madrid disagrees with the Santa Fe County Land Use Administrator on this issue. She discussed a recent meeting in Madrid that County officials attended where the majority supported the Tavern. She then stated she intended to submit a master plan for the Old Coal Mine Museum and the outlying areas of the property.

In closing, Ms. Lindsey requested an after-the-fact permit for the saloon deck and the engine house/theater landing and steps. She purported that this was not development. Then she asked that the CDRC review the engine house/theater because of a failure by the County fire department. Her property is on the most endangered historic properties list for 2005 and is listed on the National Historic Register. She said a tremendous amount of her resources are spent dealing with these complaints versus using those energies to find a funding partner to preserve the property.

Duly sworn, Jeffrey Kutcher, co-owner of Mine Shaft, said he came to Santa Fe four years ago and saw it as an amazing opportunity to change his life. Their main goal was to preserve the tavern and maintain its integrity. He discussed the respect he and his partner have for their property and the town itself. He knew as an outsider it would be challenging coming into Madrid but he recognized the tavern was the "life blood" of Madrid.

Mr. Kutcher said he and Ms. Lindsey made a very large financial commitment in the property and he would not have done so if he weren't sure the goals could be accomplished.

Mr. Kutcher said he felt this case before the CDRC has come about because a very small group of people that have "worked against us ... in an arbitrary way." He said these people were vilifying them and trying to harm the business. He was stunned to learn there have been hundreds of complaint phone calls to the County agencies "to shut us down." The calls have been made by a small, select group of people with a "relentless and one-sided pursuit."

Mr. Kutcher described a number of incidents where members of this small, select group of Madrid residents have confronted and threatened him and his employees. He said the complaints are a concerted effort to destroy what he and his partner are trying to accomplish on their property.

Steve Shepherd, Madrid landowner, two-term board member of the Madrid Landowners Association, active member of the volunteer fire department, an EMT and a proud member of the Madrid community was duly sworn. He said he was somewhat embarrassed that the actions of a few hardheaded neighbors have caused the County to intervene prematurely. "Issues between neighbors should be resolved between neighbors, not the government." The music has been used as an excuse. He described an incident where someone was playing an acoustic guitar on the tavern patio, a complaint was filed and the police arrived and made him stop playing. Mr. Shepherd said the motorcycles were louder than the guitarist.

Mr. Shepherd urged the CDRC to rescind the Land Use Administrator's decision, grant the Mine Shaft the same benefits other like enterprises in the County have, and let the neighbors resolve the problems.

Under oath, Sarah Geidenhagen, a server at the Mine Shaft Tavern said it's the best job she's ever had and is a good revenue maker for the community. She said the tavern serves as a community center and stopping the music will hurt the community.

Under oath, Eli Levin, Mine Shaft employee, said the camaraderie he has experienced there is unusual and very impressive. There is a relationship between the community and the historic structure.

Under oath, Tracey Reagan said she was thankful that the Tavern owners repaired the old, decrepit components of the structure. She said the porch had to be repaired. The issue is about the music, not the master planning, but music. Recognizing that sound travels in different ways, Ms. Reagan said it was perplexing that after years of music presented at that venue it becomes an issue.

Ms. Reagan said while the bar employs 25 people it is more than an employer but critical to the survival of Madrid. Without the financial backing of Mr. Kutcher and Ms. Lindsey the town would not be thriving.

Ms. Reagan pleaded with the CDRC to carefully look at the situation and recognize it is a few people who are irritated about the music and the change coming to Madrid.

Duly sworn, Annette Garcia, operations officer, for the Tavern stated the owners have made extremely important improvements to the property. She noted that the previous owners did not improve the property. Ms. Garcia said the threatening phone calls she receives are terrible. "It's all about going after Lori and Jeffery and going after the tavern."

Ms. Garcia questioned the validity of the County listening to six residents rather than the wishes of the majority.

Under oath, Andrew Weiss, manager of the Hollar Restaurant located across the street from the Mine Shaft Tavern and the closest building residential or business to the newly built porch, appeared in support of the appeal. He said he worked at the Mine Shaft as the music manager and bartender for a number of years and attested to the nature of the complaint phone calls being rude, insulting, threatening and harassing and made by a very few people.

Rebecca Nafey, under oath, stated that "music is the universal language of peace and understanding – everyone on the planet can speak music." The County has asked the residents of Madrid repeatedly what does Madrid want to be. She said the answer was obvious, "It is what it wants to be: young, vibrant, alive and active."

As a mixed-use community, Madrid must work together, stated Ms. Nafey. She said the residents of Madrid must remember and follow the Golden Rule in their daily lives. "The divisiveness infecting the town" has to end. She said Ms. Lindsay does consider her neighbors' complaints, feelings and rights and has worked hard to mitigate any noise issues. She said the owners of the Mine Shaft have given to the community and she challenged anyone who can be cited as having given more.

Ms. Nafey said it was unfair for the County to shut down the music because the music serves as the celebration of life.

Duly sworn, Elizabeth Falconer, a Madrid gallery and homeowner said her gallery is directly across the street from the tavern porch. She said loves the music whether it comes from the Hollar or the Mine Shaft, "it's been wonderful for business." She had hoped the community could host a Renaissance fair but that was tabled until these issues are resolved.

Ms. Falconer said there were a very few number of people who were against the tavern. She said her home is directly above the tavern and the music has never bothered her. She cautioned the County that by catering to a "few bullies" it reinforces their ability to bully. She encouraged the County to cite the complainers for being a pain in the neck.

Duly sworn, Cathasha Cabrielle, a Madrid business owner located directly across the street from the tavern said she appreciates the County's position in having to respond to the complaints. She advised the CDRC that to hear the music she must have all her

windows open and the people complaining live a ways away behind adobe buildings and she questioned how they could hear it. She said she was the closest residence to the tavern.

Ms. Cabrielle said she understood that remodels are permitted if the original footprint isn't altered. People that drive through Madrid and hear the music tend to stop and walk around and spend money. She said it was sad that the complaining parties can't work with the community and come forward to have their issues addressed.

Ms. Cabrielle urged the CDRC to grant the appeal and allow music in Madrid to continue. She proposed citing the complaining parties for harassment: "Why allow a handful of people to make harassing phone calls using vulgar language and attack and slander and involved the police department and the fire department on a regular basis..."

Paul Olsen, duly sworn, a resident of Madrid who shares the fence line with the tavern and who gave his house to the town for 2 ½ years to use as a community center described himself as a New Yorker who worked at the stock exchange. He said he hosts belly dancing at his home every two weeks and has reached an agreement with town people that if the drumming gets too loud he'll lower it and it stops by 11 p.m.

Mr. Olsen said the music from the tavern attracts tourists and is pleasant. The music brings money into the town and taxes to the County budget. The Mine Shaft is one large unit with many venues and the harassment by a few that creates aggravation for the County Commissioners is unfair. He said the town will be devastated if the Mine Shaft is shut down. He looked forward to the CDRC's positive response.

Duly sworn, Phil Undercuffler a 15-year Madrid landowner and member of the volunteer fire department for 10 years, currently serving as chief, said there were a great many challenges to overcome regarding access and parking when Ms. Lindsey and Mr. Kutcher purchased the Mine Shaft. He said the owners took steps to clear up the issues and he stands in support of the Mine Shaft.

Under oath, Ellen Deidrick, a professional environmentalist who conducts noise studies and understands decibel levels, said she and her husband moved to Gold Mine Road to get away from a noise-related problem thus she understood this issue. She pointed out that a State Highway with a high ambient level runs through Madrid.

Ms. Deidrick said her acoustic band plays at the Mine Shaft and the amplification is used for the people at the venue. She said Ms. Lindsey cautions the band to keep the volume low. The Mine Shaft is a really nice venue in a commercial district, stated Ms. Deidrick and she hoped the CDRC would grant the appeal.

Thomas St. Thomas, duly sworn, said the Mine Shaft offers an amazing venue that he feels comfortable bringing his young daughter to. The property is amazing and he was in awe of the different music that is provided. He said there are a lot of musicians who need the work and the Mine Shaft offers opportunity. He asked the CDRC to support the neighbors.

Sarah Thomas, under oath, stated that it was pretty clear the people that are calling and have created this issue are the minority. She asked how the CDRC could side with the minority and not the community.

Linda Biarchia, duly sworn, the only employee of the tavern porch said this entire summer has been one of love and made us remember what Madrid is all about. She beseeched the CDRC not to "take that away from us."

Connie Long, under oath, a previous resident of Manhattan who escaped from the destruction of the second World Trade Center, said she moved to Madrid for the quality of life. She said she frequents the Mine Shaft and was disturbed to think a few could ruin the enjoyment and livelihood of so many.

Joann Kestenbaum, under oath, described herself as a typical Madroid, a licensed massage therapist, a passionate volunteer at Hospice and a frequent patron of the Mine Shaft Tavern. Ms. Kestenbaum said her work at Hospice has reinforced what matters in life and that is community and the Mine Shaft offers that community. The music at the tavern is very healing and she feels blessed to be part of the community where you can be "gay, straight, rich or poor it doesn't matter."

Joseph Karnes 200 W. Marcy Street, under oath, said he appeared in support of the Land Use Administrator's decision that is subject to appeal. Mr. Karnes said the matter before the CDRC is not a question of the existence of the Mine Shaft Tavern nor about loud voices or complaints or majority rule. It most certainly is not about majority rule. This is not a popularity contest, stated Mr. Karnes. Instead it is about the Land Development Code and what it means. Mr. Kolkmeier's job is to apply the Code and that's what he has done. He asked the CDRC to do their job and apply the Code to the facts.

The Code requires that any property owner has to apply for required permits before making substantial changes to an existing or proposed use, stated Mr. Karnes. This owner has not done that. Mr. Kolkmeier's letter [*Exhibit 9*] cites a series of changes that the appellant made without a permit including that of changing the photography studio into a saloon and expanding the porch area. Mr. Karnes said these changes expanded and intensified the uses of the property and did so without a permit.

Contrary to the appellant's statement, the Code is not gray, and the facts were clearly established based on the Land Use Administrator's decision. Mr. Karnes requested that the CDRC carefully consider Mr. Kolkmeier's findings in making their decision.

In terms of the music issue, Mr. Karnes said the concern is more about amplified music than acoustic music but those concerns will be addressed during the master plan process.

In an effort to clarify the record, Mr. Apodaca suggested it would be helpful to know whether Mr. Karnes was speaking on his own behalf or as an attorney for a party.

Mr. Karnes said he speaks for a substantial number of Madrid property owners.

Chair Romero closed this portion of the public hearing and invited the appellants to make any closing comments.

Mr. Kutcher said there is no additional water use; they sell bottled water and an outhouse facility is used.

Ms. Lindsey said there was nothing in the packet and she knew nothing about an attorney representing anyone in Madrid and asked who was paying Mr. Karnes.

Mr. Apodaca said Mr. Karnes is entitled to represent his clients' interest without having to submit materials for the packet. Mr. Karnes' statement that he was representing parties in Madrid in opposition to the appeal was sufficient, offered Mr. Apodaca.

Ms. Lindsey said Mr. Karnes made a statement under oath that he was "representing a substantial amount of people in comparison to the people that were here tonight" and she asked for clarification of that.

Mr. Karnes said his words were twisted and he does represent a substantial number of Madrid property owners.

Ms. Lindsey said Mr. Karnes' attitude was exactly what she has been experiencing for the last two years.

Member Salazar asked whether the basis for most of the complaints has been the outdoor music.

Land Use Administrator Kolkmeier said his job is very Solomonic to rule on complicated and often emotional issues. He mentioned he has played music in Madrid with both the Velcros and the Antiques and as the former County Planning Director he helped Madrid write their community plan. The plan fails to address music and along with that a number of issues have stacked up that need to be approached in a problem-solving manner. Community problems cannot be solved with animosity or antagonism.

Mr. Kolkmeier clarified the following points:

- Neither he nor any one in his staff has said they want to shut down the Mine Shaft Tavern
- The County officials support local businesses
- The County supports and grants Special Use Permits for a range of events
- Permitting and master planning is required to change the nature of a property, e.g. The Brewing Company
- The Mine Shaft patio/porch is a new addition that was constructed without a permit
- The County has offered to grant an after-the-fact permit with the condition that the owners develop a master plan within the next six months

- The County is willing to grant Special Use Permits in anticipation of the master plan

Mr. Kolkmeier said it the public needs to be part of the master planning process. The issue is the porch because the porch facilitated music on Saturdays and Sundays that did not occur before the building of the porch and people complained.

He emphasized that there is a process that follows the Code and allows for public involvement.

Member Salazar said the complaints on the County's radar resulted in an interpretation of an intensification of use and expansion of use. The master plan will result in making the uses and activities legal and creating parameters.

In the event a master plan is submitted and approved, Member Salazar asked what County code enforcement would do when complaints came forward again. Mr. Kolkmeier responded the complaints would have basis if there was a master plan violation. He added that the County was actively developing a noise ordinance.

Mr. Kutcher asked the CDRC to separate out the issue of the porch and grant the after-the-fact permit, then allow the appellants to develop a master plan.

Chair Romero said the CDRC is not here to shut anybody down and wants to work with the appellants and community to find a solution.

Mr. Apodaca advised the CDRC to consider the Code in their action. The issue is whether the expansion of a non-conforming use meets the requirements of the Code. The entire site is a non-conforming use and he said the expansion of the photography studio and the patio are both expansions of a non-conforming use. The action of the CDRC could be to require the applicant to seek master plan approval for any future activities, essentially grandfathering what exists and bringing the whole site in for master plan review and approval thus providing public input and establish enforceable standards.

Member Salazar moved to deny the appeal and uphold the Land Use Administrator's decision and require the applicant to proceed to the master planning process with the four conditions outlined by staff and an additional condition 5

1. The applicant shall submit a master plan for consideration by the County Development Review Committee and Board of County Commissioners within six (6) months of this meeting date.
2. The applicant, as a component of the master plan, shall submit an after-the-fact permit(s) for any and all development made on the property.
3. The applicant shall be restricted to three (3) Special Use Permits per year, subject to the Land Use Administrators approval, prior to approval of the master plan.
4. The applicant shall submit in a timely manner, upon approval and recordation of a master plan, a final development plan identifying a phasing schedule for the development on the property.
5. The existing structures shall be considered the starting point and grandfathered in and all future activities will be master planned.
- 6.

Member JJ Gonzales seconded the motion. The passed by unanimous [6-0] voice vote. [See 40 page: rescinding and clarification of the motion]

Ms. Cobau clarified that the motion was to deny the appeal and the appellants have the right to appeal that CDRC's decision to the BCC.

Chair Romero said the CDRC's action allows the Mine Shaft to continue to operate as they prepare a master plan and offered that as a friendly amendment. Member Salazar said his motion allowed for continued operation.

[The CDRC recessed for 10 minutes.]

- C. CDRC CASE # V 09-5340 Robert Garcia Variance: Robert Garcia, applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 13.1 acres into two lots. The property is located at 3 Woodland Way via State Highway 14, within Section 30, Township 14 North, Range 8 East (Commission District 3)**

Mr. Dalton presented staff's report as follows:

"The applicant originally purchased two 6.5-acre properties in 1998. These lots were legal non-conforming created before 1981. In 1999, on the advice of a family member, the applicant consolidated the two lots into the current 13-acre lot. In 2005 the applicant and his neighbor recorded a lot line adjustment. Currently there are two dwellings on the property as the applicant was allowed to maintain the original density from the original two lots. The property is served by an onsite well and two conventional septic systems. The applicant states that the purpose of subdividing the property back to its original two lot configuration is so that each of his sons will have a piece of property."

Mr. Dalton said that staff recommends the request be denied based on the code requirement that 160 acres is the minimum lot size.

Responding to the Chair, Mr. Dalton said a consolidation plat was filed in 1999.

Duly sworn, Robert Garcia, applicant, stated that he wants to leave both his sons property. He originally purchased the properties as two 6.5-acre lots and following the death of his father-in-law they moved his mother in-law into a mobile home on the property and reconfigured the lots by consolidation rather than a lot line adjustment.

Mr. Garcia said he was requested that the property be returned to its original designation as two separate parcels. He assured the CDRC that the density will not change.

There were no other speakers on this case.

Member C. Gonzales moved to approve the variance request. His motion was seconded by Member JJ Gonzales and passed by majority [4-3] voice vote as follows: voting for were Members Salazar, C. Gonzales, JJ Gonzales and Romero, and voting against were Members Martin, Dayton and DeAnda.

D. CDRC CASE # V 09-5360 Carol Esquibel Variance: Carol Esquibel, applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a third dwelling unit on 5.5 acres. The property is located at 14 Eh Ski Vel Lane, within Sections 5, 6 and 8, Township 20 North, Range 9 East, (Commission District 1)

Mr. Dalton reviewed the staff report as follows:

“On August 20, 2009, the Land Use Administrator granted the Applicant a three-month temporary placement for her granddaughter’s mobile home on the property while the applicant goes through the variance process. This was done with the caveat that no utilities be hooked up to the home. After the public hearing process is complete, should the Board of County Commissioners deny the request for the variance, the applicant has ten days to remove the mobile home from the property.

“There are currently two homes on the property which comply with current zoning regulations. Each residence is served by its own septic system and shares a well. The applicant proposes to connect the third mobile home to a community water system, though staff has not received a ready, willing and able letter to connect the third dwelling unit to this particular community water system.”

Mr. Dalton said that staff recommends that the request for a variance be denied. Article III, Section 10 of the Land Development Code states the minimum lot size in this area is 10 acres per dwelling unit.

The applicant, Carol Esquibel of Cuarteles, was placed under oath and said she was told she needed 2.5 acres per dwelling in her area; however, other close-by areas have permitted homes on .75 acres.

Mr. Dalton said Ms. Esquibel’s property is located within the Basin Hydrologic Zone where the minimum lot size is 2.5 acre. He said she was close to the traditional community boundary where the lot sizes range from .25 acres to 8 acres with multiple dwellings.

Chair Romero said he was familiar with this area and questioned whether a boundary line extension was an appropriate method to help the applicant.

Mr. Dalton said a map amendment through the planning department was a possibility.

Chair Romero said if the map amendment were approved the applicant could conduct a family transfer for the three lots.

Ms. Cobau said staff was involved in the Sustainable Land Development Plan and it was unlikely that they would be willing to remap the traditional historic community boundaries.

A discussion ensued regarding the boundary of the Traditional Community and upon a rereview of the map, staff requested more time to investigate the boundary.

Member DeAnda moved to table this case. Chair Romero seconded and the case was tabled by consensus.

- E. **CDRC Case # MP/PDP/DP 09-5180 Parker NM 599. Paul Parker, applicant, James Siebert, agent, request a master plan amendment to allow a reduction of the building setback from a approved master plan and preliminary and final development plan approval for an office building consisting of 13,000 square feet and warehouse building consisting of 8,000 square feet for a total of 21,000 square feet on 5.8 acres. The property is located north of New Mexico 599 at 62 Paseo de River, within Sections 2 & 11, Township 16 North, Range 8 East, (Commission District 2)**

Mr. Larrañaga reviewed the staff report as follow:

“On April 12, 2005 the applicant was granted master plan approval, by the BCC, for light industrial and office use on 5.8 acres. The master plan was approved in compliance with the provisions set forth in the Highway Corridor Plan which included a 340-foot building setback.

“The applicant is requesting an amendment of the existing master plan to reduce the setback to 270 feet. The applicant agreed to comply with the building setback recommended by the Highway Corridor Plan with the expectation that the plan would be formalized as an ordinance. The applicant states that the proposed setback for the Parker NM 599 Amended Master Plan is based on the setback allowed for the County Public Works building.

“The applicant is requesting preliminary and final development approval for light industrial and office use. The development will consist of a 13,000 square foot office building and an 8,000 square foot warehouse building on 5.8 acres. The proposed site is within a Major Center Commercial District. The adjoining land uses are Associated Asphalt, Lafarge, the County Public Works Facility and various sand and gravel operations which are operated by Espanola Mercantile and R.L. Leeder. These uses are consistent with the requirements of a Major Center Commercial District defined in Article III, Section 4 of the Land Development Code.”

Mr. Larrañaga said the application was reviewed for signage, parking, architectural standards, lighting, existing development, adjacent property, access, terrain management, water, solid and liquid waste, fire protection, landscaping and archaeology. He said staff reviewed the application and has found the following facts to support this submittal: The Highway Corridor Plan was never formalized as an ordinance. The proposed setback for the amended master plan is based on the setback allowed for the County Public Works Facility. The master plan was approved by the BCC, for light industrial and office use. The proposed site is within a Major Center Commercial District. The proposed use and adjoining land uses are consistent with the requirements of a Major Center Commercial District. The proposal for the master plan amendment/preliminary and final development plan meet the criteria set forth in the Land Development Code.

He indicated that the review comments from State Agencies and Development Review Services have established findings that this application is in compliance with Article V, Section 5.2.6 and Article III Section 4.4 of the Land Development Code.

Staff recommends approval of a master plan amendment to allow the reduction of the building setback from an existing approved master plan and preliminary and final development plan approval for, Parker NM 599 consisting of a 13,000 square foot office building and warehouse building consisting of 8,000 square feet for a total of 21,000 square feet on 5.8 acres, subject to the following conditions:

1. All Staff redlines shall be addressed, original redlines shall be returned with final plans for the final development plan, prior to consideration by the Board of County Commissioners.
2. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) State Environment Department
 - c) State Department of Transportation
 - d) County Hydrologist
 - e) County Fire Marshal (Site Plans & Building Plans)
 - f) State Historic Preservation Division
 - g) Development Review Services Comments and Conditions
3. The applicant shall comply with all requirements of the County Land Development Code.
4. The master plan amendment with appropriate signatures shall be recorded with the County Clerk.
5. Development plan with appropriate signatures shall be recorded with the County Clerk.
6. The applicant will be required to submit a financial guarantee, in an amount approved by the County, for all improvements including but not limited to fire protection, roads, retention pond all stormwater system improvements including storage, ponding, rain water harvesting, erosion control, etc, and landscaping prior to the recordation of the final development plan. The financial guarantee for landscaping and re-vegetation will be kept until the plantings have taken, for a minimum of one year after installation.

- 7. Development shall comply with all EPA and PSD MS 4 and CGP requirements for construction and post-construction runoff stormwater pollution control and reduction measures and BMPs.
[underlined language added at motion]

Member C. Gonzales asked whether the setback was required or desired. Mr. Larrañaga said it was the required setback of a plan that is no longer in effect.

Duly sworn, Jim Siebert, 915 Mercer, said the applicant was in agreement with staff conditions.

Member DeAnda asked whether the plans were developed with the inclusion of the 340-foot setback. Mr. Siebert said when the development originally came forward the County was working on the Highway Corridor Plan and the applicant accepted future setbacks as imposed by the plan. Since that time the County has not enforced the Highway Corridor setbacks outside the Extraterritorial Zone because the plan lacks an ordinance to enforce it. The applicant will provide a 270-foot setback in accord with the County Public Work's setback of 270-feet which is next door to Parker's property.

There were no other speakers on this case.

Member C. Gonzales moved to approve MP/PDP/DP 09-5180 with staff conditions. Member Salazar seconded.

Member Salazar amended the conditions as underlined above.
The motion and amended conditions passed by unanimous voice vote.

Mr. Larrañaga advised the applicant that the CDRC's recommendation will be forwarded to the BCC for final action.

- F. **CDRC CASE # MP/PDP 09-5230 Galisteo Village Store. Timothy Willms applicant, Linda Tigges, agent, request master plan and preliminary development plan approval for the Galisteo Village Store, private social club for the village, studio/office and residence consisting of a footprint of 4,952 square feet on .568 acres. The property is within the Traditional Community of Galisteo at 2 Via La Puente, within Section 36, Township 14 North, Range 9 East, (Commission District 3)**

Mr. Larrañaga read the case caption and presented the staff report as follows:

"Currently on the property there are three structures, one of which was utilized in the past as a general store, a residence and a building currently used as an office/studio. The applicant proposes to utilize the existing structures, with some minor expansion and improvements, for the proposed development.

“The structure, which historically operated as a store formerly known as La Tiendita and Anaya Country Store, will be used as a coffee shop, grocery store, small art gallery and community kitchen. A 270 square foot bathroom addition is proposed for this structure. The existing residence will be utilized as a village social club and a 1,069 square foot residential addition will be added to the structure. The building, currently used as an office/studio, will be utilized as an office and a 220 square foot bathroom and walk-in freezer area is proposed to be added to this building. The total footprint of the proposed development will consist of 4,952 square feet and meets the 20 percent lot coverage requirement for this development.

“The applicant holds a lease to an adjoining .270-acre parcel which is owned by the New Mexico Land Office. This parcel of land will be utilized by the proposed development for access, overflow parking and leach fields for the septic system. The use of the leased parcel for leach fields has been approved by the New Mexico Environmental Department.”

Mr. Larrañaga said the applicant has met with the Galisteo Neighborhood Association to discuss the project and states that the community is in support of the proposed development.

He indicated the project was reviewed in accordance with the Land Development Code and based on that review staff has found the following facts to support this submittal: The proposed site represents a significant piece of history of the Galisteo Community. The applicant has taken measures to preserve the historic integrity of the structures and the community. The applicant has met with the community to discuss the proposed development. The proposal for master plan and preliminary development plan meets the criteria set forth in the Land Development Code.

The review comments from State Agencies and Development Review Services have established findings that this application is in compliance with Article V, Section 5 (Master Plan Procedures), Article III, 4.2.2 (Traditional Community Districts) and Article III Section 4.4 (Development Plan Procedures) of the Land Development Code. Staff recommends master plan zoning and preliminary development plan approval, of the Galisteo Village Store, private social club for the village, office and residence consisting of a footprint of 4,952 square feet on .568 acres, subject to the following conditions:

1. All staff redlines shall be addressed, original redlines will be returned with final plans for master plan.
2. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) State Environment Department
 - c) State Department of Transportation
 - d) County Hydrologist
 - e) County Fire Marshal
 - f) State Historic Preservation Division
 - g) Development Review Services Comments and Conditions
3. The applicant shall comply with all requirements of the County Land Development Code.

4. Master plan with appropriate signatures, including the signature of the New Mexico State Land Commissioner (or representative of), shall be recorded with the County Clerk.
5. The applicant shall submit a final development plan to be approved by the County Development Review Committee prior to the issuance of any permits for grading or building permit.
6. Due to the historical nature of the property and the close proximity to an existing church, any zoning statement, for, or variance of, the Alcohol and Gaming requirements for the issuance and or approval of a liquor license, shall be presented to the Board of County Commissioners for consideration.
7. The social club shall be moved to the same structure occupying the grocery store.
8. The development shall comply with all EPA, PSD MS 4 and CGP requirements for construction and post construction runoff, stormwater pollution control and reduction measures in BMPs

[Conditions 7 and 8 added at motion.]

Member DeAnda expressed concern about the parking situation, noting there were only 12 spots at the property one of which is ADA. Mr. Larrañaga said the parking was reviewed and staff finds it will accommodate the applicant's proposal. Overflow parking will be at an adjoining parcel owned by the State Land Office that the applicant has leased.

Agent for the applicant, Linda Tigges, applicant Tim Willms and architect Steven Samuelson were placed under oath.

On the applicant's behalf, Ms. Tigges thanked the residents of Galisteo for attending. She indicated that the applicant agrees with all conditions of approval. Utilizing an aerial map, Ms. Tigges identified the various properties to better orient the committee members.

Ms. Tigges said the applicant has met with the area residents and has been very responsive to their concerns. The structure had been a store but because of the length of time in which it was inoperative it lost its grandfather designation. The request for zoning returns the property to its former use.

The neighbors expressed concern about lighting, parking and an original proposal for a two-story structure. The community social club is in direct response to the community concerns and wine and beer will be sold in the store.

Previously sworn, Steven Samuelson, 623 Agua Fria Street, said the project has 14 parking spaces. The State Land Office property is being utilized for parking and access purposes. Using a plat, Mr. Samuelson said the general store will be restored and brought back its original character which is 1,550 square feet and a 225 square foot bathroom is being added. An 1,100 square foot existing structure may be expanded in the future. The old mechanic shop on the property will serve as an office and a bathroom will be added.

A courtyard will be defined where there are mature trees and new landscaping will be low water use. A cistern is being installed.

Chair Romero asked the applicant to expound on the private social club concept. Under oath Mr. Willms said his concept has been focused on rural economic development through local farming and ranching. The store will carry mostly local food products. The social club is a not-for-profit organization that will focus on local food issues with wine tasting. The intent is for a neighborhood gathering place since one no longer exists in Galisteo. The membership would be nominal. He hoped the social club would be housed under the Santa Fe Community Foundation with any profits going to local food banks.

Mr. Willms said local foods will come from a 200-mile radius mainly through the Estancia Valley.

Mr. Larrañaga said based on the proposed uses staff determined 20 parking spaces were recommended and the Land Use Administrator has deemed that the required spaces allowing the nine spaces on Tract A and three on Tract B sufficient. Member DeAnda said a total of 12 parking spaces did not seem adequate and she expressed concern that there would be parking on the street.

Mr. Samuelson said Tract B has ample space parking to accommodate any overflow. Ms. Tigges said the commercial lease on the State Land Office property is for 35 years with an option to buy.

Ms. Cobau said the church has parking that may be available to the project.

Mr. Willms said he hoped people would walk and bike to the store.

Duly sworn, Priscilla Hoback, an adjacent property owner to the proposal, said Galisteo needs a coffee shop and she was not opposed to it. However, she is very concerned about the sale of liquor and the private club. She said the property was very small and the expansions proposed by the applicant intensify it greatly. The building for the private club is 12 inches away from her living room window and at her other window the applicant will house garage cans.

Ms. Hoback said the overhang is inches from her property line. She said the idea of a club concerns her because it further factions the community. She questioned why the private club is needed when the property contains a coffee shop, store and kitchen. Ms. Hoback said she has been on both sides of a bar for most of her life and the bar concerns her.

Ms. Hoback said she would prefer that the private club be located away from her living room. She located her house on a site map.

Ms. Hoback said Mr. Willms has been open and very wonderful in working with the residents. She said she is the only building that will be impacted by his development.

Ms. Tigges said the applicant agrees that the social club could be placed within the store. The idea of the social club stemmed from neighbors wanted something to replace the Galisteo Inn.

Mr. Willms said the nominal fee would serve as a deterrent for someone to drive out to Galisteo to have a drink but it would offer it to the Galisteo residents. He said he was not interested in serving hard alcohol.

Responding to Member C. Gonzales' concern regarding the overhang, Mr. Samuelson said Morey Walker conducted the drainage/grading survey and the overhang is over one foot and the foundation will be stabilized. He said everything will be captured from the roof and brought into a cistern.

Under oath, Woody Glenn of Galisteo said he hoped all the problems can be resolved because the project will be a great thing for the community. Galisteo is a beautiful artifact and needs modern amenities. He said Mr. Willms is bringing "a little breath of life that is desperately needed..." as long as Mrs. Hoback's concerns are addressed.

Under oath, Chase Ault of Galisteo said the project began when the property went on the market and Mr. Willms was able to purchase it and has created a community-driven project. She said Mr. Willms and his team have addressed the community's concerns throughout a series of community meetings.

Ms. Ault mentioned that there were other Galisteo community members present earlier in the evening to speak about this case but had to leave.

That concluded the public testimony.

Member C. Gonzales moved to approve MP/PDP 09-5230 with staff conditions. Member Salazar seconded with the addition of conditions 7 and 8. The motion passed by unanimous [6-0] voice vote.

Mr. Larrañaga said the case will be forwarded to the BCC.

VII. PETITIONS FROM THE FLOOR

None were presented.

VIII. COMMUNICATIONS FROM THE COMMITTEE

None were presented.

IX. COMMUNICATIONS FROM THE ATTORNEY

Mr. Apodaca recommended that the Committee consider clarifying its action on the Mine Shaft Tavern. He recalled that the Chair asked for a friendly amendment allowing for the continuation of the tavern's activities and that amendment was not voted upon. Given the carefully crafted resolution by the Committee, Mr. Apodaca offered the following recommendations: reconsider the motion for purposes of clarifying the action, rescind the previous action by motion and; entertain a new motion as follows: Move that the appeal be denied; additionally that the Committee requires Lori Lindsey and Mine Shaft Properties, LLC to comply with master plan procedures per Article V Section 5-G of the Land Use Code; and that pending master plan compliance current existing non-conforming uses at the site are allowed to continue but shall not be expanded nor extended; further, all such non-conforming uses shall be subject to the master plan approval process along with conditions as recommended in staff's report for this case.

Member Martin moved to rescind the previous action for CDRC Case APP 09-5380 and the action thereon. Her motion was seconded by Member Dayton and passed by unanimous [6-0] voice vote.

Mr. Apodaca clarified that the proposed motion allows the Mine Shaft to continue to play music on the porch.

Member Salazar moved that the appeal for CDRC Case APP 09-5380 be denied; that the Committee requires Lori Lindsey and Mine Shaft Properties LLC to comply with master plan procedures per Article V Section 5-G of the Land Use Code; and that pending master plan compliance, current existing non-conforming uses at the site are allowed to continue but shall not be expanded nor extended; further, all such non-conforming uses shall be subject to the master plan approval process along with conditions as recommended in staff's report for this case. Member Gonzales seconded and the motion passed by majority [5-1] voice vote with Member DeAnda casting the sole nay vote.

Responding to the Chair's concern that the appellant was not present, Mr. Apodaca said the CDRC merely clarified their earlier action.

X. MATTERS FROM LAND USE FROM STAFF

Ms. Cobau said Committee some committee member terms were expiring and she asked that they reapply.

The next regular meeting was scheduled for November 19, 2009.

XI. ADJOURNMENT

Having completed the agenda and with no further business to come before this Committee, Chairman Romero declared this meeting adjourned at approximately 10:40 p.m.



ATTEST TO:
Valerie Espinoza
COUNTY CLERK

Approved by:

Jon Paul Romero
Jon Paul Romero, Chair
CDRC

Before me, this ____ day of

My Commission Expires:

| Notary Public

Submitted by:

Karen Farrell
Karen Farrell, Wordswork

Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Kathy Hollan
Commissioner, District

Liz Stefanics
Commissioner, District

Roman Abeyta
County Manager

SFC CLERK RECORDED 12/01/2009

MEMORANDUM

DATE: October 15, 2009

TO: County Development Review Committee

FROM: Shelley Cobau, Building and Development Manager *SC*

VIA: Jack Kolkmeier, Land Use Administrator *JK*

FILE REF: CDRC CASE # APP 09-5210 Saddleback Ranch Estates Appeal

ISSUE:

Saddleback Ranch Estates, LLC, Sommer, Karnes & Associates, Agent, appeal from the Land Use Administrator's decision to deny administrative application 08-3179 seeking a lot line adjustment for 39 lots (subsequently amended to 29 lots) on 3,129.495 acres.

The project is located on County Road 41 within Section 13, 23, 25, & 26 of Township 14 North, Range 9 East and Sections 7, 8, 9, 16, 17, 18, 19, 20, 21, and 29 Township 14 North, Range 10 East, near the Villages of Galisteo and Lamy, Santa Fe County (Commission District 3).

The decision to deny the referenced Application was rendered by the Land Use Administrator on May 6, 2009 (Exhibit A) and the Applicant's Agent subsequently filed an appeal of this decision on May 13, 2009 (Exhibit B).

SUMMARY:

The subject 3,129.495 acre property (Saddleback Ranch Estates) was submitted for review as a Lot Line Adjustment (LLA) in late 2008 (Exhibit C). The original application proposed radically rearranging lot lines to create thirty-nine (39), forty (40) acre (or larger) lots, served by two points of access taken from Highway 41 just southwest of SR84/285 (Vicinity Map, Exhibit D). The information submitted included survey documents (Exhibit E), warranty deeds, an overall development plan, roadway plan and profiles, and a technical drainage report.

The existing property has a main ranch house with numerous outbuildings, wells, stables, windmills and other appurtenant structures. The property is bisected by the Galisteo Creek, and portions of the property are encumbered by a FEMA designated 100-year special flood hazard area (SFHA), designated as a Zone A.

The parcel does not contain 29 lots, as represented in the amended application (Exhibit C-1), or 39 lots as represented in the original application. At most, six parcels exist on the property. Several of those six parcels were unlawfully created (see below).

The parcel was owned by for many years by Jo Bar Land and Cattle Company. Jo Bar filed a Plat of Survey on December 15, 1989 that showed a single parcel of 2,412 acres (Exhibit F). The survey was approved at that time by the County Land Use Administrator. That survey plat was not disclosed to the County by the applicant, even though the proposed "lot line adjustment" was prepared by the same surveyor who prepared the 1989 plat showing a single 2,412 acre parcel.

Richard L. Fisher, his wife Laura Fisher, and Mrs. Sheldon Landau acquired the property from Jo Bar early in 1990, about three weeks after the Plat of Survey was filed in the County Clerk's Office. The property was acquired from Jo Bar *on a single deed* (Exhibit G). Fisher and Landau later acquired portions of the Jarot Ranch Subdivision, and the McKee/Hacienda Tranquilas Subdivision. Subsequently, Fisher and Fisher-Landau repeatedly treated the Jo Bar, Jarot Ranch, and McKee/Hacienda Tranquilas property as a single 3,219 acre parcel, eventually recording a boundary survey depicting a single 3,219 acre parcel. At least since the recordation of the Plat of Survey by Jo Bar Land and Cattle Corp. in 1989, *the property has never been treated as individual parcels.*

Mrs. Fisher-Landau transferred most of the 3,219 acres to Saddleback Ranch Estates LLC, a New Mexico Limited Liability Company on June 23, 2008. (Warranty deeds and map exhibits, Exhibit H). Mrs. Fisher-Landau withheld three forty acre parcels and transferred parcels to William P. Verkin, "2008 Chamisa LLC" and James Scarborough. See below. Saddleback Ranch Estates, simultaneously, recorded a mortgage in favor of People's Trust Federal Credit Union in Houston Texas, again recognizing that the property was a unified whole rather than separate parcels. The mortgage was executed by one Daniele Silvestre, a Houston resident, on behalf of Saddleback Ranch Estates (Silvestre is a principal of Saga Land Inc., a Texas corporation which is variously identified as a "managing member" of Saddleback Ranch Estates, even though no filings with the New Mexico Public Regulation Commission identify that connection).

By deeds recorded within minutes of the deed to Saddleback Ranch Estates LLC on June 23, 2008, Mrs. Fisher-Landau transferred a forty acre parcel within the property which she had withheld to Pacific View Development LLC, a Washington Limited Liability Company. Minutes later, the same property was transferred to 2008 Chamisa LLC, a Texas Limited Liability Company. She also transferred a forty acre parcel to James Scarborough, who recorded a mortgage simultaneously to People's Trust Federal Credit Union. Mrs. Fisher-Landau also transferred a forty acre parcel to William P. Verkin, a principal in 2008 Chamisa LLC and 2008

Drogeda. Mr. Verkin also recorded simultaneously a mortgage in favor of People's Trust Federal Credit Union. Mr. Scarborough, Mr. Verkin, 2008 Drogeda LLC, and 2008 Chamisa LLC all share the same address in Houston (4811 Nolda Street). A few minutes later, Saddleback Ranch Estates LLC, having acquired the bulk of the property from Mrs. Fisher-Landau, again simultaneously with all of the other transactions, transferred a 140 acre parcel to 2008 Drogeda Land LLC, and LLC controlled by Mr. Verkin (who as a result of the same simultaneous transaction owns the abutting parcel). Saddleback Ranch Estates next, also simultaneously, subdivided and transferred another 140 acre parcel, again in violation of the Land Development Code, to 2008 Windland Land LLC, a Texas Limited Liability Company, also apparently controlled by Mr. Verkin.

Both 2008 Chamisa LLC, and 2008 Drogeda are limited liability companies controlled by Mr. Verkin. These businesses were formed on June 16, 2008, just days before the simultaneous real estate filings with the Santa Fe County Clerk. Mr. Scarborough controls "2008 Windland Land LLC," and although the filing with the Texas Secretary of State claims that Mr. Scarborough is the managing member, it is also claimed that "Mantle & Moose LP" is the managing member. This business was also formed on June 16, 2008, along with 2008 Chamisa and 2008 Drogeda. Mantle & Moose LP is controlled by Mr. Scarborough. As noted previously, Mr. Scarborough's business address is the same as Mr. Verkin although his filing creating Mantle & Moose is addressed to his home. Saddleback Ranch Estates also has Texas connections. The managing member of that New Mexico LLC appears to be one "Saga Land Inc.," a Texas corporation, whose managing member "Dan" or "Danielle" Silvestre has executed documents on behalf of Saddleback Ranch Estates (documents on file at the New Mexico Public Regulation do not disclose the fact that Saga Land owns Saddleback Ranch Estates), or Mr. Scarborough. Another connection between Saddleback Ranch Estates and the Houston individuals and LLCs is the financing provided by People's Trust Federal Credit Union, which provided financing to Saddleback Ranch and recorded its mortgage simultaneously with all of the other documents on June 23, 2008.

The simultaneous transactions resulted in a parcel that is divided into six parcels, not twenty-nine or thirty-nine.

Numerous violations of the Land Development Code resulted from these transactions. The apparent attempt to consolidate parcels from the Haciendas Tranquilas Subdivision and the Jarot Ranch Subdivision into the 3,219 acre parcel would constitute an unlawful replat of those subdivisions, a fact which the applicant has now apparently acknowledged by reducing the number of parcels claimed from thirty-nine to twenty-nine in its updated filing. The transfer of parcels from Saddleback Ranch Estates LLC to 2008 Drogeda and 2008 Windland Land without approval of the County of those divisions were violations of the Land Development Code. The deeds to Mr. Verkin and Mr. Scarborough of forty-acre parcels also appear to be unlawful divisions. The twenty-nine or thirty-nine parcel "lot line adjustment" may also constitute a common promotional scheme to develop property without the proper approvals or disclosures under the Code, given the simultaneous transfers to and from LLCs controlled by the same person or persons whose business address is at the same address in Houston Texas, the fact that the transaction is urged upon the County as a "lot line adjustment" when it is plainly not, and the

fact that the bank providing the financing of all these transactions is the same (People's Federal Credit Union of Houston). In short, only three legal lots and six actual lots exist at the present time, not twenty-nine or thirty-nine. Because there are not twenty-nine or thirty-nine lots whose boundaries are to be "adjusted," no basis exists for granting the application, and the appeal of the Administrator's decision is frivolous and groundless.

County Legal staff, Building and Development Services staff, the County Surveyor, Public Works Department, Open Space and Trails, and County Fire conducted discrete reviews of the submitted information (Exhibit I). Through this review process it was determined that the submittal could not be processed administratively under Article II, Section 2.3.1 of the Land Development Code (Referenced Code--Exhibit J).

Numerous meetings were conducted with the Applicant's surveyor and agent, along with County staff, and it was repeatedly explained to the Applicant's agent that the proposed lot line adjustment is actually a subdivision.

The amendment (Exhibit C-1) was submitted following discussions with County staff concerning a previous consolidation of lots in the Hacienda Tranquilas subdivision on the northeasterly side of Highway 41. This previous consolidation was not identified by the Applicant; the Applicant reduced the number of lots after this matter was presented to the applicant by County staff and the applicant amended the application to propose a 29 lot line adjustment. No new engineering drawings have been submitted to date. Considerable research of deeds and historic plats has been conducted by Building and Development Services staff, legal staff and the County Surveyor, and while the amendment reduced the lot number by ten, the original submittal and the amendment are not consistent, and any division of these parcels into 29 lots would require a new application (Exhibit K) and compliance with all applicable sections of the Code pertaining to a subdivision submittal.

The applicants failed to provide the most current Special Warranty Deed, filed on 6/23/08 which conveyed the property from Landau to Saddleback LLC, and this deed indicates property was conveyed to Saddleback LLC in three distinct tracts as recited above (Exhibit M and M1). These deeds and boundary survey are the most current information and further solidifies the Land Use Administrator's position that non-existent lots cannot be resurrected to create a subdivision administratively.

Article II, Section 2.3.4b (Appeals) states: "Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 [Administrative Decisions] may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) 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."

The Applicant's appeal request (Exhibit B) cites several reasons to justify their appeal of the Land Use Administrator's decision and staff has responded to each of the reasons stated by the Applicant in their request for appeal as follows:

Applicant Response:

"The decision that the application constitutes a subdivision is illegal and contrary to law" The Applicant goes on to include three reasons to support this assertion, these reasons are stated as follows based on quoted State statute defining the exception from subdivision regulations:

1. That the division involve alteration of parcels boundaries,
2. That the alteration be carried out for the purpose of increasing or reducing the size of contiguous parcels, and
3. That the number of parcels not be increased.

The Applicant asserts that the application unquestionably satisfies each criterion, and refers to the Amended application filed on May 1, 2009 which reduced the number of parcels from 39 to 29. The Applicant's appeal states that this Amended application was not considered prior to the issuance of letter from the Land Use Administrator; and goes on to state that the 29 lots proposed are documented by patent parcel. The appeal also cites case law (High Ridge Hinkle Joint Venture v. Albuquerque 126 NM 412(1998)) to underscore their point that because the county has previously approved lot line adjustments of this nature the decision by the Land Use Administrator must be vacated. (Section A, appeal pages 1-3—Exhibit A)

Staff Response:

The New Mexico Subdivision Act provides a very limited exception from subdivision regulation for a division of land "resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased." NMSA 1978, Section 47-6-2(J)(7). The Land Development Code requires County approval of any exempt transactions.

As noted earlier, there are not 39 or 29 lots whose boundaries may be "adjusted." Leaving that issue aside for the time being, the application improperly uses the lot line adjustment to create the proposed parcels. This is because a lot line adjustment is a procedure whereby "parcel boundaries" are "altered." The application seeks to move the entirety of each parcel within the boundaries designated as the limits of the proposed development. This is not an alteration of parcel boundaries, because the parcel boundaries are destroyed in the process and the parcels are moved, in some cases, many thousands of feet from the original location. The limitation in the statute that prevents a lot line adjustment from being used to increase the number of parcels cannot be used as a tool to defeat the objective of the statutory exemption.

Even the number of lots are quite overstated. As noted earlier, parcels are included in the proposed lot line adjustment from the Jarrott Ranch, McKee Ranch and the Hacienda Tranquilas Subdivision. These pre-existing subdivision lots may only be adjusted through a resubdivision procedure, not a lot line adjustment. Some lots referred to are in fact lots that have been previously consolidated by plat from numerous lots into a single lot. In addition, some lots are federal lots that were purchased from the federal government at the same time by the same person. These lots are a single lot, not multiple lots.

The assertion that the County has previously approved similar transaction is not true. The lot line adjustment for the Village at Galisteo Basin Preserve is one of the examples the Applicant has selected to include. It is important to note that this development has gone through the entire Master Plan process outlined in Article V of the Land Development Code, and the development is in the process of seeking Preliminary Plat and Development Plan approval for the first phase of development. The remaining two examples provided by the Applicant are entirely dissimilar to the Saddleback Ranch Estates proposal, in that few lots are involved, there is no evidence of a single effort to develop all parcels simultaneously, and lots are not being configured in a manner to create concern that a subdivision versus lot line adjustment has occurred. There was no evidence in any of these cases of a single effort to develop all parcels simultaneously, and configure lots in a manner to create concern that a subdivision versus lot line adjustment has occurred.

Applicant Summary:

The effort to ascribe a purpose requirement to the LLA statute is not supported by a plain reading of the Code or any identifiable law and the case as cited in the appeal (Kirkpatrick v. BCC)

Staff Response:

The application seeks to create a very large subdivision through the methodology of a lot line adjustment. After several meetings with development review staff of the County, the County Surveyor, and representatives of the surveying firm, it has become apparent that the Applicant's objective is to reconfigure lots that no longer exist into a form that strongly resembles a subdivision with large reserved tracts. It is apparently presented in this way to avoid the review processes that the County has established for large developments, avoid requirements that such a development would normally be required to meet, and avoid relevant zoning and other ordinances protective of the public health, safety and welfare.

The Kirkpatrick case involved a family transfer land division and it is not substantively similar to the application under consideration.

Applicant Summary:

"The Code Administrator's decision on an LLA is ministerial not discretionary"

Staff Response:

The application will not be administratively approved. See Code, Art. II, Sec. 2.3.1a ("Administrative Decisions"). The only class of development that is capable of administrative approval is a "lot line adjustment." As noted, this is not a lot line adjustment. In any event, the discretion whether to grant administrative approval or not lies with the Land Use Administrator ("... the Code Administrator *may* approve or deny development permit applications ..."). Use of the word "may" shows that the decision to approve or refer to the public review process is discretionary on the part of the Code Administrator.

Applicant Summary:

"The LLA application is not a Common Promotional Plan"

Staff Response:

Art. V, Sec. 4.8 of the Code instructs the Code Administrator to review applications to determine whether a common promotional plan exists. If it is determined that the land division constitutes a common promotional plan, the project must comply with the procedures provided for in Art. V of the Code. A Common Promotional Plan is defined in Art. X of the Code as "any plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where such land is contiguous to or part of the same area of land or is known, designated or advertised as a common unit or by a common name." This development appears to meet these criteria, to wit: the property was recently owned by a single owner, who then, in simultaneous transactions that include mortgages, divided and mortgaged the property, without disclosing those transactions to the County, relying instead on deeds from many decades ago. These individuals and companies, many of which share the same Houston address, are apparently acting in concert to develop the property without proper approvals (see above); the development is presented as "Saddleback Ranch Estates," and includes an equestrian center and common equestrian trails; roads are designed to serve all lots, and utilities will be placed to all lots; a single Technical Drainage Report has been submitted for the entire property, lot lines are being moved and completely reconfigured (in some cases from previously consolidated lots on one side of a state highway to the other side of the state highway); areas within the project boundary are part of prior subdivisions; and lots from Hacienda Tranquilas were represented as patent lots, but the patent lots have been consolidated. These factors argue in favor of the more rigorous review process set forth in the current Code, beginning with the Master Plan process.

CONCLUSION:

The Saddleback Ranch Estates submittal is clearly a subdivision, and should be submitted, reviewed and considered as such.

REQUIRED ACTION:

The CDRC should review the attached material and consider the recommendation of staff; take action to approve, deny, approve with conditions, or table for further analysis of this request.

RECOMMENDATION:

Staff recommends that the request for an appeal of the Land Use Administrator's decision to deny the Applicant's request to overturn the Land Use Administrator's decision and allow staff to process the Saddleback Ranch Estates application administratively be **denied** by the CDRC, based on the reasons cited in the May 6, 2009 correspondence from the County Land Use Administrator to the Applicant and the reasons reiterated in this report.

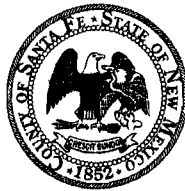
ATTACHMENTS:

- Exhibit "A"- County Correspondence to Applicant dated May 6, 2009
- Exhibit "B"- Appeal request dated May 13, 2009 w/engineering drawings
- Exhibit "C"- Proposed LLA plat (08-3179)
- Exhibit "C-1" Applicant's Amended Application
- Exhibit "D"- Vicinity Map
- Exhibit "E" - Historic and Amended Plat, Drainage Report, Engineering Dwgs and Details
- Exhibit "F"—Jo Bar Plat, signed by Land Use Administrator
- Exhibit "G"-Warranty Deed Jo-Bar to Fischer
- Exhibit "H" -Diagram of deeds and supporting documents
- Exhibit "I"- Agency reviews
- Exhibit "J"-- Referenced Code
- Exhibit "K"—Submittal Checklist
- Exhibit "L"-- Boundary Survey
- Exhibit "M"— Special Warranty Deed

Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3

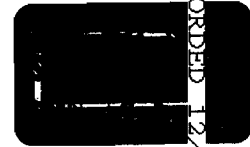


Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Roman Abeyta
County Manager

SFC CLERK RECORDED 12/01/2009



May 6, 2009

Mr. Michael Skladany
Saddleback Ranch Estates, LLC
77 Saddleback Ranch
Santa Fe, NM 87540

RE: Saddleback Ranch, Application No. 08-3179

Dear Mr. Skladany:

The referenced lot line adjustment application has been reviewed by this office. The application is incomplete and not in compliance with the Land Development Code (the Code) and State law. For the reasons stated below, the application needs to be reconfigured as an application for master plan approval and re-filed. Comments intended to assist in converting the application are included at the end of this letter.

The application seeks to create a very large subdivision through the methodology of a lot line adjustment. After several meetings with development review staff of the County, the County Surveyor, and representatives of the surveying firm, it has become apparent that your objective is to reconfigure lots that currently exist into a form that strongly resembles a subdivision with large reserved tracts. It is apparently presented in this way to avoid the review processes that the County has established for large developments, avoid requirements that such a development would normally be required to meet, and avoid relevant zoning and other ordinances protective of the public health, safety and welfare.

The New Mexico Subdivision Act provides a very limited exception from subdivision regulation for a division of land "resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased." NMSA 1978, Section 47-6-2(J)(7). Your representatives read the last clause of this sentence as controlling and assert that so long as the aggregate number of parcels is not increased, the transaction is exempt from regulation as a subdivision. This is a misreading of the statute. A lot line adjustment is a procedure whereby "parcel boundaries" are "altered." The application seeks to move the entirety of each parcel within the boundaries you designate as the limits of the proposed development. This is not an alteration of parcel boundaries, because the parcel boundaries are destroyed in the process and the parcels are moved, in some cases, many thousands of feet from the original location. The limitation in the



A-1

statute that prevents a lot line adjustment from being used to increase the number of parcels cannot be used as a tool to defeat the objective of the statutory exemption.

A less obvious problem is that the number of lots that is the basis for the lot line adjustment is quite overstated. For example, parcels are included in the proposed lot line adjustment from the Jarot Ranch, McKee Ranch and the Hacienda Tranquilas Subdivision. These pre-existing subdivision lots may only be adjusted through a resubdivision procedure, not a lot line adjustment. Some lots referred to on the plat as single lots are in fact lots that had been previously consolidated by plat from numerous lots into a single lot. In addition, some lots are federal lots that were purchased from the federal government at the same time by the same person. These lots are a single lot, not multiple lots. Moreover, boundary surveys of record filed in 1989 and 2007 show "Saddleback Ranch" as a single parcel containing some 2413 acres, and a second parcel (unnamed) containing some 600 acres -- arguably, excepting the areas within the previously platted subdivision, the land is actually two parcels, not 38.

Your representatives desire administrative approval of the application. The application cannot be administratively approved. See Code, Art. II, sec. 2.3.1a ("Administrative Decisions"). The only class of development that is capable of administrative approval is a "lot line adjustment." As noted, this is not a lot line adjustment. In any event, the discretion whether to grant administrative approval or not lies with the Land Use Administrator ("... the Code Administrator *may* approve or deny development permit applications ...") and I have chosen not to exercise that discretion for the reasons stated herein.

Your representatives have claimed that it has been the "practice" of County staff to exempt land divisions that are exempt from subdivision regulation from zoning regulations, requirements and procedures. Your representatives have further asserted that you relied on advice provided by County staff to your detriment when you entered into a contract to purchase property. The staff member with lacks the authority to vary from the terms of the Code, or to bind the Land Use Administrator or the Board of County Commissioners. It would not be reasonable for you to rely on representations of a staff member that are contrary to the Code. The Code does not provide a blanket exemption from zoning controls and procedures as has been asserted.

For example, Art. I, sec. 5 of the Code provides that its purposes are to implement the policies of the County's General Plan and to combine the regulation of various aspects of land development and use of natural resources into a common system of administration and appeals. Further, it declares the intent of the Board of County Commissioners (BCC) "to exercise all relevant powers." Art. I, sec. 6, specifically states that "[t]he Code shall be liberally interpreted to carry out the objectives of the county General Plan and the purposes and intents specified in the Code." Art. I, sec. 8.1, as amended by Ordinance 2000-03, states that Art. III of the Code (Zoning provisions) applies to all lands located in the County, without exception. Art. I, sec. 8.2 specifically states that the flood plain provisions shall apply to "all land located in the County ..." Art. I, sec. 10 provides that if there is a conflict between requirements in the Code, the more restrictive limitation or requirement shall prevail. Art. I, sec. 11 provides that the requirements of the Code are cumulative. Art. II, sec. 2 states that "[n]o person may engage in development

within the County until such person has obtained development permit for such development meeting the requirements of the Code." And Ordinance 2008-10 (the County's new floodplain ordinance) specifies that adoption and implementation of regulations are necessary for the County to comply with, and be eligible for, the National Flood Insurance Program so as to maintain the County's eligibility for participation. If the County were to permit persons to exempt themselves from requirements under the Code under the guise of a subdivision exemption, many of the programs which the County must rely on for the protection of its citizens would be jeopardized. Other sections of the Code which would be impacted by an exemption from regulation include sections that protect historic and cultural sites, regulate within landmark and archaeological districts, traditional community districts, require critical environmental protections (including but not limited to liquid and solid waste disposal, terrain management, air, noise and light quality, and water supply), require affordable housing, and protect the community planning process. The application seeks to avoid all of these critical Code protections.

Moreover, as I'm sure you are aware, the Code is changing. That may well be the reason for your request. It is well known that the County has, for many months, been engaged in a comprehensive planning effort that will result in a new general plan with growth management features and a new Land Development Code. These efforts are collectively referred to as the "Growth Management Strategy." Work on these projects has been proceeding steadily for almost two years, but the work has accelerated recently with the retention of two teams of experts that grew out of the oil and gas effort. The Board of County Commissioners has specifically authorized this process, and proposed adoption of an interim development ordinance to protect the status quo. The County, along with its team of experts, has completed four week long charettes in each of the growth management areas, and has prepared a Charette Report that was presented to the Board of County Commissioners on March 31. Detailed goals, policies, strategies and objectives will be developed from the Charette Report, which will lead to a new general plan, adopted in late spring or summer. On a parallel track is the development of a fully revised and modernized Land Development Code. One element of that document will be a clarifying statement concerning the applicability of zoning and zoning procedures to subdivisions that are exempt from regulation under the Subdivision Act. A statement on that point that appears in the interim development ordinance, proposed for adoption by the Board of County Commissioners in January. Further consideration of the interim ordinance has been deferred at the request of staff so that attention can be focused on completing the growth management plan. However, there has been no opposition to the statement by anyone because it simply restates the position of the current Code, and I have no reason to believe it will not become law.

The application at issue and the statements of your representatives are at odds with the principles that are embodied in the Growth Management Strategy, the proposed interim development ordinance, and the Land Development Code. Your attorney, Mr. Sommer, and your agent, Mr. Hoeft, have asserted that the application is not subject to zoning and does not have to be processed through the normal processes --- this is an incorrect conclusion, as noted earlier. The application varies from the goals, policies, objectives and strategies of the ongoing planning work in a number of important respects. Indeed, the area where the proposed development is

located is shown on the published maps of the growth management strategy as area that is inappropriate for residential development of the type sought. Therefore, the application should not be processed until the general plan and revised Code are in force and these matters more fully considered according to the principles developed during the planning process.

Finally, we are very concerned that the proposal may constitute a common promotional plan to develop this property without proper approvals. Art. V, sec. 4.8 of the Code instructs the Code Administrator to review applications to determine whether a common promotional plan exists. If it is determined that the land division constitutes a common promotional plan, the project must comply with the procedures provided for in Art. V of the Code. A Common Promotional Plan is defined in Art. X of the Code as "any plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where such land is contiguous to or part of the same area of land or is known, designated or advertised as a common unit or by a common name." This development appears to meet these criteria, to wit: the property is owned or was until recently, owned by numerous owners, apparently acting in concert to develop the property without proper approvals (see above); the development is presented as "Saddleback Ranch Estates," and includes an equestrian center and common equestrian trails; roads are designed to serve all lots, and utilities will be placed to all lots; a single Technical Drainage Report has been submitted for the entire property, lot lines are being moved and completely reconfigured (in some cases from previously consolidated lots on one side of a state highway to the other side of the state highway); areas within the project boundary are part of prior subdivisions; and lots from Hacienda Tranquilas were represented as patent lots, but the patent lots have been consolidated. These factors argue in favor of the more rigorous review process set forth in the current Code, beginning with the Master Plan process.

A cursory review of the information that was submitted along with the application has been performed as a courtesy, although the submittal is incomplete. The following comments are offered to assist with future submittals:

1. The survey information, both historic and proposed, must be presented in a clear and concise manner. The following items specific to the presented survey information must be addressed:
 - a. A composite map, showing the number of patent lots used for lot line adjustment and owner information, patent number, original patent owner, and reference to recorded Plat(s) must be provided. This composite must be submitted as requested to facilitate review however, the following discrepancies are evident:
 - i. Areas of the ranch(es) which have been mortgaged must be depicted and this information must be included on the Plat and in the Subdivision Disclosure. Should foreclosure of these mortgaged areas occur, this would present a conflict with the proposed platted subdivision.
 - ii. Maps must be based on a usable scale as noted in Article V, Section 5.2.2(b), a scale of 1" = 1250' is not acceptable.

- iii. Section corners and section lines must be clearly depicted and the project boundary must be horizontally tied to a section corner. Township and Range lines should be depicted using a different symbol to improve clarity.
- iv. Record and measured bearings and distances must be indicated. In no case shall the error of closure exceed one (1) part in 1280 parts (Article V, Section 5.2.2(b)), or must meet more strict current surveying standards if applicable.
- v. Forty parcels are shown yet the Application states 39 lots are being "adjusted". Inconsistencies such as this must be addressed during the Master Plan process.
- vi. The project boundary must be clearly depicted. Areas that are "not a part" should be labeled as such.
- vii. Sheet indexing must be clear
- viii. Sheet numbering must be clear
- ix. All depicted proposed lot lines must have a metes and bounds descriptions
 - x. Owners of current lots, tracts, patents and adjoining parcels must be clearly depicted. Patent parcels must contain the original owner's name as well, along with historic recording information.
 - xi. Historic lot lines must be shown on proposed plats
 - xii. All lots created must have buildable area and all weather access. Note that buildable areas must be horizontally dimensioned and tied to the proposed lot line. (Ordinance 2008-10 and Art. V, Section 8.8.2)
 - xiii. Lot fronts where lots abut highways must be indicated on the plat (Art. V, Section 8.8.3)
 - xiv. The current Flood Insurance Rate Maps must be referenced and Special Flood Hazard Area boundaries must be based on those maps.
 - xv. Basis of Bearing notation must comply with current principles and practices for land surveying, and must be fully described on the cover sheet.
 - xvi. All easements must be clearly depicted and dimensioned. Historic recording information shall be called out and a copy of the project Title Binder must be provided and easements for the following must be depicted along with all historic easements and their reference information:
 1. Archaeological sites
 2. Burial plots
 3. Floodplains with the 75' no build setback depicted (per Ordinance 2008-10); the floodplain must be shaded, the symbol used is misleading (standard symbol for wetlands was used)
 4. All defined historic drainage conveyances must be within an easement (Article V, Section 8.6)

5. Easements on all property lines for utilities (10' minimum) (Article V, Section 8.6)
 6. Well easements
 7. Roadway easements, including turnarounds
 8. Mailbox easements
 9. Utility easements
 10. Rights-of-way widths and recording information must be provided for perimeter state roads and railroads
 - xvii. Many callouts, notations and dimensions are cut or are illegible, where additional sheets are needed to convey information clearly, match lines should be utilized and clearly noted with line type and callout.
 - xviii. No easements for access are shown to serve lots 30, 34 & 35.
 - xix. Data tables have been used to conserve space and improve legibility however, line and curve data on each sheet must be presented on that specific sheet to facilitate review.
 - xx. A distinction between record and measured bearings and distances must be provided.
 - xxi. Signature blocks for all owners of record must be provided in the "Owner's Consent" certification area on the cover sheet.
 - xxii. Signature lines for affected utilities must be included.
2. This Application must meet all current Code criteria set forth in the Land Development Code including but not limited to:
- a. Compliance with Article V, Section 5.2 (Master Plan Procedure) of the Land Development Code. The following are items which must be addressed (note that additional comments may be forthcoming upon receipt of all information as required) as part of the Master Plan review process:
 - i. Approval of cul-de-sacs over 500 feet in length by the County Development Review Committee per Article V, Section 8.2.1(d) of the Land Development Code.
 - ii. Submitted plans indicate 1690 acres⁺ of area designated as "Future Development". This area must be incorporated into the Master Plan and the type of future development indicated and included in water demand/water availability computations.
 - iii. Submittal of a Market Analysis (Article V, Section 5.2.2(d))
 - iv. Submittal of a Master Plan Report (Article V, Section 5.2.2(g))
 - v. Submittal of a Hydrogeological Report and proof of water availability for the first Phase of development (Ordinance 2005-02, Section 5.2.2.g (9) states "the applicant must submit a water supply plan and water permits as required by Article VII, Section 6 of the Code; provided, however that permits to appropriate water issued by the Office of the State Engineer, provided for in Article VII, Section 6.2.2 of the Code, are not a required part of the water supply plan to be submitted as part of a Master Plan report, though

the applicant may, at its discretion, submit such permits as part of its water supply plan. If the applicant opts not to submit permits to appropriate water issued by the Office of the State Engineer, the applicant shall submit sufficient written documentation to demonstrate that water rights are available of for the first sustainable phase of development. Water rights shall be considered available for the purpose of this subsection when the water rights are owned by the applicant, under contract or optioned to the applicant, or otherwise deemed available by the Board. Sufficient written documentation includes, but is not limited to, a water rights deed, an option agreement to purchase water rights or other appropriate documentation deemed sufficient by the Board.”

- vi. Submittal of a Subdivision Disclosure Statement, Home Owner's Association Documentation, Covenants, Codes and Restrictions.
- vii. Submittal of a Traffic Impact Analysis (Article V, Section 5.2.2(g)5) and:
 1. A NMSHTD Access Permit will be required for direct access to roadways owned and maintained by the NMSHTD
 2. Roadway plan and profile drawings have been submitted at a 1"= 100' scale, which makes it very difficult to show grading adequately, provide at a larger scale such as 1"=40' to facilitate review—daylight all proposed contours to existing.
 3. Lots must be shown on roadway plans, along with proposed driveway locations. Driveway profiles may be required.
 4. 28 foot minimum radii are required at all returns
 5. 18" diameter culverts are required as the minimum size acceptable
 6. Roadway placement is resulting in major cuts at Station 65+74.14 and 219+09.21, as indicated on Sheet 22 of 28. Where cut depth exceeds 5' an alternate design is required as stated in Article VII, Section 3.4.4.b.
 7. Roadway cross sections indicate a significant amount of export—will this be stockpiled? Hauled? Please indicate. Note that Code requires that roadways with substantial cut are redesigned to minimize, redesign includes splitting lanes, following contours etc.
 8. Roadways must be designed in a manner to train flow to culvert entrances, as designed it is unclear how sheet flow will reach culverts. Additional, severe rill and gulying will occur at entrances as designed. A Geotechnical Report must be submitted to address minimum design requirements for roadways, storm drains and culverts, foundations, driveways etc., due to the nature of the soil in this area.

9. Driveway access must be designed in compliance with the Code regarding slope, distance from intersections, separation from other access points, etc.
 10. Setbacks must comply with Article V, Section 8.1.6.
- viii. County Public Works has commented on the information submitted and their comments are attached as Exhibit A.
 - b. No Archaeological Report has been submitted as required by Article VII, Section 3 of the Land Development Code. The presence of archaeological sites in this project will dramatically impact the layout of lots, roads and buildable areas. (Note that an Archaeological Report would be required both for a Lot Line Adjustment and for a Master Plan Application). County Open Space and Trails has commented on this issue, and their comments are attached as Exhibit B.
 - c. The submittal must comply with Ordinance 2008-10 and 44 CFR §60.3.
 - i. Note that anywhere within the project boundary that a floodplain crossing is proposed (either roadway or driveway) must include a pre and post construction hydraulic analysis to determine pre and post construction water surface elevations. This analysis must be prepared pursuant to Article 5, Section 5.6(B)—the information submitted does not appear to meet this minimum criteria.
 - ii. Hydrology and hydraulics have not been provided for the Galisteo Creek. Lots are configured across and directly adjacent to this major conveyance and water surface elevations and lowest floor elevations must be indicated on the plat. Driveway locations for lots that are bisected by the Galisteo Creek must be indicated.
 - iii. Normal depth computations are not adequate in this case, but a model that performs step backwater computations must be utilized. Culvert capacity hydraulics must include consideration for entrance losses based on inlet configuration (projecting). Plan and profile drawings must be provided which include pre and post hydraulic grade lines.
 - iv. Be advised that if the water surface elevation is increased by more than 1' through placement of the culvert, driveway or roadway embankment, a Conditional Letter of Map Revision (CLOMR) processed through FEMA, will be required prior to commencement of construction activity of any kind. If impacts affect platting, plat recordation may be delayed.
 - v. A Section 404 Permit will be required; these permits are issued by the Army Corps of Engineers and must be provided prior to commencement of construction activity in the arroyos, of any kind.
 - vi. Note that all changes to the physical characteristics of the floodplain must be sent to FEMA within six months of completion (Letter of Map Revision).
 - vii. The Technical Drainage Analysis provided includes a section titled: "Maintenance and Operations", however, it is not clear who will

perform the required maintenance on stormdrain facilities since no Subdivision Disclosure nor Homeowner's Association documentation has been provided. The internal roadways are private, and the County will not assume maintenance responsibility unless approved by the Board of County Commissioners.

- viii. A Stormwater Pollution Prevention Plan (SWPPP) will be required at the time of Preliminary Development Plan submittal.
- ix. Roadside ditch design is of concern; embankments are shown in typical sections directly adjacent to the driving surface of the road. Capacity and velocity computations must be provided, and erosion protection may be required. In addition, it is strongly suggested that a shoulder is provided, and roadside ditch grading remain outside this shoulder.

As previously noted, additional comments may be forthcoming based upon the nature of the comments herein. Comments have been summarized inasmuch as possible and redlined comments are also available.

The Master Plan submittal process will be required for this project, and the next submittal deadline occurs in early May. A Case Manager will be assigned to the application upon receipt of all required information. Note that a submittal checklist is included for your convenience.

Sincerely,



Jack Kolkmeier
Land Use Administrator

ENC
Sc/jk

Enclosures:

- Exhibit A Comment Letter Department of Public Works
- Exhibit B Comment Letter Open Space and Trails
- Exhibit C Submittal Checklist

Cc: Stephen C. Ross, County Attorney w/enclosures
Robert Martinez, Public Works Director w/enclosures
Beth Mills, Open Space and Trails w/enclosures
Shelley Cobau, Building and Development Services Manager
Vicki Lucero, Residential Subdivision, Case Manager

For: GARY LAWSON @ SHERIDAN SURVEYING
4/12/09

B.P. 8/17/09

KS
SFC CLERK RECORDED 12/01/2009

MEMORANDUM OF UNDERSTANDING

This Agreement contains the terms of understanding between BLUFORD A. THORNTON, JIM P. THORNTON, GENE V. THORNTON AND GENORA THORNTON MOORE ("THORNTONS"), owners of certain real property in Santa Fe County and the BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY ("COUNTY").

RECITALS

1. WHEREAS, THORNTONS are owners of certain real property in Santa Fe County, New Mexico as described in deeds attached hereto as exhibits "A" through "D" and made a part of hereof; and
2. WHEREAS, THORNTONS applied for recognition of certain BLM Cadastral Survey "lots" as legal lots of record on October 7, 1999 and that application was denied by the Land Use Administrator based on stated Land Use Department policy of recognizing contiguous survey "lots" conveyed on a single patent as a single legal lot of record only; and
3. WHEREAS, The Land Use Administrator's decision was upheld by the County Development Review Committee on December 16, 1999 and THORNTONS further appealed to the Board of County Commissioners; and
4. WHEREAS, Subsequent to the denial of the application by the Land Use Administrator, THORNTONS provided the COUNTY with a letter, dated March 25, 1993, from the then County Attorney recognizing certain lots as described on exhibits "A" through "D," which letter is attached hereto as exhibit "E"; and
5. WHEREAS, in addition, THORNTONS provided the COUNTY with a letter, dated May 11, 1995 from the then County Attorney indicating agreement with the above-mentioned letter which letter is attached hereto as exhibit "F"; and
6. WHEREAS, for the sake of consistency and fostering reliance on official statements, the COUNTY has agreed to continue to recognize the "lots" described in exhibits "A"

through "D" as legal lots of record; and

7. WHEREAS, the THORNTONS have agreed to withdraw the pending appeal and not pursue further claims of legal lots of record in relation to the property that is the subject of this agreement;

NOW, THEREFORE, IT IS AGREED THAT:

TERMS OF UNDERSTANDING

1. The COUNTY shall recognize, as legal lots of record, under the current Santa Fe Land Development Code (Ordinance 1996-10, as amended), the 112 lots described in exhibits "A" through "D" attached hereto.
2. The COUNTY shall recognize that remnant portion of "lot 2" situated in T14N, R10E Section 5 (SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$), approximately one-half (1/2) acre in size, that is located East of State Route 285 as a legal lot of record.
3. The COUNTY shall recognize seven (7) legal lots of record in T14N, R9E, Section 18, including six (6) lots to the north and one (1) lot to the south of the intersecting road (CR 42).
4. THORNTONS shall prepare and file an amended plat and lot line adjustment showing the lots described in the preceding paragraph 3.
5. The COUNTY shall allow lot line adjustments of the resulting legal lots of record, without imposing any water restrictive covenants, so long as no lot is reduced by more than one-half of one percent ($\frac{1}{2}$ %) in size as a result, as permitted by current code.
6. The COUNTY shall otherwise treat the above lots as legal lots of record for all purposes under the Land Development Code, including applications for any exempt land divisions.
7. THORNTONS will withdraw and agree not to refile the appeal currently pending before the Board of County Commissioners (A 99-5581) concerning certain lots in T14N, R9E,

3FC CLERK RECORDED 12/01/2009

Section 18.

- 8. THORNTONS agree not to make any future additional claim to any additional legal lots of record based on U.S. Government patents or surveys for the property covered by this agreement. Provided, however, this provision shall not prevent THORNTONS from applying to divide large legal lots into smaller legal lots as permitted by the Land Development Code.
- 9. The parties hereto agree that this agreement represents the settlement of disputed issues and that it has no effect on current Land Use Department policies, County ordinances, or any other application or potential application to the Land Use Department. This agreement shall remain in effect so long as the Land Development Code is not amended or changed in such a way as to nullify or substantially reduce the rights or duties of either party under this agreement. No claim for damages, shall be premised upon any breach of this agreement.

COUNTY

Estevan Lopez
 Estevan Lopez
 Land Use Administrator

3/14/00
 Date

Christopher L. Graesser
 Christopher L. Graesser
 Assistant County Attorney

3/17/00
 Date

THORNTONS

Bluford A. Thornton 14 Mar 2000
 Bluford A. Thornton Date

Jim P. Thornton 3/15/00
 Jim P. Thornton Date

Gene V. Thornton 3-14-00
 Gene V. Thornton Date

Geneva Thornton Moore 3-15-00
 Geneva Thornton Moore Date

Section 18.

- 8. THORNTONS agree not to make any future additional claim to any additional legal lots of record based on U.S. Government patents or surveys for the property covered by this agreement. Provided, however, this provision shall not prevent THORNTONS from applying to divide large legal lots into smaller legal lots as permitted by the Land Development Code.
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COUNTY

Estevan Lopez
Land Use Administrator

Christopher L. Graeser
Assistant County Attorney

3/14/00
Date

3/14/00
Date

THORNTONS

Bluford A. Thornton

Date

Jim P. Thornton

Date

Gene V. Thornton

Date

AFFIDAVIT OF MITCHEL K. NOONAN

The undersigned, being duly sworn and under oath, states the following:


1. My name is Mitchel K. Noonan.
2. I am the owner of Southwest Mountain Surveys, Inc. (SWMS) and have owned SWMS since 1979.
3. I received my professional surveyors license from the State of New Mexico in 1979 and have maintained my license in good standing continuously since that time to the present. My N.M.P.L.S. number is 6998.
4. I have worked in Santa Fe County continuously since 1974 and have been responsible for well over 1,000 boundary surveys, plats of survey, lot splits and similar plans that have been approved by Santa Fe County and recorded in the Official records of Santa Fe County.
5. In 1989, SWMS was hired to prepare a Lot Split Plat for lands owned by the Jo Bar Land & Cattle Corporation (the "Lot Split Plat"). The County Land Use Administrator approved the Lot Split Plat, and the Lot Split Plat was subsequently recorded in the official records of Santa Fe County. The Lot Split Plat was recorded on May 5, 1989, in Book 198, Page 010.
6. The Lot Split Plat includes legal descriptions of 30+ aliquot lots that comprise the land identified on the Lot Split Plat at "Remaining Lands of Jo Bar."
7. In 1989, SWMS was hired to prepare a Plat of Survey for the 2,425 acres owned by the Jo Bar Land & Cattle Corporation (the "Plat of Survey"). The County Land Use Administrator approved the Plat of Survey, and the Plat of Survey was subsequently recorded in the official records of Santa Fe County. The Plat of Survey was recorded on December 15, 1989, in Book 205, Page 009.
8. The Plat of Survey is commonly referred to as a "boundary survey", the purpose of which was to identify the exterior boundaries of the Ranch
9. The Plat of Survey does not contain the words "Lot Consolidation" and the Owner's Consent Statement on the Plat of Survey does not contain any reference to a lot consolidation. The Plat of Survey was not prepared for the purpose of consolidating legal lots of record. It did not have the owner's consent to consolidate any legal lots of record within the Ranch. At the time the Plat of Survey was prepared, in 1989, the County Land Development Code required a statement of owners consent on a plat of survey in order to consolidate lots and in addition, new consolidated lots would be assigned a new name or designation and old lot lines would be shown, typically as dashed lines. None of these items were shown on the Plat of Survey.

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10. In about 1994, SWMS was hired to prepare a plat titled "Consolidation and Replat of the McKee Subdivision Tracts 1 through 5 into Tract 'A' and 'B'." (the "Consolidation Plat") The County Land Use Administrator approved the Consolidation Plat, and the Consolidation Plat was subsequently recorded in the official records of Santa Fe County. The Consolidation Plat was recorded on December 5, 1994, in Book 291, Page 039.
11. The Consolidation Plat included the property owners' express consent to the consolidation and replat, which consolidated 5 tracts into 2 tracts.
12. In about 2007, SWMS was hired to prepare a plat titled "Boundary Survey of the Saddleback & Jarrot Ranches & Hacienda Tranquilas Tract 'A' Totaling 3129.495 ac+/-." (the "Boundary Survey" of "Saddleback Ranch") The Boundary Survey was recorded in the official records of Santa Fe County. The Boundary Survey was recorded on June 20, 2007, in Book 657, Page 035-036.
13. The Boundary Survey referenced the Lot Split Plat, the Plat of Survey and the Consolidation Plat.
15. In about 2007, SWMS was hired to research United States Government Patent Parcels with respect to Saddleback Ranch (the "Patent Parcels"). SWMS determined that a total of 29 Patents Parcels are within Saddleback Ranch and identified those Patent Parcels on a plat titled "Lot Line Adjustment Survey of the Saddleback and Jarrot Ranches & Hacienda Tranquilas Tract 'A' Totaling 3129.495 Ac. +/- (the "Patent Plat"). A copy of the Patent Plat was submitted as part of a lot line adjustment application to Santa Fe County in May of 2009.
16. In about 2007, SWMS was hired to prepare a lot line adjustment plat involving the 29 Patent Parcels within Saddleback Ranch. The lot line adjustment plat was submitted as part of a lot line adjustment application to Santa Fe County in May of 2009.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing is true and correct of my own personal knowledge, that if called upon to testify to the same in a court of law I could and would testify competently to the same, and that this Affidavit was executed on October 15, 2009 in Santa Fe, New Mexico.

MITCHEL K. NOONAN

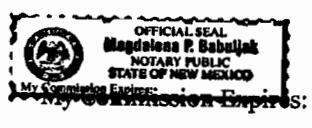

Signature

ACKNOWLEDGMENT

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

The foregoing Affidavit was sworn to and subscribed to before me by Mitchel K. Noonan on this 15th day of October, 2009,

Magdalena P. Babuljak
Magdalena P. Babuljak
Notary Public, State of New Mexico



09/25/2011



SWR
352.078



659956

REC'D CLERK
RECORDED 12/01/2009

LIBRARY

SANTA FE COUNTY
LAND DEVELOPMENT CODE
ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS
ON OCTOBER 28, 1980
EFFECTIVE JANUARY 1, 1981

This is a recompiled version of
the County Land Development Code
(1980-6) which incorporates the
following amendments;

- County Ordinance 1981-2
- County Ordinance 1984-3
- County Ordinance 1987-1
- County Ordinance 1987-3
- County Ordinance 1987-7
- County Ordinance 1988-8
- County Ordinance 1988-9
- County Ordinance 1989-3
- County Ordinance 1989-5

688,729

COUNTY OF SANTA FE)
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed
for record on the 16th day of Sept A.D.
19 88 at 3:19 o'clock P m.
and was duly recorded in book 654-660
page 456-240 of the records of
Santa Fe County.

Witness my Hand and Seal of Office
Jena G. Armijo
County Clerk, Santa Fe County, N.M.
[Signature]
Deputy



the Code and may require additional submittals in connection with the siting.

- (vi) Building, Mechanical and Electrical Code Review

The Code Administrator shall cause the submitted plans and specifications to be reviewed for compliance with Article IV - Construction Codes - of the Code and for engineering design.

- (vii) Commencement of Development
Construction must begin within one (1) year of the date of issuance of development permit, or the development permit is void and a new application shall be made prior to any development.

2.4.2 Division of a Parcel of Land

2.4.2a The following submittals and review shall apply when an application for a development permit involves the division of a parcel if the division is not a subdivision and does not involve the construction, alteration or repair of a dwelling or other structure.

- (i) Submittals
The application shall be accompanied by two (2) copies of a plat, which shall:
- (a) indicate the lots to be created;
 - (b) be drawn at a scale of one (1) inch equals one hundred

- feet, or larger, or other appropriate scales approved by the Code Administrator;
- (c) refer to permanent monuments;
 - (d) accurately describe each lot, number each lot in progression, give its dimensions and the dimensions of all land dedicated for public use or for the use of the owners of lots fronting or adjacent to the parcel;
 - (e) show improvements, including but not limited to, the location of liquid waste disposal systems, wells, structures and roads;
 - (f) be certified by an engineer or land surveyor, who shall be licensed in accordance with the laws of the State of New Mexico, certifying to the accuracy of the survey and plat, and that the same has been prepared by him;
 - (g) contain a certification of title showing that the applicant is the owner of the land, and that the lots created by the plat are created with the free consent and in accordance with the desires of the owner, which certification

AFFIDAVIT OF GILBERT CHAVEZ

I, Gilbert A. Chavez, being first duly sworn and under oath, do hereby and depose and state as follows:

1. I am more than eighteen (18) years of age, and I have personal knowledge of all of the matters set forth in this Affidavit.

2. I was employed in the Santa Fe County Land Use Department (the "Department") from 1978 through 1981 and from 1984 through 1994. In my career with the Department I started as a case planner and ended as the Land Use Administrator. I was the Land Use Administrator from 1989 through 1994.

3. During my employment with the Department, I handled planning, platting and zoning matters, and it was my job to understand and apply the regulations, policies and practices of Department under the Santa Fe County Land Development Code in effect during the years of my employment.

4. During my employment with the Department, I was charged with the review, consideration and approval of hundreds of plats of survey of all types, including without limitation, boundary surveys, easement plats, lot split plats, consolidation plats, lot line adjustment plats, subdivision plats, family transfer land division plats, and land divisions that did not constitute subdivisions.

5. During my employment with the Department in 1989, it was the policy and practice of Santa Fe County that no plats of any kind could be recorded without the Land Use Administrator's signature of approval on the plat. This policy and practice was applied to **all** plats of survey including without limitation, all boundary surveys, easement plats, lot split plats, consolidation plats, lot line adjustment plats, subdivision plats, family transfer land division plats, and land divisions that did not constitute subdivisions.

6. Under this policy and practice, the County Clerk's would not record such plats until and unless the Land Use Administrator's appeared on the plats of survey.

7. Attached as Exhibits A and B are examples of plats of survey that were recorded under the above described policy and practice, which include boundary surveys and easements plats of survey.

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RECORDED 12/01/2009

8. The policy and practice of requiring the Land Use Administrator's signature on all plats of survey prior to recordation changed in 1993 or 1994, when plats of survey could be recorded with a public notice like the ones shown on Exhibits C and D. After this change in policy, boundary surveys did not require the signature or approval of the Land Use Administrator for recordation, but the policy did require that the above-mentioned public notice be on the face of the plat of survey at the time recordation.

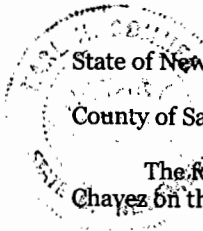
9. I have reviewed the plat of survey that is attached hereto as Exhibit D, which was recorded in the records of the Santa Fe County Clerk on December 15, 1989, in Plat Book 205, Page 004 (the "Jo Bar Boundary Survey").

11. Under the regulations, policy and practices of the Department in 1989, the Jo Bar Boundary Survey required the signature of the Land Use Administrator to be recorded as a boundary survey.

12. The Jo Bar Boundary Survey did not get recorded as lot consolidation plat of survey. The Jo Bar Boundary Survey does not provide that it is recorded for the purpose of the consolidation of lots, and it was the requirement of the Department to have the purpose of the plat of survey - for example lot consolidations or lot line adjustment - be stated and shown on the face of the plat of survey. It was **not** the requirement of the Department to show or depict all of the interior boundaries of the lots within a tract in order for a boundary survey, such as the Jo Bar Boundary Survey, to be approved for recordation. The absence of such depiction of the interior boundaries of lots within a tract did not constitute a consolidation unless the purpose of the plat stated that it was for lot consolidations.


Further Affiant Sayeth Naught.


Gilbert A. Chavez

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

The foregoing Affidavit was subscribed and sworn to before me by Gilbert A. Chavez on this 14th day of October 2009, to me personally known.

My Commission Expires: 3-10-11

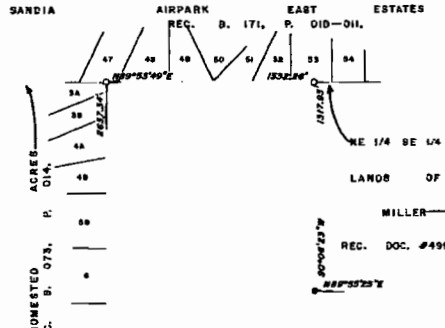
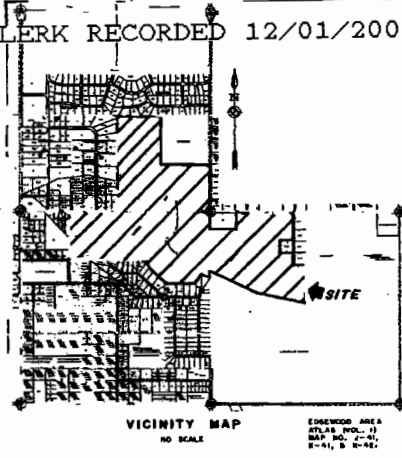
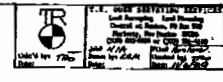

Karl H. Sommer
Notary Public
State of New Mexico

SFC CLERK RECORDED 12/01/2009

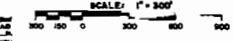
CORRECTIVE PLAT OF TRACT C, LANDS OF DONALD E. and MARY E. HUSTON

LOCATED IN SECTIONS 14, 23, AND 24, T 10 N, R 7 E, N.M.R.M., SANTA FE COUNTY, NEW MEXICO, JUNE, 1999

204839



NOTE:
THE PURPOSE OF THIS PLAT IS TO CORRECT BOUNDARY ERRORS IN TRACT C AS SHOWN ON PLAT PREVIOUSLY RECORDED. NO OTHER CHANGES HAVE BEEN MADE.



REVISION

NOTE all the contents herein which is Tract C of the Lands of Donald E. and Mary E. Huston, as the same is shown and described on the plat thereof filed in the office of the County Clerk of Santa Fe County, New Mexico, on 17 July 1999.

SAID TRACT SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD AS FILED IN THE OFFICE OF THE COUNTY CLERK OF SANTA FE COUNTY, NEW MEXICO.

The undersigned hereby certifies that the plat of survey on which this plat is based is a true and correct copy of the original field survey and that, in accordance with the provisions of the Statutes of this State, he has caused the same to be recorded in the office of the County Clerk of Santa Fe County, New Mexico, and that he has caused the same to be published in the Santa Fe County Record, a newspaper published in Santa Fe, New Mexico, on 17 July 1999.

STATE OF NEW MEXICO

County of Santa Fe

Donald E. Huston, P.E., Licensed Professional Engineer, License No. 1762, State of New Mexico.

Mary E. Huston, P.E., Licensed Professional Engineer, License No. 1763, State of New Mexico.

PREPARED BY: Donald E. Huston, P.E., Licensed Professional Engineer, License No. 1762, State of New Mexico.

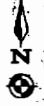
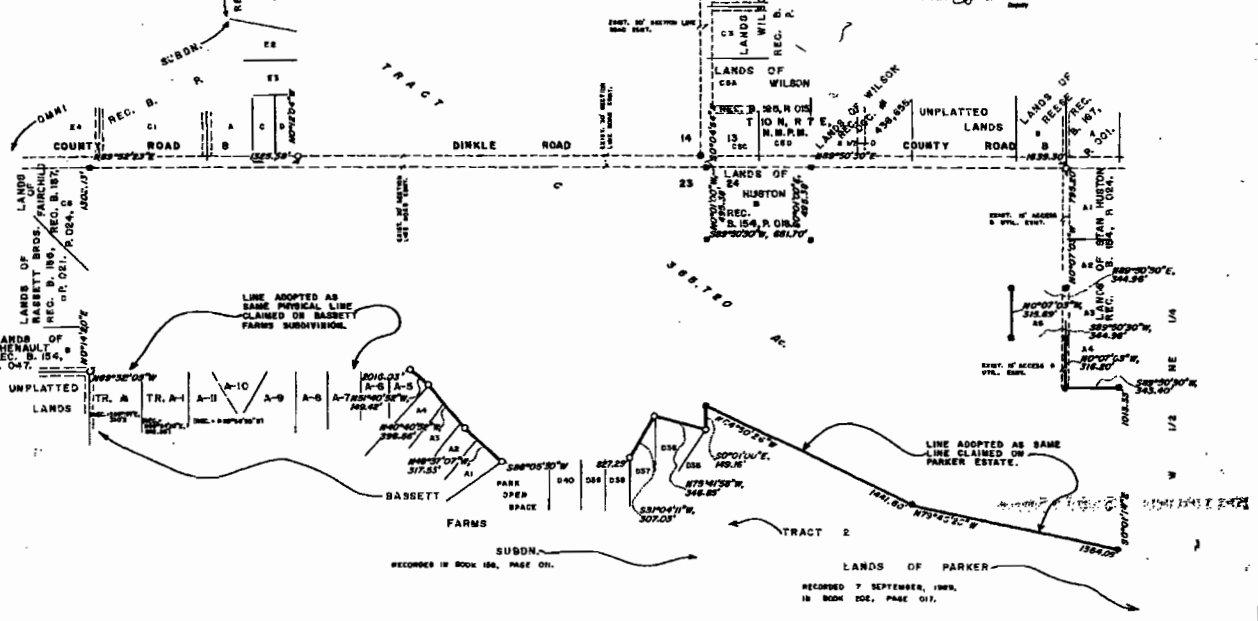
DATE: 6 November 1999

WITNESSETH: I, Donald E. Huston, being duly sworn, hereby certify that the above plat was prepared under my supervision from field notes of an actual field survey and is true and correct to the best of my knowledge and belief, and cause the same to be recorded in the office of the County Clerk of Santa Fe County, New Mexico, on 17 July 1999.

Donald E. Huston, P.E., Licensed Professional Engineer, License No. 1762, State of New Mexico.

RECORDED: 12-2-99

Lead Development Permits No. _____



1999
DONALD E. HUSTON
MAY 22 1999
1762
STATE OF NEW MEXICO
DONALD E. HUSTON
1762
STATE OF NEW MEXICO

UNPLATTED LANDS
REC. B. 154, P. 501
REC. B. 154, P. 501
REC. B. 154, P. 501

LANDS OF WILSON
REC. B. 147, P. 507
REC. B. 147, P. 507

LANDS OF MILLER
REC. DOC. #499,617

RECORDED IN BOOK 186, PAGE 011.

RECORDED 7 SEPTEMBER, 1999, IN BOOK 106, PAGE 017.

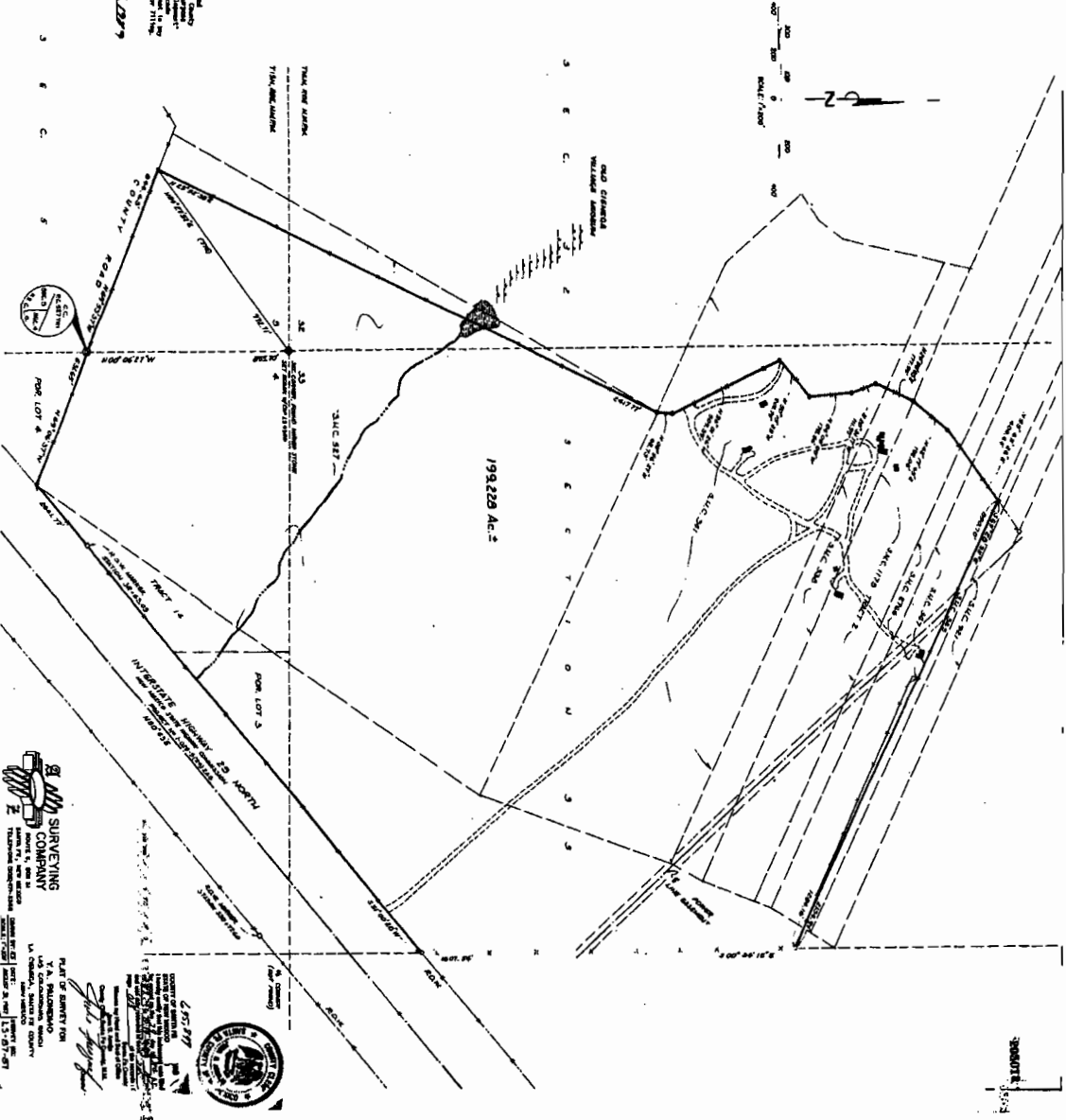


DESCRIPTION OF PROPERTY
The above described property, 11,000 sq. ft., more or less, is a portion of the 11,000 sq. ft. parcel of land, more or less, as shown on the map...

DEED TO THE CENTER ROAD, IN THE COUNTY OF ALBERTA, PROVINCE OF ALBERTA, CANADA...
This deed is made this 1st day of December, 2009, by and between...

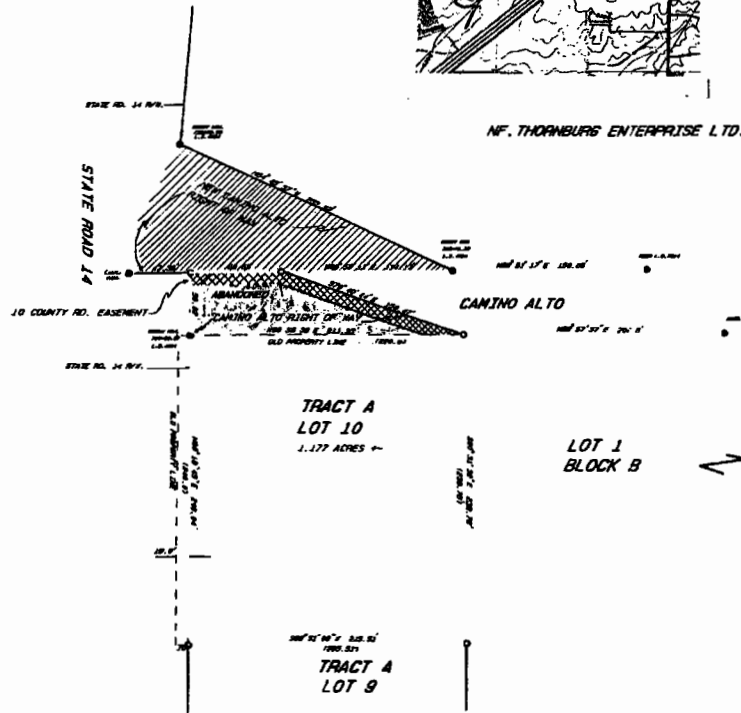
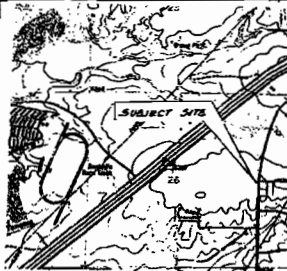
C152

CERTIFICATE
The above described land has been surveyed and the boundaries thereon shown on the map are true and correct...
Signed: [Signature]



M/S SURVEYING COMPANY
10000 100th Street, Edmonton, Alberta T5A 1K6

PLAT OF SURVEY
L.S. 217
199,229 ACRES
EDMONTON, ALBERTA



LEGEND

BEARINGS ARE DERIVED FROM PLAT OF SURVEY FOR SAN C. THORNBURG BY H. APDOCCA, N.M.P.S. 8304, 3/15/88.

- DENOTES POINT FOUND AS SHOWN
- DENOTES REBAR SET
- DENOTES CALC POINT NOT SET

Thom Wilson *12-22-99*
TOM WILSON DATE

THIS PLAT IS SUBJECT TO ANY RESTRICTIONS, COVENANTS AND EASEMENTS OF RECORD

SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT IS A TRUE REPRESENTATION OF A SURVEY COMPLETED UNDER MY PERSONAL SUPERVISION ON THE 30TH DAY OF OCT. 1999. THE SURVEY AND PLAT ARE CORRECT, TRUE AND MEET THE MINIMUM STANDARDS FOR LAND SURVEYS IN N.M.

GARY E. DANSON N.M.P.S. #7014.

STATE OF NEW MEXICO
COUNTY OF SANTA FE

THE FOREGOING INSTRUMENT HAS SHOWN, ACKNOWLEDGED AND SUBSCRIBED BEFORE ME BY *Tom Wilson* THIS 27th DAY OF 10 1999. MY COMMISSION EXPIRES 1-1-03. NOTARY PUBLIC

SURVEY PLAT OF LOT 10 TR. A VALLE LINDO SUBD.

1485487

COUNTY OF SANTA FE
STATE OF NEW MEXICO
I hereby certify that the instrument filed for record on this 27th day of October, A.D. 1999, was duly recorded in Book 1485487 and filed in the records of Santa Fe County. Witness my Hand and Seal of Office this 27th day of October, 1999.

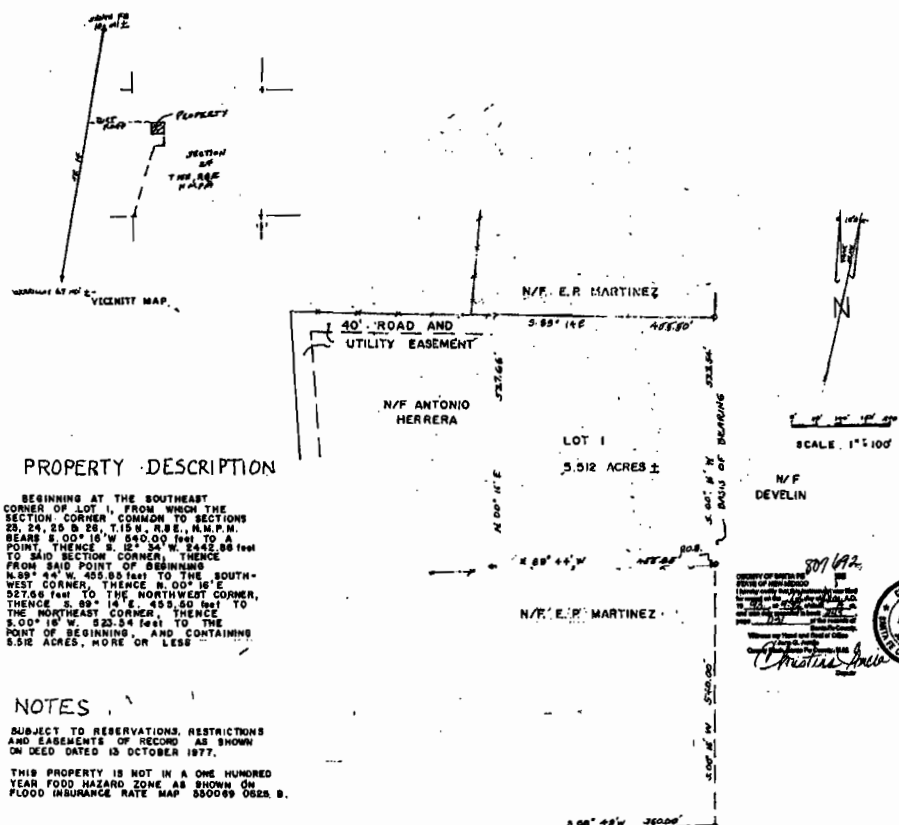


SCALE 50 FEET

G. DANSON & ASSOCIATES
PROFESSIONAL LAND SURVEYORS
SANTA FE, N.M.
FILE # 1484

248081

PLAT OF RESERVATION IN SECTION 24, T.15N., R.8E.,



PROPERTY DESCRIPTION

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, FROM WHICH THE SECTION CORNER COMMON TO SECTIONS 23, 24, 25 & 26, T.15 N., R.8 E., N.M.P.M. BEARS S. 00° 16' W. 840.00 feet TO A POINT, THENCE S. 89° 14' E. 453.60 feet TO SAID SECTION CORNER, THENCE FROM SAID POINT OF BEGINNING N. 89° 14' W. 453.60 feet TO THE SOUTHWEST CORNER, THENCE N. 00° 16' E. 827.88 feet TO THE NORTHWEST CORNER, THENCE S. 89° 14' E. 453.60 feet TO THE NORTHEAST CORNER, THENCE S. 00° 16' W. 840.00 feet TO THE POINT OF BEGINNING, AND CONTAINING 3.512 ACRES, MORE OR LESS.

NOTES

SUBJECT TO RESERVATIONS, RESTRICTIONS AND EASEMENTS OF RECORD AS SHOWN ON DEED DATED 13 OCTOBER 1977.

THIS PROPERTY IS NOT IN A ONE HUNDRED YEAR FLOOD HAZARD ZONE AS SHOWN ON FLOOD INSURANCE RATE MAP 550009 022A B.

EASEMENTS ARE GRANTED AS SHOWN FOR ROADS AND UTILITIES

Antonio Herrera *12/15/99*
ANTONIO HERRERA DATE

I HEREBY CERTIFY THAT I AM THE OWNER OF LOT 1 SHOWN ON THIS PLAT AND THE LOT CREATED BY THIS PLAT IS CREATED WITH MY FREE CONSENT AND IN ACCORDANCE WITH MY DEEDS AND DO FURTHER GRANT EASEMENTS FOR ACCESS AND UTILITIES TO FUTURE OWNERS.

Curtis Nikolai *12/15/99*
CURTIS NIKOLAI DATE
State of New Mexico County of Santa Fe

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS DAY OF *March* 1999.

Mark H. Harrison
NOTARY PUBLIC
MY COMMISSION EXPIRES *August 15, 1999*

I HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL ENGINEER AND LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF NEW MEXICO, AND THIS PLAT IS AN ACCURATE REPRESENTATION OF A FIELD SURVEY DONE UNDER MY SUPERVISION ON DECEMBER 10, 1992.

I FURTHER CERTIFY THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR LAND SURVEYS IN NEW MEXICO.

Cecil Gilbert *12/16/1992*
CECIL GILBERT DATE
N.M. P.E. & L.S. No. 3023



UTILITIES

U.S. WEST *Shirley* DATE: *3-4-92*
PUBLIC SERVICE CO. *A. Bonardo* DATE: *7-5-93*
SAMORE DE CRISTO WATER CO. *Paul B. ...* DATE: *7-7-92*
GAS COMPANY OF N.M. *He ...* DATE: *3-4-92*

- POINT FOUND & USED (1/2" REBAR)
- PROPERTY LINE
- - - SURVEY TIE
- AS AS SECTION CORNER WITH SECTION NUMBERS
- DA DA
- BARBED WIRE FENCE

MAINTENANCE OF PRIVATE ROADS AND EASEMENTS IS THE RESPONSIBILITY OF THE LAND OWNER/USER.

COUNTY OF SANTA FE

De limit
12/15/92
COUNTY LAND USE ADMINISTRATOR DATE

GILBERT ENGINEERING SERVICES
2210 WEST ALAMEDA AVENUE
SANTA FE, NEW MEXICO 87501 phone (505) 989-4171

Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Roman Abeyta
County Manager

August 19, 2009

Lori Lindsey
Mine Shaft Tavern
2846 State Highway 14
Madrid, New Mexico, 87010

FAX 989-1833

Re: Zoning Statement for the Mine Shaft Tavern property

Dear Lori,

I would like to thank you for coming in to meet with me and my staff to talk about your options and to explain to you what we think might be your best course of action as you plan to improve the businesses that you have acquired.

The existing use of the Mine Shaft Tavern and adjacent uses including the Wild West Photography studio, the Old Coal Mine Museum and the Theater were established prior to the adoption of the code and, therefore, have been determined by the Land Use Administrator to be non-conforming uses, subject to requirements set forth in Article II, Section 4.5.2 of the Land Development Code.

Historically, entertainment and music have been ongoing at the Mine Shaft Tavern. While entertainment has also been a function at the Theater, it is not entirely clear to me that music has been a function at the other venues. This is essential to the discussion here because it is the outside, amplified music that is central to the land use issue and to the numerous complaints brought forward by neighboring residents and businesses.

Article II – Administration Section 4.5.2 Re-use or Expansion of Non-conforming Use does not state what type of expansion can occur or how much in terms of square footage. This creates some ambiguity in interpretation. However, two sections of the code provide further direction for my interpretation:

4.5.2b 1) states, “the re-use, expansion or extension does not increase the intensity of development or alter the character of the non-conforming use on the site according to any limitations set by the Code relating to development standards for lot coverage, height, waste disposal, water use, setbacks, traffic generation, parking needs, landscaping, buffering, outdoor lighting, access or signage;” and,

102 Grant Avenue

P.O.



...xico 87504-1985

www.santafecounty.org

CDRC
Mineshaft Tavern
October 15, 2009
Page2

Several improvements have been made, by the property owner, to the site which has enabled expansion of the historical use. A porch was built, without a development permit, and is used for outdoor seating, serving of alcohol and music events (Exhibit "B"). Terracing of a portion of the property allowed for outdoor seating and entertainment (Exhibit "C"). The owner has converted what was known as the Photography Studio into a Saloon, where music events are held and alcohol is served.

These alterations have prompted the property owner to engage in a variety of outdoor events on the property. These events were permitted by the LUA with the issuance of Special Use Permits. This type of permit is intended to allow an Applicant to have an occasional special event. The regularity of these events has increased the intensity of use of the property and altered the non-conforming character of the site (Exhibit D").

Article II, Section 2.3.1a (Administrative Decisions) 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". Permitted uses in any non-residential district as set forth in Article III, Section 4 (Article II, Section 2.3.1a, xvii) is listed, as a type of development that may be approved or denied administratively, within the Land Development Code (Exhibit "F").

Article III, Section 4.2.2.b (Traditional Community Districts) states: "Commercial or light industrial zoning may be approved in the traditional community where no qualifying intersection appears to be present provided (Exhibit "G"):

- a) Similar uses have been established as non-conforming on contiguous and adjacent locations in the community;
- b) The re-zoning to be approved is similar in type and scale to those uses suggested for neighborhood or small scale districts by Article III, Section 4.3.2;
- c) The re-zoning is compatible with neighboring uses;
- d) It is the consensus of the local community to allow the proposed re-zoning and use".

In a letter to the LUA, dated August 20, 2009, Lori Lindsey/Mineshaft Tavern Properties, LLC (Appellant) stated: "I am requesting that this Zoning Statement not be enforced until the CDRC has a public meeting on this issue. I am appealing this letter and maintain that I should be able to operate until there has been a meeting to finalize this issue" (Exhibit "H").

Article II, Section 2.3.4b (Appeals) 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 (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County Development Review

4.5.2b 4) states, "The re-use, expansion or extension is not incompatible with the surrounding uses of land and is deemed to be of interest to the health, welfare and safety of the community."

The County Land Use Administrator and the County Attorney believe that recent changes to the photography studio, changing it into a saloon, and the addition of seating and entertainment and music on the porch area have, in fact, created changes that affect development standards and the health, welfare and safety of adjacent residential and commercial neighbors. It is our opinion that these changes increase the intensity of development on the property and are, therefore, a violation of the code.

This zoning statement, therefore, serves to acknowledge that uses outside of the Mineshaft Tavern itself will be interpreted as conditional uses and subject to special use permits or approval by either the County Development Review Committee or the Board of County Commissioners. Outdoor entertainment, including music and concerts, will need to be evaluated by the Land Use Administrator on a case by case basis. Special Use Permits will be required for events and/or concerts held on the property outside of the Mineshaft Tavern, this includes the patio area adjacent to the Old West Saloon, formerly the Old West Photography Studio.

Expansion of future, non-conforming commercial uses shall be allowed provided the redevelopment or improvements to the site serve to bring the use into conformance with the purposes of the Code. Article II, Section 4.5.3a states: Expansion of a non-conforming use is subject to the submittals and review requirements set forth in the Code. Article II, Section 4.5.3b states: If deemed to be in the public interest by the Code Administrator a public hearing shall be required.

Any further expansion or extension increasing the intensity of the Mine Shaft Tavern and its attendant properties or alterations to the character of this non-conforming use shall be subject to a Master Plan and Development Plan submittal and meet all requirements set forth in Article III, Section 4 of the Land Development Code.

The existing non-conforming use of the Mine Shaft Tavern serves to enhance the mixed use scheme of the community of Madrid. It is acknowledged that the historic pattern of use as a restaurant, lounge and entertainment facility is likely to continue in the future. It is, therefore, our opinion, as we have stated to you in our previous meetings, that any further activities or changes outside of the Mineshaft Tavern itself require Master Plan submittal and approval.

As the Land Use Administrator, I am, therefore, directing you to confine all music events on the property to the interior of the Mineshaft Tavern. This will be in effect immediately. Any activity outside of the Mineshaft Tavern will require a Special Use Permit. Any further music activities that have not received a Special Use Permit will be issued a Notice of Violation and subject to attendant penalties.

And finally, there appear to be a number of physical changes and improvements to the property that should have been undertaken through our building permit process but were not. We have discussed these with you and want to reiterate that you will need to acquire "after-the fact" building permits to correct these issues.

All of the changes and activities that you have described to me and my staff that you would like to see happen on your property can be included in a Master Plan and once presented will also allow your neighbors an opportunity to voice their opinions and concerns in a public meeting process. We believe this is the most equitable and fair way to proceed.

Staff will be happy to meet with you to discuss any concerns or questions you may have. Please do not hesitate to contact this office at 986-6225 or to call me directly at 995-2711.

You have the right to appeal this decision within five working days from this date. If you elect to do that, the matter will be put on the next available and appropriate agenda of the County Development Review Committee for a public hearing.

Sincerely,



Jack Kolkmeier
Land Use Administrator

CC: Mike Anaya, County Commissioner/District 3
Shelly Cobau, Building and Development Services Manager
Jose E. Larrañaga, Commercial Development Case Manager
Stephen Ross, County Attorney



SEC. CLERK RECORDED 12/01/2009

October 14, 2009
Attn: Jose
Santa Fe County Land Use

Re: Mineshaft LLC, Madrid, NM.

Dear Jose,
Due to scheduling conflicts we are unable to attend the CDRC meeting with regard to the Mineshaft Complex, located in Madrid, NM. This meeting is scheduled for Thursday, October 15, 2009.

We have lived and been a part of this community for 30 plus years, always celebrating the wonderful growth and changes through out those years. Most of those changes have not had an affect on our neighbors.

The outdoor amplified events at the Mineshaft Complex, due to the nature of where the complex is situated, with mountain side behind them, these amplified events can echo through out the entire community, or only one direction of the community, depending how the wind blows. Living directly across the street from the complex these events have had a negative impact on our home & business.

On rare occasion we would not hear or feel the outdoor events yet 2 blocks away a neighbor in tears because the outdoor amplified event at the Mineshaft Complex is shaking their home, in their living room, affecting them and not us. It is obvious that decibel readings are not a way to ensure peoples lives are not being negatively affected by these outdoor events.

The impact on our peace, quiet, privacy has been great. Anywhere else, a master plan, an impact analysis must be done, an opportunity for a community to have a voice before drastic changes are done to a business, like what has happened at the Mineshaft Complex.

The once Old West Photography building is now a "Saloon", which was transformed in a matter of days, with no permit, with a deck that is so tall it is now our view from our backyard and also the people sitting on the deck, our backyard is their view. The noise from the saloon, just day to day, requires us to close our doors & windows. Needless to say the noise during outdoor amplified events is even worse.

We had no voice in this change that has affected our privacy, our peace & quiet. For 31 years we have enjoyed the privacy of our back yard, we want our peaceful, quiet, back yard back. The mechanism in place by the County failed us.

Thank you for your time.
Barb & Al Leedom
2845 State Highway 14 North
Madrid, NM 87010
505-473-2054



Mineshaft Properties, LLC
PO Box 725
Cerrillos, NM 87010
(505) 473-0743
www.themineshafttavern.com

August 20, 2009

Jack Kolkemeyer, 102 Grant Ave
PO Box 276
Santa Fe, NM 87504-1985

Re: Zoning Statement for the Mine Shaft Tavern Property

Dear Jack,

This letter is in response to your letter dated August 19, 2009. I am responding to a faxed version of this letter received at 3:00pm yesterday.

My goal has always been to work with Santa Fe County hand in hand on issues that concern my property. I bought a very unique property that was in desperate need of management, clean up, and economic development. Because everything was existing, there were many items that needed repair and maintenance. We undertook many projects at great expense to improve the experience that our customers would have dining at our establishment.

Upon purchasing this property there were several concurrent businesses operating. The bar has been ongoing since 1895. The restaurant has been operating since the late 70's or early 80's. The Old West Photography had been operating since the 70's and the Engine House Theatre was established in the early 80's. The Old Coal Mine Museum was established at the departure of the Albuquerque Cerrillos and Coal Mining Co in the mid to late 50's. I believe that all of these businesses precede the development of your organization within Santa Fe County.

I do not believe that anyone can definitively state whether or not over the last 114 years there had been live music outdoors on my property. My guess is that there probably has been quite a bit of live music indoors and outdoors in the lifespan of this business. In my own knowledge, I am aware of music being played outside in my patio between the Engine House Theatre and Old West for 25 years prior to the Melodrama and at its intermission.

I am aware of approximately 4-10 individuals who have called you, Mike Anaya, Roman Abeyta, Alcohol & Gaming, Sfe County Fire Department and Sfe County Sheriff's Office repeatedly, intently, and obsessively. I have had Sfe County Sheriffs at my property numerous times only to apologize for having to come out on a fraudulent phone call. One of the individuals that has called you and others repeatedly drove around town banging on pots and pans during the filming of the movie "Paul" when it was being filmed on my property. When asked by the State Police officers who found him and 2 friends in the arroyo banging away why he was doing that, he stated it was because he was trying to hurt my business NOT the movie.



NBF-39

The basis of these complaints is not because I am having live music on my deck Saturday afternoons from 3pm-6pm but because they would like to see my business fail. One of the other contentious individuals that obsessively calls public officials told my fellow business owner across the street that if he did not stop his music on a Sunday afternoon that he would (and I quote) "put him out of business". One of these individuals harassed Sfe County Fire Department Chief enough to have them come out to my theatre and shut it down. From my perspective, Sfe County is set up to respond only to complaints and does not look at the whole picture. My 135 seat theater that has been continuously operating for 27 years does not meet current fire codes. It did not have a sprinkler system when it was built in 1895 +-20 years. It is NOT a nightclub, nor is it a 1000 person theater.

Today, Scargant Fredrick Jasler with State of New Mexico Special Investigations Division came out to speak with me. He was called by Sfe County Sheriffs office to come out and investigate the legality of my footprint for alcohol service. He will be sharing his report to Sfe County Sheriff's Office so that they can quit responding to the well over 200 calls placed to them since I purchased this business. Yesterday, you sent me a letter to cease and desist live music between 3pm-6pm on Saturday afternoons on a legally licensed liquor establishment. He will tell them that I am legal as far as the Alcohol and Gaming and Special Investigations Division is concerned.

When we decided to take an existing permitted structure and convert it to a deck, I called Jose Larranaga twice asking him if I needed a permit since I was using existing structure. I have witnesses to that effect. We never received a callback. I called the State of New Mexico ADA Division to ask them instructions on how to make an existing structure a more appropriate handicapped entrance than it was at the time. I was told that what we were doing was good. There was a gentleman who came out and reviewed our project. So, if I didn't get a callback to clarify whether or not I needed a permit; I made the determination that Sfe County thought that I probably did not need it. I will be happy to provide a statement from the witnesses of me making those phone calls. I have a 13,000 sq ft footprint for my alcohol license and I added a measly 600 sq ft.

I have a business license, alcohol license and a history of entertainment on this property. I do not believe that we are in violation of any codes. Intensity of use appears to be very grey. The sound ordinance appears to be very grey. YOUR INTERPRETATION OF HEALTH, SAFETY, AND WELFARE OF THE COMMUNITY IS MORE GREY. I have not increased the size of my business license, only my alcohol license. The Old West Photography was licensed as part of the alcohol license. Historically, alcohol was served in the patio between Old West Photography and The Engine House Theatre and the Engine House Theatre itself. Numerous events (mostly fundraisers) occurred on this part of the property. In addition, the Melodrama had 26 seasons.

Let's talk intensity—The Mine Shaft Tavern is a restaurant and a bar. I lessened the intensity of this establishment on the community upon purchasing it. I installed an HVAC system. This enabled closing windows and doors when there was live entertainment in the business. Previously, for 60 years sound flowed loudly out of the restaurant off the porch and towards the same people who have made a point of trying to say that I intensified the use of this property. I rarely stay open past midnight. The previous owners stayed open until late night every night and

NRE-40

2am on Friday and Saturday. This is lessening intensity. When there has been outside live music on the deck it has never gone past 7pm when I am allowed to go until 10pm.

Many times too numerous to remember, Sfe County officials have come out here to take sound readings. We have never been over any decibel limits. In fact, the ambient noise is louder than the musicians that have played on my deck.

It is time that Sfe County acknowledges the desires of the majority of the individuals who make Madrid their own rather than the voice of angry, relentless, and self-serving complainers. I have asked for a town meeting on this issue so that it would not impact my business and therefore, the community at large. This has not happened.

I am requesting that this Zoning Statement not be enforced until the CDRC has a public meeting on this issue. I am appealing this letter and maintain that I should be able to operate until there has been a meeting to finalize this issue.

I am currently working on a Master Plan and recognize that my property is a very important one to the community. We employ over 20 people in rural New Mexico with good paying jobs. My company is trying to protect a site that is one of 2005's Most Endangered Historic Sites. We are a plagued and historic community and this property is the centerpoint of its history. I am trying to preserve a property and we have to create more revenue than our predecessors as they never had a mortgage on their property. They had \$600 county tax bill and we have a \$6000 county tax bill. The music from 3-6pm at The Old West Saloon was helping to push me out of the red and into the black on my bottom line.

The financial implications of the actions of these 4-10 people is horrific. The additional monies created by this one thing would allow me to keep my staff employed through the winter. Without it, I will have to layoff and rehire when the season begins again.

In response to your code references:

4.5.2b 1) It states that re-use, expansion or extension DOES NOT INCREASE THE INTENSITY OF DEVELOPMENT OR ALTER THE CHARACTER OF THE NON CONFORMING USE.

4.5.2B 4) It states that re-use, expansion or extension is not incompatible with the surrounding uses of land. Your argument about health, welfare and safety of the community is vague and the community is much larger than the 4-10 people who have intensely contacted your office. We have done nothing that compromises anyone's health, their safety, or their welfare. I would like to understand this in more detail. Has anyone been hurt? Gotten sick? Or impacted in anyway negatively- ie welfare?

Of the many times that these individuals have called you, they open their doors and walk down to my property so that they can hear so that they can complain. One time, Lawry Sager complained about The Family Coal playing and I walked to his house and I could not hear the music. His door was wide open and his hearing aid was on....Think about that, you complain about music at an entertainment business and you put on your hearing aid to hear it. Since you could not hear it, you open your door so that you can try harder. That particular day, the 4 police

NRF-41

cars that showed up circled the town with recording devices and could not find any issues with anything that my business was doing. They also filed a report at my request. Previously, they would come out – find nothing wrong and not file. Hence, the visit by Sgt. Jasler of the Special Investigations Division.

I look forward to resolving this issue. Once again, my request out of fairness for the ambiguity of your letter, county ordinances and the nature of those complaining; be that we continue to operate as we have for last several months until the CDRC or the Board of County Commissioners makes a ruling on my appeal.

I would appreciate being contacted by email at lori@theminshaftavern.com or by cellphone at 577.3934 to let me know if I may be able to operate until a decision is made.

Sincerely,



Lori Lindsey
Owner / General Manager
Mineshaft Properties, LLC

CC: Roman Abeyta
Mike Anaya
Shelly Cobau
Jose E. Larranaga
Stephen Ross

NRE-47

MINUTES OF THE
SANTA FE COUNTY
DEVELOPMENT REVIEW COMMITTEE

Santa Fe, New Mexico

November 19, 2009

This meeting of the Santa Fe County Development Review Committee (CDRC) was called to order by Chair Jon Paul Romero, on the above-cited date at approximately 4:05 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:

Jon Paul Romero, Chairman
Susan Martin, Vice Chair
Don Dayton
Juan José Gonzales
Maria DeAnda

Member(s) Excused:

Jim Salazar
Charlie Gonzales

Staff Present:

Shelley Cobau, Planning Division Director
John Michael Salazar, Development Review Specialist
Ted Apodaca, Assistant County Attorney

III. APPROVAL OF AGENDA

Ms. Cobau announced the tabling of CDRC Case #V 09-5360, the Carol Esquibel Variance, CDRC Case # MIS 09-5390, Matthew Malczewski Legal Lot of Record, and CDRC Case #VAR 09-5020, Karen Esquibel Variance.

Upon motion by Member DeAnda and second by Member Dayton the agenda was unanimously approved by 5-0 voice vote.

IV. **APPROVAL OF MINUTES: October 15, 2009**

Member Dayton moved to approve the October minutes as submitted. Member Martin seconded and the motion passed by unanimous voice vote.

V. **FINDINGS OF FACT**

- A. **CDRC CASE # MIS 09-5310 Charles Breckenridge Wind Turbine Tower.** Charles Breckenridge II, agent, Charles Breckenridge, applicant, requests approval to install a 40-foot wind turbine tower. The tower is based on a light-pole design and is constructed of tubular steel with a galvanized finish which will be mounted upon a concrete base. The property is located at 47 Charlie Breckenridge Road, which is off SF County Road 41, within Section 31, Township 10 North, Range 9 East (Commission District 3) Approved 5-1
- B. **CDRC CASE # MIS 09-5310 Charles Breckenridge II Wind Turbine.** Charles Breckenridge II, applicant, requests approval to install 40-foot wind turbine tower. The tower is based on a light-pole design and is constructed of tubular steel with a galvanized finish which will be mounted upon a concrete base. The property is located at 38 Snow Moon Estates, which is off of Martin Lane and Martin Road, within Section 28, Township 10 North, Range 8 East (Commission District 3) Approved 5-1

Upon motion by Member Martin and second by Member Dayton, the Consent Agenda was approved by unanimous voice vote.

VI. **OLD BUSINESS**

None.

VII. **NEW BUSINESS**

- B. **CDRC CASE #MIS 09-5440 Virginia Eldridge Legal Lot Recognition.** Virginia Eldridge, applicant, requests the recognition of a 5.00-acre lot as a legal lot of record. The property is located at 10 Dawn Trail within Section 26, Township 15 North, Range 8 East (Commission District 5)

Staff asked that this case be moved down on the agenda in order to allow the County Surveyor to provide input on the case. The applicant agreed.

VII. C. CDRC CASE # V09-5420 William Gooch Variance. William Gooch, applicant, requests a variance of Article II, Section 2.3.3a (Site Planning Standards for Residential Uses) of the Land Development Code to allow disturbance of 30% slopes on three separate areas exceeding one thousand square feet. The property is located at 30 Monte La Cueva Road, within Section 26, Township 16 North, Range 11 East, (Commission District 4).

Mr. Salazar gave the staff report as follows:

“The applicant requests a variance of Article II, Section 2.3.3a of the Land Development Code to allow disturbance of 30 percent slopes on three separate areas exceeding one thousand square feet. The applicant submitted an application to construct a driveway on September 1, 2009 but was denied during the terrain management review. The three instances of 30 percent slope vary size a follows: 2,858 square feet, 1,558 square feet, and 1,198 square feet.

“Land Use and the Fire Department have both conducted site visits and concluded that the proposed layout of the driveway is the best alignment due to the rocky terrain of the subject property. The applicant is proposing turnouts and a y-turn at the end of the driveway for the Fire Department.”

Mr. Salazar stated that after conducting a site inspection on the property, staff has determined that the proposed location of the driveway causes the least amount of 30 percent disturbance to the terrain of the property. Staff recommends approval of the requested variance.

Member J.J. Gonzales asked how big the property is and Mr. Salazar replied ten acres, and the driveway is around 800 feet. He added Tim Gilmore of the Fire Department reviewed the application and approved the plan with the turnarounds.

Duly sworn, William Gooch indicated the plans have undergone multiple revisions in order to comply with the Code and disturb the terrain as little as possible. “This is the one that works.” He said when he bought the property the disclosures failed to adequately describe the conditions.

Ms. Cobau agreed this was the best possible alignment and said Mr. Gooch and his engineer had worked with County staff to come up with this design.

Neighbor Matthew Clinton, under oath, stated serious questions remain regarding the stability of the soil and the accessibility of emergency vehicles. He said his property is immediately below and there are a number of boulders that could come loose. He stated he had a real estate flyer showing the topography of the lot. In response to a question of the chair, Mr. Clinton said he had not seen the new engineering plans, but he would hope that all requirements for culverts and ditches are fulfilled.

Mr. Gooch stated the hillside faces east and southeast, not northeast as described by Mr. Clinton. He said steps will be taken not to undermine the boulders.

Member DeAnda asked Mr. Gooch if he shared common boundary lines with Mr. Clinton. He said the south and southeast boundaries of his property bounded Mr. Clinton's property. There is another property higher on the hill but it is currently vacant. There is an easement for that property through his.

There was no one else from the public wishing to speak.

Member J.J. Gonzales moved to grant the variance in CDRC Case #V 09-5420. Member Martin seconded and the motion passed 4-1 with Member DeAnda casting the nay vote.

VII. D. CDRC CASE # V09-5400 Nikolos Cecere Variance. Nikolos Cecere, applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 5.6 acres into two lots. The property is located at 101 Lower La Joya Road, within Section 36, Township 16 North, Range 11 East, (Commission District 4)

Mr. Salazar read the case caption and staff report as follows:

"The applicant requests a variance of Article III, Section 10 of the Land Development Code to allow a Land Division of 5.6 acres into two lots. Article III, Section 10 states the minimum lot size in the area 20 acres per dwelling unit. The Applicant requests this variance due to financial hardship. The applicant is proposing to split his 5.6-acre lot into one 2.5-acre lot and one 3.1-acre lot. The applicant would then construct a new "green" home for him and his sister to reside in. The 2.5 acre lot would contain the existing home and the applicant would sell it in order to maintain the rest of his property otherwise he is at risk of losing the whole 5.6 acres."

Mr. Salazar said staff recommends that the request for a variance be denied. Article III, Section 10 states that the minimum lot size in the area of the subject property is 20 acres per dwelling unit. He distributed maps to the committee members to demonstrate the neighboring lot sizes. (This exhibit was not made available for the record.)

Chairman Romero said there appeared to be a number of small lots in the vicinity and asked if they were created recently. Mr. Salazar said some were reduced recently. The property is close to the Glorieta traditional community.

Duly sworn, Nikolos Cecere indicated most lots in the area are smaller than the 20-acre minimum. He said he bought the lot in 2005 and it has since diminished in value.

The house has been on the market since August for less than the purchase price. He plans to split the lot, sell half and build a green house for himself and his sister. He said he met with his neighbors and no objections were voiced. Many of the adjacent lots are vacant. The property is near the border with San Miguel County and the lots there are quite small. Some lots in the area have been split after 1991.

There was no one from the public wishing to speak on this case.

Member J.J. Gonzales moved to approve CDRC Case #VAR 09-5400. Chairman Romero seconded. The motion failed by 2-3 vote, with Members Dayton, DeAnda and Martin voting against.

Member Dayton moved to deny the variance and Member DeAnda seconded. The motion passed by 3-2 vote with Members Romero and Gonzales voting against.

VI. B. CDRC CASE #MIS 09-5440 Virginia Eldridge Legal Lot Recognition. Virginia Eldridge, applicant, requests the recognition of a 5.00-acre lot as a legal lot of record. The property is located at 10 Dawn Trail within Section 26, Township 15 North, Range 8 East (Commission District 5)

Ms. Cobau stated she attempted to contact County Surveyor Jeff Ludwig, who has said he would like to make recommendations on questions of legal lots. She added the applicant has agreed to defer the case to the December 3rd meeting.

VIII. PETITION FROM THE FLOOR

None were presented.

IX. COMMUNICATIONS FROM THE ATTORNEY

None were presented.

X. COMMUNICATIONS FROM STAFF

Ms. Cobau indicated that the December 3rd meeting will be at 6:00 and the Santa Fe Studios project will be heard at that time.

The December 17th meeting will be at 4:00. Land use cases will be heard at that time and the Sustainable Land Development Plan will be heard at 6:00.

XI. ADJOURNMENT

Having completed the agenda and with no further business to come before this Committee, Chair Romero declared this meeting adjourned at approximately 4:45 p.m.

Approved by:

Jon Paul Romero for
Jon Paul Romero, Chair
CDRC



Valerie Espinoza
Before me this _____ day of _____, 2009.

My Commission Expires: _____
Notary Public

Submitted by:
Debbie Doyle
Debbie Doyle, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
CDRC MINUTES
PAGES: 6
I Hereby Certify That This Instrument Was Filed for
Record On The 18TH Day Of December, 2009 at 01:39:42 PM
And Was Duly Recorded as Instrument # 1586378
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy *Valerie Espinoza* County Clerk, Santa Fe, NM