

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

**Santa Fe, New Mexico**

**October 17, 2013**

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

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

**Members Present:**

Juan José Gonzales, Chair  
Susan Martin, Vice Chair  
Phil Anaya  
Maria DeAnda  
Dan Drobnis  
Manuel Roybal

**Member(s) Excused:**

Frank Katz

**Staff Present:**

Wayne Dalton, Building and Development Services Supervisor  
Vicki Lucero, Building and Development Services Manager  
Rachel Brown, Assistant County Attorney  
Buster Patty, Fire Marshal  
Karen Torres, County Hydrologist

**IV. APPROVAL OF AGENDA**

Upon motion by Member Anaya and second by Member Martin the agenda was approved [6-0] as published.

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**V. APPROVAL OF MINUTES: September 19, 2013**

Member Anaya moved to approve the September minutes as submitted. Member Martin seconded and the motion passed by unanimous [6-0] voice vote.

Ms. Lucero noted that the case caption for item VII. A was correct; however, the staff report contained a typographical error.

**VII. NEW BUSINESS**

- A. CDRC Case #V 13-5270: Rebecca Ornelas & Maria Zubia, Applicant, request a variance of Ordinance No. 2007-2, (Village of Agua Fria Traditional Community Zoning District), § 10.6 (Density Standards) to allow a second dwelling unit on 0.638 acres. The property is located at 2144 Camino Polvoso, within the Traditional Community of Agua Fria, within Section 5, Township 16 North, Range 9 East (Commission District 2)**

Wayne Dalton, read the case caption and the staff report as follows:

“The property is located within the Traditional Community of Agua Fria where the minimum lot size is 0.75 acres per dwelling unit. Lot size can be further reduced to 0.33 acres per dwelling unit with community water and sewer. The subject property is served by community water and sewer. In order to have two dwelling units on the property, the lot would have to be at least 0.66 acres, 28,749 square feet in size. The Applicant is lacking approximately 958 square feet of property to meet Code requirements for two dwelling units.

“There is currently one dwelling unit and one accessory structure on the property. The Applicant purchased the property in July, 2013, and shortly after moved a mobile home onto the property without a Development Permit from Santa Fe County. The Applicant along with her three daughters and grandchildren reside in the current residence. If the variance is granted, the Applicant intends to move an additional mobile home onto the subject property. The proposed mobile home that would be placed on the property belongs to another daughter who does not live in the current residence or resides on the subject property. The Applicant’s intention is to move this daughter onto the subject property in order to help provide special needed care for her daughter’s two young children.”

Mr. Dalton reviewed the pertinent section of the code, Article II, § 3, Variances, and the Village of Agua Fria Traditional Community Zoning District Ordinance. In accordance with the Code, staff recommends denial. However, if the decision of the CDRC is to recommend approval of the Applicant’s request, staff recommends imposition of the following conditions:

1. The Applicant must obtain an After-the-Fact permit for the mobile home and accessory structure (As per Article II, § 4.5.2b Article II, § 2).
2. The placement of additional dwelling units or Division of land is prohibited on the property (As Per Ordinance No. 2007-2 Section 10.6).
3. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).

In response to the Chair's question, Mr. Dalton said it was not by ordinance that variances be reviewed by the Agua Fria Village Association and this applicant did not go before the Association. He indicated that the applicant met notification requirements and staff received neither support nor opposition letters. The variance is for the placement of a second dwelling not a lot split, clarified Mr. Dalton.

Member Drobnis asked about the applicant's written statement that contained blacked out information. Deputy County Attorney Brown explained that applicants can disclose any information they choose, however, the County is prohibited from forwarding medical information in documents to the public.

[A portion of the testimony provided by the applicant and her family was in Spanish. Member DeAnda translated and what appears in the record is based on the translation.]

Duly sworn, Veronica Ornelas, daughter of the applicant, stated that she wants to live on her mother's property because she has two babies that require special care that her mother and family could provide. Also, she would be able to help her mother to care for her sisters.

Ms. V. Ornelas confirmed that she currently resides in a mobile home at the Country Club Gardens within a few miles of her mother's home. She said her family provides help at this point.

Staff confirmed that a variance would not be necessary if the applicant had the required acreage and while there are no required setbacks the applicant meets recommended setbacks.

Duly sworn, Maria Zubia, the applicant, provided data on the size of the mobile homes. Member Anaya observed that the combined square footage of the dwellings was minimal.

Chair Gonzales commented that this application appears to be a minimal easing of the Code and noted that the CDRC has granted variances for the placement of second dwellings in this area.

Member Anaya moved to approve CDRC Case V 13-5270 with staff recommendations. Member Martin seconded and the motion passed by unanimous [6-0] voice vote.

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Ms. Zubia thanked the Commission for their support.

Member DeAnda advised the applicant that the CDRC's recommendation would be forwarded to the BCC for final action.

**B. CDRC CASE # V 13-5250 Thomas Wagner Variance: Thomas Wagner, Applicant, requests a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow the construction of a residence on 40.01 acres. The property is located at 67 Camino San Marcos, Off Goldmine Road (CR59B), within Sections 3, 4, 9, & 10, Township 13 North, Range 8 East (Commission District 3).**

[This case is presented verbatim]

MR. DALTON: The subject lot was created on September 2, 2009, by way of Family Transfer for Sharon Thams Carter. Tract 2A-2 was deeded to Sam Carter Jr. on September 2, 2009, and was then sold to the Applicant on October 23, 2009.

At time of Plat recordation, a note was placed on the Plat which states: "Prior to issuance of Development Permits for dwellings on lots 2A-1 and 2A-2, Camino San Marcos roadway and drainage crossing within lot 2A-2 shall be upgraded to County all weather standards." This note was placed on the Plat due to the property owner at the time not making the necessary improvements to Camino San Marcos and agreeing that any recipients of the Tracts hold the property for a period of three years in accordance with Article III, Section 2.4.2b.3c for off-site road improvements and you can refer to Exhibit 6.

Since the recipient of Tract 2A-2 sold the property prior to holding the property for the three-year period, off-site improvement requirements of the Code should have been met at the time of sale.

The property is accessed from, Wagon Trail Road which connects to Camino San Marcos. These are private roadways. Wagon Trail Road and Camino San Marcos range from 18 to 24 foot wide base course driving surfaces. Camino San Marcos crosses one arroyo/drainage easement which is impacted by stormwater runoff within the jurisdiction of Santa Fe County, therefore Ordinance No. 2008-10 applies to this Application, and you can refer to Exhibit 3. The portion of Camino San Marcos that services the property is approximately .67 miles in length. Wagon Trail Road and Camino San Marcos do have an all-weather driving surface however, being that Camino San Marcos crosses an arroyo/drainage easement, it may be frequently impassible during and after inclement weather, and thereby is not all weather accessible. After conducting a site inspection on the property, it was determined that a significant amount of run-off impacted this arroyo/drainage easement in the recent storm events.

The Applicant states he is not in a position to upgrade the arroyo/drainage crossing on Camino San Marcos to an all-weather access. The Applicant also states that he has received an engineer's cost estimate for the improvements and it would be in excess of \$50,000, a cost which is prohibitive for what he considers to be his driveway.

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MR. DALTON: Mr. Chair, Committee Member DeAnda, as far as the update of the road goes there really is no enforcement because we don't know when the property changes hands. So it's hard for the County to know when a property changes hands. So to answer your question before, these notes do transfer to different property owners.

MEMBER DEANDA: Okay, that was what I – so it's really the enforcement mechanism between the buyer and the seller. It's notice to the seller that if they purchase the property they either hold the buyer responsible for the deed conditions or they make some arrangement because they will carry forward, if they purchase the property, they carry forward. Okay, that's what I was trying to determine. Thank you.

CHAIR GONZALES: Thank you, Ms. DeAnda. Mr. Anaya.

MEMBER ANAYA: Thank you, Mr. Chair. Mr. Dalton, was this a transfer within the family or is it non-family?

MR. DALTON: Mr. Chair, Committee Member Anaya, originally this family transfer was between a husband and wife.

MEMBER ANAYA: So the one that we're talking about, there's no family relations whatsoever.

MR. DALTON: Mr. Chair, Committee Member Anaya, that's correct. He's the purchaser of the property.

MEMBER ANAYA: But no blood.

MR. DALTON: No.

MEMBER ANAYA: Thank you.

CHAIR GONZALES: Do we have any other questions of staff? If not, this is a public hearing, is the applicant here? Please step forward, identify yourself and get sworn in for the record.

[Duly sworn, Thomas Wagner testified as follows]

RECORDER: And you name and address please.

THOMAS WAGNER: Well, it's a difficult question. I guess now my address is 45 – I can't even remember my address – 45 Aventura, Santa Fe, New Mexico 87508 starting tomorrow.

CHAIR GONZALES: Thank you very much. Would you explain to us what the request is and how you got to this point?

MR. WAGNER: Well, how I got to this point is not very funny. I purchased this land in October 2009 and as you're aware the plat was recorded on September 2<sup>nd</sup> and so that was pretty close and the title company didn't get a chance to actually send me a copy of the plat until after it was recorded and the title was transferred until escrow closed. So I didn't even know about this condition until after I paid for the land and then I attempted to negotiate with the homeowners association and also the developer of the land, the Montoya family, with no success to have the road improved and my other alternative would have been to sue everybody which would have been extremely expensive and my lawyers recommended against that. And then I came to the County and to Wayne and to the Fire Department and everybody looked at it and said, That doesn't so bad. And to my knowledge only relatively one severe time which was September, this past September when everything flooded, when a portion of Goldmine Road collapsed, when Wagon Trail Road got eroded because the stormwater went over the culverts and over the top of the road. And I arrived in Santa Fe on Monday and went

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out to the land and saw a small amount of erosion. It could have been that it was already repaired by then but it didn't seem to be too bad.

Last year I had the people from the Fire Department come out and have a look at it and they said it looked like it was a reasonable driving surface and it may become impassable for short periods of time. But that's about the situation, so that's why I'm requesting variance.

I had an engineering design prepared for this and it's with all of the runoff calculations everything else, the engineer came up with a design for two 5-foot culverts, which in my view seems a little bit excessive, and that would cost on the order of between \$60,000 and \$100,000 to install and re-grade the road. So that's why I'm here.

I basically consider this road my driveway because no one else, there aren't any other residential structures past that point in the road.

CHAIR GONZALES: Thank you very much. Do we have any questions of the applicant? Ms. DeAnda.

MEMBER DEANDA: Thank you. You know one of the statements you make in the report is that you expressed that somehow there will be development out in that area and the developers will then become responsible for upgrading the road.

MR. WAGNER: Yes. According to the covenants of the homeowners association if the Phase 2 of Ranchitos, which is the 6,000 acres just directly to the east of my property, is ever developed as residential land they are obligated to upgrade Camino San Marcos to County standards and perhaps even past County standards because at that point if 100 houses are built through that arroyo that will turn into a super-highway past my house which I hope doesn't happen, and that land has recently been purchased by a rancher who has fenced off the 6,000 acres and is doing some development there.

MEMBER DEANDA: So your homeowners association is, what's the name of it?

MR. WAGNER: It's the Ranchitos de Santa Fe Homeowners Association.

MEMBER DEANDA: Okay, and then if the other land, the 6,000 acres, is developed that will be a different homeowners association?

MR. WAGNER: That will be the Phase II homeowners association and these two associations have to merge and it's a very complicated and legalese road maintenance agreement which in order to enforce would cost me a tremendous amount of money with lawyers and court fees.

MEMBER DEANDA: Why do you say they have to merger, the HOAs?

MR. WAGNER: Because according to the roadway maintenance agreement the owners of Phase II are obligated to upgrade the access road which is Camino San Marcos before they can – well, after they sell 75 percent of the lots, they are obligated to upgrade the road and also pay 75 percent of the Phase I road maintenance costs. This is where it starts getting complicated and too legalese for almost anybody to understand.

MEMBER DEANDA: Well, you know, because you say that those 6,000 acres were purchased by a totally different individual; right, is that what you said?

MR. WAGNER: They're owned by somebody who has turned it into a ranch.

MEMBER DEANDA: Uh huh.

MR. WAGNER: Up until May it was for sale by the Montoya family.

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MEMBER DEANDA: If I can just ask you about, there were some photographs that were provided to us in the packet –

MR. WAGNER: Uh huh.

MEMBER DEANDA: -- and there's one in particular, I think it's 12-NBB-21; which is this one that shows what looks like water. It has really exposed rock and is this part of the roadway that we're talking about?

MR. WAGNER: May I come closer and see it?

MEMBER DEANDA: Yes.

MR. DALTON: Mr. Chair, Committee Member DeAnda, yes, that is the crossing in question.

MEMBER DEANDA: Okay, just so that the applicant knows. But this is the roadway we're talking about; right?

MR. WAGNER: Yes.

MEMBER DEANDA: Now, was the roadway in this condition when you had the engineering study performed?

MR. WAGNER: No, when I had the engineering study performed the road was in perfect condition.

MEMBER DEANDA: And that's my concern, I guess. Because one of the things you mentioned is that the road was in pretty good condition that everybody looked at it at the time that I guess they were looking at it precedes this rainfall and it was in pretty good condition and it would only flood occasionally.

MR. WAGNER: Actually, the Fire Department also looked at it after a rain in September of a year ago.

MEMBER DEANDA: Yes, but I'm concerned about this –

MR. WAGNER: Yes, I understand. This is the storm of –

MEMBER DEANDA: Because we all know. We've lived here quite a while and it seems to me that weather conditions are changing.

MR. WAGNER: Right.

MEMBER DEANDA: You know, it may be part of climate change, who knows? But it sure seems that way and so, you know, this last rain we had was so intense I guess a year ago conditions may no longer be conditions today or potentially in the near future. I just have that as a concern. But I wanted to make sure that this was a photograph of the roadway that we're talking about.

MR. WAGNER: Yes, I believe Mr. Dalton took that photo – when was that, a couple of weeks ago?

MR. DALTON: Yes.

MEMBER DEANDA: And the other question that I have is that we have also an Exhibit 9, and I don't know if you have it. It has an arrow pointing out subject property which I'm assuming is your property.

MR. WAGNER: Yes, yes.

MEMBER DEANDA: And I take it that you're familiar with Exhibit 9.

MR. WAGNER: Yes.

MEMBER DEANDA: And Exhibit 9 appears to show that there is maybe one residence, I think, at point 38; is that right?

MR. WAGNER: That's correct.



MEMBER DEANDA: And then nothing else; is that right? Nothing else around that area?

MR. WAGNER: That's correct.

MR. DALTON: Mr. Chair, Member DeAnda, I think there are two houses out there.

MEMBER DEANDA: Oh, there's another 87 and 28?

MR. WAGNER: No, the only house in that – along the entire roadway, Camino San Marcos is 37, oh, 38 I should say, it's 38.

MEMBER DEANDA: Thirty-eight, yeah, is that the lot that adjoins your lot?

MR. WAGNER: Yes.

MEMBER DEANDA: Okay, and there's no other lot with a residence on it adjoining your lot?

MR. WAGNER: No.

MEMBER DEANDA: So do you have to – are there easements – I guess I was trying to understand, I thought that the packet said that there were easements either on your property or on the adjoining the lot.

MR. WAGNER: That road Camino San Marcos is an easement on my property.

MEMBER DEANDA: Because it turns and then it ends up and going through where 38 is; right?

MR. WAGNER: Well, on 38 it is on the property boundary when it –

MEMBER DEANDA: Right, but it goes through your property to get to 38.

MR. WAGNER: It goes through my property to get to – well going the other way. If you come in from Goldmine Road 38 is before 67. So they don't have to go through the arroyo whereas I do to get to my driveway.

MEMBER DEANDA: Right, and that's what I – you're the only one that has to go through it now.

MR. WAGNER: There's one other person. Actually, the surveyor. His name Rick Chatroop. He lives four miles down the dirt road which is a continuation of Camino San Marcos and he has to drive through ravines and arroyos and mud puddles and snowstorms and when it rains he doesn't go anywhere.

MEMBER DEANDA: And so when you say that the HOA or the agreement is that when the other 6,000 acres is developed they're going to improve and I think you said Camino San Marcos.

MR. WAGNER: Yes, that's correct. That's my understanding but to enforce that I would have to take somebody to court.

MEMBER DEANDA: Right, and that's the question. Okay, thank you.

MR. WAGNER: Which I really don't want to do. I've already paid lawyers \$15,000 to –

CHAIR GONZALES: Any other – oh, excuse me. Mr. Drobnis, you have a question?

DMEMBER DROBNIS: I have a question for staff. Mr. Chair, Mr. Dalton, since the development to the east of this property has been mentioned is there any preliminary development plans approved for any of that property?

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MR. DALTON: Mr. Chair, Committee Member Drobnis, not at this time, no.

DMEMBER DROBNIS: Thank you.

CHAIR GONZALES: Mr. Anaya.

MEMBER ANAYA: Mr. Chair, Mr. Wagner, on your estimate or on your statement letter you said the estimate for improvements would exceed \$50,000?

MR. WAGNER: Yes.

MEMBER ANAYA: What are they talking about doing?

MR. WAGNER: The engineer that I hired for the design came up with a requirement for two 5-foot diameter culverts each 70 feet long which themselves would cost about \$8,000 each. And then the amount of dirt that would have to be dumped on top of the road because we have underground power cables so I can't dig the culverts into the ground I have to stick them on top of the ground and then cover them with dirt. So I'm probably talking about several hundred dump trucks of dirt plus the culverts and the bulldozer and the catch basins on either side and I think for a driveway that's a little bit overkill. If I wanted to build a highway to Phase II I would say yes, let's go ahead and do that.

But as my driveway and since there's no other development out there that's why I'm asking for the variance.

MEMBER ANAYA: So, again, the size of the culverts are 5-foot, two five-foot?

MR. WAGNER: Yes, that's assuming that it rains a massive amount and even in this last storm it probably didn't rain enough to fill those up. And, again, I'd like to point out the other culverts which are sized 3-feet which are on Wagon Trail Road which is the access road to Camino San Marcos, they were filled with trees and stuff and they overflowed and eroded Wagon Trail and also I guess Goldmine Road which is the County maintained road off of 14. A big chunk, about 50 feet of that washed away completely and it has some culverts, so this was a storm of I guess of massive proportions. What else can I say to that?

MEMBER ANAYA: Okay, then another question I had then is that it showed an address of California. You bought this property sight unseen?

MR. WAGNER: No, I saw the property. I also saw the road and the real estate developer, the real agent said this is a perfectly good road, don't worry about it. I've heard that before too. And then I never saw the plat with the requirements from the County on it until the close escrow so I'm just some poor guy you know with a problem here.

MEMBER ANAYA: How many estimates did you get?

MR. WAGNER: I got one estimate.

MEMBER ANAYA: One, thank you.

CHAIR GONZALES: Thank you, Mr. Anaya. Ms. Martin.

MEMBER MARTIN: I have a question for staff. It talks of family transfer on September 2, 2009, was that by act of the CDRC?

MR. DALTON: Mr. Chair, Committee member Martin, no, that was an administrative approval.

CHAIR GONZALES: Thank you, Ms. Martin. Mr. Patty can you come and add some clarity to our little problem here. The question I have for you is this is a

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long road, Camino San Marcos, and I guess you've been out there, you or your staff was out there. Have you driven out that road?

FIRE MARSHAL PATTY: Mr. Chair, committee members, yes, I have been out there along with my staff also. We've been out there a couple of times to look at the roads. We haven't been out there since the big rains and looking at the pictures here it was before it was repaired or graded over.

CHAIR GONZALES: Okay, and when you were at that road, well, most of Camino San Marcos is leading up to this subject property and that's probably, it says .67 miles, like a little more than half a mile. The first part of that road meets County standards as an all weather road?

FIRE MARSHAL PATTY: Mr. Chair, Members, most of it does. There is some places there where it is anywhere from 24-foot wide to 18-foot wide. There's one spot there that is just right at 11 percent grade. But the road is in pretty good condition for the amount that it doesn't get graded shall I say. The crossing that we're looking at right now for us looking at it, this was kind of an unusual storm that we got. It wouldn't normally washout as bad as it did this time. Like I say, I didn't see it after the rain. I think Mr. Dalton did take some pictures. This is after that rainstorm and that's probably what the engineer's are looking at is maybe the 100-year or 500-year flood. They were actually claiming that this was a 1,000-year flood that was pretty extensive. Not counting that for the most part we had to recommend denial because the County Fire Code does state that it has to be an all weather driving surface which it is not. You could get a small storm and it would rut it out a little bit and we could probably get through it but I can't say that for sure because there's no culverts at all.

CHAIR GONZALES: Okay, thank you. Another question I had was most of the driveway or the road, Camino San Marcos, leading up to this property is on somebody else's property. And there's an easement through that. It looks like it goes, meanders along a property line and I'm sure they have an easement on that. The first part of that road seems to be kind of acceptable. There's an orange dot at the lower part of Mr. Wagner's property that indicates and maybe that's where the property to that really is. Is that correct?

FIRE MARSHAL PATTY: Mr. Chair, Committee Members, the orange square that is on his road that about center is where the drainage is if that's what you're talking about. That's on the Exhibit 9 that I'm looking at.

CHAIR GONZALES: Exhibit 9, yeah. Now, other than that point most of that property before that and past that seems to be passable, meets your conditions for all-weather service; is that correct?

FIRE MARSHAL PATTY: Mr. Chair, Committee Members, yes it does.

CHAIR GONZALES: And what would you recommend for where that orange dot is where that arroyo is for that severe washout? Is there anything that you could recommend, like a low-water crossing? Would that be acceptable and less expensive than culverts?

FIRE MARSHAL PATTY: Mr. Chair, Committee Members, we're not engineers. This is why we require an engineer's statement. I can't make that call of what is required. That would be left up to an engineer. I would make a recommendation of maybe getting some other quotes opposed to the two 5-foot culverts. Like I say, I can't do engineering on what the water flow is coming out of that arroyo.

CHAIR GONZALES: Okay. So that would require an engineer and what the applicant got estimates for like two 5-foot culverts, 70 feet long. And that would satisfy your requirements if an engineer designs something?

FIRE MARSHAL PATTY: Mr. Chair, Members of the Committee, like I say, we're not engineers and that appears to be a little excessive. For us to be able to make the terrain crossing. But there again, I can't make that call. I'm not an engineer.

CHAIR GONZALES: That's perfectly fine, I think but the clarity I wanted was, you know, how bad that road is or how good that road is or whether it meets the minimum standards for an all-weather crossing. That's what I was trying to clarify for myself. And the orange dot that was where the problem lies along this Camino San Marcos and that's what I wanted to clarify a little bit.

FIRE MARSHAL PATTY: Mr. Chair, that is correct.

CHAIR GONZALES: You've clarified that for all of us, thank you. Any questions for Fire Marshal Patty? Than you, Mr. Patty.

MEMBER ROYBAL: I do have a question to Wayne Dalton.

CHAIR GONZALES: Okay, Mr. Roybal.

MEMBER ROYBAL: Is the requirement that the County setting forth just through his property or the road going down? In other words, the road from -- arriving to his property has met County standards or reasonable --

MR. DALTON: Mr. Chair, Member Roybal, that is correct. The note on the plat only applies to the -- his property and the drainage that the road crosses on his property.

MEMBER ROYBAL: So he has 40 acres there and you're telling me if he went in 10 feet and built his residence, I assume he wants to put his residence at point 67, I'm not sure. But he has 40 acres there he could move into his property 10 feet, put 10 feet of basecourse 20 foot wide and build a house.

MR. DALTON: Mr. Chair, Member Roybal, we have to go back to the plat of survey which says no building permits will be issued on these lots until Camino San Marcos is brought up to County all-weather standards. So no matter where he places his house before he gets a permit that road needs to be brought up to standard regardless of the positioning of his house, whether or not he crosses that. It's the note on the plat that we have to go by and we will not issue a development permit.

CHAIR GONZALES: Ms. DeAnda, do you have a question?

MEMBER DEANDA: No, I have a comment.

CHAIR GONZALES: A comment.

MEMBER DEANDA: In light of what Mr. Dalton just said and Mr. Anaya's questions and that's whether the applicant has considered getting other estimates because --

MR. WAGNER: If I could answer that for the Board. I went through the engineering calculations and according to all the numbers that is correct. If somebody came and said, Well, I can do it for a little bit smaller, with a smaller culvert, you know, that's just sort of fudging the numbers. If you take all the numbers of the flood plain and the amount of water that it should take it takes two 5-foot culverts. And so to go to the letter for the requirements that's what it would take. If somebody says, Okay, I can do it for less, then perhaps that's a possibility. But that then would require --

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MEMBER DEANDA: Well, I think we're all as consumers and we're always told you should get two or three estimates to whatever, no matter what. If you're buying a car. If you're looking for a loan, you know, it just makes sense to try and find out what's available out there. So that was my question.

MR. WAGNER: [[ a small culvert. You know, if I go with two 3-foot culverts or something like that, it's just some engineer's call as to what the correct number is.

MEMBER DEANDA: Mr. Dalton, is there a correct culvert size in terms of as far as the County is concerned?

DMEMBER DROBNIS: Mr. Chair, Committee Member DeAnda, no. That's going to be based on an engineer's –

MEMBER DEANDA: Determined need for the particular site.

DMEMBER DROBNIS: -- yes, and keep in mind it's not only the culverts and the materials here the big cost is going to be the drainage studies for all the contributing areas to identify how that drainage impacts – or how much water is impacting the drainage. So that's within the cost as well.

MR. WAGNER: May I interject, that study has already been completed and I have the design documents for the drainage crossing which that costs \$1,600 to prepare and then that's what I'm basing my estimates on.

MEMBER DEANDA: And so I guess my last question to the applicant is have you attempted to try and contact other landowners adjoining your property that might benefit from – I guess the area needs to be improved solely on your property.

MR. WAGNER: That's correct. Nobody uses but me and I have [[ so nobody else cares.

MEMBER DEANDA: Well, you're assuming the next developer is going to care of the 6,000 acres. That might not happen either.

MR. WAGNER: And then the County can say, Hey, man, you guys can't develop your –

MEMBER DEANDA: Well I don't know that the County is going to do that if it's solely on your property and that's the issue at least from my perspective. There's no guarantee that the next developer is going to come in and –

MR. WAGNER: According to the covenants of the homeowners association they are required to. So that's another thing. So I'm just pleading my case so I can build a small house without tremendous expense of the culverts.

MEMBER DEANDA: Well, thank you.

CHAIR GONZALES: Thank you, Mr. Wagner. Mr. Drobnis.

DMEMBER DROBNIS: Mr. Chair, Mr. Wagner, I have a hypothetical question for you. If this were to be approved and knowing what you do about the conditions of the road, what sort of minimal improvements would you think would be reasonable to do in order for you to get in and out of your house.

MR. WAGNER: I think I could get in and out about 99.5 percent of the time without any trouble except if it rains like it did in September. It was a small – there was storm if you remember a year and a half ago in September what was it 2011, or 2012, there was about 6 inches of water in the road. I have pictures of that. And at that time I had a road builder come to take a look at the road and he couldn't drive his motorcycle across and that was for one day. And not even one day, I think it dried out within several

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hours of the rain passing. So I consider for all practical purposes that it is a perfectly viable arroyo crossing except for a day or two if we have a severe flood.

CHAIR GONZALES: Thank you, Mr. Wagner. Yes, Ms. DeAnda.

MEMBER DEANDA: If there are no more questions, I am prepared to make a motion and then we can discuss the motion.

CHAIR GONZALES: I think I had another question. Mr. Wagner, I see the picture on NBB21; has that washed out area been repaired and who repaired it?

MR. WAGNER: I believe that was repaired by Ken Rice who owns the 6,000 acres because he is driving cattle trucks through that arroyo.

CHAIR GONZALES: So it's been filled in and brought back up to –

MR. WAGNER: Yes, he probably did that within several hours of when the water passed.

CHAIR GONZALES: Okay, thank you very much. And then I had a question for Mr. Dalton. Being that this area that washes out on this Camino San Marcos would that prevent the upstream or downstream or down the road people from getting development permits on their property if the improvements aren't made on this particular lot? Or would they come and be able to get a development permit?

MR. DALTON: Mr. Chair, the way it is right now, yes, it would impact other property owners.

CHAIR GONZALES: It would impact other property owners?

MR. DALTON: Correct.

CHAIR GONZALES: So if that improvement is made on this particular portion of the Camino San Marcos [sic] other people could not apply for development permits.

MR. DALTON: Mr. Chair, they'd have to go through the same process as Mr. Wagner.

CHAIR GONZALES: Okay, so that puts – now if this variance was approved, how would that affect the other property owners?

MR. DALTON: Mr. Chair, it would not affect other property owners. It would only affect the applicant because the variance runs with his land and only his land. It doesn't benefit anybody else. We may be able to come up with another favorable recommendation based on if this were to be approved by the Board we may be able to recommend approval based on a prior decision from the Board but that would have to be discussed amongst staff.

CHAIR GONZALES: Okay, so that's the problem I had. If we approve the variance then other people might benefit from that variance because there was, you know, prior approval of one person and now it's fair to approve the others. Would that same kind of rule follow?

MR. DALTON: Mr. Chair, we have had cases in the past, that, yes, would help people out with their variance request.

CHAIR GONZALES: I recall some of those, yes. Ms. Martin.

MEMBER MARTIN: Actually, this is a question for staff and more of a policy question but I looked at the plat, it's dated – let's see, 2/30/2010 by the notary public and the sale to the applicant was October 23, 2009, so this is a notice issue but my question is are there any provisions in the new Sustainable Land Use Development that

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would prevent this situation or that would require some kind of notification so we wouldn't have a situation like this in terms of holding?

MS. LUCERO: Mr. Chair, Committee Member Martin, in terms of the holding period I'm not exactly sure what the new code is going to state. I know that there are some provisions as far as the all-weather access that it may not be required in certain situations. So from that perspective in that respect as far as all-weather access it may be different in the new code.

MEMBER MARTIN: Thank you.

CHAIR GONZALES: Thank you, Ms. Martin.

MEMBER ANAYA: Mr. Chair.

CHAIR GONZALES: Yes, Mr. Anaya.

MEMBER ANAYA: After going back and looking at the plot and that road is plotted in as – it's actually going to be access for anybody that goes up, down, or anywhere else like that, that cannot be changed unless everything on this area has been replotted and – I guess my point is that without that road the other people on the other side are going to be land locked.

MR. WAGNER: If I take the road away but I can't it's an easement.

MEMBER ANAYA: That is correct. It is an easement. So it's going to take an act of congress to get that taken over.

MR. WAGNER: Right, and I'd like to force somebody else to fix the road for me. But I don't –

MEMBER ANAYA: Unfortunately, that's not going to happen.

MR. WAGNER: -- have any leverage there.

MEMBER ANAYA: Okay, so I just wanted to make it clear that that easement is there and it's going to stay there and it's going to take an act of congress to take that out. And you all know what act of congress is going to happen with -- no pun intended.

Mr. Chair, I have no further questions at this time.

CHAIR GONZALES: Thank you, Mr. Anaya. I think we're done with the questions, Mr. Wagner. This is a public hearing. Anybody from the public wishing to speak for or against this case? Seeing none, the public hearing is closed.

What are the wishes of the Committee?

MEMBER DEANDA: I'd like to move, Mr. Chair, I move to deny the variance request in CDRC V 13-5250.

CHAIR GONZALES: I have a motion to deny is there a second? Seeing none, the motion dies for lack of a second.

MEMBER ANAYA: Mr. Chair.

CHAIR GONZALES: Can we have another motion? Mr. Anaya?.

MEMBER ANAYA: Mr. Chair, I'd like to make a recommendation please. A motion to approve CDRC Case V 13-5250, Thomas Wagner variance as submitted with approvals from staff.

CHAIR GONZALES: With conditions?

MEMBER ANAYA: With conditions.

CHAIR GONZALES: Is there a second?

MEMBER DROBNIS: Second.

[A vote was taken]

CHAIR GONZALES: The motion passes, I think, 4 to 2; is that correct?  
Okay, Mr. Wagner your motion for a variance – your variance request is approved.

MEMBER MARTIN: Mr. Chair.

CHAIR GONZALES: Ms. Martin, yes. Oh, we have a change.

MEMBER MARTIN: I vote “nay.”

The motion tied [3-3] as follows: Voting for the motion were: Members Anaya, Drobnis, and Roybal; voting against were members Gonzales, Martin and DeAnda.

CHAIR GONZALES: So we have a tie, I believe. Mr. Wagner, this case goes to the – yes, Vicki.

MS. LUCERO: Mr. Chair, the ordinance states that when the vote ends in a tie, then it is tabled until there is a greater number of members present. So this case will come back when all seven members of the committee are present.

CHAIR GONZALES: That is correct, yes. Thanks for correcting me. So, Mr. Wagner, there's a tie on this request. We have one member absent, Mr. Katz, and hopefully he will be present at the next meeting and this case will be on our agenda and there will be a vote only. And we need to get some resolution for you before it goes to the Board of County Commissioners. Thank you for your patience.

**VIII. Petitions from the Floor - None were presented.**

**IX. Communications From the Committee**

Member Anaya advised the Committee that he would be out of the state for the November meeting and requested an excused absence. The topic of the Wagner variance came up and Member Anaya offered to phone in.

**X. Communications From the Attorney - None were presented.**

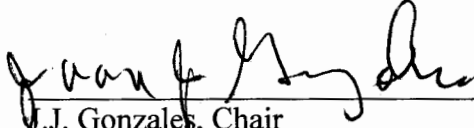
**XI. Matters From the Land Use Staff - None were offered.**

**XII. Next CDRC Regular Meeting: November 21, 2013**

**XIII. ADJOURNMENT**

Having completed the agenda and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at approximately 5:15 p.m.

Approved by:

  
J.J. Gonzales, Chair  
CDRC

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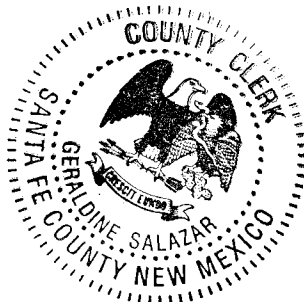
*Geraldine Salazar* 12/19/2013  
COUNTY CLERK

Submitted by:

*Karen Farrell*  
Karen Farrell, Wordswork



REC'D CLERK RECORDED 12/20/2013



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

CDRC MINUTES  
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I Hereby Certify That This Instrument Was Filed for  
Record On The 20TH Day Of December, 2013 at 09:57:00 AM  
And Was Duly Recorded as Instrument # 1725896  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Deputy *Maxwell Salazar* Geraldine Salazar  
County Clerk, Santa Fe, NM