

I Hereby Certify That This Instrument Was Filed for Record On The 23RD Day Of September, 2009 at 09:54:40 AM And Was Duly Recorded as Instrument # 1577960 Of The Records Of Santa Fe County

Deputy Marcelle B. Garza Witness My Hand And Seal Of Office  
Valerie Espinoza  
County Clerk, Santa Fe, NM

MINUTES OF THE

SANTA FE COUNTY

DEVELOPMENT REVIEW COMMITTEE

Santa Fe, New Mexico

August 20, 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  
Jim Salazar  
Don Dayton  
Juan José Gonzales [early departure]  
Charlie Gonzales  
Maria DeAnda

Member(s) Excused:

None

Staff Present:

Shelley Cobau, Planning Division Director  
Wayne Dalton, Planning Division Supervisor  
Ted Apodaca, Assistant County Attorney  
Vicente Archuleta, Development Review Specialist  
John Michael Salazar, Development Review Specialist

APPROVAL OF AGENDA

Ms. Cobau went over the proposed tablings, noting that the agent for Saddleback Ranch Estates has submitted a letter from the applicant's attorney opposing the tabling. [Exhibit 1] She added that they recently received a large packet of information that they have not had the opportunity to review.



SFC CLERK RECORDED 09/23/2009

Legal Counsel for Saddleback Ranch Estates counsel Karl Sommer stated the principals for the project were present having traveled some distance to be at the meeting. He noted for the record that the delay is causing severe financial hardship.

Chairman Romero moved to approve the agenda as amended and Member Dayton seconded. The motion carried unanimously.

Chairman Romero asked that the Saddleback case be put on the next agenda. Ms. Cobau said it would be automatically carried forward.

**IV. APPROVAL OF MINUTES: July 7, 2009; July 15, 2009; July 16, 2009**

Member Martin moved blanket approval and Member Dayton seconded. The motion passed by unanimous voice vote.

**VI. OLD BUSINESS**

1. **CDRC CASE # MIS 09-5220/APP 09-5221 Libby Pattishall Accessory Structure. Libby Pattishall, Applicant, is requesting an appeal of the Land Use Administrator's decision to deny an application for an accessory structure greater than 2,000 square feet on a parcel without a dwelling and approval of an accessory structure which is 9,100 square feet. The property is located at 8 Camino del Gallo within Section 28, Township 15 North, Range 10 East (Commission District 5)**

John Michael Salazar gave the staff report as follows:

“At its regularly scheduled meeting on July 16, 2009, the County Development Review Committee tabled this case in order for the applicants to meet with Staff and go over their options. The applicants have chosen to move forward with a lot consolidation. Since the staff report was drafted the applicants have received administrative approval for that lot consolidation so there's no need for the appeal of the Land Use Administrator's decision to deny the application. So basically what the CDRC will be doing is making a motion to either approve or deny the accessory structure.”

Mr. Salazar stated staff recommends approval for the request of an accessory structure greater than 2,000 square feet with the following conditions of approval:

1. The applicants must receive administrative approval for a lot consolidation.
2. The applicant must comply with all other Santa Fe County and CID building permit requirements.
3. Compliance with minimum standards for Terrain Management as per the Environmental Requirements of the Land Development Code.
4. The structure shall not be utilized for commercial use.

Chairman Romero said he appreciated staff working with the applicant to clarify the situation.

Duly sworn, Libby Pattishall read the conditions and agreed to them. She said they now have a 20-acre lot and wish to construct a 9,100 square foot indoor riding arena for her personal use.

Member Dayton asked how many vehicles would be there at one time and Ms. Pattishall answered one.

Member C. Gonzales asked how many horses she had and she said currently one and she hopes to get one more soon.

In response to a question from the chair Ms. Pattishall said the accessory structure would be dark brown with a dark green roof in order to blend into the surroundings.

There was no one from the public wishing to speak.

Member C. Gonzales moved to approve CDRC Case #MIS 09-5220 with staff conditions. Member Dayton seconded and the motion carried by unanimous voice vote.

Mr. J.M. Salazar said this was the final approval, so they could pursue a building permit.

5. **CDRC CASE #MIS 09-5260 Richard Montoya Legal Lot Recognition.**  
**Richard Montoya, applicant, is requesting recognition of a 0.396-acre lot located #6 Mi Tierra as a legal lot of record. The property is located off County Road 76 in Cuarteles, within Section 2, Township 20 North, Range 9 East (Commission District 1) [Exhibit 2: Aerial Photographs]**

Mr. Salazar gave the following staff report:

“At its regularly scheduled meeting on July 16, 2009, the CDRC moved to table this case so that the applicant could hire a surveyor and get a survey done on his property. The applicant has since done that and is back to request legal lot recognition in order to give the property to his daughter.”

Noting the survey was included in the packet, Mr. Salazar said staff is still recommending denial. He added the aerial photographs from the Assessor's office differ from the new survey.

SEC CLERK RECORDED 09/23/2009

Chairman Romero asked if staff had any conditions in the case the application was approved. Mr. Salazar said one possible condition would be no further division of the property.

Member C. Gonzales said the survey lacks the book and page of adjoining properties to see if they match. Additionally, the survey does not appear to be tied to anything such as a section line. Mr. Salazar said the survey will have to be reviewed in any case. He said the plat reviewer has not reviewed it since it is not yet a legal lot of record.

Member DeAnda asked about the discrepancy between the survey and the Assessor's records. She noted on the Assessor's record the lot was triangular and on the applicant's survey is rectangular.

Member Dayton asked if there were any other alternatives for the applicant to prove legal lot of record. Ms. Cobau said it can be recognized administratively if they can show exclusion, by using tax records, or by declaration by the CDRC.

Member Salazar asked what the minimum lot size in the area was, whether the lot fits in with the surrounding lots, and if there were septic issues. Mr. Salazar said NMED usually requires .75 acres for a septic system and well on a property. Other lots in the area also tend to be small, from ¼ acre to 2.5 acres, so it fits in with surrounding lot patterns.

Member J.J. Gonzales indicated the case was confusing in that the earliest recordation of the land was in 1994, six years after it was ostensibly created. The aerial photo does not match the survey, although the acreage is the same. Mr. Salazar said they would look for a deed from before 1981 describing the property. Member J.J. Gonzales asked if staff had done a field visit verifying the points of the survey, or if there had been objections to the request for legal status. Mr. Salazar said the neighbor to the southwest, Juan Cordova, has issues.

Ms. Cobau said it is common for people to create warranty deeds, record them in the Clerk's office without Land Use ever being aware of them. Unless those were done prior to 1981 they are not recognized as legal.

Chairman Romero asked what the next steps would be if this were approved by the CDRC. Ms. Cobau said the CDRC would be the final authority on the legal lot. They would then have to go through an administrative plat review process at which point comments would be made and conditions could be put on the plat, such as specifications about the septic, shared well, etc. The County Surveyor would review the plat.

Member Salazar got confirmation that a warranty deed, even if not a legal lot can be the basis of a tax assessment. Ms. Cobau added it could also be recognized for a real estate transaction.

SFC CLERK RECORDED 09/23/2009

Richard Montoya was placed under oath and asked his daughter to make the presentation.

Duly sworn, Melissa Montoya said they complied with the CDRC's request to get a survey. She said, "The difference that you're seeing on the survey, he went off – he looked at our plots that was the written stuff, so what we were paying in taxes was more than what was written on the land."

Chairman Romero asked if Mr. Cordova has seen the new survey. Ms. Montoya did not believe so. She added they have been paying taxes on the land since 1994, and that's what the surveyor went off of.

Member DeAnda asked who paid the taxes since 1994 and Ms. Montoya said her father was paying, and before that her grandfather.

Under oath, Juan D. Cordova, Jr. indicated he was not disputing ownership; his interest is in establishing correct boundaries. Although the committee suggested they work together to do a survey he was not involved in the survey at all, but he has seen the new survey. He distributed an information packet to the committee. [A copy was not made available for the record.] He referred to various family disputes in the past. He said he asked the surveyor how the survey was performed and was told that Mr. Montoya provided all the information and documents. He noticed that a 10-foot easement was added to his property, along with an affidavit signed by his mother, who no longer owns the property.

He noted the property has changed hands a number of times within the family.

Chairman Romero asked if the preliminary plat resembled the property. Mr. Cordova said he would like to walk the land and see where the points have been put. Chairman Romero said even if the lot is granted there are a number of subsequent steps that will be done to ensure everything is done properly.

Member DeAnda asked if there was infringement on his property, and Mr. Cordova answered he wanted to make sure there wasn't infringement. Member DeAnda said it was not the purview of the CDRC to settle boundary disputes. Mr. Cordova expressed his concern that if it were made a legal lot it would become a boundary dispute.

Member Salazar and Mr. Cordova went over the history of the land divisions. Mr. Cordova said currently there is nothing on the area marked as easements.

County Surveyor Jeffrey Ludwig stated he will review the plat to make sure it conforms to the survey code and he could review it for improper easements. He said he has not been out to the site.

Duly sworn, Cecilia Martinez, mother to Mr. Cordova, stated she never gave anyone right-of-way through the north part of that property. She hasn't owned the

SFC CLERK RECORDED 09/23/2009

property since around 1999. She said her father deeded land to his grandchildren at the same time.

Mr. Montoya said at the time of the deeding, he gave Cecilia Martinez a 10-foot easement on the south side of his property and she gave him a 10-foot easement on the north side of her property. At that time she wrote out a statement which was notarized. He recorded it with the Clerk this August.

Member C. Gonzales said he had concerns establishing a legal lot of record in the midst of a property dispute.

Member DeAnda noted there was a boundary dispute over the easement, and there was no proof of a lot before 1981. Ms. Cobau agreed that that was the basis for staff's recommendation for denial, along with concerns about access and septic.

Member Dayton asked if this presented legal problems. Assistant County Attorney Ted Apodaca said the core issue is whether this was a lot before 1981, and there is no evidence in the record to support that. He suggested that the applicant work to establish this as a legal lot of record through the regular plat process.

Member DeAnda moved to deny the request in CDRC Case #MIS 09-5260. He motion was seconded by Member Martinez and passed by 6-1 voice vote, with Member Salazar casting the nay vote.

3. **CDRC CASE # V09-5330 Leroy Alderete Variance.** Leroy Alderete, applicant, requests a variance of Ordinance #2000-1 (Height Standards for Walls and Fences) to allow an eight foot (8') coyote fence to be constructed atop a four foot (4') retaining wall for a total height of twelve feet (12'). The project is located at 49 County Road 113-A in Section 9, Township 19 North, Range 9 East, (Commission District 1)

Mr. Salazar gave the following staff report:

"Leroy Alderete, Applicant, requests a variance of Ordinance #2000-1 of the Land Development Code to allow a twelve-foot fence (an 8' coyote fence on top of a 4' retaining wall). Ordinance #2000-1 states: 'The combined height of any freestanding wall or fence constructed atop a retaining wall shall not exceed ten feet.'

"On June 16, 2009 the applicant was issued a Notice of Violation by Santa Fe County Code Enforcement for constructing a fence greater than six feet without a permit. The fence has been constructed atop a retaining wall. The applicant applied for a development permit in June but since the height exceeds ten feet and the applicant would prefer to leave it at its current height so as to match his neighbor's existing fence, was advised by staff to apply for a variance.

"The applicant states the reason for constructing the fence is to have a buffer between him and his neighbor who he has been having problems with over the years which includes damage imposed upon his property."

Mr. Salazar stated if the decision of the CDRC is to recommend approval, Staff recommends the following conditions:

1. The applicant must comply with all other Santa Fe County and CID building permit requirements.
2. Compliance with minimum standards for Terrain Management as per the Environmental Requirements of the Land Development Code.

Duly sworn, applicant Leroy Alderete stated his neighbor built a nice wall several years ago that ended at his property line. He wanted to continue the line all the way around. He noted the wall is twelve feet only on the interior side; the other side is approximately seven feet and can barely be seen from the road since it runs along the side of the property. He pointed out there has been litigation and a fence would help ease tensions. He agreed to all conditions and would like to finish construction. He showed the committee pictures of the project.

Member DeAnda asked how large the lot was and Mr. Alderete said it was .62 acre.

David Luna, under oath, stating he was representing the Luna family and some of the neighbors in the community. He said the fence that Mr. Alderete is trying to match belongs to his cousin and did not have a permit either. He said the retaining wall the fence is on has been knocked down due to irrigation and is not strong. He said he follows the rules and Mr. Alderete should be held to them as well. He is thinking of putting a guesthouse on the vacant lot next to the property in question and a 16-foot fence would make it like being in prison.

Chairman Romero asked where the 16-foot figure came from. Mr. Luna said the property is on a slope. He said in talking to the neighbors they agreed the wall was not necessary.

Mr. Alderete said the wall is not 16 feet; at the highest it is 12 feet as measured by County Code Enforcement. He stated the wall has been core-filled and reinforced since the incident with the irrigation. He said he discussed the wall with Mr. Luna's father and he had no problem with it.

Duly sworn, Josie Alderete disputed Mr. Luna's contention that the neighbors were in opposition. The certified letters produced no opponents. "As a matter of fact our neighbors don't even talk to him." She said the wall is very strong and reviewed some of the past litigation. She reiterated that the fence is only seven feet on the neighbors' side. She doubted Mr. Luna would be able to build on that property since it is only 1/3 of an acre.

SFC CLERK RECORDED 09/23/2009

Member C. Gonzales asked Mr. Alderete why he didn't get a permit. Mr. Alderete said he didn't know one was required. His neighbor had already built his and he was just matching it. Mr. Salazar said as far as staff knows the neighbor's fence was not permitted either. "We rely on neighbors to report unpermitted development."

Member Salazar asked if all the variance criteria that normally come into play were applicable to this fence height as well. Mr. Salazar said they were not.

Member DeAnda asked if a ten-foot fence could be constructed without a variance. Mr. Salazar said only a building permit would be required for that. She asked if there were many 12-foot fences in the area. Mr. Salazar said he didn't know.

Member DeAnda asked if a ten-foot fence would be adequate. Mr. Alderete said the exposed side is under ten feet. He is attempting to achieve uniformity. He said it would be a lot of work for him and his neighbor to take down the fence, which cost his neighbor over \$100,000.

Referring to the pictures, Member C. Gonzales noted horse fencing along the road and asked if there were plans to put coyote fence there, and Mr. Alderete said he did not know.

Member J. J. Gonzales moved to recommend granting the variance in CDRC Case #VAR 09-5330 with a condition that he finish the section in question but not fence the other sides. Member C. Gonzales seconded contingent upon a friendly amendment that if the fence is visible from the road that screening trees be required. Member J. J. Gonzales accepted the friendly amendment.

Member DeAnda asked for clarification on Member J. J. Gonzales' condition. Member J. J. Gonzales said his motion is to approve the fence for the section only, not for the entire perimeter of the property. Ms. Cobau confirmed that the variance is only to complete the section of fence along the one side. Any further fencing outside the limitations of the Code would require another variance request.

The motion carried 6-1 with Member Dayton voting against.

Mr. Salazar said the recommendation would be forwarded to the BCC. Chairman Romero suggested he take more photographs of the wall/fence.

[Member J. J. Gonzales left the meeting.]

SFC CLERK RECORDED 09/23/2009



5. **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)
  
6. **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)

[These cases were heard together.]

Vicente Archuleta gave the staff report:

“The applicant requests approval for the installation of a small residential wind generator system consisting of one SkyStream 3.7 wind generator on 10.8 acres and 15 acres. The monopole tower will be forty feet in height. The tower is based on a light-pole design and is constructed of tubular steel with a galvanized finish which will be mounted on a concrete base. This proposal consists of the following:

- SkyStream 3.7 wind generator
- 34 foot monopole
- 12-foot diameter blade
- Grid tied to the Central NM Electrical Co-op power grid, with buried cable from tower to meter

“The following issues have been discussed in communities throughout the world: acoustics, visual impact, structure safety and climbing hazard, interference, property values.

“Article III, Section 2.3.6c states: ‘Requests for residential accessory structures such as windmills and radio antennas to exceed the maximum height restrictions shall be reviewed for approval by the County Development Review Committee. When an exception to the height restrictions is desired, the applicant shall submit plans for the installation and operation of the accessory structure with a report explaining why the requested height of the structure is necessary for proper function. The County Development Review Committee shall consider: whether the requested structure is reasonably necessary to be on the proposed site; whether the applicant has demonstrated that the requested height is the minimum height

SFC CLERK RECORDED 09/23/2009

necessary for the proposed structure to function properly, not to exceed a maximum height of forty-five feet; and the size of the lot and impact on neighboring properties.”

Mr. Archuleta stated Article III, Section 2.3.6c states that the CDRC is required to review and approve residential accessory structures such as windmills and radio antennas which exceed the maximum height restrictions. Staff feels that this request is conformance with Article III, Section 2.3.6c of the Land Development Code. Therefore, staff recommends approval of both requests.

Under oath, Charles Breckenridge said one wind turbine is at his house and one at his father's.

Chairman Romero asked if he had done a cost analysis to calculate the payback time. Mr. Breckenridge said he estimated five years with the federal rebate. If cap-and-trade occurs payback will be 2.5 years. He has an interconnection agreement with PNM. Chairman Romero noted the County's Public Works facility's wind turbine is not yet on the grid. Mr. Breckenridge said his are identical to that of the National Guard.

Member DeAnda asked if there would be interference with digital television or microwave signals. Mr. Breckenridge said he was told by the manufacturer there is not. He said these can be monitored by a computer in your house.

Member DeAnda asked about the height and Mr. Breckenridge said the total height is 40 feet. Mr. Archuleta said the height limit is 45 feet so no variance is required. He added CDRC makes the final determination on the request.

Member DeAnda asked if other height alternatives were considered. Mr. Breckenridge said this is the smallest SkyStream model.

Member DeAnda noted that she gets interference with many environmental factors, and asked whether he had notified his neighbors. Mr. Breckenridge said he sent letters to all the adjoining neighbors with no negative response; people were interested in the cost. The turbine costs around \$17,000 before rebate, \$12,000 after. He estimated it would take care of 75 percent of his household power.

In response to a question from Member Dayton Mr. Breckenridge said his closest neighbor was about 450 feet away.

There was no one from the public wishing to speak.

Member Dayton moved to approve CDRC Cases #MIS 09-5310 and 09-5320. Member Martin seconded and the motion carried 5-1 with Member DeAnda casting the negative vote. [Member J.J. Gonzales was not present for this action.]

## **VI. PETITIONS FROM THE FLOOR**

None were offered.

**VII. COMMUNICATIONS FROM THE COMMITTEE**

Member DeAnda asked if there was a procedure for changing one's vote. She wished to change her vote on the Alderete case. Counsel for the CDRC Apodaca said that was not possible but she could state her intent for the record.

Member C. Gonzales asked where cases have been tabled that staff provide the original reports to understand the previous issues. Ms. Cobau said they would do that.

Member DeAnda asked about the parking, and Ms. Cobau said she would talk to the Manager's office to see what could be done.

**VIII. COMMUNICATIONS FROM THE ATTORNEY**

Mr. Apodaca introduced himself and said he was glad to be aboard.

Chairman Romero said he had previously served with the ISC, the DFA, the Attorney General's office, the Energy and Minerals Department and the Renewable Energy Transmission Authority.

**IX. MATTERS FROM LAND USE FROM STAFF**

**B. Next Meeting: September 17, 2009**

Ms. Cobau noted that the meeting date for the next ELUC was changed from September 10<sup>th</sup>, the night of Zozobra and changed to September 16<sup>th</sup> at 6:00. This means the CDRC meeting will be on the next afternoon. She asked everyone to report in to make sure there will be a quorum.

SFC CLERK RECORDED 09/23/2009

**X. ADJOURNMENT**

Having completed the agenda and with no further business to come before this Committee, Chairman Romero declared this meeting adjourned at approximately 5:55 p.m.



Approved by:

*Jon Paul Romero*  
Jon Paul Romero, Chair  
CDRC

Before me, this \_\_\_\_ day of \_\_\_\_\_, 2009.

My Commission Expires: \_\_\_\_\_

Notary Public

Submitted by:  
*Debbie Doyle*  
Debbie Doyle, Wordswork

SFC CLERK RECORDED09/23/2009

SOMMER, KARNES & ASSOCIATES, LLP

Mailing Address  
Post Office Box 2476  
Santa Fe, New Mexico 87504-2476

Street Address  
200 West Marcy Street, Suite 142  
Santa Fe, New Mexico 87501

Telephone: (505) 989.3800  
Facsimile: (505) 982.1745

Karl H. Sommer, Attorney at Law  
khs@sommer-assoc.com  
Joseph M. Karnes, Attorney at Law  
jmk@sommer-assoc.com  
James R. Hawley, Attorney at Law  
jrh@sommer-assoc.com

Mychal L. Delgado, Paralegal  
mld@sommer-assoc.com  
Magdalena Babuljak, Legal Assistant  
mpb@sommer-assoc.com

August 20, 2009

**Via Hand Delivery**

John Paul Romero, Chair  
County Development Review Committee  
County of Santa Fe  
102 Grant Street  
Santa Fe New Mexico 87504

Re: Appeal of Administrative Decision  
Saddleback Ranch, Application No. 08-3179

Dear Chair Romero and CDRC Members:

We understand that Land Use staff, in lieu of preparing a staff report for inclusion in the CDRC's packet, submitted a request that consideration of the Appeal by Saddleback Ranch Estates, LLC ("Saddleback") be tabled by the CDRC. The County Attorney requests thirty (30) days to review the information submitted by Saddleback on August 12, 2009. Staff provided us with its position that, under Article II, section 2.3.2 (copy attached), the submission of information for inclusion in your packet triggers a thirty (30) day review period for the County Attorney.

Although the tabling is likely a foregone conclusion because neither CDRC nor Saddleback knows the County Attorney's position - nor has the CDRC received information in its packet - Saddleback vehemently objects to the tabling and requests the opportunity to make a record of its objection at the meeting - particularly given that principals of Saddleback partnership are traveling from out of state to attend the meeting.

The Code section relied upon by staff has no application to the pending Appeal. The provision sets a time line for action on an *application* from the date it is deemed complete. The matter before you is **not** the application, but rather the Appeal of the Land Use Administrator's May 6, 2009, denial of the lot line adjustment application (the "Application"). The reliance upon Section 2.3.2 is a pretext for an unwarranted delay, for it is the policy of the County to allow a party to an appeal to supply information for a packet not later than the date the packet is to be prepared and parties - including Staff - routinely supply information at the actual hearing. We have advised the County Attorney and Staff previously that the delays in this matter are costing our clients

SFC CLERK RECORDED 09/23/2009

Sommer, Karnes & Associates, LLP

John Paul Romero  
County Development Review Commission  
August 20, 2009  
Page 2 of 2 Pages

hundreds of thousands of dollars per month, and this delay appears calculated – like the others experienced in this case – to intentionally cause a financial hardship on Saddleback.

By way of background, the underlying application in this Appeal was filed and deemed complete in November 2008. Following submittal of the Application in November of 2008, Plats Examiner Emilio Gonzales deemed the Application complete and issued public notice signs to Saddleback, triggering the thirty (30) day window for the Land Use Administrator to render a decision per Code section 2.3.1b (copy attached). The denial of the Application was issued on May 6, 2009 – over six (6) months after the Application was filed. The Appeal was filed on May 13, 2009. The Code (section 2.3.4.6) obligates the CDRC to hear the appeal within sixty (60) calendar days of the date the Appeal, and the CDRC hearing should have been held no later than July 13, 2009.

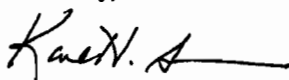
During the time that the Land Use Administrator was holding on to his denial, we informed the County Attorney of the extreme financial burden the delay was causing. Saddleback was subjected to over five (5) months of delay before issuance of the Land Use Administrator's May 6, 2009, denial.

Now, more than three (3) months after receiving the Appeal, Staff asks for an *additional* thirty (30) day delay in reliance on a plainly inapplicable Code section. As explained in Saddleback's May 13, 2009, appeal letter, the Land Use Administrator's decision has deprived Saddleback of equal protection under the law. The continued delays, in violation of the Code, have further deprived Saddleback of due process and have caused substantial monetary damages.

We request that you take all necessary and appropriate actions, including providing clear direction to Staff, to ensure that further harm to Saddleback is avoided.

Thank you for your consideration.

Sincerely,



Karl H. Sommer

KHS:mpb  
Enclosures

SEC CLERK RECORDED 09/23/2009

provided further that a survey shall be filed with the county clerk indicating the five (5) year holding period for both the original tract and the newly created tract;

- h. The division of land to create a parcel that is sold or donated as a gift to an immediate family member (as defined in Article X); however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member. Divisions made under this exception will be referred to throughout the Code as Family Transfers, and
- i. Lot line adjustment;
  - iii. Lot consolidation;
  - iv. Easement plat;
  - v. Plat amendment;
  - vi. Boundary survey;
  - vii. Type III subdivisions containing five (5) or fewer parcels of land, unless the land within a subdivision has been previously identified in the County General Plan or this Code as an area subject to unique circumstances or conditions that require additional review;
  - viii. Type V subdivisions containing five (5) or fewer parcels;
  - ix. Building permits;
  - x. Grading and clearing permits;
  - xi. Driveway cut permits;
  - xii. Road cut permits;
  - xiii. Blasting permits;
  - xiv. Sign permits;
  - xv. Business licenses, except liquor licenses;
  - xvi. Legal lot of record;
  - xvii. Permitted uses in any non-residential district as set forth in Article III, Section 4; and
  - xviii. Permits for construction materials, mine sites and road materials fabrication plants that are temporary in nature, using mobile equipment, including but not limited to: crushers, stackers, conveyors, asphalt hot mix plants and concrete batch plants, for state, federal or local highway projects. Such temporary permits, not exceeding 180 days, must comply with all provisions of this ordinance except height. Height shall be controlled by FAA regulations in those areas where applicable. If not located in an FAA regulated area, height shall not exceed that dimension as approved by the Code Administrator. All materials stockpiles should be configured so as to prevent any sight safety distance conflicts from any road or access way. Temporary permits may be renewed for an additional 180 day period.
- 2.3.1b The Code Administrator shall review the application for compliance with the requirements set forth in the Code. (See Article III, Section 2.4.2 for the submittal and review requirements for projects listed in Sections 2.3.1a.ii through viii, above.) The Code Administrator shall make and file a decision approving or disapproving the application or approving the application with conditions or modifications within thirty (30) working days from the date the application was deemed complete for projects listed in Sections 2.3.1a.ii through viii and fifteen (15) working days from the date the application was deemed complete for all other projects listed in Section 2.3.1a.

*inapplicable*

SFC CLERK RECORDED 09/23/2009

- 2.3.1c Applications for items listed in Section 2.3.1a i, ii, vii, viii, x and xii are subject to the following posting requirement. At least fifteen (15) calendar days prior to the administrative decision, The applicant shall post notice of the filing of the application prominently on the land, dwelling or other structure which is the subject of the application, in such a way as to give reasonable notice to persons interested in the application and shall provide written certification of the posting of the notice to the Code Administrator. In addition, Sections 2.3.1a vii and viii shall follow the requirements of Section 2.4.2b of this Article.
- 2.3.1d The Code Administrator may hold an informal conference with the applicant and any interested person at any time prior to the making of his decision. The Code Administrator shall give at least three (3) working days' notice either orally or in writing to the applicant who has requested in writing that he receive notice of any informal conference held under this subsection.
- 2.3.1e The Code Administrator may refer an application to an appropriate agency or official of the State of New Mexico for an opinion concerning whether the application should be disapproved or approved with conditions or modifications. The opinion of the state agency or official shall be advisory only, and in no way does it bind the Code Administrator, require him to approve or deny an application, or oblige the Code Administrator to seek additional information or clarification from said agency or official. The Code Administrator may delay the making and filing of his decision for five (5) working days after he receives the requested opinion, if he believes that such a delay is in the public interest.
- 2.3.1f A decision of the Code Administrator on an application shall become final five (5) working days after the decision has been made, unless within the five (5) working days an appeal from the decision has been filed or the Board, on its own initiative, has decided to review the decision of the Code Administrator or has referred the application to the County Development Review Committee for a decision or recommendation.
- 2.3.1g After a decision approving an application has become final, the Code Administrator shall sign the plat and shall record the plat in the records of the County Clerk.

History. 1980 Comp. 1980-6. Section 2.3.1a was amended by County Ordinance 1988-9, allowing an administrative approval of permitted uses in established non-residential zoning districts and by Ordinance 1996-8 adding the exceptions to the NMSA to Section 2.3.1a.ii and summary review subdivisions.

**2.3.2 Administrative Recommendations for Development Permits Requiring County Development Review Committee and/or Board Review**

The following procedure applies to any application for a development permit of a type not listed in Section 2.3.1a above. Applications for a development permit involving a subdivision shall also comply with the procedures provided for in Section 2.6 of this Article II and applications for a development permit involving zoning shall also comply with the procedures provided for in Section 2.5 of this Article II.

applicable

- 2.3.2a Within thirty (30) working days from the date the application was deemed complete. (except for preliminary plats where the time limits shall be as set forth in Article V, Section 5.3.3d) the Code Administrator shall review the application



for compliance with the requirements of the Code, and shall make and file a report to the County Development Review Committee evaluating the application and recommending that the County Development Review Committee approve, disapprove, or approve the application with modifications and/or conditions or recommending that the County Development Review Committee recommend the same to the Board depending on which body has final authority pursuant to Section 2.3.2e.

- 2.3.2b The Code Administrator may hold an informal conference with the applicant and any interested person at any time prior to the making of his recommendation. The Code Administrator shall give at least three (3) working days' notice, either orally or in writing, to the applicant or any interested person who has requested in writing that he receive notice of any informal conference held under this Subsection b.
- 2.3.2c At least twenty one (21) calendar days prior to any public meeting at which an application will be heard, the applicant shall post notice of the filing of the application prominently on the land, building, or other structure which is the subject of the application in such a way as to give reasonable notice to persons interested in the application and shall provide written verification of the posting of the notice to the Code Administrator.
- 2.3.2d For development other than subdivisions under the New Mexico Subdivision Act (which shall comply with the public agency review process as set forth in Article V, Section 5.3.3d.), the Code Administrator may refer an application to an appropriate agency or official of the State of New Mexico for an opinion concerning whether the application would be disapproved or approved with conditions or modifications. Unless otherwise required by law, the opinion of the state agency or official shall be advisory. The Code Administrator may delay the making and filing of his recommendation for up to sixty (60) calendar days to await the opinion if he believes that such a delay is in the public interest.
- 2.3.2e The County Development Review Committee has final approval authority on preliminary and final development plans and on appeals of the Code Administrator's decisions and has recommendation authority on variances, preliminary and final plats, and all master plans, including zoning, for which the Board shall have final approval authority. Plats for Type V subdivisions containing six (6) or more parcels go directly to the Board for review and approval, in accordance with Article V, Section 5.5.4b.

#### 2.3.4 Appeals

##### 2.3.4a Filing an Appeal

All appeals under the Code shall be filed in writing with the Code Administrator.

##### 2.3.4b Appeal of Code Administrator Decision under Section 2.3.1 to the County Development Review Committee

- i. 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

applicable

Development Review Committee shall make and file its decision approving or disapproving the application or approving the application with conditions or modifications.

- ii. A decision of the County Development Review Committee on an appeal shall become final thirty (30) calendar days after the decision is filed, unless within that month an appeal of the decision has been filed by an interested person including the Code Administrator, pursuant to Section 2.3.4c of this Article or the Board on its own initiative has decided to review the decision.

**2.3.4.c Appeal of Development Review Committee Decisions to the Board**

- i. Any person aggrieved by a decision of a Development Review Committee may file an appeal in writing to the Code Administrator within thirty (30) calendar days of the date of the decision of the Development Review Committee. The Board shall hear the appeal within sixty (60) calendar days after the date the appeal is filed. The Board shall timely make and file its decision approving or disapproving the application or approving the application with conditions or modifications.
- ii. The decision of the Board shall become final on the date when the decision is filed.

**2.4 Notice and Conduct of Public Hearing**

**2.4.1 Notice by County**

Notice of a public hearing to be held by a Development Review Committee or the Board, shall be given as provided by resolution of the Board and as otherwise required by law. Copies of the public notice policies shall be posted in the Code Administrator's office. Public hearings shall be conducted as provided by policies established by the body holding the hearing or as required by law. All interested persons shall be allowed a reasonable opportunity to be heard at a public hearing held under the Code.

**2.4.2 Notice by Applicant**

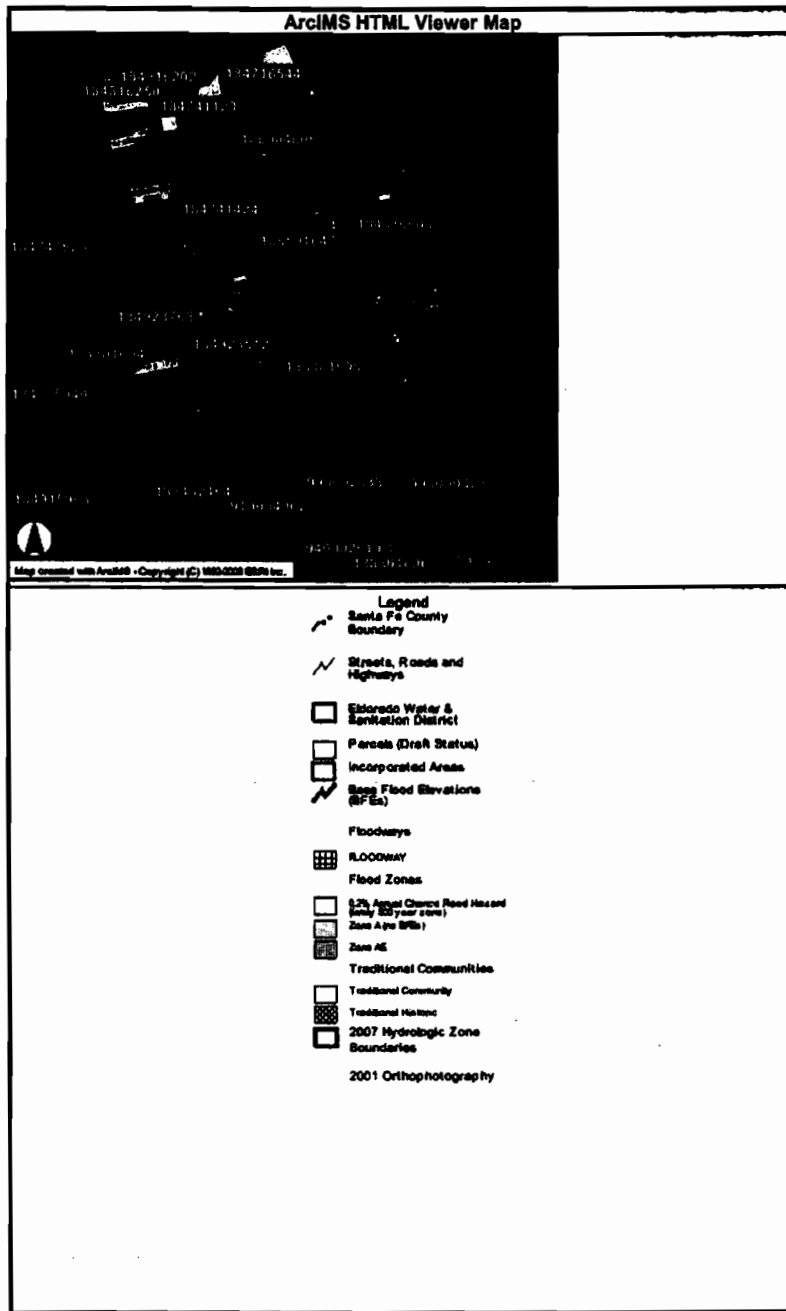
**2.4.2a** For all zoning cases, master plans, development plans, variances, preliminary and final subdivision plats, Type V subdivisions containing six (6) or more parcels and appeals of these matters, the following public notice requirements shall be completed by the applicant at least twenty one (21) calendar days prior to the public meeting:

- i. A notice shall be published in the legal section of the daily newspaper which covers the area in which the project is located;
- ii. Certified letters, prepared by the Code Administrator, shall be mailed return receipt requested to all property owners within one hundred (100) feet (excluding rights-of-way) of the subject property;
- iii. The subject property shall be posted, in the manner outlined in Section 2.3.2c of this Article II.

**2.4.2b** For all summary review subdivisions containing five (5) or fewer parcels, Sections 2.4.2a.ii. and iii. Shall be completed by the applicant at least fifteen (15) calendar days prior to the administrative decision.

History. Section 2.4 was amended by Ordinance 1996-8 to include notice requirements for most projects.

SEC CLERK RECORDED 09/23/2009



SFC CLERK RECORDED09/23/2009

