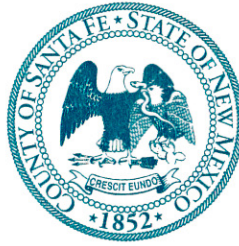


Danny Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: September 13, 2011

TO: Board of County Commissioners

FROM: Jose E. Larrañaga, Commercial Development Case Manager *JEL*

VIA: Jack Kolkmeier, Land Use Administrator *JK*
Shelley Cobau, Building and Development Services Manager *SC*
Wayne Dalton, Building and Development Services Supervisor *WD*

FILE REF.: CDRC CASE # APP 10-5270 Windmill Water Business License Appeal

ISSUE:

Leon and Diana Richter, Appellants, Joseph M. Karnes (Sommer, Karnes & Associates, LLP), Agent, request an appeal of the County Development Review Committee's decision to uphold the Land Use Administrators decision, to deny a modification of a Home Occupation Business License.

The property is located at 2042 Hwy 333 in Edgewood, within Sections 34 & 35, Township 17 North, Range 7 East, (Commission District 3).

SUMMARY:

On May 19, 2011, the County Development Review Committee (CDRC) conducted a public hearing on an appeal of the Land Use Administrator's (LUA) denial of a modification of a Home Occupation Business License. The decision of the CDRC was to support the LUA's decision and denied the appeal for a modification of a Home Occupation Business License (Exhibit "G").

On December 21, 1995, the LUA approved a Home Occupation Business License, subject to conditions, for Windmill Water Inc. (Exhibit "A"—Business Registration & Conditions). Prior to approval of the Home Occupation Business License it was determined that the Application met requirements set forth in Ordinance 1992-3 (Business Registration Licensing), Article III, Section 3 (Home Occupations) and Article II, Section 2.3.1.a (Administrative Decisions).

On March 2, 2010, a notice of violation was issued to Windmill Water Inc. (Leon and Diana Rictor) for exceeding the Home Occupation Business License criteria (Exhibit "B"). On May 6, 2010, Leon and Diana Rictor ("Appellants") submitted a letter of intent and documents requesting a modification of the existing Home Occupation Business License (Exhibit "C").

On May 18, 2010, the LUA **denied** the request by Windmill Water Inc. for modification of the existing home occupation (Exhibit "D") based on the following criteria: a discrepancy was found between the site plan submitted by the Applicant, which illustrates the square footage of the residence as 3,269 square feet and the Santa Fe County Assessors summary of improvements, which describes the square footage of the residence as being 2,366 square feet (Page NBB-17); a 2008 aerial photo shows vehicles, trailers and trucks that are not illustrated on the site plan (Exhibit "E"); outdoor storage, customer and employee parking used by a business shall be included in calculating the area used by a business as a home occupation; the outdoor storage, parking and the square footage of the structures being used for the business clearly exceeds fifty percent of the square footage of the residence; Land Use Policy states: "a home occupation may use up to 50% of the square footage of the residence" (Page NBB-19); a twenty four hour self serve facility is utilized by the business; Land Use Policy states: "a home occupation will be allowed eight appointments per day" (Page NBB-20); residential zoning allows for a home occupation business license which shall be clearly incidental and subordinate to its use for residential purposes by its occupants; staff's interpretation of Article III, Section 3.2 (Exhibit "H") of the Code is that a twenty four hour self serve water vending facility, the traffic created by this venue and the square footage of the structures and outdoor storage used by the current business practice is not considered subordinate and/or incidental to the use of the residential property.

On behalf of the Appellants the Agent requests an appeal of the CDRC decision to support the LUA decision to deny the request of a modification of a Home Occupation Business License (Exhibit "F").

The Appellants state: "the Home Occupation complies with the code requirements that it not exceed 50% of the size of the residence including accessory buildings."

Staff response: as a condition of approval of the home occupation business license, issued in 1995, the Appellants acknowledged the use of 50% of the square footage of the residence and accessory structures which existed at the time of approval (Exhibit "A"); the Appellants have since built or installed accessory structures to be utilized by the business; these structures were placed on the site without the proper permits from the County; the addition of these structures increased the intensity of the business and exceeded the square footage allowed by the previously approved Business License; the area used for outdoor storage, parking for vehicles and/or equipment shall be incorporated when calculating the total square footage used by the business.

The Appellants state: "un-adopted Land Use policies cannot replace or alter code provisions."

Staff response: policies are implemented by Land Use in an effort to interpret the code criteria; for example, code states that a Home Occupation Business shall be subordinate and incidental to the residential use. To interpret this language, policies were implemented to allow only eight appointments per day, no retail sales and 50% of the square footage of the residence shall be allowed to be used by the business on the property; these types of policies assure consistent interpretation of the code criteria.

The Appellants state: "the self serve is incidental to the residential use of the property."

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

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

Article III, Section 3.2.3 (Performance Standards) states: "There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation". (Exhibit "H")

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

Article II, Section 2.3.1.a (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". The following types of development may be approved administratively; business license (Article II, Section 2.3.1.a, xv.), (Exhibit "J").

Article II, Section 2.3.4.c (Appeals) states: "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" (Exhibit "K").

REQUIRED ACTION:

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

RECOMMENDATION:

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

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

Attachments:

- Exhibit "A"- 1995 Business Registration, Conditions & Attachments
- Exhibit "B"- Notice of Violation
- Exhibit "C"- Letter and Documents Requesting Modification
- Exhibit "D"- LUA Denial Letter
- Exhibit "E" – Aerial of Site
- Exhibit "F" – Letter of Appeal
- Exhibit "G" – CDRC Final Order and May 19, 2011 Minutes
- Exhibit "H" – Article III, Sections 3.2.2 and 3.2.3
- Exhibit "I" – Ordinance 1992-3, Section 4
- Exhibit "J"- Article II, Section 2.3.1.a
- Exhibit "K"- Article II, Section 2.3.4.b
- Exhibit "L" – Article II, Section 2
- Exhibit "M" - Photos of Site
- Exhibit "N" – Letter and Documents of Concern

SANTA FE COUNTY

P.O. BOX 1985, 102 GRANT

SANTA FE, NEW MEXICO 87504-0276

(505)986-6226

BUSINESS REGISTRATION APPLICATION

Ordinance No. 1982-8 Imposing a Business Registration Fee pursuant to Sections 3, 4, 5 and through 3-38-6, NMSA, 1978 Comp. (Being Laws 1982, Chapter 37, Section 3, 4, 5 and 6); and providing a means of enforcement and penalty.

NAME OF BUSINESS Windmill Water Inc. PHONE NO. (505)281-398

ADDRESS OF BUSINESS 2042 East Hwy-333 Edgewood N.M. 87015

MAILING ADDRESS, IF DIFFERENT P.O.Box 2174 Edgewood N.M. 87015

NAME OF PRINCIPAL OWNER Leon Richter

TYPE OF OWNERSHIP: SINGLE PRCP () PARTNERSHIP () CORP (X)
OTHER: ()

NEW MEXICO GROSS RECEIPTS TAX NUMBER _____

DESCRIPTION OR NATURE OF BUSINESS Manufacturing of Bottled Water

[Signature]
SIGNATURE OF APPLICANT

11-22-95
DATE OF APPLICATION

FOR OFFICE USE ONLY

Development Permit No. 95-2206 Commission District 5

LOCATION OF BUSINESS: TNSHP. 10 ⁱⁿ RNG. 7 SECT. 34-35

WITHIN THE EZ BOUNDARIES: YES ___ 2 MILE ___ 5 MILE ___ NO

LAND USE DEPARTMENT REVIEW: APPROVED DISAPPROVED ___

FEE PAID \$ 35.00 ()

RECEIPT NO. _____

DAILY REPORT _____

BUSINESS REGISTRATION

NO. _____

PROCESSED BY: _____

[Signature]
HOUSE REVIEW INSPECTORS SIGNATURE

12-21-95
DATE

OFF COMMENTS: Home Occupation / Business Lic.

ORB-6



AS PER SECTION 22-F OF THE EXTRATERRITORIAL ZONING ORDINANCE
AS PER SANTA FE COUNTY LAND DEVELOPMENT CODE ARTICLE III,
SECTION 3:

A DEVELOPMENT PERMIT INVOLVING A HOME OCCUPATION MAY BE
APPROVED ONLY IF THE FOLLOWING STANDARDS ARE MET:

PLEASE INITIAL

- 5-D.1, 5-D.3 Apply if property lies within two (2) mile
3.2.2, 3.2.4 extraterritorial zone
3.2.5
- 3.2.1, 3.2.3 Apply if property lies outside two (2) mile
3.2.2, 3.2.4 extraterritorial zone
3.2.5
- _____ 5-D.1 Not more than two persons, other than members
of a family residing on the premises, shall
be regular engaged in such occupation.
- _____ 5-D.3 There shall be no change in the outside
appearance of the building or premises, nor
other visible evidence of the conduct of such
home occupation, except for one non-illuminated
nameplate sign not more than one foot square.
- L.R. 3.2.1 Not more than six (6) persons, other than
members of a family residing on the premises,
shall be regularly engaged in work at the site
of the home occupation;
- L.R. 3.2.2 The use of the dwelling for the home occupation
shall be clearly incidental and subordinate to
its use for residential purposes of its
occupants, and not more than 50% of the floor
area of the dwelling including accessory
buildings shall be used in the conduct of the
home occupation;
- L.R. 3.2.3 There shall be no change in the outside
appearance of the building or premises, nor
other visible evidence of the conduct of the
home occupation, except for one (1) non-
illuminated name plate sign not more than nine
square feet in area;

L.R. 3.2.4 Parking for employees and for customers or clients of the home occupations required by Section 9 of this Article III shall be provided off the street;

L.R. 3.2.5 No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area.

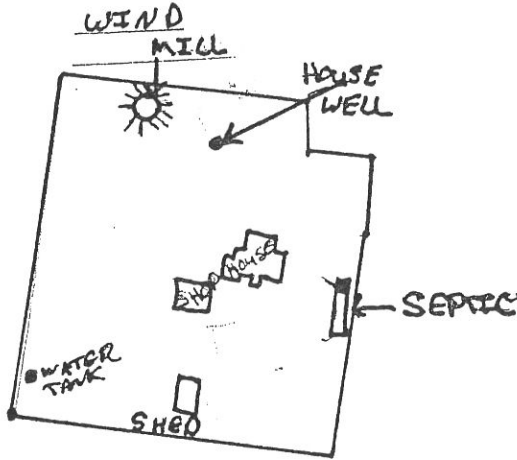
SITE PLAN

FOLLOWING MUST BE DEPICTED

HOUSE LOCATION:

ACCESSORY STRUCTURE'S LOCATION: GARAGE, SHEDS, ETC.

LOCATION OF WELLS, AND SEPTIC SYSTEMS.

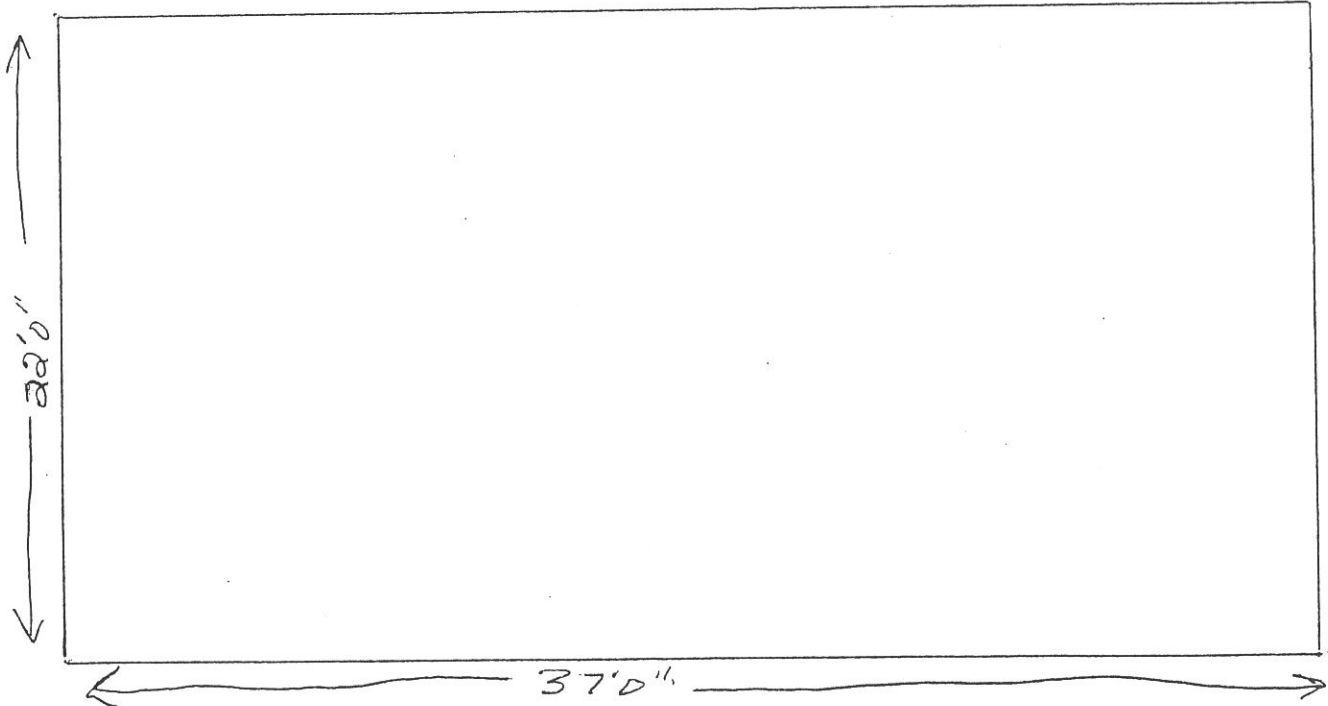


Note: The septic tank is 335 feet from the windmill.

FLOOR PLAN

11-22-95

SQUARE FOOTAGE OF HOME: 2272 (5464) L.R.
SQUARE FOOTAGE OF HOME OCCUPATION AREA: 792
PERCENTAGE OF HOME OCCUPATION AREA: 34.8%





NOTICE OF VIOLATION

THIS BUILDING AND OR PROPERTY HAS BEEN INSPECTED AND IS IN VIOLATION OF SANTA FE COUNTY ORDINANCE:

LAND DEVELOPMENT CODE

UNPERMITTED DEVELOPMENT

1996-10 ART. 2 SEC. 2

JUNK VEHICLES

1993-6 ART. 2 SEC 2

ANTI-LITTER

1993-11

TERRAIN MANAGEMENT

1996-10 ART. 7 SEC. 3

OTHER _____

BUSINESS REGISTRATION

1992-3

LIGHTING ORDINANCE

1996-10 ART. 3 SEC. 4

RV ORDINANCE

1996-11

PUBLIC NUISANCE

2009-11

OTHER _____

YOU HAVE (5) FIVE WORKING DAYS TO CONTACT THE COUNTY AND MAKE ARRANGEMENTS TO CORRECT THE VIOLATION OR LEGAL ACTION WILL BE NECESSARY. STOP WORK ORDER

PERSON/LOCATION:

Leon and Diana Richter

COMMENTS:

Home Occupation exceeding criteria of original permit.

DATE:

3/2/10

INSPECTOR:

GENE PORTILLO



0BB-10

May 6, 2010



Mr. Jose Larranaga
Santa Fe County Land Use Department
P. O. Box 276
Santa Fe, NM 87504-0276

Dear Jose:

Attached is an application for a modification to our existing Home Occupation permit, which the County issued in 1995 and has been in effect since that time. Please let us know if you have any questions.

As you know, Windmill Water has operated for the last 15 years in our present location. You would also be aware that we have had no complaints, violations or any issues with the county, or our neighbors. In fact, our product is a valued necessity for many of the home owners in the Edgewood area because of the taste of Edgewood water. You would also be aware that we personally filed an appeal to the blasting permit of our neighbors (Edgewood Aggregate, Tom George and Nancy Holt) after their flagrant disregard for the close proximity of their neighbors and lack of respect for the quality of life of those living around the pit. You would know that after the appeal (which the CDRC approved their permit), that Tom and Nancy filed a complaint with Santa Fe County regarding Windmill Water. In our eyes, and in the eyes of many of our customers and neighbors, this is complete retaliation on their part. It should be noted that neither Tom or Nancy live in close proximity to Windmill Water.

In the 15 years we have been in business, we have taken great pride in "doing everything right" and in following all regulations. Quite frankly, we were not aware of issues they brought to the County. And in fact, Santa Fe County inspectors as well as several County Managers have been on our property many times throughout the last 15 years because of the issues with Edgewood Aggregate. We also have had Ron Godbey here. At no time was any issue brought to our attention.

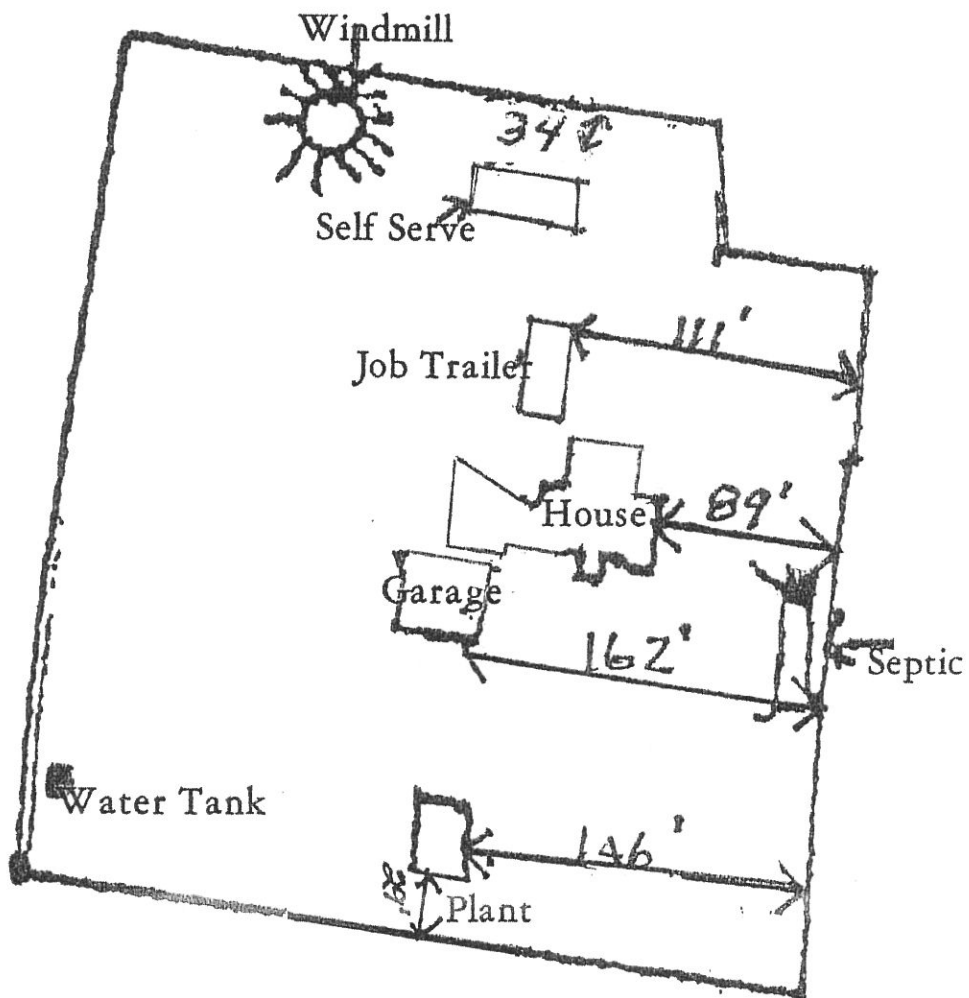
In this time of economic hardship, it's tough to reason that it's in the best interest of the County (to whom we pay gross receipts tax) to shut down a small business because of retaliation of persons who are not even a neighbor. We beg for the County's mercy and trust that we can work together to develop a resolution that will work for us and the County.

Sincerely,

Leon and Diana Richter
Owners

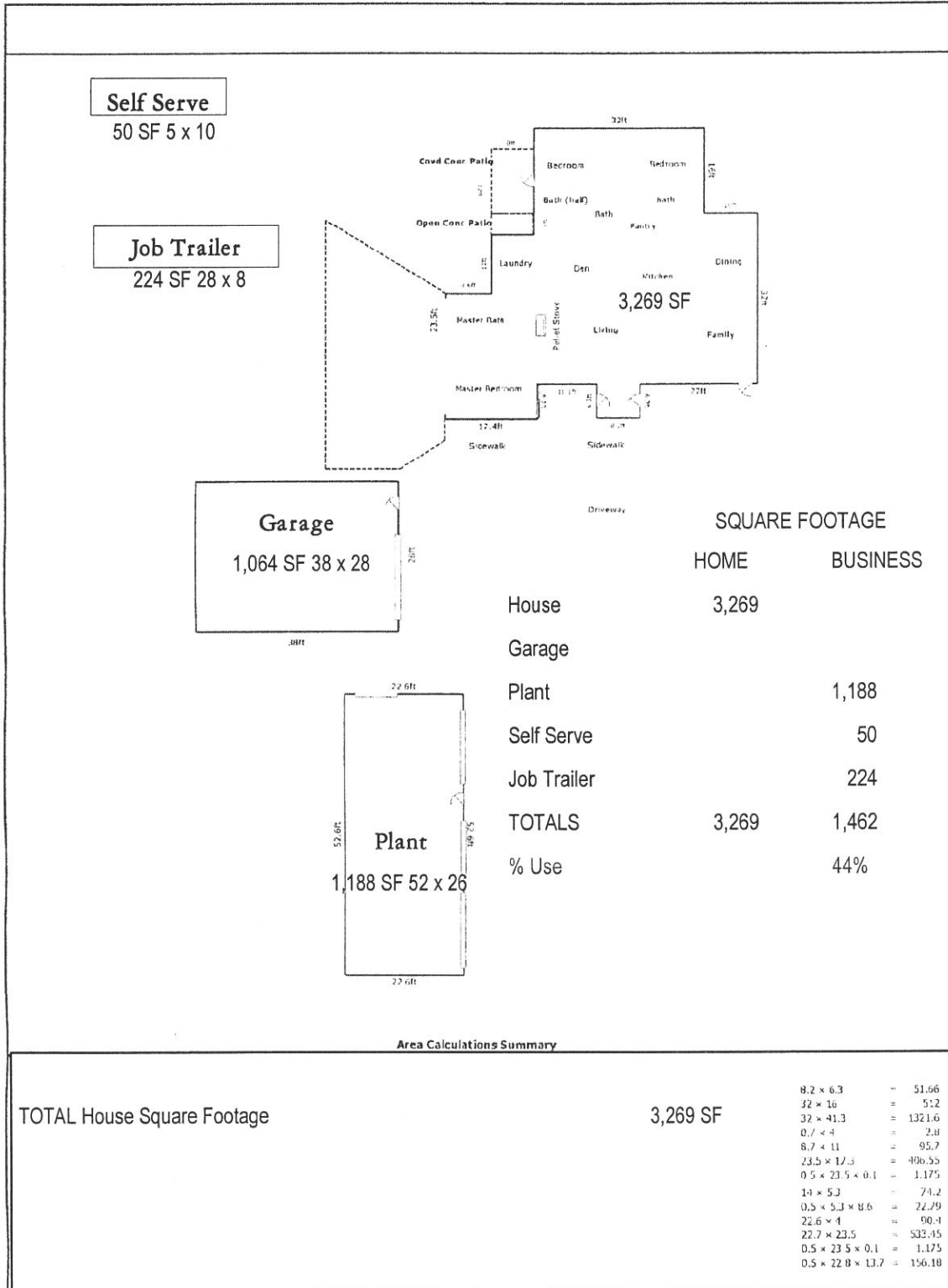


SITE PLAN



FLOOR PLAN

Borrower/Client	Diana K. & Leon E. Richter		
Property Address	2042 Highway 333		
City	Edgewood	County	Santa Fe
		State	NM
		Zip Code	87015-6740



	SQUARE FOOTAGE		
	HOME	BUSINESS	GARAGE
House	3,269		
Garage			1,064
Plant		1,188	
Self Serve		50	
Job Trailer		224	
TOTALS	3,269	1,462	1,064
% Use		44%	

Area Calculations Summary

TOTAL House Square Footage	3,269 SF	<table style="width: 100%; border-collapse: collapse;"> <tr><td>8.2 x 6.3</td><td>=</td><td>51.66</td></tr> <tr><td>32 x 16</td><td>=</td><td>512</td></tr> <tr><td>32 x 41.3</td><td>=</td><td>1321.6</td></tr> <tr><td>0.7 x 4</td><td>=</td><td>2.8</td></tr> <tr><td>8.7 x 11</td><td>=</td><td>95.7</td></tr> <tr><td>23.5 x 17.3</td><td>=</td><td>406.55</td></tr> <tr><td>0.5 x 23.5 x 0.1</td><td>=</td><td>1.175</td></tr> <tr><td>14 x 5.3</td><td>=</td><td>74.2</td></tr> <tr><td>0.5 x 5.3 x 8.6</td><td>=</td><td>22.79</td></tr> <tr><td>22.6 x 4</td><td>=</td><td>90.4</td></tr> <tr><td>22.7 x 23.5</td><td>=</td><td>533.45</td></tr> <tr><td>0.5 x 23.5 x 0.1</td><td>=</td><td>1.175</td></tr> <tr><td>0.5 x 22.8 x 13.7</td><td>=</td><td>156.18</td></tr> </table>	8.2 x 6.3	=	51.66	32 x 16	=	512	32 x 41.3	=	1321.6	0.7 x 4	=	2.8	8.7 x 11	=	95.7	23.5 x 17.3	=	406.55	0.5 x 23.5 x 0.1	=	1.175	14 x 5.3	=	74.2	0.5 x 5.3 x 8.6	=	22.79	22.6 x 4	=	90.4	22.7 x 23.5	=	533.45	0.5 x 23.5 x 0.1	=	1.175	0.5 x 22.8 x 13.7	=	156.18
8.2 x 6.3	=	51.66																																							
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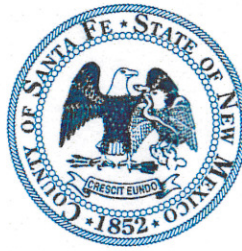


SELF SERVE
WATER 
.30¢ GALLON 4/29/2010

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

May 18, 2010

Windmill Water, Inc.
Leon and Diana Richter
2042 Highway 333
Edgewood, New Mexico, 87015

Re: Reconsideration of a Home Occupation Business Registration

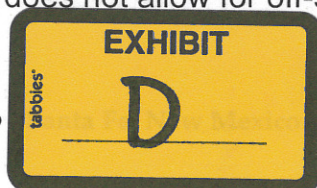
This letter is in response to your request for a modification of your Home Occupation Business License. The material you submitted, which included a letter of intent, acknowledgement of the home occupation criteria, home occupation development permit application, current business license certificate, vicinity map, photo of a proposed sign, site plan and floor plan of existing buildings, has been reviewed by staff.

Staff has found a discrepancy between your site plan, which illustrates the square footage of the residence at 3,269 square feet and the Santa Fe County Assessors summary of improvements, which describes the square footage of the residence as being 2,366 square feet (Exhibit "A"). A 2008 aerial shows vehicles, trailers and trucks that are **not** illustrated on your site plan (Exhibit "E"). Outdoor storage, customer and employee parking used by a business shall be included in calculating the area used by a business as a home occupation.

The outdoor storage, parking and the square footage of the structures being used for the business clearly exceeds 1,183 square feet which is fifty percent of the square footage of the residence. Land Use Policy adopted August 7, 2000 states: "a home occupation may use up to 50% of the square footage of the residence" (Exhibit "B").

As part of your business, you operate a twenty four (24) hour self serve facility and you state that 5 to 25 vehicles per day, utilize your business and that no appointments are needed. Land Use Policy adopted May 13, 2003 states: "a home occupation will be allowed eight (8) appointments per day" (Exhibit "C").

The proposed sign shall comply with Article VIII of the Land Development Code (Code) and an application, with the appropriate fees, for a sign permit shall be submitted. Code criteria does not allow for off-site signage.



Residential zoning allows for a home occupation business license which shall be clearly incidental and subordinate to its use for residential purposes by its occupants. Staff's interpretation of Article III, Section 3.2 (Exhibit "D") of the Code is that a 24 hour self serve water vending facility, the traffic created by this venue and the square footage of the structures and outdoor storage used by the current business practice would not be considered subordinate and/or incidental to the use of the residential property, therefore the request for the modification of Home Occupation Business License No. 2010-11291 is **DENIED**.

Article II, Section 2.3.4b of the Code 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 Committee shall make and file its decision approving or disapproving the application or approving the application with conditions or modifications". (Exhibit "F")

Properties which lack the appropriate zoning for the type of development being proposed, shall submit for a Master Plan, per Article V, Section 5, of the Code. Therefore, if you plan to operate this business in its current state, Staff recommends a request for a zoning change (Master Plan) be made to the Board of County Commissioners.

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.

Sincerely,



Jack Kolkmeier
Land Use Administrator

CC; Shelly Cobau, Building and Development Services Manager

Wayne Dalton, Building and Development Services Supervisor

Jose E. Larrañaga, Commercial Development Case Manager

0BB-10

IMPROVEMENT DATA

PHYSICAL CHARACTERISTICS

Style: Custom
Occupancy: Single family

Story Height: 1.0
Finished Area: 2366
Attic: None
Basement: None

ROOFING
Material: Asphalt shingles
Type: Gable
Framing: Std for class
Pitch: Not available

FLOORING
Slab 1.0
Tile 1.0
Hardwood-std oak 1.0

EXTERIOR COVER
Stucco 1.0

INTERIOR FINISH
Sheetrock 1.0

ACCOMMODATIONS
Finished Rooms 8
Bedrooms 2
Formal Dining Rooms 1

HEATING AND AIR CONDITIONING

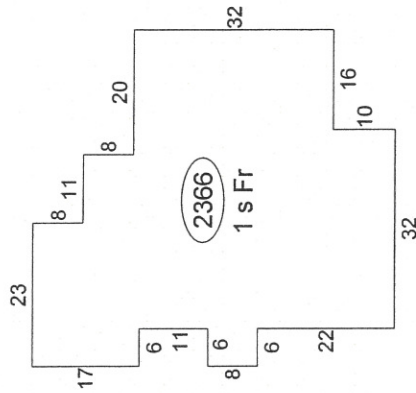
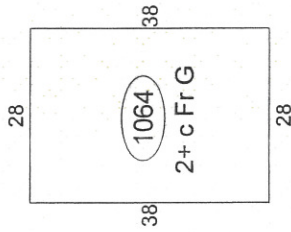
Primary Heat: Electric baseboard
Lower Full Part /Bsmt 1 Upper Upper

PLUMBING

3 Fixt. Baths 9
Kit Sink 1
Water Heat 1
TOTAL 11

REMODELING AND MODERNIZATION

Amount Date



1	Construction	Base Area	Floor Area	Sq Ft	Value
	Wood frame	2366	1.0	2366	168300

0 Crawl ----- -6390

TOTAL BASE 161910

Row Type Adjustment 1.00%
SUB-TOTAL 161910

0 Interior Finish 550
0 Ext Lvg Units 0
0 Basement Finish 0
Fireplace(s) Heating
Air Condition
Frame/Siding/Roof
Plumbing Fixt: 11 8460

Exterior Features	Value	SUB-TOTAL ONE UNIT	171160
Description	Value	SUB-TOTAL 0 UNITS	171160
Garages	0	Integral	0
	0	Att Garage	0
	0	Att Carports	0
	0	Bsmt Garage	0
	0	Ext Features	0

Quality Class/Grade SUB-TOTAL 171160
Av 3 Av 3

GRADE ADJUSTED VALUE 213950

SPECIAL FEATURES

ID	Use	Stry Hgt	Const Type	Grade	Year Eff	Const Year	Cond	Base Rate	Feat- ures	Adj Rate	Size or Area	Computed Value	Phys Obsol	Market & Depr	Adj Comp	Value
D DWELL	1.00	1	Av 3	1984	1996	AV	0.00	N	0.00	2366	213950	6	0	85	100	170940
G01 ATTGAR	0.00	1	Av 3	1984	1996	AV	20.17	N	24.35	28x 38	25910	14	0	100	100	22280

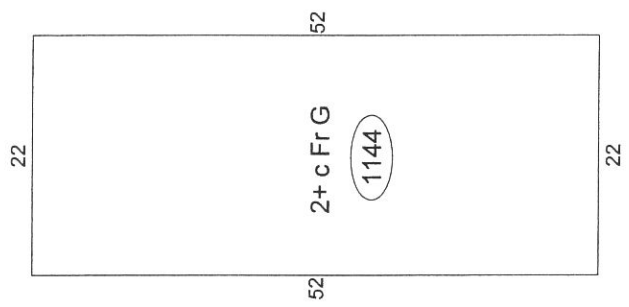
SUMMARY OF IMPROVEMENTS

Data Collector/Date Appraiser/Date Neighborhood Supplemental Cards
Neigh 5210001 AV TOTAL IMPROVEMENT VALUE 193220



08B-17

IMPROVEMENT DATA



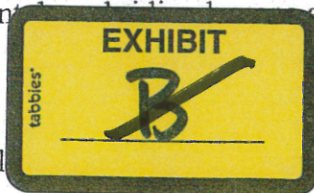
PHYSICAL CHARACTERISTICS

SPECIAL FEATURES

Description	Value	ID	Use	Sty Hgt	Const	Year	Eff	Const	Year	Cond	Base Rate	Feat-ures	Adj Rate	Size or Area	Computed Value	Phys Obsol	Market & Depr	Adj Comp	Value	
G01 ATTGAR	0.00	1	Av	3	1984	1996	AV	0.00	N	0.00	N	0.00	22x52	1484	0	0	0	0	100	
G02 Guesthse	1.00																			100

Data Collector/Date Appraiser/Date Neighborhood Supplemental Cards
 Neigh 5210001 AV TOTAL IMPROVEMENT VALUE

10. Car Sales as Home Occupations – policy adopted November 10, 1998. Car sales and car mechanics cannot qualify as home occupations, nor can car dismantlers or salvage operations due to the history of property appearing to be commercial in nature. Home occupations can be granted with only 1 commercial vehicle and a requirement that no commercial related vehicles (i.e. a towed vehicle) may be brought to the home.
11. Code Violations – policy adopted prior to February 18, 1999. No development permits may be granted, and no applications for subdivision, zoning or development plan approval may be processed for any property with an existing code violation unless approved by the Land Use Administrator and directly related to addressing the existing code violation.
12. Pools and other non-residential projects – policy adopted April 26, 1999, amended September 14, 2000, May 17, 2002, March 17, 2005 and June 17, 2005. See attached memo from Stephen Wust.
13. Resorts – policy adopted April 27, 1999. Resorts are not defined in the code except to state that they are to be zoned as large-scale residential projects. Resorts are defined as having 3 meal services everyday for guests, and offering the following types of facilities: tennis court, Jacuzzi, sauna, exercise room with workout equipment, indoor and outdoor lounging area and concierge services.
14. Joining of Multiple Mobile Homes – policy adopted January 10, 2000. Two or more mobile homes may not be joined to create a single dwelling unit, as the mobile homes were designed to each be a dwelling unit and could easily be converted into multiple units.
15. Public Notice requirements for Building Permits – adopted May 12, 2000. All building or mobile home permits for increased density based on water availability (2nd dwelling unit in Basin Fringe on 12.5 acres) will be required to post 21 days prior to issuance of development permit.
16. Sheds – policy adopted August 7, 2000. In all cases, all accessory structures require a development permit. The purpose being that the Land Use Administrator is concerned that all structures meet code requirements, especially with regards to flood control issues.
17. Horses / Livestock – policy adopted August 7, 2000. Residents boarding no more than 6 horses, excluding their own, may qualify as a home occupation. Training of boarded horses is permitted, but rental stables are not permitted under a home occupation license.
18. Kennels – policy adopted August 7, 2000. Dog and cat kennels cannot be approved as a Home Occupation, regardless of the number of animals.
19. Home Occupations – policy adopted August 7, 2000. A home occupation may use up to 50% of the square footage of the residence. Accessory structures which are used as part of the home occupation shall not exceed 50% of the total square footage of the residence.



30. Home Occupation with appointments – Policy adopted May 13, 2003. A home occupation will be allowed 8 appointments per day. Examples of businesses using appointments are chiropractors, massage therapists and hairdressers.
31. Trucking Water – Policy adopted July 25, 2003. No development's water supply can rely on trucking in water (e.g. swimming pool permits). A trucking company cannot show an assured source of long-term water availability. An exception is for mining or construction projects using trucked in treated effluent for dust control.
32. Variances requiring master plan submittal – Policy adopted June 1, 2005. A master plan shall be submitted with any application for a density or zoning variance request. This shall be required for projects that will need a master plan such as commercial or multi family (not for a single family residence).
33. Committee dates and noticing – policy adopted June 22, 2005. Development Review cases being heard by a reviewing committee followed by the BCC or EZA shall skip a month between these meetings, they shall not go back to back unless requested to do so by the LUA. The legal noticing for each hearing shall be done separately for all larger cases, complicated projects, or projects with issues.



from off-site road improvements for the first lot, the person transferring the lot shall file an affidavit as described in Article II, Section 4.5.2b.v.

- (d) Water Conservation. All lots created in accordance with Sections 2.3.1a.ii(b), (d), (f), (g) and (h), which are less than ten (10) acres in size shall be subject to water conservation covenants as set forth in Article VII, Section 6.6.2.

History: Sections 2.3 and 2.4.1 of Section 2 were amended by County Ordinance 1996-3, providing for site planning standards, required submittals and a review procedure regarding terrain management. Section 2.4.2 was amended by Ordinance 1996-8 to include summary review subdivisions, update road and access requirements, clarify provisions for family transfers and add water conservation requirements for some land divisions.

SECTION 3 - HOME OCCUPATIONS

The requirements of this Section 3 of Article III apply to home occupations.

3.1 Location of District

Home occupations are allowed anywhere in the County, provided all of the requirements of the Code are met.

3.2 Performance Standards

A development permit involving a home occupation may be approved only if the following standards are met:

- 3.2.1 Not more than six (6) persons, other than members of a family residing on the premises, shall be regularly engaged in work at the site of the home occupation;
- 3.2.2 The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation;
- 3.2.3 There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation, except for one (1) non-illuminated name plate sign not more than nine square feet in area;
- 3.2.4 Parking for employees and for customers or clients of the home occupation as required by Section 9 of this Article III shall be provided off the street;
- 3.2.5 No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area.

3.3 Submittals

The application shall be submitted on a form provided by the Code Administrator which shall include a description of:

- 3.3.1 Activities involved;
- 3.3.2 Materials and equipment used;
- 3.3.3 Methods of operation;
- 3.3.4 Number of employees;
- 3.3.5 Type of product to be produced, serviced or repaired;



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



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.

Map of Property in Santa Fe County



Legend

- Parcels
- Minor Roads
- Major Roads
- Section Lines

2008 FEMA Flood

- 500 Year
- 100 Year

1:1,200

1 inch represents 100 feet



WARNING:
Two (2) foot contour data sets are NOT SUITABLE FOR ENGINEERING WORK. These data are appropriate for PLANNING PURPOSES ONLY.

Orthophoto from 2008
Contour Interval 2 Feet

This information is for reference only. Santa Fe County assumes no liability for errors associated with the use of these data. Users are solely responsible for confirming data accuracy.

tabbies' **EXHIBIT E**



April 26, 2010

OBB-24

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mpb@sommer-assoc.com

July 15, 2011

Via Hand Delivery

Board of County Commissioners
c/o Jose Larranaga
County of Santa Fe
102 Grant Street
Santa Fe NM 87504

Re: Appeal of CDRC Decision – Windmill Water, Inc.
Modification of Home Occupation Permit # 95-2206

Dear Commissioners:

On behalf of the holders of the above-referenced permit, Windmill Water, Inc., this letter sets forth the grounds for appeal of the CDRC's decision upholding an administrative decision of the Land Use Department (the "Decision") denying Windmill's request to modify the existing home occupation permit for their use, which the County approved in 1995.

The citation giving rise to Windmill's application and leading to the instant appeal appears to have been triggered by a neighbor's retaliatory complaint and Windmill's construction of a 50 SF self-serve vending machine about 10 years ago. Windmill constructed the vending machine in an effort to better serve their customers and subsequent to a verbal question to a member of County Land Use staff, who advised that no permit was necessary.

Windmill Water provides high quality purified drinking water to the community and their business is certified and carefully regulated by the federal government. They provide an important and valued service to the community of Edgewood and the nature of their business has not materially changed since its initiation over 15 years ago.

Based on the following, Windmill respectfully requests that you either table the appeal pending a final court decision on the Town of Edgewood's annexation of the subject property and surrounding areas, which would eliminate County jurisdiction over the use. Alternatively, Windmill requests that you reverse the CDRC decision and allow this important service to continue operation.



1. Consistent with the Land Use Department's Previous Determination, Tabling of this Appeal is Warranted.

In the Fall of 2010, the District Court issued a decision approving annexation of the subject property and surrounding areas to the Town of Edgewood. The Municipal Boundary Commission appealed that decision to the Court of Appeals. All of the briefing has been complete for over 2 months and a decision may be rendered at any time. If the Court of Appeals upholds the District Court decision, the subject property will no longer be in the County's jurisdiction. Efficient use of public resources would be served by tabling this appeal until the Court of Appeals decision is rendered, consistent with the January 20, 2011 memo from the Land Use Department, a copy of which is attached.

2. The Home Occupation Complies with the Code Requirement that it Not Exceed 50% of the size of the Residence Including Accessory Buildings

The Decision references a Land Use Policy stating that "a home occupation may use up to 50% of the square footage of the residence" and concludes that the existing use exceeds the allowable square footage. The Decision also takes issue with the applicant's representation of the square footage of their residence. The Decision does not contest the applicant's representation that the use of existing structures in conjunction with operation of the business occupies 1,462 SF.

The applicable Code section states that "not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation." (Article III, §3.2.2) A plain reading of this requirement is that the area of the dwelling unit and accessory structures must be determined and the home occupation is limited to no more than half of that area.

In this case, staff determined the residence occupied 2,366 SF, that the maximum size of the home occupation may be 1,183 square feet and that the applicant's determination that the home occupation is 1,462 SF exceeds that limit and therefore is not allowed.

Based on a plain reading of the Code, the size of the dwelling including accessory buildings shown on the original 1995 home occupation approval (the house, shop and shed, NBA-9) is 3,836 SF – house= 2,272 SF, shed = 500 SF and shop/garage = 1,064 SF.

The size of the home occupation is well below half of the size of the dwelling including accessory structures that existed at the time the original home occupation was approved. Therefore, the home occupation should be allowed to continue. The Ricters are prepared

Sommer, Karnes & Associates, LLP

Page 3 of 4

to obtain permits as necessary for structures and additions that have been added since the original permit was approved.

3. Unadopted “Land Use Policies” Cannot Replace or Alter Code Provisions

The Decision references a “Land Use Policy” stating that “a home occupation will be allowed eight (8) appointments per day.” Land use policies may be an aid for staff in interpreting the Land Development Code, but given that such policies have not been adopted by the BCC, they do not change the Code and cannot be imposed as mandatory requirements.

The Decision also states that “outdoor storage, customer and employee parking used by a business shall be included in calculating the area used by a business as a home occupation.” The Decision does not reference a basis for this assertion, which is not supported by the language of the applicable Code requirements. Again, an un-adopted policy does not constitute a Code requirement and has no application to this matter.

4. The Self Serve is Incidental to the Residential Use of the Property

The Decision states that the 24 hour self serve water vending facility, the traffic created by this venue and the square footage of the structures and outdoor storage used by the current business practice would not be considered subordinate and/or incidental to the residential use.

As to traffic generation, the Code does not contain any requirement or limitation on traffic generation. As to structures used for outdoor storage, the Decision does not assert that there is any basis for determining whether the appearance of such structures if used for residential use would be any different from the appearance were they used in relation to the business. As to the self serve structure, it is 5 by 10 feet in size. A 50 SF structure is clearly incidental and subordinate to the main residence. The siding used on the structure is similar in material and design to the roof of the existing residence and meets the intent of the applicable requirement.

5. The Sign Issue Has Been Resolved

The Decision states that a sign permit application shall be submitted for the proposed sign. Upon receiving notice of the alleged Code violation, the applicant removed the previously existing sign, which had been in existence for a substantial period of time. The applicant designed a sign that is in conformance with the Code requirement and will submit the requested application.

Sommer, Karnes & Associates, LLP

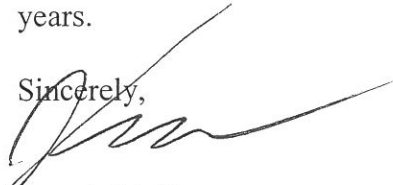
Page 4 of 4

6. Conclusion

Windmill Water, Inc. has been providing an important service to the Edgewood community for more than 15 years by selling purified water that is of far better quality than water otherwise available in the area. The business meets the stringent requirements of the federal government for water providers and meets the intent and letter of the applicable County Land Development Code. Further, Windmill Water is substantially surrounded by an active gravel mining operation that involves blasting and intensive mining activity. In no way is the character of the area negatively affected by the operation of this business.

Based on the foregoing, we respectfully request that you allow for Windmill Water, Inc. to continue operating and providing service to the community as it has for the past 15+ years.

Sincerely,



Joseph M. Karnes

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: January 20, 2011

TO: County Development Review Committee

FROM: Jose E. Larrañaga, Commercial Development Case Manager *JEL*

VIA: Jack Kolkmeier, Land Use Administrator *JK*
Shelley Cobau, Building and Development Services Manager *SC*
Wayne Dalton, Building and Development Services Supervisor *WD*

FILE REF: CDRC CASE # APP 10-5270 Windmill Water Business License Appeal

ISSUE:

Leon And Diana Richter, Appellants, Joseph M. Karnes (Sommer, Karnes & Associates, LLP), Agent, Request An Appeal Of The Land Use Administrators Decision To Deny A Modification Of A Home Occupation Business License.

The Property Is Located At 2042 Hwy 333 In Edgewood, Within Section 34&35 Township 17 North, Range 7 East, (Commission District 3).

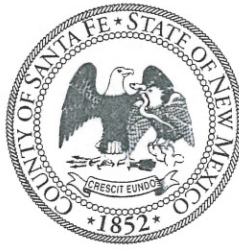
SUMMARY:

This case is being tabled from the CDRC agenda until such time that a judgment is made on the appeal of the infill annexation to the incorporated area of the town of Edgewood.

Danny Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

SEC. CLERK RECORDED 06/16/2011

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

**IN THE MATTER OF:
WINDMILL WATER, INC.
LEON AND DIANA RICTER,**

CASE NO. CDRC APP 10-5270

APPELLANTS

FINAL ORDER

THIS MATTER having come before the County Development Committee of Santa Fe County (“CDRC”) for hearing on May 19, 2011, on the Application of Leon and Diana Richter (“Appellants”) for an appeal of the Land Use Administrator’s (“LUA”) decision. After conducting a public hearing and reviewing the record, the CDRC finds as follows:

1. Leon Richter is the principle owner of Windmill Water, Inc.
2. The business is located at 2042 Hwy 333 in Edgewood, within Sections 34 & 35 Township 17 North, Range 7 East (Commission District 3).
3. December 21, 1995, the LUA approved, subject to certain standards, a home occupation business registration for Windmill Water, Inc.
4. Pursuant to the Santa Fe County Land Development Code Article III, Section 3 [Performance Standards] the home occupation business registration issued to Windmill Water, Inc. is subject to the following standards:



- 3.2.1 – Not more than six (6) persons, other than members of the family residing on the premises, shall be regularly engaged in work at the site of the home occupation.
- 3.2.2 – The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes of its occupants, and not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation.
- 3.2.3 – There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation, except for one (1) non-illuminated name plate sign not more than nine square feet in area.
- 3.2.4 – Parking for employees and for customers or clients of the home occupations required by Section 9 of this Article III shall be provided off the street.
- 3.2.5 – No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area.
5. Appellants attested that each of the standards required for a development permit involving a home occupation were met by initialing the Business Registration Application.
6. As a result of a complaint received by the County alleging that Windmill Water, Inc. was exceeding the County standards for a home occupation business, a Notice of Violation was issued to Appellants on March 2, 2010.

7. On May 6, 2010, the Appellants submitted a request for modification of the existing home occupation business registration.
8. Ordinance 1992-3, Section 4. [Land Use Administrator] states: "Before a business license is granted, the County Land Use Administrator may review the Application and shall inform the applicant of any further requirements pursuant to life, health, welfare, and safety considerations. If after review of the business registration or license application, it is determined that a development permit, as defined in the Santa Fe County Land Development Code is also required, the registration or license shall not be issued until the development permit is obtained."
9. Article II, Section 2.3.1.a [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...The following types of development may be approved administratively: i. Any home occupation."
10. A letter dated May 18, 2010 was sent by the LUA to Appellants informing them that their request to modify the existing home occupation business registration for Windmill Water, Inc. was denied based on the following criteria:
 - a. Appellants new site plan depicted the residence as 3,269 square feet and the County Assessor summary of improvements records the square footage of the residence as 2,366;
 - b. Appellants new site plan illustrates the addition of a bottling plant, 24 hour self-serve dispenser and job trailer, which is used as an office, totaling 1,462 square feet used for the home occupation business;

- c. an arial photo from 2008 shows vehicles, trailers and trucks that were not illustrated on the site plan submitted by the Appellants and are included in calculating the area used by a home occupation business;
- d. the parking and the square footage of the structures being used for the home occupation business exceed 50% of the square footage of the residence; and
- e. the 24 hour self-serve dispenser and square footage of the structures used by the business are not subordinate or incidental to the use of the residential property.

11. Article II, Section 2.3.4.b [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 Committee shall make and file its decision approving or disapproving the application or approving the application with conditions or modifications."

12. The Appellants filed an application for Appeal of the LUA's decision on May 26, 2010.

13. Testifying in support of reversing the LUA decision, Joseph Karnes, counsel for the Appellants, stated that the home occupation business has operated since 1995 and that the license was issued based on the buildings now on the property and the use has not changed.

- 14. Also testifying in support of reversing the LUA decision, Leon Richter, Appellant, stated that he and his wife started the business in 1996 and that the customer base has grown considerably over the years.
- 15. Three members from the public spoke in support of reversing the LUA decision because the business provides a service valued by the community.
- 16. Testifying in favor of supporting the LUA decision, Tom George stated that Windmill Water, Inc. should be required to adhere to the same rules and laws that other businesses must adhere to.
- 17. Contrary to Santa Fe County Land Development Code Article III, Section 3, Paragraph 3.2.3, the expansion of a 1,188 square foot Plant and the addition of a 224 square foot Job Trailer and 50 square foot 24 hour Self-Serve water vending facility has changed the outside appearance of the buildings and premises of the Appellants' home and there is significant visible evidence of the conduct of the home occupation business operations.
- 18. Contrary to Santa Fe County Land Development Code Article III, Section 3, Paragraph 3.2.2, a 24 hour Self-Serve water vending facility, the square footage of the structures used by the current business and the traffic created by this business is not subordinate and/or incidental to the use of the residential property.
- 19. The County Development Review Committee conducted a public hearing on the request of the Appellants and agreed with the LUA's decision to deny a modification of a Home Occupation Business License.

COUNTY OF SANTA FE) CDRC ORDER
 STATE OF NEW MEXICO) ss PAGES: 12

I Hereby Certify That This Instrument Was Filed for Record On The 16TH Day Of June, 2011 at 04:47:21 PM And Was Duly Recorded as Instrument # **1637721** Of The Records Of Santa Fe County




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

IT IS THEREFORE ORDERED that the Land Use Administrator's decision is affirmed and the Application for modification of a Home Occupation Business Registration for Windmill Water, Inc. is denied.

Signed this 16 day of June, 2011.
Santa Fe County
County Development Review Committee

By: *John J. Lynch*
CDRC Chairperson

 *Valerie Espinoza*
Valerie Espinoza, County Clerk

Approved as to form:
Stephen C. Ross
Stephen C. Ross, County Attorney

~~IV. APPROVAL OF MINUTES: April 21, 2011~~

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

VI. OLD BUSINESS

- B. CDRC CASE # APP 10-5270 Windmill Water Business License Appeal.
Leon and Diana Richter, Appellants, Joseph M. Karnes (Sommer, Karnes & Associates, LLP), Agent, request an Appeal of the Land Use Administrators decision to deny a modification of a Home Occupation Business License. The property is located at 2042 Hwy 333 in Edgewood, within Sections 34 & 35 Township 17 North, Range 7 East (Commission District 3)

Jose Larrañaga summarized the staff report as follows:

“On April 21, 2011, the County Development Review Committee met and heard testimony from the Appellants’ Agent, Joseph M. Karnes. The CDRC passed a motion to table the Appeal request until such time that the Court of Appeals issues a decision regarding the appeal of the Infill Annexation of the City of Edgewood Article II, Section 2.3.4.b requires the CDRC to make and file a final decision approving, or disapproving or approving with conditions, the Code Administrator’s decision. Case # APP 10-5270 shall be presented to the CDRC for full consideration.”

Member Katz noted that in the previous report there was a discrepancy in the square footage of the residence. He asked if the other buildings are in fact the size they are stated to be. Mr. Larranaga said he believed the depicted amounts were correct.

Chair DeAnda asked for clarification on the shop and garage. Mr. Larranaga said the shop and garage are the same.

Member Anaya asked if the house has been added on to. Mr. Larranaga said no remodeling of the house or other buildings was permitted, and there was no discussion on that.

Counsel for the Richters, Joseph Karnes, noted that the action taken at the previous meeting was to table the case pending clarification of jurisdiction. He pointed out no motion was made to take the case off the table. Assistant County Attorney Linda Trujillo explained that under the County rules of order tabled cases automatically come back on to the agenda at the next meeting and no additional action is necessary to take the case off the table. She added that making the return to the agenda pending an event certain was beyond the authority of the committee members.

Mr. Karnes reminded the committee that the business was granted a home occupation license in 1995 and has been operating since that time. The house, shop/garage and the shed/plant have been in existence since that time. The 50 square foot self-serve vending machine and the trailer are new. He said Windmill Water is an important asset to the community since the drinking water in the Edgewood area is marginal.

Regarding the violation, Mr. Karnes said it was his understanding that the San Pedro Community Ordinance, 2002-2, replaced the home occupation section of the code for the entire county with less stringent restrictions. The policy provisions regarding square footage limitations, etc. are not part of the code and are not readily available to the public. "I would submit that those policies simply don't apply here." They should not be used to determine violations.

He said the permit was issued based on the uses of most of the buildings now on the property and those uses have not changed. He stated the code is unclear about whether non-heated square footage should be included in the calculations; this lack of clarity gave rise to the ambiguity in square footage. The vending machine has been in place over ten years. A complaint only arose from one individual with "an ax to grind," whereas over 20 people wrote in support of Windmill Water.

Mr. Karnes said while the code requires a case of this sort to be heard within 60 days, it does not say a decision has to be rendered in that time. He recommended retabing the case after tonight's hearing to allow the Court of Appeals to make a decision.

Duly sworn, Leon Richter stated he and his wife started the business in 1996 to fill the need for bottled water. Their kids learned how to work from the business. Previously there was a self-serve station at the bottling plant but following 9/11 it was recommended they move the self-serve away from the plant for security reasons. At that time he called the County and expressed his intent; he was told a permit was not necessary. This kiosk is not a hangout.

Chair DeAnda asked what the square footage of the residence was at the time of the initial home occupancy application. Mr. Richter said it was 2,300 square feet. A deck of 880 square feet has been added; the heated area is still 2,300. Chair DeAnda established that the shed was enlarged from about 700 to 1,352 square feet to become the bottling plant. The job trailer serves as a temporary office.

Member Katz asked if a building permit was secured to build the plant. Mr. Richter said the shed was already there and he did not pull a permit.

Member Anaya referred to an area adjoining the house and Mr. Richter said that is a 60 square foot covered porch.

Member Gonzales asked how much the business has grown. Mr. Richter stated he and his wife still run the entire business. One delivery truck leaves daily. Employees consist of a part-time high school boy and an office assistant. He said the customer base has grown considerably over the years. Member Gonzales asked why he hasn't gotten

commercial zoning for his business. Mr. Richter said they are now entertaining the idea. Taxes are a consideration.

Member Gonzales asked staff for clarification of code issues. Mr. Larrañaga indicated that Ordinance 2002-2 refers only to the San Pedro traditional community and this property is not within those boundaries.

Ms. Cobau said there is a clear policy in the Land Development Code regarding home occupations. She pointed out that Edgewood's home occupation regulations are more stringent than those of the County.

Member Anaya asked if Edgewood had three different levels of home occupation and Ms. Cobau said she was aware of only one category.

Returning to the question of square footage, Chair DeAnda asked what area would be allowed to be devoted to commercial. Mr. Larrañaga answered that in the initial application they were granted home occupancy status for 792 square foot. Any addition to that exceeds the allowed amount.

Member Katz asked if any part of the residence is used for the business. Mr. Larranaga said not according to the original submittal. Member Katz noted that the current total square footage used for commercial amounts to around 1,400 square feet. This amount added to the residence would give 3,828 square feet, 50 percent of which is well over the amount devoted to commercial. Mr. Larranaga reiterated they are exceeding what the originally got approved for. He added the 24-hour self-service kiosk is clearly not incidental and subordinate to the residential use.

Member Anaya asked if the applicant would be allowed to request a new home occupancy license. Mr. Larrañaga stated residential square footage is computed from the heated area. The original application did not specify area of the shop or garage and the intended use area was clearly stated. He noted that the applicant came in for a modification of the business license and there is nothing in the code that allows for that. Other factors include the 24-hour self-serve, a sign that has been removed, traffic, and non-incidental use of the property. These all contributed to the Land Use Administrator's denial of the request for modification.

Ms. Cobau read the code to the effect: "The use of the dwellings for the home occupation shall be clearly incidental and subordinate to it's use for residential purposes by the occupants, and not more than 50 percent of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation." Determination of the allowable square footage is only one criterion.

Mr. Karnes reiterated that the purpose of the application was to request a modification, which although not specifically addressed in the code, is not prohibited in the code.

Chair DeAnda asked if a permit was obtained for the bottling plant or trailer and Mr. Karnes said he did not know, adding self-serve station was addressed by Mr. Richter.

Duly sworn, Gary Sloman, Edgewood resident, stated he is Mr. Richter's brother-in-law. As a business owner he is familiar with some of Mr. Richter's problems. The service provided is needed and the property is clean. Only one person has complained. Mr. Richter is a good, honest man who tries to do things the right way and is an asset to the community. He should be given a chance to correct any deficiencies.

Brad LeFleur, under oath, indicated he has attended two previous hearings and said what happens here will affect a lot of people. He juxtaposed rules and regulations against quality of life as he read from the code's mission statement. He said the purified water cured his kidney stones and is grateful for the vending machines. He said traffic congestion is not an issue. He asked the committee members to keep the good of the community in mind.

Lurleen Lake, duly sworn, an employee of the Richters, stated she has known the Richters most of their lives and has never worked for a more honest, wonderful employer. She said the Edgewood water is despicable.

Under oath, Thomas George, indicated he has been demonized this evening. He said he does not want to see the Richters out of business, but held to the same standards as other businesspeople. The Richters have complained continually about his business and cost him a lot of money. He pointed to the regulation that says the outside appearance shall not be changed in the case of a home occupation and in this case it is very much changed. He offered to provide pictures. But felt it was not necessary. Mr. Richter "should be commercial just like the rest of us are."

The public hearing was closed.

Member Katz moved to approve the home occupation with the condition the self-serve not be used, since that appears to be the part that doesn't mean the code. The motion failed for lack of a second.

Member Anaya moved to approve the business license for one year with the understanding they comply with the new code standards currently under discussion, based on home occupation and/or commercial. Member Gonzales seconded.

Member Anaya said the new code, or possibly the code of the Town of Edgewood if that turns out to be the jurisdiction, would govern. If there is no new code the old code must be adhered to.

Chair DeAnda noted that the question was one of modification, and whether they have grown to the extent that it is now a fully commercial venture, which requires a different permit or zoning change.

Counsel Trujillo outlined the options, which does not include following the new code. It is an appeal to the Land Use Administrator's denial of the request for modification. She recommended a friendly amendment to the effect that new regulations not be referred to.

Member Gonzales said staff did their job by responding to a complaint but he would not like to see the Ricters put out of business by a denial. He suggested limiting the hours of the vending area. He suggested they develop a master plan to get the property zoned for this purpose.

Member Katz pointed out a home occupation allows people to operate out of their residence without changing the nature of the neighborhood. In this case there appear to be no near neighbors, but no provision is made for that in the code. In this case most of the appearance is that of a residence with the exception of the vending machine. He agreed they should probably be getting a commercial permit. He said the committee has to vote on what the rules are now.

Member Martin asked if the request is denied will it essentially end the business, or could they apply for a development permit. Ms. Trujillo said the CDRC's decision can be appealed to the BCC and the business could go on in the meantime. They could also apply for a permit in the interim.

Ms. Cobau pointed out that many businesses come in with expanded non-conforming uses and staff endeavors to work with them by asking them to submit a master plan, go through the public hearing process, with the business still in operation during the process. Ms. Trujillo referred to the Land Use Administrator's letter from a years ago, which stated that if the Ricters intend to continue operation in the current state staff recommends a request for a zoning change/master plan. He offered staff's help.

Chair DeAnda noted that the CDRC's decision would not negatively impact the business immediately. It is a question of coming into conformance.

Ms. Cobau indicated that a home occupation business is taxed as a residential property. Following rezoning to commercial there would be a different classification for tax purposes, so there is an equity issue involved.

Member Anaya accepted Member Gonzales' friendly amendments to limit the hours of the vending machine and to apply for a master plan. Member Anaya said his motion specified they have one year to comply with all of the standards. He commended staff, adding this is something of a gray area.

The motion failed 3-4 with Members Anaya, Gonzales and Valdez voting in the affirmative and Members Katz, Martin, Pato and DeAnda voting in the negative.

Member Pato moved to accept staff's recommendation to deny the appeal, with the applicant having the option to rezone or come in with a master plan. Member Martin seconded.

Member Katz asked if the CDRC affirms the Land Use Administrator's decision are they still allowed to operate under a non-modified version, to wit, deliver bottled water. Ms. Trujillo stated they would have to go back to using 762 square feet for their business as allowed by their current license. If they appeal to the BCC they would be allowed to continue operation in the interim.

The motion to uphold the Land Administrator's decision in Case #APP 10-5270 carried 4-3 with Members Katz, Martin, Pato and DeAnda voting in the affirmative and Members Anaya, Gonzales and Valdez voting no.

Ms. Cobau stated the CDRC's decision can be appealed to the BCC.

[The committee recessed from 5:30 to 5:45.]

C. ~~CDRC CASE # MIS 11-5110 Ron Fares Accessory Structures. Ron Fares, Applicant, requests approval of a 4,000 square foot accessory structure to be used as tool and equipment storage, and a 4,800 square foot accessory structure to be used as a barn and hay storage on 124 acres. The property is located at 82 Wagon Trail, within Sections, 3, 4 and 9, Township 13 North, Range 8 East (Commission District 3)~~

Wayne Dalton read the caption and gave the following staff report:

~~"The Applicant requests approval to construct two accessory structures totaling 8,800 square feet – one structure consisting of 4,000 square feet to be utilized for tool and equipment storage and one structure consisting of 4,800 square feet to be utilized as a barn and hay storage. Both structures are proposed to be steel-framed, on concrete slabs. At this time the Applicant cannot provide detailed drawings for the structures, due to the buildings having to be purchased prior to the manufacturer providing engineered drawings. Upon approval of this Application the buildings will be purchased and the Applicant will be able to provide these detailed drawings for the structures.~~

~~"There is currently a well on the property. The Applicant has submitted for a development permit for a 6,259 square foot residence on the subject property. This Application for the residence is under review; once this permit is approved there will be a primary residence on the property which is needed in order to construct an accessory structure.~~

~~from off site road improvements for the first lot, the person transferring the lot shall file an affidavit as described in Article II, Section 4.3.2b.v.~~

- ~~(d) Water Conservation. All lots created in accordance with Sections 2.3.1a.ii(b), (d), (f), (g) and (h) which are less than ten (10) acres in size shall be subject to water conservation covenants as set forth in Article VII, Section 6.6.2.~~

~~History. Sections 2.3 and 2.4.1 of Section 2 were amended by County Ordinance 1996-3, providing for site planning standards, required submittals and a review procedure regarding terrain management. Section 2.4.2 was amended by Ordinance 1996-8 to include summary review subdivisions, update road and access requirements, clarify provisions for family transfers and add water conservation requirements for some land divisions.~~

SECTION 3 - HOME OCCUPATIONS

The requirements of this Section 3 of Article III apply to home occupations.

3.1 Location of District

Home occupations are allowed anywhere in the County, provided all of the requirements of the Code are met.

3.2 Performance Standards

A development permit involving a home occupation may be approved only if the following standards are met:

- 3.2.1 Not more than six (6) persons, other than members of a family residing on the premises, shall be regularly engaged in work at the site of the home occupation;
- 3.2.2 The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation;
- 3.2.3 There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation, except for one (1) non-illuminated name plate sign not more than nine square feet in area;
- 3.2.4 Parking for employees and for customers or clients of the home occupation as required by Section 9 of this Article III shall be provided off the street;
- 3.2.5 No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area.

3.3 Submittals

The application shall be submitted on a form provided by the Code Administrator which shall include a description of:

- 3.3.1 Activities involved;
- 3.3.2 Materials and equipment used;
- 3.3.3 Methods of operation;
- 3.3.4 Number of employees;
- 3.3.5 Type of product to be produced, serviced or repaired;



1. Kennel fees and additional requirements are set forth in the Santa Fe County Ordinance 1991-7, as amended.
- m. any other temporary business: up to ten (\$10.00) dollars per month.
- C. Any person who had validly engaged in business in the County and who is not engaging in business in the County for one or more calendar years must reapply for business registration and/or business license, pursuant to Section 3 of this Ordinance.

SECTION 4. LAND USE ADMINISTRATOR.

Before a business license is granted, the County Land Use Administrator may review the license application and shall inform the applicant of any further requirements pursuant to life, health, welfare, and safety considerations. If after review of the business registration or license application, it is determined that a development permit, as defined in the Santa Fe County Land Development Code (1992-1, as amended from time to time), is also required, the registration or license shall not be issued until the development permit is obtained. If the Land Use Administrator determines that restrictions or limitations should be placed on the licensed activity in order to protect the health, safety or welfare of the citizens, he may impose requirements or conditions on the issuance of the registration or license, which shall reasonably be related to the concerns for the health, safety or welfare of the citizens of the County. An applicant aggrieved by the decision of the Land Use Administrator



may seek review pursuant to Section 7 of this Ordinance.

SECTION 5. RENEWAL.

Prior to March 15 of each year, a person engaging in business in the County and subject to this Ordinance shall submit the Business Registration Form and shall pay the fee for renewal of Business Registration and/or Business License with the County Clerk.

SECTION 6. LATE FEE.

Any person who does not pay the registration fee prior to March 15 of each year, or the license fee and any renewal fees thereto within seven (7) days of the due date will be assessed a late fee in the amount of ten (\$10.00) dollars, which must be paid before the Business Registration or Business License will be reissued.

SECTION 7. BUSINESS REGISTRATION OR LICENSE REVOCATION.

The Clerk may refuse to grant or renew a Business Registration or License to a person, based upon good cause. Upon request from such person whose registration or license has been or has been threatened to be denied, the reasons for such denial shall be written and given to such person within seven (7) days of such denial or revocation. The written decision shall state that such person shall be given the opportunity to appeal the denial or revocation at a hearing held before the Board of County Commissioners of Santa Fe County. Such hearing shall be held at a regularly scheduled meeting of the Board of County Commissioners, if the person denied a Business Registration or a License requests such a

2.2 Development Permit Fees and Copies

The amount of the fee for the development permit shall be determined by resolution of the Board, which may establish different fees for different types of development. Permit fees established under the Code are not refundable. The Code Administrator shall make copies of any fee schedule adopted by the Board available to the public in his office and shall post in his office a copy of all current fee schedules. An applicant for a development permit may file an application with the Code Administrator upon paying the fee determined by the Board.

2.3 Administrative Procedures

2.3.1 Administrative Decisions

- 2.3.1a By using the following procedure, 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. Applications for land divisions that constitute a subdivision under a common promotional plan shall comply with the procedure provided for in Article V. The following types of development may be approved administratively:
- i. Any home occupation;
 - ii. The following divisions of land which are exempt from subdivision regulations. Applicants claiming any of the following exemptions shall submit supporting data and affidavits to verify their claim as required by the Code Administrator:
 - a. The sale, lease or other conveyance of any parcel that is thirty-five (35) acres or larger in size within any twelve (12) month period, provided that the land has been used primarily and continuously for agricultural purposes, in accordance with 7-36-20 NMSA 1978, for the preceding three years;
 - b. The division of land created by a court order where the order creates no more than one parcel per party;
 - c. The division of land for grazing or farming activities provided that the land continues to be used for grazing or farming activities;
 - d. The division of land created to provide security for mortgages, liens or deeds of trust; provided that the division is not the result of a seller-financed transaction and provided that the parcel given for security is consolidated with the original parcel upon release of the mortgage, lien or deed of trust;
 - e. The sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty (140) acres;
 - f. The division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in 501 (c) (3) of the U.S. Internal Revenue Code of 1986, as amended; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or to any church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity;
 - g. The sale, lease or other conveyance of a single parcel from a tract of land, except from a tract within a previously approved subdivision, within any five (5) year period; provided that a second or subsequent sale, lease or other conveyance from the same tract of land within five (5) years of the first sale, lease or conveyance shall be subject to the provisions of the New Mexico Subdivision Act and these Regulations;



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.~~

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

EXHIBIT

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II - 7

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.

performed by the County Development Review Committee. Any reference to the County Development Review Committee in the Code shall be construed as reference to the appropriate Local Development Review Committee in cases where the application involves land within the jurisdiction of a Local Development Review Committee.

History. Section 1.3 was amended by Ordinance 1996-2 authorizing the Board to appoint a Local Development Review Committee for an area declared by ordinance to be a Traditional Historic Community under state law and eliminating the requirement that recommendations of Local Development Review Committees be taken to the County Development Review Committee.

SECTION 2 - DEVELOPMENT PERMITS

No person may engage in development within the County until such person has obtained a development permit for such development meeting the requirements of the Code.

2.1 Extent of Activities Authorized by a Development Permit

The following limitations shall apply to all development permits issued under the Code:

- 2.1.1 A development permit shall specify the development permitted and the location at which the development may occur.
- 2.1.2 Development allowed by a development permit is limited by:
- a. The provisions of the Code;
 - b. Any conditions indicated on or attached to the development permit. Conditions may include a requirement of compliance with any plan or other submittal required and approved under the Code or a time of expiration, which shall be noted on the application, and
 - c. The application, which includes all materials submitted by an applicant to the Code Administrator, the County Development Review Committee, or the Board in support of a request for a development permit.
- 2.1.3 Exception for Actual Construction. Nothing in this Section shall be deemed to require a change in the plan, construction, or intended use of a new structure on which actual construction was lawfully begun before the effective date of the Code or any amendments thereto, for a development permit which has been issued and upon which actual construction has been diligently carried on. "Actual construction" means 1) permanently fastening construction materials in permanent position; or 2) substantial demolition or removal of an existing building or other structure preparatory to construction of a replacement.
- 2.1.4 Commencement and Completion of Development. Commencement of construction or work must begin within one (1) year of the date of the issuance of the development permit. Construction or work set forth in the development permit shall be completed within two (2) years of the issuance of the development permit unless an extension of time has been obtained from the Code Administrator.

History. 1980 Comp. 1980-6. Section 2.1.3 is language previously part of Article I, Section 12 which was repealed by County Ordinance 1990-11.





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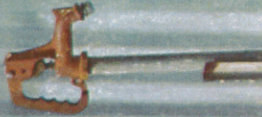


08B-52

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0BB-54



DOB-55



OBB-56

Jose Larranaga

From: TOM GEORGE [tjdozerman@msn.com]
Sent: Monday, July 05, 2010 10:51 PM
To: Jose Larranaga
Subject: Formal Objection
Attachments: windmill water driveway.bmp; windmill water entrance.bmp; windmill water hill at entrance.bmp; windmill water lights at night.bmp

Dear Jose;

Please allow me to submit a formal objection before the CDRC July 15th 2010 at 4:pm regarding the appeal of Leon Richter regarding his objection to the county of Santa Fe, requiring him to turn his residential property, into a commercial property. We feel at Edgewood Aggregates, that he should be a commercial entity, in that he has violated his Home Occupation License as previously documented with a formal complaint by us some months ago.

Additionally, he poses a hazard to the well being of the community with the access and entrance of that location where there have been fatalities within 50'-100' or so. His driveway is not within the required easement of the property. His entrance is not a commercial entrance and his driveway does not meet the regulations of a road for commercial access, (too narrow for commercial traffic). He needs a ingress and egress pull out for safety purposes, due to the hazardous nature of his location on a hillside. There is a large mound of dirt on the west side of his entrance that poses a safety hazard when exiting his property. Traffic coming in blocks the view of those trying to exit safely. He needs to have two separate lanes clearly marked for traffic entering and exiting his property. He should also be required to put his road within the legal easement of the property when he gets his commercial status.

Additionally, he now has a light on a pole at the water dispensing machine in violation of his home occupation license that now illuminates the entire parking area at the machine in addition to the one on the machine. The light on the pole violates the county code of being higher than allowed by county statute's.

I would like the opportunity to address the CDRC regarding these issues and to voice our concerns regarding his flagrant violations of the county codes. I have yet to find a permit issued to him for any and all improvements to his commercial endeavor. Please see attached photo's taken this past week of these that I have mentioned.

Please let me know what I need to do in order to speak before the CDRC in these matters.

With regards;

Thomas George - Managing Member - Edgewood Aggregates, LLC



OBB-82

1. Leon and Diane Richter are in direct violation four different permit requirements for their premises at 2042 State Route 333, Edgewood, NM.
2. Leon and Diana Richter operate Windmill Water, Inc under a Home Occupations Permit. They have 5 violations of the Home Occupations Permit requirements.

The Santa Fe County Land Use Code, Home Occupation Permit has the following performance standards.

3.2 Performance Standards

A development permit involving a home occupation may be approved only if the following standards are met:

- 3.2.1 Not more than six (6) persons, other than members of a family residing on the premises, shall be regularly engaged in work at the site of the home occupation;
- 3.2.2 The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation;
- 3.2.3 There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation, except for one (1) non-illuminated name plate sign not more than nine square feet in area;
- 3.2.4 Parking for employees and for customers or clients of the home occupation as required by Section 9 of this Article III shall be provided off the street;
- 3.2.5 No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area.

Windmill Water, Inc has violated the Santa Fe County Land Use Code by the following items.

Violation 1: Windmill Water, Inc facilities occupy more than 50% of dwelling and accessory buildings. Windmill Water has an office trailer, a garage where company vehicles are stored, a metal building for the bottling plant, and a building to house the cash operated water dispenser. The original owner of the property

confirms that just the metal building alone is larger than the dwelling. Additionally, they have two commercial trailers on the property that they use to store supplies for the business.

Violation 2: Windmill Water, Inc has a business office at the front of their premises, which is separate from the residence and clearly not incidental to the residential purposes of the premises and changes the external appearance of the premises.

Violation 3: Windmill Water, Inc has two business signs on their premises. There is one lighted sign on the water dispenser and one sign that has been placed on the neighbors land. This sign which is 4 feet by 8 feet, exceeds the nine square feet in area. Windmill Water, Inc violated the requirement for only one sign, its size and the requirement for it to be unlighted.

Violation 4: Windmill Water, Inc operates 24 hours a day, 7 days a week, 365 days a year on their Home Occupation Business License. They operate a cash activated water dispenser on the front of their property which is accessed by the public 24 hours a day. This usage is clearly not subordinate to use as a residential purpose if they allow the public to access their residential area on a 24/7, 365 days a year basis. Please see attached picture of their signage which advertises their 24 hour operations and a picture of the water dispenser.



Violation 5: Windmill Water, Inc has too many vehicles on its property, inconsistent with its residential use. It has at least two

truck trailers as well as other vehicles stored outside, as its garage is occupied by business equipment and storage.

2. Windmill Water, Inc is also in violation of the New Mexico Administrative Code 18.31.6 STATE HIGHWAY ACCESS MANAGEMENT REQUIREMENTS

State Regulation Violation 1: Access is via a driveway that is not suitable for public access. It has a hazardous exit onto a high-speed roadway, which is New Mexico State Highway Transportation Department road State Route 333. It is not wide enough for two-way traffic. The roadway has no shoulders

State Regulation Violation 2: The driveway is located on an easement that is not a public easement. Windmill Water, Inc does not have permission of the landowner, Donovan Bassett, to conduct business activities on the Bassett's land.

State Regulation Violation 3: Windmill Water does not have a NMSHTD permit for accessing on to a State Highway.

State Regulation Violation 4: Windmill Water, Inc generates a large amount of incoming and outgoing public traffic, and parking is on private easement belonging to the neighboring landowner. Their easement empties out into a 55 mph zone on State Route 333.

3. Leon and Diana Rictor, the property owners, did not get a County permit to pave their driveway. They also paved this driveway easement without the permission of the easement landowner, Donovan Bassett.

4. ~~The residence owners, Leon and Diana Rictor, conduct regular church services in their home. They are not zoned as a Community Service Facility or nor have they applied for the necessary permit as a Community Service Facility. They have not notified neighbors, meet parking requirement, met ingress and egress requirements in violation of County Land Usage Paragraph 4.4. It is believed that other requirements of this Land Use paragraph have also not been met.~~

Withdrawn
By Tom
George
5/9/11

OBB-85

5. As the church services are held in the residence it is believed that they do not meet Fire Code requirements as well.

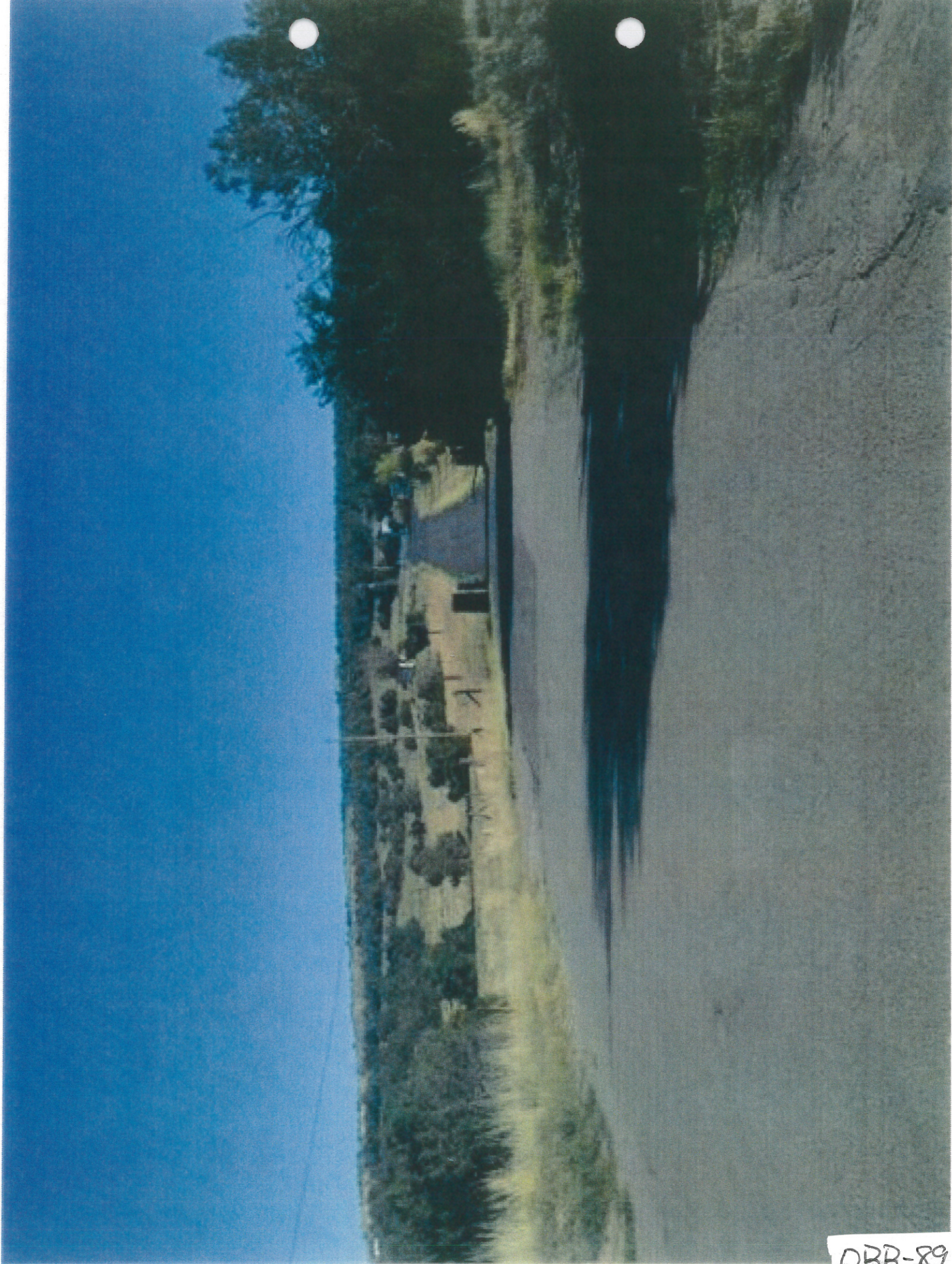
Windmill Water, Inc Business Facilities



1. Public access via easement across neighbors land
2. Cash operated 24 hour water dispenser
3. Office Building
4. Residence/Church
5. Product Storage Building
6. Water Bottling Plant
7. Delivery Truck
8. Other Vehicles
9. Storage Trailer Location



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OBB-89



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OBB-92