

DATE: March 15, 2012

TO: County Development Review Committee

FROM: Wayne Dalton, Building and Development Services Supervisor

VIA: Shelley Cobau, Building and Development Services Manager
Penny Ellis-Green, Interim Land Use Administrator

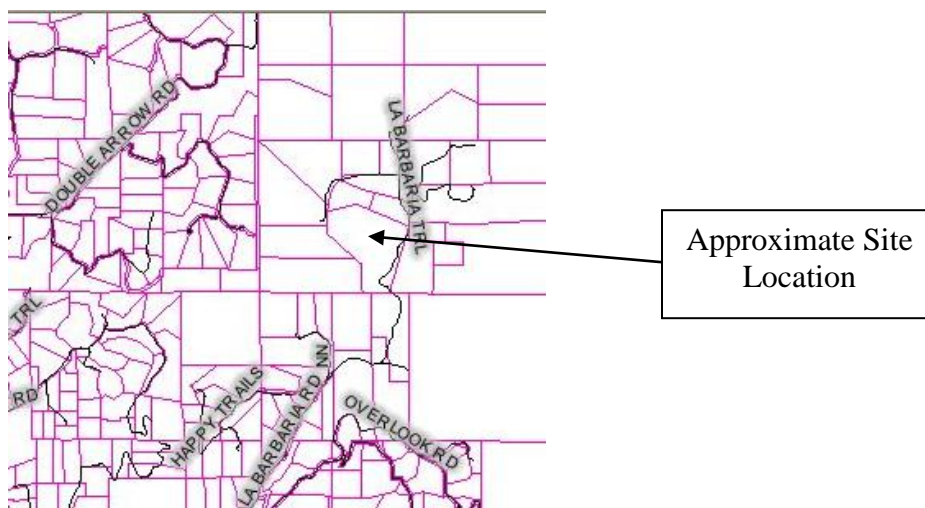
FILE REF.: CDRC CASE # APP 12-5040 William Frederick Wagner Appeal

ISSUE:

The Homeowners/Landowners of La Barbaria Trail, Appellants, (The Egolf Law Firm LLC.), Brian Egolf, Agent, request an appeal of the Land Use Administrator's decision to approve a Small Lot Family Transfer Land Division (Case # 11-3090 William Frederick Wagner) of 31.824 acres into two lots; one lot consisting of 20.990 acres and one lot consisting of 10.834 acres.

The subject property is located at 45 La Barbaria Trail, within Section 9, Township 16 North, Range 10 East, (Commission District 4).

Vicinity Map:



SUMMARY:

The Appellants request an appeal of the Land Use Administrator's decision to approve a Small Lot Family Transfer Land Division (Case # 11-3090 William Frederick Wagner) of 31.824 acres into two lots.

The Appellant states that the Wagner application violates Article II, § 4.3.5. The Appellant also states that even in the case of Small Lot Family Transfers, no lot shall be smaller than one half the standard minimum lot size allowed in the particular location or hydrologic zone where the transfer is to take place. The Appellant further states that the Wagner application is located entirely within the Mountain Zone and the minimum lot size is 40 acres. The proposed Plat provided by Mr. Wagner with his application shows that the resulting lots would be 20.990 acres and 10.834 acres.

The Appellant claims the 10.834 acre lot fails to meet the minimum lot size in the Mountain Zone and fails to meet the Code's requirement that the lot be at least half the minimum size, or 20 acres. Furthermore, the Wagner application contains no reference to any type of water conservation measures to be imposed on future building and contains no reference to any water rights that Mr. Wagner intends to deliver to the County's water rights portfolio. For these reasons, the Wagner application should be denied.

Staff response: The subject property is located within the Mountain Hydrologic Zone where the minimum lot size is 80 acres per dwelling unit. Lot size may be reduced to 20 acres with water restrictions/water conservation measures as required in Article III, § 10.2.2. Lot size may be further reduced to 10 acres per dwelling unit via the Small Lot Family Transfer process per Article II, § 4.3.5a. Water Restrictive Covenants will be recorded along with the Final Plat. A note will also be placed on the Final Plat referencing water Restrictive Covenants for both lots.

The Appellant states that Article II, § 4.3.3 requires an applicant for a Small Lot Family Transfer include with the application an affidavit stating that "notice of the application for approval of a family transfer Plat has been mailed by certified mail to owners of property, as shown by the records of the County Assessor, adjacent to and within one hundred feet, excluding public right-of-way, of the proposed family transfer parcel." The Appellant states the Wagner File lacks the required application and should be denied.

Staff response: Mr. Wagner has provided a signed and notarized certification of posting along with ten certified mail receipts to adjoining property owners which meets the requirements for noticing as per Article II, § 4.3.3b.iv. The adjoining property information was provided to Mr. Wagner from the County Assessor's Office.

The Appellant further states that Article II, § 4.3.3 also requires that an applicant record deeds transferring the parcels at the time the Plat is recorded. The application does not contain draft deeds, which makes it impossible to determine whether the recipients of the new parcels meet the requirements of "immediate family member" as defined in Article X, § 1.66. The Appellant states for this reason the application should be denied.

Staff response: Article II, § 4.3.3a (Small Lot Inheritance Transfers) states deed(s) transferring the parcel(s) to or among the heirs or beneficiaries shall be recorded at time the Plat is filed. Staff does not require draft deeds as part of a submittal for Land Divisions. These documents will be provided once the Plat is approved and before Plat recordation. These documents will also be reviewed by staff to ensure Code compliance as defined in Article X, § 1.66 and state statute.

The Appellant states there is no evidence and no reasons to believe that evidence exists that granting the Wagner application will help to “maintain local cultural values by perpetuating and protecting a traditional method of land transfer within families, especially within Traditional Communities.” The Appellant also states the proposed transfer is not within a Traditional Community, and Mr. Wagner has not shown that he is a member of a family that has previously participated in the “traditional method of transfers” found in Santa Fe County and northern New Mexico. The Appellant further states there is no evidence in the Wagner application to suggest that the proposed transfer will enable an adult child or grandchild of Mr. Wagner to obtain an affordable home site as a result of the transfer. The Appellant claims it is widely known in the area that Mr. Wagner intends to sell the resulting lots to non family members for the purpose of making a profit on his purchase of the land. For these reasons, the Wagner application should be denied.

Staff response: Family Transfers are allowed anywhere in the County. The property does not have to be located within a Traditional Community. Mr. Wagner has also provided proof that the property has been in lawful possession of the family proper for a period of five years as required by Code. Mr. Wagner has also provided a Family Transfer Affidavit as required per Article II, § 4.3.3b.v. This document certifies that Mr. Wagner has not made a Family Transfer of any other lot(s) to the person receiving the current lot. Any person may receive only one lot via the Small Lot Family Transfer process. The Land Use Administrator cannot base a decision for approval or denial of an application on rumor.

Growth Management staff thoroughly reviewed the Application (William Frederick Wagner Case # 11-3090) for compliance with pertinent Code requirements and found the Application for a Small Lot Family Transfer was in compliance with County Code criteria.

APPROVAL SOUGHT: Overturn the Land Use Administrators decision to approve Admin. Case # 11-3090 William Frederick Wagner Small Lot Family Transfer Land Division.

GROWTH MANAGEMENT AREA: El Centro, SDA-3

HYDROLOGIC ZONE: Mountain Hydrologic Zone, minimum lot size per Code is 80 acres per dwelling unit. Lot size can be reduced to 20 acres with water conservation measures. Lot size may be further reduced to 10 acres via Small Lot Family Transfer as per Article II, § 4.3.5a of the Land Development Code.

FIRE PROTECTION: Hondo Fire District.

WATER SUPPLY: Domestic Well

LIQUID WASTE: N/A

VARIANCES: None

AGENCY REVIEW: None

STAFF RECOMMENDATION: **Staff recommends that the CDRC uphold the Land Use Administrator's decision to approve the application and deny the requested appeal.**

EXHIBITS:

1. Letter of request
2. Article II, § 4.3 (Small Lot Inheritance and Small Lot Family Transfer)
3. Article II, § 4.3.5 (Lot Size Standards)
4. Article III, § 10.2.2 (Calculation of Use)
5. Article X, § 1.66 (Immediate Family Member)
6. Article III, §10 (Lot Size Requirements)
7. Certification of Posting and Certified Mail Receipts
8. Family Transfer Affidavit
9. Proposed Plat
10. Site Photographs
11. Aerial of Site and Surrounding Area