MEMORANDUM

DATE: May 19, 2011

TO: County Development Review Committee

FROM: Jose E. Larrañaga, Commercial Development Case Manager

VIA: Jack Kolkmeyer, Land Use Administrator
Shelley Cobau, Building and Development Services Manager
Wayne Dalton, Building and Development Services Supervisor

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

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ISSUE:

Leon and Diana Ricter, 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).

SUMMARY:

On April 21, 2011, the County Development Review Committee (CDRC) 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 (Exhibit "P"). 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 (Exhibit "K"). Case # APP 10-5270 shall be presented to the CDRC for full consideration.

On December 21, 1995, the Land Use Administrator (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.

In a letter, dated May 26, 2010, the Agent on behalf of the Appellants requested an appeal of the LUA decision, to deny the modification of the existing home occupation business license, to the CDRC (Exhibit "F"). The Appellants base the appeal on criteria set forth in Ordinance No. 2002-2. This ordinance is exclusive to the San Pedro Contemporary Community Zoning District (Exhibit "G"). The property, on which Windmill Water is located, is not within the boundaries of this ordinance, therefore the criteria set forth in Ordinance 2002-2, referenced in the appeal letter, does not apply.

The Appellants state: "the decision references a Land use Policy stating 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".

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 for the business (Exhibit "A").

The Appellants state: "the decision also takes issue with the Applicant's representation of the square footage of the residence and 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 square feet".

Staff response: a discrepancy was found between the site plan submitted by the Appellants, 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); the Appellants state the operation of the business occupies 1,462 square feet, which exceeds 50% of the square footage of the 2,366 square foot residence (1,183 square feet); 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 Appellants state: "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; the Code does not contain any requirement or limitation on traffic generation; the appearance of such structures if used for residential use would not be any different from the appearance in relation to the business".

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 Appellants have failed to produce documentation for permits for these structures; staff has not found any record of application for development permits for these structures; 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.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" (Exhibit "K").

REQUIRED ACTION:

The CDRC 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 Land Use Administrator's decision to deny the modification of the home occupation business license for Windmill Water Inc.: 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 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; 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 has 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. In support of the Land Use Administrators decision staff recommends **denial** of the Appellants request and solicits the support of the County Development Review Committee 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" – San Pedro Boundaries
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" – Letters of Support
Exhibit "O" – Letter of Objection and Photos
Exhibit "P" – April 21, 2011, CDRC Minutes