



# Agenda

CITY CLERK'S OFFICE

DATE 7.16.14 TIME 2:00pm

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**BOARD OF ADJUSTMENT**  
**Tuesday, August 5, 2014 at 6:00 P.M.**  
**200 Lincoln Ave. Santa Fe NM**  
**City Council Chambers**

- A. ROLL CALL
- B. PLEDGE OF ALLEGIANCE
- C. APPROVAL OF AGENDA
- D. APPROVAL OF MINUTES: Minutes of April 1, 2014
- E. FINDINGS/CONCLUSIONS: Case No. 2014-17 Galisteo Street Special Use Permit
- F. NEW BUSINESS

1. **Case #2014-68. 121 Siringo Road Special Use Permit.** Christian Life Fellowship, Inc., request a Special Use Permit to include a day care, pre-school and on-line training for grades 1-12. The property is zoned R-1(Residential-One dwelling unit per acre). (Dan Esquibel, Case Manager)
2. **Case #2014-69. 621 Old Santa Fe Trail Special Use Permit.** Wayne Lloyd, requests a Special Use Permit to allow a restaurant use. The property is zoned RC8AC (Residential Compound Eight dwelling units per acre with Arts and Craft Overlay). (Dan Esquibel, Case Manager)

- G. STAFF COMMUNICATIONS
- H. MATTERS FROM THE COMMISSION
- I. ADJOURNMENT

**NOTES:**

New Mexico law requires the following administrative procedures be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearing before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to cross-examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

**DISCUSSION ITEMS AND ACTION ITEMS**

17. Update on Legal Action(s) by Wild Earth Guardians filed against the US Army Corps of Engineers and Bureau of Reclamation regarding Endangered Species Act issues in the Middle Rio Grande. (Shannon Jones and Kyle Harwood)
18. Request for approval to create, post, and fill an Anti-Graffiti Program Manager position. (Lawrence Garcia)

**MATTERS FROM THE PUBLIC**

**MATTERS FROM THE CITY ATTORNEY**

**ITEMS FROM STAFF**

**MATTERS FROM THE COMMITTEE**

**NEXT MEETING: Wednesday, September 3, 2014**

**ADJOURN**

**TOUR WILL BEGIN AT 5:30 PM**

**PERSONS WITH DISABILITIES IN NEED OF ACCOMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 505-955-6520, FIVE (5) WORKING DAYS PRIOR TO THE MEETING DATE.**

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Tuesday, August 5, 2014**

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**MINUTES OF THE MEETING OF THE  
BOARD OF ADJUSTMENT  
CITY COUNCIL CHAMBERS  
SANTA FE, NEW MEXICO  
Tuesday, August 5, 2014**

**A. CALL TO ORDER AND ROLL CALL**

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Gary Friedman, Chair, at approximately 6:00 p.m., on Tuesday, August 5, 2014, in the Council Chambers, City Hall, Santa Fe, New Mexico.

**MEMBERS PRESENT:**

Gary Friedman, Chair  
Coleen Dearing  
Patricia Hawkins  
Douglas Maahs  
Donna Reynolds  
Daniel H. Werwath

**MEMBERS EXCUSED:**

Rachel L. Winston, Vice-Chair

**OTHERS PRESENT:**

Zachary Shandler, Assistant City Attorney  
Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division  
Matthew O'Reilly, Director, Land Use Department  
Melessia Helberg, Stenographer

There was a quorum of the membership in attendance for conducting official business.

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA**

Mr. Esquibel noted a correction in the caption of Case #2014-69, as follows: "....Wayne Lloyd, Agent for Orchard Metal Capital requests...."

Mr. Esquibel noted there is a letter in the packet from the Applicant requesting indefinite postponement so they can resolve some issues.

**MOTION:** Douglas Maahs moved, seconded by Donna Reynolds, to approve the Agenda, as amended

**VOTE:** The motion was approved unanimously on a voice vote.

**D. APPROVAL OF MINUTES – April 1, 2014**

**MOTION:** Douglas Maahs moved, seconded by Donna Reynolds, to approve the minutes of the meeting of April 1, 2014, as presented.

**VOTE:** The motion was approved unanimously on a voice vote.

**E. FINDINGS/CONCLUSIONS: CASE NO. 2014-17. GALISTEO STREET SPECIAL USE PERMIT.**

A copy of the City of Santa Fe Board of Adjustment Findings of Fact and Conclusions of Law, in Case #2014-17, 2095 Galisteo Street Special Use Permit, is incorporated herewith to these minutes as Exhibit "1."

**MOTION:** Coleen Dearing moved, seconded by Patricia Hawkins, to approve the Findings of Fact and Conclusions of Law in Case No. 2014-17, Galisteo Street Special Use Permit, as submitted by staff.

**VOTE:** The motion was approved unanimously on a voice vote.

**F. NEW BUSINESS**

1. **CASE #2014-68. 121 SIRINGO ROAD SPECIAL USE PERMIT. CHRISTIAN LIFE FELLOWSHIP, INC., REQUESTS A SPECIAL USE PERMIT TO INCLUDE A DAY CARE, PRE-SCHOOL AND ON-LINE TRAINING FOR GRADES 1-12. THE PROPERTY IS ZONED R-1 (RESIDENTIAL – ONE DWELLING UNIT PER ACRE). (DAN ESQUIBEL, CASE MANAGER)**

A Memo dated July 23, 2014 for the meeting of August 5, 2014, with attached letter from Christian Life Fellowship, to Board of Adjustment, from Dan Esquibel, Land Use Planner Senior, regarding Christian Life Special Use Permit, indicating the Applicant is requesting an indefinite postponement of this case, and that the Land Use Department recommends postponement in this case, is incorporated herewith to these minutes as Exhibit "2."

2. **CASE #2014-69. 621 OLD SANTA FE TRAIL SPECIAL USE PERMIT. WAYNE LLOYD REQUESTS A SPECIAL USE PERMIT TO ALLOW A RESTAURANT USE. THE PROPERTY IS ZONED RC8AC (RESIDENTIAL COMPOUND EIGHT DWELLING UNITS PER ACRE WITH ARTS AND CRAFT OVERLAY). (DAN ESQUIBEL, CASE MANAGER)**

A Memorandum prepared July 23, 2014, for the August 5, 2014 meeting, with attachments, to the Board of Adjustment, from Daniel A. Esquibel, Land Use Planner Senior, regarding Case #2014 Old Santa Fe Trail Special Use Permit to allow a restaurant use, is incorporated herewith to these minutes as Exhibit "3."

A copy of a letter dated July 22, 2014, to Mr. David Lamb, Orchard Metal Capital Corp., from Frank T. Herdman, regarding this case, submitted for the record by staff, is incorporated herewith to these minutes as Exhibit "4."

A copy of a letter dated July 28, 2014, to Dan Esquibel Land Use Planner, from L.R. LaRoche, regarding this case, submitted for the record by staff, is incorporated herewith to these minutes as Exhibit "5."

A copy of the Annotated Site Plan, 621 Old Santa Fe Trail, submitted for the record by Frank Herdman, is incorporated herewith to these minutes as Exhibit "6."

Three color photographs of the area, submitted for the record by Frank Herdman, are incorporated collectively herewith to these minutes as Exhibit "7."

A copy of photographs 3 color photographs of the Acequia Madre at Halona Street, submitted for the record by Philip Bové , are incorporated collectively herewith to these minutes as Exhibit "8."

A copy of a letter dated August 5, 2014, to the Board of Adjustment, from Peter B. Komis, President, Don Gaspar Neighborhood Association, submitted for the record by Peter B. Komis, is incorporated herewith to these minutes as Exhibit "9."

A copy of the statement for the record of Dan M. Guy, dated August 5, 2014, submitted for the record by Dan M. Guy, is incorporated herewith to these minutes as Exhibit "10."

A copy of the statement for the record of Dena Aquilina, submitted for the record by Dena Aquilina, is incorporated herewith to these minutes as Exhibit "11."

### **Staff Report**

The staff report was presented by Daniel Esquibel, which is contained in Exhibit "3." Mr. Esquibel added an additional condition which is to screen the trash dumpster which will be located to the back of the property. Please see Exhibit "3" for specifics of this presentation.

**Staff recommendation:** The Land Use Department recommends approval of the Special Use Permit subject6 to conditions listed below:

1. Applicant shall provide 4 accessible parking spaces with one van accessible parking space to be ADA compliant and all parking shall be developed in compliance with 14-8.6, "Off-Street Parking and Loading."
2. Applicant shall install 15 bicycle parking spaces.
3. Shall Comply with International Fire Code (JFC) 2009 Edition. Any change or modification of use shall be in compliance with current IFC 2009 Code requirements.

### **Public Hearing**

#### **Presentation by the Applicant**

**Wayne Lloyd, 100 N. Guadalupe, Agent for the Applicant was sworn.** Mr. Lloyd said, "We've read the conditions. I think two new ones, we agree with those conditions. I have a lot of information that may or may not be relevant, depending on what this Board chooses to hear about the dedicated and undedicated portion of Halona Street and the width of that, but I'd rather not go into all of that until either this Board thinks that's appropriate, or I'm responding to the neighborhood."

Chair Friedman said that is fine, and asked if he would give an overview of the project.

Mr. Lloyd said, "There are three properties, or three buildings at the property of 621. The second building, that used to be the old bicycle rental shop, has been vacant now for a number of months, and there have been several inquiries for restaurant use. As you know, restaurants are allowed under a Special Use Permit. In fact, 613, the building next door, or just north, used to be the bookstore and restaurant. Just south of that, used to be Rincon del Oso that operated for a number of years. So, there is a history of restaurants in the area. The owner of this property feels that they can't seriously promote the building use as a restaurant until they have a special use permit. There is no point in going through that discussion with various tenants if we can't go in there."

Mr. Lloyd continued, "We have met with the City staff of the various departments, the Traffic Department. You heard the report. The report is for a recommendation for approval. We do not have a restaurant yet identified. We've talked to 3 or 4 different ones, but until this goes in place, we can't have serious discussions about those. So this is simply allowing us to have further discussions with potential restaurants."

#### **Questions by the Board**

- Mr. Werwath noted there is a letter from the Homeowners Association in the packet claiming the Applicant intends to make use of a portion of an easement to which you don't have legal access. He asked Mr. Lloyd to address this in respect to his application.

Mr. Lloyd said, "We have a recorded easement onto 613 and that has been in place for about a year. So coming out of the east end of the property, and Mr. Chair, I'm happy to drop "this" off. *[Inaudible here because Mr. Lloyd was away from the microphone]*

Chair Friedman said, "Are you saying 'this' is an easement through Halona."

Mr. Lloyd said, "It is an easement onto 613. That does not grant an easement into any other portion of Halona. Our understanding is that that it is an undedicated portion of Halona Street which the City uses to collect trash and anyone right now can drive in there without any special easement or the granting of an easement. So people can drive into 613 anytime they choose. To my knowledge, that's not private property, but I could be proved wrong. My understanding has been, both from the City and how that property has been used, is it is an undedicated portion of a City street. That's where trash collection is done, and where people have access to all of those properties."

- Chair Friedman asked, "Currently, how are people accessing that overall property and the other buildings on the property. How do they access those."

Mr. Lloyd said, both from Halona and from Old Santa Fe Trail.

- Chair Friedman said, "In the event you didn't have access off Halona, you would still have access to the property from Old Santa Fe Trail."

Mr. Lloyd said, "Yes, and I think that's the way the City staff has reviewed 'this,' is they have concerned themselves with the access to Halona Street."

- Ms. Hawkins asked what is now in Building 1 and in Building 3.

Mr. Lloyd said Building 1 is completely occupied by Lockwood-Albright, which is a lighting and hardware company, and they've been there about 20 years. Building 2 is empty. Building 3 has a painting studio in it, an artist that does paintings of pets. Actually Building 2 is not empty. Building 2 has one office where a State Farm Agent is, and there is a bead lady that is in a portion of it, but the larger portion is empty. Then there are two different art studios in Building 3, and a portion of that building is also vacant."

- Chair Friedman asked Mr. Lloyd to speak to the issue of noise in the outdoor courtyard, noting he saw in the application that there would be some tables outside under the current plan.

Mr. Lloyd said, "I would have to unroll my drawings so you can see that. So, Santa Fe Trail is out 'here.' Building 1 is 'here,' which is where Lockwood-Albright is. Building 2 is 'here,' and there is one tenant in 'this' space, and another tenant 'here.'"

- Chair Friedman said, "Show us visually where the restaurant is going to occupy, which buildings."

Mr. Lloyd said, "It would occupy "this" building. The outdoor eating area would be 'this' portion between Building 1, 2 and 3, so it's fairly tucked away here. The most recent addition to Building 3 has been 'this' row of garages. So, any outdoor eating space exists in 'here,' so whatever noise that 25 or 30 people would make in the summertime is shielded on all almost all sides."

Chair Friedman said, "And the Applicant is okay with there being no amplified noise."

Mr. Lloyd said yes.

Chair Friedman asked, "Is there going to be any music at night that's amplified."

Mr. Lloyd said no.

- Ms. Hawkins, "I don't know how you can say no, when you don't have a tenant yet and you don't know what the tenant will want to do."

Mr. Lloyd said the owner can put that restriction on the tenant.

- Ms. Hawkins said, "The space between the garage, what is it, Halona Street, what is in there."

Mr. Lloyd said a parking lot with 2 existing trees.

- Chair Friedman said, "As far as residential homes that are nearby, does 'that' show where they're located."

Mr. Lloyd said, "Well, 'this is Kitchens by Jeanné. 'This' is a residence, 'this' is a residence, 'these' are residential over 'here.' 'This' is commercial. 'This' is residential."

- Ms. Dearing asked, "Where are the residences, what type of fencing or privacy or walls do they have existing to address any noise that might be coming from that area."

Mr. Lloyd said, "There are several different types of walls, actually 'this' house is exposed completely, it's built to the property line. Then there is coyote fencing mostly along the south side, all along the east side, all the way to 'this' corner, and 'this' is coyote as well on the north side. All of these are between 4 and 6 feet high."

- Ms. Dearing asked if this includes the wall where the residence actually abuts.

- Mr. Lloyd said, "Here, there is no wall. They're built to the property line."

- Mr. Maahs said, "Mr. Esquibel, this is concerning this letter that we received from the legal firm, Katz, Ahern, Herdman & MacGillivray. It does claim that this is a private easement on Halona Street, and that there is no documentation of allowable access for anybody coming out of 621 through 613, to allow them to use that. Can you elaborate on that please."

Mr. Esquibel said, "I received the same letter. Unfortunately, when it comes to the private easements, the City tends to stay out of those private issues, and allows the applicant and the concerned neighbors to work that out for themselves, as the City does not want to get in such a private matter. So if they do have access, or if they don't have access, that would be between the applicant and the Neighborhood Association to work out."

- Mr. Werwath asked, "Does anyone understand.... the letter from Katz Ahern says that the 20 foot wide private easement located along the western boundary of the parcel on which the condominium is located. I believe.... is that just referring to what shows on our...."
- Chair Friedman said, "Mr. Herdman can elaborate on that more, he's here, but I think the Acequia Compound Condominium is on the other side..."
- Mr. Werwath said, "I'm just interested to know what easement we're talking about."
- Chair Friedman said he is going to reserve that for Mr. Herdman's comment.
- Mr. Werwath asked, "Staff Condition on 15 bicycle parking spaces. It seems like more bike parking than I've seen anywhere. What's with this."

Mr. Esquibel, "We use the standard chart at the back of the Code in the appendix. And it identifies the number of bicycles commensurate to the number of total parking spaces. So it's a set number based on how many parking spaces they have."

- Mr. Werwath said then that number exceeds the require number of parking spaces, based on the actual number of parking spaces present.

Mr. Esquibel said, "I used the proposed existing number of parking spaces. I understand that number did change when they put some loading facilities in. It dropped, but because there's a range within that, I still think the bicycle parking will fall within that range. As long as they meet that table, the standard in the table, I think we'll be okay with that and the actual number in and of itself, if we can condition to meet that table in the back then that will suffice."

- Chair Friedman quoted from the Staff Report, "The applicant's submittals do not include a proposal for amplified music." He asked if the request is approved, does this mean they would have to seek a variance. He noted that the Arts & Crafts District allows amplified music and live entertainment until 10:00 p.m., under the Code.

Mr. Esquibel said, "As a special use permit in an Arts & Crafts District, it is highly regulated in order to avoid having a bar, so it was not included as part of the application. As you know, a special use permit, the old special exception, is very specific to the approval that you get. What you see is what you get. If they didn't apply for it, it's not approved, and they have to apply for it if they're going to do it afterwards. So, if it is on their application and they bring it in later, they have to come back to the Board for a re-approval."

- Chair Friedman said, "That's what I was concerned about. I wanted to make sure. The concerns of the residents are noise and traffic. This approval does not allow amplified music is what we're saying. I wanted to make that clear. Period."

### **Speaking in Favor of the Request**

*All those speaking were sworn en masse*

**Charlie Goodman, 33 Teddy Bear Trail [previously sworn]**, said he is the owner of 613 Old Santa Fe Trail, and he may be able to shed a little light on the easement and so forth. He said, "This time last year, I purchased the property from the Association of Counties. Prior to my purchase, the Association of Counties granted a permanent easement to 621 Old Santa Fe Trail across the back side of my property so they could do the construction they were doing, so construction vehicles could get in and out of there. I'm not familiar with the easement that they got at that time. But when I received all my documentation on the purchase, the dedicated portion of Halona ends at the pavement, which is on the north side of Acequia Madre, not Acequia Madre the street, the actual ditch that flows on the north side there. And through my documentation, I have a permanent easement granted back in the days when the building was Ernie's Restaurant. I could go back and tell you who granted that easement, but that's what I have. So it would appear that you are required to have an easement to go across that property. They do require, at my building, access off Old Santa Fe Trail. We can access off Halona as well, because we have a permanent easement, but we have a one way, so if you enter on Old Santa Fe Trail you have to exit on Halona. So that's the way my property is set up. And I would speak in support of the application."

**Michael Ragsdale, owner of the property at 612B, a condo complex [previously sworn]**. He said, "An architect is in one office, my house is another one and there are two rental units, other than those that are in the area as well. I guess I should tell you first why I felt I should come here. I think in things like this, normally the predominance of people that will show up have more people than are against. People that are for the proposal normally don't show up. I didn't at the time when it first happened. I thought, well, this will be a good thing for the neighborhood. What I love about Santa Fe are the vibrancy of the neighborhoods, the availability of all the things in the neighborhood. If I wanted something other than that, I wouldn't have chosen to buy in that area. I truly love the walkability of being able to get to a grocery store or a coffee shop, clothing stores, antique stores and would like to have the addition of a restaurant in the area. I certainly would go to it myself."

Mr. Ragsdale continued, "I think that anyone living in that area also chose it for the vibrancy of the neighborhood. And I've heard talk of the noise. I don't think there would be a significant change in that. I heard arguments at an earlier meeting about delivery trucks coming. Well, we already have those. I've seen the traffic stopped on Old Santa Fe Trail for a truck to back into Kaune's. Okay, well that's Old Santa Fe Trail and not Halona, but that's the street I'm on, and I'm good with it. There's a lot of things that people may not like that happen with commerce. I love the unit that we bought, but I can stand in my kitchen window and look out and see the back wall of Ranger's, if you are familiar with the new/old Santa Fe Trail Garage, and tires stacked up very high behind it. And the realtor even tried to warn me about that. I said well no, that's okay. That just goes with the territory. And some things do with the territory. Now

would I prefer if Ranger decided to move it 3 blocks somewhere else, yes, that would be great. But I was prepared to live with it and deal with it."

Mr. Ragsdale continued, "And I've also hear the argument of more drunks in the area if they get an alcohol permit. I don't have any recent experience with being drunk. But I do have recent experience with eating in restaurants and having a glass of wine with my food. And I never would think of going to a restaurant to get drunk. If I wanted to get drunk, I could get drunk for a fraction of the price at home, rather than go out and enjoy a good meal."

Mr. Ragsdale continued, "And the other thing I can see, I think is going to be a quality restaurant. I think the expense they've gone to to buy this place. So I don't think it's going to be a person would go to to get drunk. I just don't think that will happen. And the other owners of the condo I'm in didn't come this evening. One of them is from Albuquerque, as a matter of fact two are from Albuquerque and one from Phoenix. And of course the other one is an architect and he chose not to come, but they're all in favor of it, but those in favor, like I said, rarely go to the trouble to show up at one of these."

Mr. Ragsdale continued, "I understand that notifications went out to in excess of 120 people on this. I think mostly the people that are against proposal did show up, and if that case, then there is a large number out there that didn't show up, that I suggest are for the proposal. Thank you."

### **Speaking in Opposition to the Request**

*The Chair gave each person 3 minutes to speak to the request with the exception of Mr. Herdman who is representing a group of people*

*All those speaking were sworn en masse*

**Chair Friedman said Frank Herdman does not need to be sworn because he is a member of the New Mexico bar.** He asked that everyone keep to the allocated 3 minutes and to try not to be repetitive and to be courteous and respectful of one another.

Mr. Herdman said he is here on behalf of the Acequia Compound Condominium Owners Association, and there are other members from the neighborhood that he does not represent and they are on their own. He said, "I intend to make a brief presentation that will address two issues of a legal nature and then others will speak."

Mr. Herdman presented information via the overhead using Exhibits "6" and "7," which are incorporated herewith to these minutes.

Mr. Herdman said, "My name is Frank Herdman. I'm an attorney here in Santa Fe, and I'm here on behalf of the Acequia Compound Condominium Owners Association. And just by way of background, you see on your screen a copy of the larger 11 x 17, what I refer to as the Annotated Site Plan [Exhibit "6"], to create this. What we took was the site plan that was submitted by the applicant and we have superimposed it on an aerial photo. There were cars that were inserted to fill the various parking spaces,

so you have the sense of what this would look like and the intensity of the proposed use when the parking lot is full. In addition, I'm going to try to answer some of the questions that were previously asked. The application provides for a proposed new entrance and exit, and you'll see where I have indicated that on the annotated site plan, and I have a yellow arrow showing where that is. And there was a question about the private easement, a portion of Halona Street, and I put a long yellow box around that private easement area of Halona Street. And there was a gentleman who testified moments ago who confirmed that the private easement portion of Halona Street terminates right there. You see where it is cut off at an angle at the upper portion, that's where it crosses the Acequia Madre. That portion, the private easement portion is gravel and then the public road from there on out to Paseo de Peralta is concrete or asphalt, it's paved."

Mr. Herdman said, "So, I'm just going to try to answer some questions and then I'll go to my presentation. The Acequia Compound Condominium is located to the right. On the private easement portion where it says Halona, the Condominium Association that I represent is located immediately to the right. The issue came up whether or not that private easement is located on private property. There is no question that it is. One need only look at the Applicant's own survey from 2011 that confirms that the private easement is located on private survey. This is a copy of the Applicant's own survey, and it confirms that it is in fact located on the very same lot on which the condominium is located. So there is no question about that."

Mr. Herdman continued, "There was some discussion that the owner of 613 Old Santa Fe Trail granted an easement to 621. I know that Mr. Friedman is aware of this because he practices real estate law like I do, but it is very well established in the law that if there is an easement granted for the benefit of one lot and one lot only, that lot owner can then not turn to the lot next door and say, I'm going to grant you an easement to come onto my property and then you can travel down that easement. That is not permitted. Here is a copy of the easement that was granted to 613 Old Santa Fe Trail. That easement states that 'This easement shall serve only the following described property, hereinafter the dominant state,' and it refers to 613 Old Santa Fe Trail. 613 Old Santa Fe Trail can't grant an easement to 621 to use this easement."

Mr. Herdman continued, "And I want to confirm, and you have a copy of my letter that was submitted to the Applicant and it was sent to Wayne Lloyd as well, and he confirmed its receipt. In that letter I said, if you think I'm wrong, tell me. I've received no response. I'm pretty confident that I'm right. I've researched the title records in connection with this easement. That was a private easement that was created in 1955. It was created when property to the east of 621 and 613 was divided in half and an easement was reserved for the southern lot for the benefit of the northern lot. I have seen nothing whatsoever that grants any right to 621 to use that easement. I think you should proceed on the assumption that 621 does not have the right to use that easement, and should proceed on the assumption that the Condominium Association will consider it an unlawful trespass if that is used for the purposes contemplated by this application, and that the Condominium Association will enforce its rights to prohibit the use of that."

Mr. Herdman continued, "Now there was a question about the use of that easement today. Again, the Applicant submitted a plat from 2011. That plat, which is included as part of the application materials, confirms that there was a fence as of 2011 where an opening currently is situated. If there is an opening

there today, it is a relatively new development. So our concern, among others, is that this application was submitted and presumably referred by the Fire Department on the assumption that there are two exits and two entrances. I would ask you to proceed on the assumption that is only one, and it is the one that leads to Old Santa Fe Trail."

Mr. Herdman continued, "The concerns that arise from that, I'm going to touch on this lightly, because others will speak to the issue. But if you look at the photos [Exhibit "7"] that I presented to you, you will see that these are photographs of the gap between Building No. 2, where this business is proposed to be located and the adjacent property boundaries to the south. Pursuant to our measurements, that's approximately 18 ft. 5 in. wide. You can see a photograph of a vehicle as it is passing through that gap. And so the question is, did the Fire Marshal contemplate if a fire truck needs to get to the back of this property, would it be able to do so while patrons presumably are hurriedly trying to escape the property in their own vehicle. I think that photograph answers the question in the negative. But we do not believe the Fire Marshal reviewed it with that in mind."

Mr. Herdman continued, "The other issue that I want to talk to very quickly is parking. The issue of parking is something Mr. Esquibel addressed in his Staff Memo. And if you look at the Staff Memo, I call your attention to page 3 of the Staff Memo. In the Staff Memo on page 3, you will see a chart where Mr. Esquibel did his parking calculations. I mean no disrespect to Mr. Esquibel because of his job and his work, however, I disagree with his calculations. There is a chart and then he refers to the outdoor seating area. The application contemplates that there is going to be a total of, for the indoor dining, it indicates seating for 44 diners. If you count the tables and the chairs at the tables on the indoor portion, it shows 44. For the outdoor dining area, if you count the tables and the chairs at the table as shown on the application, it is actually 42. Calculations for indoor dining seating for 44 diners, count chairs and tables. For outdoor it is 42. The applicant mis-stated, I'm not suggesting intentionally, but the application says only 38 outside. So, the dining capacity for this restaurant is a total of 86 patrons at on time."

Mr. Herdman continued, "If we go back to Mr. Esquibel's calculations, you see that he has used different formulas to calculate the parking requirements for the inside versus the outside dining areas. So, for the inside, you use one space for 200 sq. ft. of net leasable area, and then if you look at the outdoor seating, it says one for fifty square feet of serving area. Now according to this math, this yields 16 spaces for the outdoor seating area, and 10 for the inside. But the outdoor seating area has less seating capacity than the indoor seating area, as indicated on the Applicant's own materials. So we have serious questions about the calculations."

Mr. Herdman continued, "In addition, as I read the Code, the Code requires one parking space for each 50 sq. ft. of serving area for eating and drinking establishments. There is no question that that's what this is. If you look at the application materials, you will see there is a bar that is indicated right inside the front door. And since there are seats associated with it, it says Serving Bar, I read that to be a bar. Maybe it's a place where people will get drinks while they're waiting. Maybe it's a bar where the people will go and they'll eat and will have a drink. It's not at all clear. And I don't think we know because, according to the Applicant, we don't even know who's going to occupy this space. But I submit to you that bar makes this an eating and drinking establishment, and as a consequence, the formula provided in the Code is one space for each 50 sq. ft. of serving area."

Mr. Herdman continued, "However, if you look at the application, there's no commitment as to what is the total square feet of serving area for this particular application. And I submit that because we don't even know who the tenant is, we don't even have the answer to that today. And so the ability to accurately calculate the parking requirements for this application are not possible. There's no commitment by the Applicant against which you could measure the parking requirements for enforcement purposes in the future. Another problem."

Mr. Herdman continued, "There are a lot of loose ends associated with this application, and I submit that without a tenant there are more than I anticipated in terms of loose ends. We really don't know what's going to go on in this place because there is no particular proposed business going in at this time. I want to do some additional math. The application shows seating for up to 86 diners. I estimate at least 10 employees on site running the restaurant – a manager, wait staff, bus people, cook, etc. that's a total of 96. Add a few more patrons hanging out at the bar. You're easily over 100 people in this building. Mr. Esquibel has specified 26 parking spaces for this business alone. 26 parking spaces for 100 people. That's obviously not enough parking spaces for that many people."

Mr. Herdman continued, "So, let me be clear. The people I represent and I expect people I don't represent in the audience today, don't want to see more parking than the 60 spaces already indicated. However, this property will not accommodate what appears to be the required number of parking spaces. And in addition, there is a legitimate concern that this business will have flow-over, that the area on the lot will not be adequate, so parking will spill over into adjacent areas. Where is it going to go. It is going to go onto that private easement, and the Association is going to be put in a pickle where they will have to resort constantly to enforcement actions, moreover, it would be an unsafe condition. If you look at the additional photographs that I presented [Exhibit "7"], there's two photographs of Halona Street. It shows that it is narrow. If there was parking in that area, it would create not only an inconvenience, but a hazard. So for these two reasons, the only two issues that I'm going to address, other will address additional issues, this application should be denied. "

Mr. Herdman continued, "And I want to leave you with, as you listen to individuals in the audience, the standard by which this application needs to be measured, which is an application for a special use permit, is whether it's compatible with the surrounding area. If you look at the site plan, you see that almost 2/3 of this property will be turned into a parking lot. That, in addition to the other disruption associated with this proposed business, I submit to you is not going to be compatible with the surrounding area. But I'll leave it to the others to explain why that's true and why the application should be denied."

Mr. Esquibel said, "And again, I don't think Mr. Herdman had any understanding of what came in afterwards. After the Applicant had submitted the plans, the Memo had already been developed, signed and ready for packaging. The plans didn't come in, we [inaudible] the plans afterwards. Originally, when the Applicant came in, there were 70 parking spaces existing. When the new plans came in which addressed the bicycle parking, the loading facilities, it reduced that total amount to 60. We do calculate the parking area based on a restaurant use, which is one space for every 200 sq. ft. As a direct result of speaking with Mr. Herdman, I did a recalculation using both. Now given the existing parking spaces with the loading facility, the use of one of those garages as a storage area, that brought it down to 60 parking spaces. At one to 50, the Applicant was able to provide me, and it wasn't shown on his plans, but it would

be on page A-101 in your maps of the attachments. But when I asked him what the serving area is and he gave the calculation of 1,155 sq. ft. total, that did not include the bathroom areas and hallways, it just includes the dining area that they provided me. And that was that figure based on one space for every 50 sq. ft., it came out to 23.1. When you add that to the 800 sq. ft. at 16 spaces, you include the existing uses at one to 200. That total amount came to 59.15, which is well within the parking requirements they submitted for the existing parking that was established on the property. So the revaluation, based on the submittal, still meets the requirement based on Chapter 14, and Table 14-8-6-1 in the Appendix.”

**Peter Komis, President, Don Gaspar Neighborhood Association [previously sworn]**, said he had surgery yesterday, because of an accident. He said he wrote a letter which former Councilor Heldmeyer will distribute to the Board which expresses the Association’s concern, noting she also will speak on behalf of the Don Gaspar Neighborhood Association. He said he used to work for Ernie’s, and the customers would park on Santa Fe Avenue if there were no other places to park and he’s concerned about that, because they get a lot of spill in our neighborhood, noting former Councilor Heldmeyer will address those issues on behalf of the Association.

**Susan Staples, owner of 442 Acequia Madre, #6, part of the Acequia Compound, [previously sworn]**, said she is here this evening to speak for herself and other members of the neighborhood. Ms. Staples read from a prepared statement as follows:

*We oppose the approval of this special use permit for an eating and drinking establishment restaurant, at 621 Old Santa Fe Trail, in this historical residential neighborhood. We believe this type of business is incompatible with the homes and the businesses in this very dense community and creates safety hazards, traffic congestion, noise and light pollution. Frank has already addressed several of the easement issues. I would like to talk to the fact that the 20 foot opening that he referenced in this drawing, that is going between 613 and 621, is really inviting, we believe, illegal trespass onto the private easement on Halona. And it is going to encourage short-cut traffic between Old Santa Fe Trail and Paseo de Peralta. This is going to create a horrible traffic situation on Halona and safety hazards for the pedestrians, dog walkers and residents that use this narrow, single lane, unlighted gravel road every day. We are also very concerned about how we will be able to enforce any of that overflow, off site traffic, not only on the Halona no parking fire lane, but also because the entrance to our compound is immediately to the east of that entrance and we expect that we will have patrons wanting to use that parking too. As we pointed out, Halona is a private road, and therefore, it cannot be used to provide the traffic relief for the Applicant’s estimated 315 patron cars that will increase with the restaurant. Vehicles be allowed only to enter where were are showing, over in ‘this’ corner. ‘That’ is the entrance from Old Santa Fe Trail, and that is going to be further complicated by the fact that large, obstructing, commercial vehicles will need to use it to service the restaurant. Access to 621 is already difficult, and it is restricted that you’re not supposed to make a left turn exit. Even David Lamb, the owner of Orchard Metal Capital Corporation and 621 Old Santa Fe Trail has described to other neighbors that ‘this’ entrance is, quote, already dangerous. Also, today, we really emphasized the parking, really, the dramatic change. Today, there are 22 parking spaces. The permitting of a business*

*using 60 or more space is an extreme change, almost tripling the number of spaces, and incompatible with the characteristics of this historic location. As a point of comparison, the parking lot in front of Kaune's Grocery Store has only 45 parking spaces for a retail operation that is surrounded by commercial businesses and not homes. The parking lot in this plan also has a pinch spot which you have, and Frank provided those photos I'm showing [Exhibit "7"]. And you see where the two vehicles come together. At this pinch point only one vehicle can enter or exit at a time, and we believe this is going to cause even additional traffic stack-up onto an already crowded Old Santa Fe Trail and the potential for accidents. In summary, I'll let the rest of our neighbors speak to specific issues, but for many years, 621 has preserved its historic position on Old Santa Fe Trail and respected and balanced the needs of businesses and residents that live and work closely together. A restaurant there would effectively destroy the peace and quiet and safe surroundings that any of us would expect in our back yards and hurt this historic neighborhood. We respectfully request that you deny this application."*

**Dan Guy, 438 Acequia Madre, in Plaza Chamizal due east of Halona and due north of the Acequia Compound [previously sworn].** Mr. Guy read from his Witness Statement. Please see Exhibit "10" for the complete text of Mr. Guy's statement in opposition to this request. Mr. Guy requested that the Fire Marshal reassess the ability of firefighting vehicles to get into 631, especially given the propensity to be a greater risk for fire, and to do a drive-through of a large fire vehicle to see what happens with only one entry and one exit. He said he disagrees with the issuance of a Special Use Permit and asked the Board to deny the Permit, noting he has concerns about the historical nature of the neighborhood into which they bought and in which they reside.

**Philip Bové, 922 Acequia Madre [previously sworn],** said he is a Commissioner on the Acequia Madre and this evening his comments are being addressed primarily to the private land that is part of the Acequia Compound property. He said, "In 1983 the Acequia Madre crossing at Halona Street was by fording the ditch. There was no culverts across the ditch and you had to actually physically drive through the ditch to get to what we called at that time, the Otero property to the rear. And Ernie's Restaurant moved from Canyon Road to 613 Old Santa Fe Trail either late 1983, or early 1984. And at that time, there was rumbling I guess you would say, coming from neighbors and so on about crossing the Acequia Madre being dangerous because they had to go through the water. Sometime in late 1983 or early 1984, and I have in my notes that the City hired a contractor, but I really don't know that for fact, but anyway a contractor had been hired by somebody that installed two culverts in the Acequia Madre. The Acequia Association was not privy to this, either in discussions or in the Acequia Association there was no approval for these culverts to be placed in the Acequia. So, and part of my evaluation of the infrastructure of those culverts, because they put in double culverts. And double culverts, which is the first picture I think that I have handed you [Exhibit "8"], as you can see, in that picture, there is a little bit of debris from our last rainstorm. We have 5 double culverts in the 7 miles of the Acequia Madre. And one of our first concerns after each storm, is to make sure we don't have a blockage at the double culverts because they do catch debris very easily."

Mr. Bové continued, "The existing culverts that were installed, are elliptical culverts and they only have about 50% of the capacity of the culverts that the Association would require. And we would require a 42 x 29 inch pipe arch, and so that's a concern. With the last storms that we've had, there have been good possibilities with the debris and so on of flooding people in that neighborhood from the Acequia Madre at no fault of its own. Because the Acequia Madre also carries trespass stormwater from the City. I mentioned that the culverts catch debris. Culverts also, on the second picture, which is the outflow of the culverts going toward Pino Road, the culverts at the distance that they are set apart, at the height that they were set when the initial culverts were set in, in my estimation, improperly cause erosion and scouring on the west side which means that the Acequia in that first 200 feet is wider and is less efficient for moving water."

Mr. Bové continued, "And my concern is that additional traffic will cause failure of the culverts, especially if there are large trucks. The culverts replace only have 12 inches of earth cover which is the bare minimum for age 20 loading, and in a time that has been less than because of mud puddles and scouring on the surface of the driveway. The Homeowners Association now takes pretty good care of that, but the Acequia Madre Association's feel is that if there is going to be additional traffic on this traffic easement, that the Acequia Madre Association wants the infrastructure of the culverts to be replaced with culverts that we would specify before additional traffic is allowed on the easement."

**Richard Alford, 413 Arroyo Tenorio [previously sworn]**, said he and his wife Jane are year round residents at 413 Arroyo Tenorio. He said, "The development of 621 Old Santa Fe Trail, as proposed, will significantly interfere with our sleep, the quality of life as well as our ability to enjoy our home. Our property abuts the southeast corner of the property of 621. I have about 60 or 70 feet of frontage between the south side and the east side. Our bedroom directly overlooks one of the proposed dumpsters. The dumpsters impose a variety of burdens on us as homeowners and residents as well as upon our neighbors. The burdens include noise, vermin, odors. There are other problems. Cars and trucks of patrons, employees and suppliers would be coming and going well beyond normal business hours as well as on weekends. We don't object to a business, but this is something beyond simply a business. In addition, the noise from the proposed outdoor seating area would be primarily in the evenings. The proposed lighting scheme in the parking area, as well as the headlights of patrons and employees would also pose a problem. The sale of alcohol will create an additional set of problems, including noise and the potential for DWI accidents, particularly at closing time. It is both desirable and entirely reasonable to require the developer to take into account the nature of the immediate neighborhood on the south and east sides of 621, as well as a neighborhood more broadly.

Mr. Alford continued, "At a follow up meeting to the Early Neighborhood Notification meeting in the architectural office, the architect agreed to move the dumpsters and to use light proof barriers to prevent headlights from shining into the windows and back and front yards of residences. However, the plan submitted does not reflect any of those changes. At the post-ENN meeting, the architect also indicated the light poles would be 14 feet high. Homes bordering and overlooking the parking lot will suffer significantly from this intrusive light pollution in their personal interior and exterior spaces. Also the plan does not mention any effort to cap or mitigate the light or noise generated by the proposed establishment or its patrons."

Mr. Alford continued, "A plan for the site can be structured to allow for a business that does not necessarily degrade the quality of life of the neighborhood residents and is compatible with historic character of the neighborhood. The architect's position to date is that any accommodation to the concerns of the residents would prevent the development of the site. If the business is not viable without outside seating as well as the sale of alcohol, and if such businesses are unwilling to limit hours of operation or to mitigate negative externalities, such as traffic, noise, lights, etc., then that type of business is inappropriate at 621 Old Santa Fe Trail. It is Old Santa Fe Trail. It is not Cerrillos Road. I am sure that Santa Fe can accommodate such businesses at more appropriate sites. I respectfully submit that this application should be denied."

**Sheila Perot, 621 Halona Street [previously sworn]**, said she and her husband own 621 Halona. She also supports many of the concerns brought up tonight, and respectfully asks the Board to deny the application. She said they also have a master bedroom looking right out from a second story, and this would look out from basically the site of the new dumpster. She said "after you got done with him the first time, he moved it right below our bedroom window. And that is literally 20 feet from the outside of our wall to what they call the coyote fence." No amount of screening will help them with the vermin and pests, odor and noise of the garbage being there. She said any use of Halona Street connected with this use creates an untenable situation. She said currently it is a quiet, private, dead-end street, which you are turning into a very busy street which will be extremely dangerous for pedestrians. She is concerned about combining cars, intoxicated customers and bicycles "all in one soup does not seem to be a very good idea."

**Tom Davis, 444 Acequia Madre, Unit #4 [previously sworn]**, which is on the other side of Halona right across from 613. He said his house is 40 feet from the entrance to the back side of the property which means he is 42 feet from the trash, and stench that will come from the trash will waft into his house. He has outdoor seating and an outdoor dining area which will be ruined when the wind is blowing in the wrong direction. He also has 12 windows facing Halona – his entire living room and dining room. He said he will have a wonderful view of the spectacular proposed parking lot and the tops of the cars, not to mention the light intrusion from the proposed light poles in the parking lot. He said, "I would propose that you deny this application for a number of reason people have already talked about, but also the fact that it is not appropriate to the historical east side of Santa Fe."

**Jeanné Sei, owner of 631 Old Santa Fe Trail,[previously sworn]** which is the building on the south side of the proposed restaurant. She said she has occupied the building and run a business in this location since 1999. She said she has observed a number of factors that make the location of the proposed restaurant inappropriate and unacceptable. Her first concern is for the safety of the ingress and egress to the proposed restaurant. Ms. Sei indicated the location of her property on the overhead, noting cars will be coming onto her property. She has witnessed treacherous maneuvers by drivers trying to turn onto Old Santa Fe Trail, north or south. The existing utility poles and the old buildings impair anyone's ability to get in or out safely. She said Old Santa Fe Trail is a substandard street and one of the busiest downtown, carrying about 13,000 vehicles a day and worse during tourist season. She said Old Santa Fe

Trail operates at an unacceptable level of service, and adding more traffic to this failing street is a bad idea and make existing traffic safety hazards even worse. She said entering or exiting this narrow drive in the presence of people speeding down Old Santa Fe Trail is dangerous. Last week a traffic accident immediately in front of her office shut down Old Santa Fe Trail for hours. She has attempted to get speed controls on the street to no avail."

Ms. Sei continued, saying the history and character of this neighborhood was developed long before the Code came into effect, and it has small lots with a mix of small homes and low density office and commercial uses. She said new uses should fit with the existing character of the neighborhood. She said McDonald's would be radically different than the long standing uses of this space, and so would a restaurant that generates 3 or more times the amount of traffic until late hours. It would be incompatible with the character and historic value of the area. She is concerned about approving a restaurant without knowing what it is going to be, which she believes is irresponsible. She said overflow clients gravitate to the 4 limited spots she has for her patrons behind her building, and access to those spaces frequently are blocked by UPS and FedEx Trucks. She is concerned about service vehicles and garbage trucks and restaurant patrons for the proposed restaurant. She said the drive accessing the parking lot of the proposed restaurant, as shown in the proposed layout is inaccurate. It may be 14-17 feet wide, but two cars passing in opposite directions "is not going to happen," unless both cars are Mini Coopers. She implored the Board to "reconsider the approval of this proposed restaurant for the reasons stated. It is incompatible with the historic area, in an unacceptable location and totally an inappropriate use of a valued space."

**Former Councilor Karen Heldmeyer, 325 E. Berger [previously sworn]**, said she is speaking on behalf of Peter Komis, 610 Don Gaspar, and both are speaking for the Don Gaspar Neighborhood Association, and read Mr. Komis's letter into the record in opposition to this request, and in support of "the immediate neighbors in their attempts to decrease or eliminate the impacts that such a project would have in the neighborhood." Please see Exhibit "9" for the complete text of the letter.

Former Councilor Heldmeyer said, "While I was on Council, there was a very similar case that came up, where a commercial property wanted to use what was a residential easement. And the City Council postponed a decision on that case until the easement questions went through District Court, where they languished for years until, unfortunately, all of the principals died. So, hopefully that won't happen here. Thank you."

**Dena Aquilina, 327 Sanchez Street, [previously sworn]** read a statement into the record in opposition to this request, and said "We urge you to recognize that this special exception is a wholly incompatible use in this neighborhood." Ms. Aquilina said she has served on the Board of the Old Santa Fe Association and is a past president as well. Please see Exhibit "11" for the complete text of Ms. Aquilina's statement.

**John Penn LaFarge, 647 Old Santa Fe Trail [previously sworn]**, said he lives 4 doors to the south of the property. He also is a member of the Historic Neighborhood Association Board, and a Past President. He said the Historic Neighborhood Association is the neighborhood within which this property lies. He said, "Most of the points that I would make have already been made, so I will say merely this, that I have lived on my property all of my life. I have seen all the restaurants that have been mentioned and others, come and go since the 1950's. And it is my considered opinion, after decades of experience, that aside from the smallest, quietest restaurants, that restaurants in residential districts simply are not a good idea, and I don't think the two work together well. And because of that, I would ask you to deny this application. Thank you."

**Linda Murphey, a local Real Estate Agent [previously sworn]**. Ms. Murphey said, "I just want you to know that I am a real estate agent here locally. I have no dog in this fight. I don't live in the area. I have traversed Halona selling property in not only Plaza Chamizal, but also in the Acequia Madre Compound, as well as 621 Halona. To put the kind of traffic that you're talking about onto Halona, in my professional opinion, is the worst thing that could possibly happen and I'll tell you why. I had a listing at 621 Halona, and when I would come out to try to turn left onto Paseo de Peralta, 3 times, it was almost a t-bone. So what I decided to do, unfortunately for these folks, is to go through Acequia Madre Compound, Plaza Chamizal, out onto Acequia Madre so I had a stop sign, and then I could see both ways. Secondly, I followed the permits for the garages that are not listed on this. The garages seem to be a studio or a gallery and now, there is a rooftop deck. So, wait a minute, where is all that parking happening. Those aren't garages, apparently they aren't garages. So a lot is going on in that area that I think you guys absolutely need to be on top of, to protect the citizens, to protect all of us. And I would respectfully say that you should decline this as well."

**L.R. La Roache, 442 Acequia Madre [previously sworn]**, said he wants to add something to the last speaker's remarks. He went into those garages that are studios, and they're not garages. There is no way they'll be using those unless they change the use. He asked the workmen about it and the deck on top, because he's thinking you could have a dance up there, or you could have music and it's going to float over to his place. Mr. La Roache said he wrote a letter to the Board [Exhibit "5"] and in the letter he explains that his bedroom is on Halona Street, without a wall to protect him, so courtyard to protect him. He is right on the street, and when the garbage truck has to back up the street to Richard's house to get the garbage and then work Halona going back toward Paseo de Peralta, it is about 6:30 a.m., and they always wake him up the day they come, but that's expected. He owned 2 large restaurants for 20 years, and being in the restaurant business is a wonderful thing to do. It is very profitable and it's a great business.

Mr. LaRoache continued, saying, "But a restaurant is not a good neighbor in a neighborhood of houses and bedrooms. It's just a terrible situation. If a year ago, when I bought my home in Acequia Madre Compound, if I had known about that, I would not have bought. That's all I have to say. I hope that you deny this request for the change in the zoning at that location."

**Larry Smith, 442 Acequia Madre, Unit #5 [previously sworn].** He said he is the last man standing and you won't have to hear anybody else tonight. He said, "I would like to ask a question if I might. Perhaps you are as confused as I am. I heard the second person who was in support of the application, indicate that he was really looking forward to the existence of this Restaurant, so that he could have a glass of wine. And yet I heard staff come up with an exquisite explanation as to why the parking was not considered for a drinking establishment, but rather a restaurant. I don't have an answer to that. I don't understand it, but if, indeed, the gentleman that who wants his wine can get his wine, then the calculations by staff are mis-allocated. They may just be wrong. I won't stand here tonight and offer more eloquent description than what the 15 or 16 people who preceded me provide to you with reasons to disallow a restaurant at this location. It is important to us, for the technical reasons, the environmental issues, the width of the 16 foot street. Allowing commercial traffic just doesn't work and I hope you agree. Thank you."

### **Rebuttal by Applicant**

Mr. Lloyd said, "It is clear this is a really emotional issue for the neighborhood, but let me make a few points here, starting with Mr. Herdman mentioning the Fire Department. And the question was whether the Fire Department did the right thing with this 18 foot 5 inch distance between Building 2 and the property line. There are portions of Acequia Madre, a paved street, curbed, that are 15 feet 8 inches. Fire trucks go down Acequia Madre. I've measured them personally. The typical requirement for the Fire Department is 19 feet, so at 18 feet 5 inches (8 inches?), they're 7 inches short, but that is still a much wider distance than some of the public streets in Santa Fe, including Acequia Madre, where traffic passes each other every day. So I have diagrams. The narrowest point on Halona, right before the culverts at the Acequia is 15 feet 6 inches, 2 inches less than the public street of Acequia Madre. And I've diagrams if you want to see them, but while there's been contention that two cars can't pass, we've drawn to scale standard size cars and one example of an oversize car and a regular car, and there is sufficient room. A typical garage door for a two car garage is 16 feet wide, so people park in those all the time. So the space exists and it happens all the time on Acequia Madre, which is a much greater traveled street."

Mr. Lloyd continued, "Now, I don't think we will resolve tonight, the private issue. The City has taken hands-off on that area, and I think that probably will resolve itself, either by the neighbors who own that private easement, or not. But there was a lot of discussion about the inability to get in and out of Old Santa Fe Trail. That is an argument for another way out, not an argument against. If you did the standard 25 foot cut-off or angle at Santa Fe Trail, the wall at 631 would have to come down. It's too high. And then, on top of that wall, there is landscaping that grows even higher, so there has been nothing done by the neighbor, who agrees that it is a terrible intersection, to help that intersection and to be able to see to the left. I agree, that's a terrible intersection. I've talked to the traffic department about that, and they said, look, we've got any number of streets in the core area that exceed the traffic limit and there's nothing we can do about that. From their perspective, a second way out of this was a benefit for a fire truck that needs to get in and out of there. That's a benefit to have a second way out. Now if 18 feet 5 inches is too tight, then all of the houses that are on Halona Street are even tighter and less able to be protected by fire trucks, because they've got a narrower street. The fact is we have a whole lot of the downtown area that doesn't meet the minimum standards. So, that addresses the fire truck concern."

Mr. Lloyd continued, "The parking issue, I think, was pretty well answered by Dan Esquibel, in terms of what is required for this property. The fact is, that the reason restaurants are interested in this, is that there is parking and there are many restaurants in town that don't have that amount of parking and are parking on private streets. The attractiveness is that the parking exists in a sufficient quantity to allow this to occur."

Mr. Lloyd continued, "There were comments about the maximum number of seating tied to this parking, and the numbers used were having the restaurant completely full. Restaurants should be so lucky as to be completely full all the time, but even at the full capacity, the parking requirements are met."

Mr. Lloyd continued, "Safety hazards, noise, all of those are addressed by the standards and Codes of the City of Santa Fe. I remind you that the staff reviewed this whole submittal and is recommending approval. The lights were brought up at 14 feet high. These were approved by the Historic Board. The garages and that deck had to go before the Historic Review Committee. All of that was approved. Lighting is required to have a cut-off spread of how far the light spreads and it can't go off the property. So the lighting criteria was met, so... those lights are the same lights that are used at the Civic Center with the same cut-off areas. The garages went through the Historic Board, were approved. Yes, there's a deck up there. It met the height standards. It met the Architectural Review Committee's standards. There is an art studio, as I mentioned earlier in Building 3, that is directly attached to the deck that is on top of the garages. Are they allowed to use that. Of course, it's an outdoor deck. The culverts, I'm not even sure how to address the culverts. There have been concrete trucks going across there. I've seen a Mayflower moving van all the way back to Halona Street. There's been lots of weight put on those culverts, but I don't think that should be an issue here."

Mr. Lloyd continued, "Lots of discussion about alcohol. Alcohol is a whole separate permit process, as this Board probably knows. You're not approving alcohol for this restaurant. Any restaurant that takes or rents this space, has to apply to the State and obtain a liquor license, and that's a whole separate review process. So, it's not one that if you approve this, you've approved drinking in this establishment. That's not up to you."

Mr. Lloyd continued, "The garbage was brought up as if that is a given location. Quite frankly, we haven't given it a final location, and it can easily and can go right behind Building 3, and where the garages are. So, there was discussion by Solid Waste, that yes they want a wall around that and gates on it which is typically done at dumpsters almost anywhere in town, so that's something that's easily relocated to the best advantage of all of the neighbors."

Mr. Lloyd continued, "I think many of the arguments used to discourage the use of Halona Street and then to regard the ingress and egress of Old Santa Fe Trail not working, is an argument against having a second ingress/egress."

Mr. Lloyd said, "But I would close by saying the owner of this property does not want a McDonald's or any kind of second rate restaurant facility. They're interested in renting this space to a restaurant that people would be proud and delighted to go to, a high end restaurant. They're turned down already a couple of different people, not only because we don't have the Special Use Permit, but because they were

just incompatible with the type of level of restaurant that the owner would deem appropriate. So with that, I would just remind the Board that this use is allowed in this District under a Special Use. I've met with all of the various departments of the City, and the staff has recommended approval for this use. Thank you."

Ms. Dearing said, "It was brought up by one of the opponents that you had an Early Neighborhood Meeting where they had discussed the lights that would shine into their windows from headlights as people drive in and out of the establishment, and you had come to some sort of an agreement on that, but it's not reflected on the plan. Can you address that please."

Mr. Lloyd said, "Yes, I absolutely agree that right now.... the coyote fence and what I understood that applicant and where he lived, while it is a coyote fence, it has silver lace growing all over it. So what I said was, we can double the amount of pickets to that coyote fence, but quite frankly it wouldn't change what's there. I'd have to cut off all the silver lace that has taken years to cover that. I don't think headlights will shine through there, but the owner would be happy, and if I've got the wrong location, if it's on the other side, then I'm happy to stand behind what we said the owner would be happy to stand behind what we said, which is double the thickness of the coyote pickets, and put one of those between each of the other ones."

Chair Friedman asked, "I just want to clarify what's been talked about, the rooftop deck. Is that deck on the building that's part of the application, or is that another building."

Mr. Lloyd said, "It is attached to Building 3, and that was built in the last year."

Chair Friedman said, "Right, but is it going to be part of the restaurant structure, it's not."

Mr. Lloyd said, "No."

Chair Friedman said, "Building 2 is the restaurant structure, correct."

Mr. Lloyd said, "Yes. It has nothing to do with the restaurant."

Chair Friedman said, "Okay, so an approval does not allow serving on a rooftop deck on the restaurant."

Mr. Lloyd said, "Right."

Chair Friedman said, "Okay. I just wanted to clarify that."

Ms. Reynolds said, "Sometimes we do, because of the density, create a canyon effect and the noise can reverberate and become a problem. How might you address something like that if it did become an issue."

Mr. Lloyd said, "Well, again, we're all speculating on who might go in there. We're not even sure a restaurant will want an outdoor space. But if they do, we've included it, because a restaurant in this area cannot exceed 3,000 sq. ft.. Building #2 is only 2,200 sq. ft. gross area, so the maximum outdoor space that would be allowed is 800 sq. ft., so we put that in, anticipating that a restaurant may, in the summertime, want to have outside space. How they would use that is certainly, as discussed previously.... there is no amplification asked for in this submittal. There are noise ordinances in place for the City of Santa Fe, and one would expect any tenant to abide by those ordinances. But I think, given the seclusion of this outdoor area, it's surrounded on 3 sides. So what happens when there is too much traffic noise on highways. They put vertical barriers along the sides so the noise hits that and goes up. That's the whole point of highway sound control. So, in this case, we have 3 walls, actually a 4<sup>th</sup> one since the garage has been build, but it's a little distance away. That sound will hit that and go up. In my semi-trained acoustic control, and I'm certainly not an acoustic expert, but I've had classes in that through architecture school, that noise, unamplified if going to go up, not out. And again, we have City Ordinances in terms of decibel levels and hours that's allowed."

Chair Friedman said, "Yes, of course."

Ms. Hawkins said, "I would like to know, in view of Mr. Herdman's position that you cannot use the easement, and that exit or entrance at the back of the property, if this is still a viable proposal."

Mr. Lloyd said, "The City of Santa Fe and the Traffic Department didn't look at that as even a question as to whether this is viable traffic-wise. They looked only at Old Santa Fe Trail. When I met with John Romero, he said this stands on its own in looking at Old Santa Fe Trail. I think the private easement will resolve itself, presumably by Frank Herdman, and the ability, assuming he's correct and I have no reason to believe he is not, that it's a private easement, then that will resolve itself. This application wasn't based on being able to use that ingress and egress. The owner believes that exists and he has been using it for the past year."

Mr. Maahs, "I just want to double-check what you're telling us. We have a proposed traffic impact of Building #2, on T-101 here that we're looking at, that clearly delineates the number of cars per week, per hour, at peak, etc., onto Halona, and you're saying that the City did not consider this at all as part of this entire plan, that the plan stood on its own."

Mr. Lloyd said, "We did that completely. We had an Early Neighborhood Notification meeting, there were certainly questions about much traffic do you think this is going to generate. So we did a proposal, estimated what we believed would be the traffic generation, and certain amount of that would continue to go out onto Old Santa Fe Trail. And we assumed, based on how horrible it is to pull out onto Old Santa Fe Trail that, given an option, people would take the safer route. So we put about 89-90% of that traffic going out onto Halona, which I happen to believe is the safer way to go out."

Mr. Maahs said, "90% of the traffic from this parking structure is going out there."

Mr. Lloyd said, "That's what I projected, as people.... we can't control that."

Mr. Maahs said he understands that.

Mr. Lloyd said, "But I projected, and wanting to be conservative to not tell the surrounding owners that there won't be traffic on Halona, if I were going to that restaurant, I would want to go out onto Halona, because it's a safer place. I would assume that a whole lot of people would do that, so that's where those numbers got generated from. The Traffic Department is not looking at that. The Traffic Department says Old Santa Fe Trail is a failed street right now."

Mr. Werwath asked John Romero, Traffic Engineer, "Was the assumption the use of the easement to Halona Street a factor in the City's consideration when they analyzed the application for special use."

John Romero said, "No, it was not, Chair Friedman, Board Member Werwath. We compared what a restaurant would generate during the a.m. and p.m. peak hours to what is currently allowed on that property. And according to our estimates, it's marginal. The guidelines we use show an increase in two cars during the p.m. peak. I think the reason for that is that quality sit-down restaurants, their main hours of operation and their main influx of vehicles straddles our rush hours. People don't go to these during the morning rush hour, and in the afternoon, reservations normally are taken 6:00 p.m. to 7:00 p.m., those are the peak times. And those are reflected in the trip generation manual that we use and how it calculates that. So, in our opinion, from a traffic standpoint, whether current allowed uses happen, or a proposed us, it's really not going to affect the number of peak hour cars that come in and out of that site.

Ms. Dearing said, "Probably my biggest concern with this is egress;/ingress off Old Santa Fe Trail. It appears to be quite narrow. And is it possible for two cars, a car pulling in and a car pulling out, to access that property at the same time."

Mr. Romero said, "We did not evaluate that, again, because if there isn't a net change in traffic, again, what we looked at is, by approving this, are we going to have a significant change in traffic patterns and if so, do those need to be addressed. Just total, coming in and out of that site. So whether there are two cars being able to pass, or not being able to pass with the current use, currently allowed uses, or the proposed use, there's really no difference there. We can't close the access. We can't not allow the property owner to have tenants there. So what we limited out evaluation to was, does the proposed special use alter current peak hour traffic patterns, and our answer is no."

**Richard Alford [previously sworn]** said, "I was at the meeting, post the Early Neighborhood Notification meeting at the architect's office. He characterized the meeting as what we agreed, on doubling the pickets on the coyote fence. We didn't agree to anything. He suggested it. It was never satisfactory to me. It was never satisfactory to anyone else. You mis-characterized our position. I would like to point out something else. Let's assume the best as far as Old Santa Fe Trail goes, that Halona Street is allowed as an exit. What you may remember is Sanchez Street was once a through street. It's now blocked at Halona. The residents requested that it be blocked again because cars were going down Sanchez Street to avoid the light at Old Santa Fe Trail at Paseo de Peralta. That was in the 1980's. In 2002, 12 years ago, Arroyo Tenorio, the street I live on, was a two way street. So many cars were turning off Old Santa Fe Trail during rush hour, going down Arroyo Tenorio to beat the light at Old Santa Fe Trail. It finally

stopped when the [inaudible]. Now, if in 2012, people can use Arroyo Tenorio to beat the light at Old Santa Fe Trail, how many commuters are going to go through the lot at 621 onto Halona Street. There is no way it could be stopped. And once that starts, there's room for people on Halona Street, and Sanchez Street, they dead-ended. Arroyo Tenorio has been made one lane. You can't dead end Halona because then people couldn't get in. And if they made it one way, if they could get in, they couldn't get out. So if you make this decision to allow this to go forward, it is the wrong decision and it's going to be very hard to reverse."

### **Final Comment by Frank Herdman**

**Frank Herdman** said, "Just briefly. Mr. Lloyd repeatedly, in his rebuttal, said this complies with current conditions, this complies with current conditions. Your job is to assess compatibility. If all this application was, does it comply with standards in the Code, we don't agree that it does, but if all your job was does it comply with standards in the Code, you would have no job. Why. Because staff would make that determination. That's a development plan. This is a Special Use Permit. Whether or not it complies with the standards in the Code is not the end of your job. The end of your job is whether this is compatible with the surrounding area. You've heard a myriad of reasons why it is not, and those reasons have not been satisfactorily answered or resolved. Lighting, noise, traffic, you name it, stench from the dumpsters, the noise from the dumpsters have not been adequately addressed. This project, the intensity of this as shown on this site plan is clearly and obviously no compatible with this neighborhood. So, we request that you deny the application."

### **The public testimony portion of the public hearing was closed**

Chair Friedman asked the Fire Marshal to comment regarding the narrowness.

Mr. Shandler advised that it is necessary to reopen the public hearing to hear from Fire Marshal Gonzales.

### **Public Hearing reopened**

Chair Friedman said he wants to hear Fire Marshal Gonzales' thoughts on the comments this evening about the narrowness of the potential access for Fire Department emergency vehicles, and what the Fire Department thinks about the application.

**Fire Marshal Rey Gonzales** said, "When I reviewed the packet that was submitted, it was showing an egress/ingress from both locations. The first one met the criteria of 20 feet and it met the 150 feet, so it did not necessarily require the second means of egress. However, if there is an easement that allows us to have accessibility to it, we are going to require it, whether it just be an emergency access easement or a public open easement, because it is a second tool belt in our box, as far as us getting in and out. However, with the submittal that was submitted, a second egress is not required, due to the size of the buildings and the distance from the road."

## The Public Testimony Portion of the Public Hearing was Closed

**MOTION:** Daniel Werwath moved, seconded by Donna Reynolds, to grant the Special Use Permit for 621 Old Santa Fe Trail, Case #2014-69, to approve the Special Use Permit with all conditions of approval as recommended by staff, including four accessible parking spaces, 15 bicycle parking spaces, and screening of the dumpsters, and all changes should comply with the International Fire Code of, 2009.

**FRIENDLY AMENDMENT:** Chair Friedman said he heard Mr. Lloyd say the applicant was willing to make sure the dumpsters were behind Building #3 and behind the wall and the gate, and asked that be added as an additional condition of approval to the motion. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE BOARD.**

**DISCUSSION ON THE MOTION, AS AMENDED:** Ms. Dearing said, "My biggest concern is still ingress, egress and safety. I'm just picturing the way restaurants operated, which in general, people tend to leave and come at kind of the same time. So, I'm picturing a line of cars being backed-up in that driveway without any way to leave, and people waiting to pull in, like happens already all over Old Santa Fe Trail. Whether that's cause to deny the application is a different question, but it definitely concerns me. I actually was in a restaurant downtown, when someone I was at lunch with, we had to call 911. And just watching the fire trucks trying to get into the downtown area is an interesting experience on a busy traffic day. So that's where I'm finding kind of a heartburn with this, is it just seems like the potential capacity....again we don't know what's going in there. We don't know whether they're going to try to get a liquor license, or what's going on, but the potential capacity of people coming and leaving pretty much at the same time, we're thinking lunch and dinner, primarily, is going to pose pretty significant traffic impacts, although it won't be at peak hours. That's my concern, the safety of that ingress and egress."

Mr. Maahs said, "What's been really proposed here, is about the intensity of this plan. And I have to agree, I just feel the intensity of this plan, and given the surrounding conditions, not only to the neighbors on Halona Street and the traffic developing on Halona Street, but the issues with Santa Fe Trail. I just have an issue with how safe this is really going to be, and that its impact is possibly too intense for what's allowed in the neighborhood, not what's allowed, but what the neighborhood can handle. I just see it as a real issue, and it has me really concerned."

Ms. Hawkins said, "I don't think this proposal is compatible with the neighborhood, whether there is a traffic problem, or not a traffic problem, that use is not compatible with the neighborhood as it exists, and I think we would be doing a disservice to approve this plan."

Mr. Maahs said, "And again, I go back to the same thing. It's the intensity of the use I find incompatible as well."

Mr. Esquibel said, "If you will turn to page 4 of my Memo, under number 2, Approval Criteria, under conditions, 'The Land Use Board may specify conditions of approval that are necessary to accomplish proper development of the area and to implement the policies of the general plan.' If you look at all the items listed below, specifically for C. Provisions for vehicular circulation, E. Noise generation and attenuation, H. Special Hazards reduction measures such as slopes, planting, J. Other conditions

necessary to address unusual site conditions, K. Limitations of type, extent and intensity of use and development allowed, O. Establishment of a date for annual or other periodic review at the public hearing. You can have another look at this if you so choose, and any other appropriate conditions and safeguards in conformity with Chapter 14. So, as indicated by the Applicant, if the State does issue a liquor license, whether that be a beer and wine, or they allow a transfer, the Governing Body will approve that liquor license. But here at this body, you have control over the use, whether that be time of operation, beer and wine sales, or any other condition that you deem appropriate under the limitations provided to you under the approval criteria. And you might want to take a look at that while you are deliberating on this case.”

Ms. Dearing said, “So, if I’m hearing you correctly, would we have the capability of reducing the number of seats, dining area, the capacity, or is that something that is within our purview.”

Mr. Esquibel said yes.

Ms. Dearing said, “Because, I respectfully disagree. I think that a little neighborhood restaurant could be quite a nice addition to the neighborhood, but encouraging the walkability factor, people being able to walk to the restaurant, etc. But the scope of this, I think I added up 86 potential, which I understand what you’re saying that we would all love restaurants to operate at capacity, but they don’t usually. But just the ability to do that. That’s my main level of concern, and so, I’m not opposed to the use, because I think it could be a charming addition to the neighborhood, but at the level this is proposed, it is onerous to the neighborhood.”

Mr. Werwath said, “I would just like to point out that obviously, as residents nearby here, you have genuine concerns. You also live next door to a commercial property that historically has been used as a commercial property. I would love for you to sit through a Planning Commission meeting when someone tries to get a high density condo development through development review. It sounds a lot like what you guys are saying now. That is the same exact thing we hear about single family homes when people are trying to do a high density residential compound, like the type that you have. But to me, I look at Old Santa Fe Trail, it is a busy street and it’s a commercial street.”

Mr. Werwath continued, “And I think that hamstringing the owner of this property because of the concerns of an adjacent residential neighborhood is not in the best interest of treating landowners fairly, and in the interest of treating people fairly with the rights to use their property. And I’m sorry that’s offensive to you guys, but I’ve sat through meetings with a bunch of people who have the same types of objections you do, for almost any type of thing from a neighborhood church to something else. And to me, I feel strongly that this use is compatible with the level of intensity of use found on Old Santa Fe Trail, for better or worse, and that’s my opinion.”

**VOTE:** The motion, as amended, failed to pass on a voice vote, with Donna Reynolds and Daniel Werwath voting in favor of the motion, Douglas Maahs, Colleen Dearing and Patricia Hawkins voting against and Chair Gary Friedman abstaining,

**MOTION:** Coleen Dearing moved to grant the Special Use Permit for 621 Old Santa Fe Trail, Case #2014-69, to approve the Special Use Permit with all conditions of approval as recommended by staff, including four accessible parking spaces, 15 bicycle parking spaces, and screening of the dumpsters, and all changes should comply with the International Fire Code of, 2009, with an addition condition that the density of the restaurant be reduced by 30%. **THE MOTION FAILED FOR LACK OF A SECOND.**

Mr. Werwath said it's not our job to plan something else for the restaurant.

*[Ms. Hawkins remarks here are inaudible]*

Chair Friedman said, "You do have the right to limit the usage, the same way if we have a school and a certain amount of people who can attend the school, etc., right. We've done that in the past. But you also can do that. If you're going to do that, I would suggest, I don't know how you're going to allocate the inside and outside seating either. So the other thing would be, you could deny the application and have the Applicant come back and resubmit. You could vote to put it off and give the Applicant an opportunity to come back. The Applicant might not want to do that. These folks might not want to do that."

Ms. Dearing said, "He's willing to do that, he said."

Chair Friedman said, "You will have another hearing, the same way we had tonight, with the same issues, other than the fact that there will be less of an intensity. So, those are alternatives. Any guidance from staff on that."

Matthew O'Reilly, Land Use Department Director said, "I just wanted to point out that the reason that this use is not allowed as a right in the Zoning Code, is because it is special to the particular Zoning District that it is in, requiring your special consideration and approval of its use. There are necessary findings, and one of those is that, as was pointed out, that the Board will need to find that this is compatible. If you find it's compatible, you can impose then these conditions that are listed, any combination, in any number you so choose. You could decide that there is not going to be outdoor music played. You could decide that there will not be outdoor seating and thereby limit the total effect of square footage of the restaurant. You could require that they not use Halona to access the property. You could require that they move the dumpsters. You could require any number of things, if you were inclined to want to approve the application with those kinds of conditions. Or, as the Chair pointed out, you could simply deny the application. So you have a lot of flexibility. And there's a reason for that, because this is a special use in a residential neighborhood, and it requires that you have that flexibility to add those kinds of conditions if you are going to allow this at all."

Ms. Hawkins said, "Could I just call your attention, before we start making more motions, to page 2 of the staff memo, where it says, 'Purpose and Intent..... to allow arts and crafts and other related commercial uses in eligible underlying districts. Within the overlay district, residential and limited office and retail commercial uses are intermixed with small arts and crafts shops, studios and galleries....' The proposal of the Applicant does not seem to meet the purpose and intent of the arts and crafts overlay, in my opinion."

Mr. Maahs said, "I am in agreement with that observation. It just doesn't seem compatible to what this neighborhood is representing. So I would just vote to deny it."

**MOTION:** Douglas Maahs moved, seconded by Patricia Hawkins, in Case #2014-69, to deny the application.

Mr. O'Reilly said, "Mr. Chair, I suggest that the recorder call the roll."

Chair Friedman said, "Just a point of clarification, I typically only vote in the case of a tie. "

Mr. O'Reilly said, "Mr. Chair, that is correct."

**CLARIFICATION PRIOR TO VOTING:** Ms. Dearing said, "Can I ask a point of clarification. If we vote to deny the application, does it stop him from resubmitting with some alterations."

The response indicating it doesn't inaudible, and Ms. Dearing said, "Okay. Thank you."

**VOTE:** The motion was approved on the following roll call vote:

**For:** Coleen Dearing, Patricia Hawkins, Douglas Maahs.

**Against:** Donna Reynolds and Daniel Werwath.

## **G. STAFF COMMUNICATIONS**

Mr. Esquibel said he has no communications.

Mr. O'Reilly said, "Regarding the last case, and procedural matters, of course the Applicant can choose to appeal the decision of this Board of Adjustment. That appeal would be filed with the City Council if they so choose."

## **H. MATTERS FROM THE COMMISSION**

Chair Friedman said, "I want to thank all 3 of you gentlemen for being here tonight, and for your insights and your comments and for helping us get through, which obviously was not an easy decision, so thank you for moving it forward in a positive way."

The Board discussed the next steps.

Ms. Dearing asked, "If they threw out the baby with the bathwater, and came back with a whole new plan, reduced seating capacity, etc., is that an appeal, or do they have to resubmit and go through the whole process again."

Mr. O'Reilly said, for this particular kind of case, there is nothing to prevent the applicant from re-applying with a different kind of plan, or a change plan for your consideration again.

Ms. Dearing asked, "If he would do an appeal, it has to be for what he presented this time."

Mr. O'Reilly said this is correct, reiterating the Applicant has 30 days to appeal to City Council. He said, "The Board will, hopefully, adopt Findings of Fact and Conclusions of Law, regarding this case at your next meeting. After that meeting, they [the Applicant] will have 30 days to appeal your decision to the City Council, if they choose to do so."

Mr. Esquibel said unless the Application which was postponed comes back, he has no cases for consideration next month.

Mr. O'Reilly said a meeting will be scheduled for next month so the Board can act on the Findings of Fact and Conclusions of Law.

It was the consensus among the Board to meet during the noon hour next month to approve the Findings of Fact and Conclusions of Law.

Mr. O'Reilly commended the Board for its deliberations on this case.

Chair Friedman asked if staff could prepare an outline of the litany to be used by Board members in making motions on a case following a public hearing.

Mr. O'Reilly said staff can work on that for the next meeting.

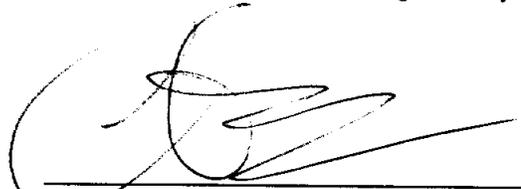
The Board then briefly discussed procedural matters with regard to making findings in cases such as the one this evening, and what is within the purview of this Board in making its decisions.

Responding to a question from the Chair, Mr. O'Reilly said typically the Public Hearing is closed after the last person has testified.

## **I. ADJOURNMENT**

**MOTION:** Douglas Maahs moved, seconded by Daniel Werwath, to adjourn the meeting.

**VOTE:** The motion was approved unanimously on a voice vote, and the meeting was adjourned at approximately 8:40 p.m.



**Gary Friedman, Chair**

  
Melessia Helberg, Stenographer

City of Santa Fe  
Board of Adjustment  
Findings of Fact and Conclusions of Law

Case # 2014-17—2095 Galisteo Street Special Use Permit  
Owner/Applicant—Sangre de Cristo Church

THIS MATTER came before the Board of Adjustment (Board) for hearing on April 1, 2014 (Hearing) upon the application (Application) of Sangre de Cristo Church (Applicant). The Applicant seeks a special use permit for a religious assembly use at 2095 Galisteo Street (Property). The Property is zoned R-1 (Residential—1 dwelling units/acre) and Applicant is requesting to construct an approximately 9,306 square foot structure on 4.23 ± acres (the Project).

After conducting a public hearing and having heard from staff and all interested persons, the Board hereby FINDS, as follows:

FINDINGS OF FACT

1. The Board heard reports from staff and received testimony and evidence from the Applicant. No members of the public interested in the matter spoke at the hearing.
2. Pursuant to Code §14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Code §§14-3.6 (Special Use Permits) and 14-6 (Permitted Uses).
3. Pursuant to Code §14-3.6(B) the Board has the authority to hear and decide applications for special use permits in accordance with applicable provisions of Chapter 14; to decide questions that are involved in determining whether special use permits should be granted; and to grant special use permits with such conditions and safeguards as appropriate under Chapter 14; or to deny special use permits when not in harmony with the intent and purpose of Code Chapter 14.
4. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled “Table of Permitted Uses”, “Religious Assembly” is a permitted use in an R-1 district with a special use permit.
5. The Property is located in an R-1 district.
6. A special use permit is required for the Applicant’s religious assembly use on the Property because this is a new use.
7. Code Section 14-3.6(C) sets out the procedures to be followed prior to the grant by the Board of a special use permit, including:
  - (a) Approval of a site plan and other site development drawings necessary to demonstrate that the Project can be accomplished in conformance with applicable Code standards [Section 14-3.6(C)(1)];
  - (b) Submittal of an application indicating the Code section under which the special use permit is sought and stating the grounds on which it is requested [Section 14-3.6(C)(2)]; and

*Exhibit "1"*

- (c) That a special use permit is limited to the specific use and intensity granted, requiring a new or amended special use permit if the use is changed or intensified [Section 14-3.6(C)(3)].
8. Code Section 14-3.6(D)(1) sets out certain findings that the Board must make to grant a special use permit, including:
  - (a) That the Board has the authority to grant a special use permit for the Project [Section 14-3.6(D)(1)(a)];
  - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(b)]; and
  - (c) That the Project is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project [Section 14-3.6(D)(1)(c)].
9. Code Section 14-3.6(D)(2) authorizes the Board to specify conditions of approval for a special use permit to accomplish the proper development of the area and to implement the policies of the general plan.
10. Code Section 14-3.6(D)(2) includes among the conditions of approval that the Board may specify for a special use permit the provision for and arrangement of parking and vehicular and pedestrian circulation.
11. Code Section 14-3.1(F)(2)(a)(viii) requires an ENN for special use permits and Code Section 14-3.1(F)(4)-(6) establishes procedures for the ENN, including:
  - (a) Compliance with the notice requirements of Code Section 14-3.1(H) [Section 14-3.1(F)(4)];
  - (b) Timing for the ENN meeting and the principles underlying its conduct [Section 14-3.1(F)(5)]; and
  - (c) Guidelines for the conduct of the ENN meeting [Section 14-3.1(F)(6)].
12. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
13. An ENN meeting was held on January 14, 2014 at 2011 Botolph Road; Suite 100.
14. The ENN meeting was attended by the Applicant, City staff, and approximately thirteen other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).
15. The Applicant submitted a site plan and an application indicating the Code section under which the special use permit was being sought and stating the grounds for the request.
16. Board staff provided the Board with a report dated March 26, 2014 for the April 1, 2014 Meeting (Staff Report) evaluating the factors relevant to the proposed special use permit and recommending approval by the Board of such special use permit, subject to the conditions set out in the Staff Report (the Conditions).
17. Granting the special use permit for the Project will not adversely affect the public interest because while use will be intensified as a result of the Project, the massing of the building as single story and the architecture will be similar to existing structures in the area and the Applicant has offered the nearby school an opportunity to handle overflow parking by parking at the Applicant's parking lot.
18. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project in that it will be similar to buildings on adjacent properties.

### CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the Hearing, the Board CONCLUDES as follows:

1. The Board has the power and authority under Code §§14-2.4(C)(2) and 14-3.6(B) and Code §14-6.1(C) Table 14-6.1-1 to grant the special use permit applied for.
2. The special use permit was properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
3. The ENN meeting complied with the requirements established under the Code.
4. The granting of the special use permit will not adversely affect the public interest.
5. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
6. The special use permit granted herewith is granted for the specific use of the Property and intensity applied for and no change of use or more intense use shall be allowed unless approved by the Board under a new or amended special use permit or as otherwise permitted by applicable Code.

**WHEREFORE, IT IS ORDERED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE:**

1. That the special use permit is approved as applied for, subject to the Conditions presented in Staff's report.
2. The special use permit granted herewith shall expire if (a) it is not exercised within three (3) years of the date these Findings of Fact and Conclusions of Law are adopted by vote of the Board, subject to any right of the Applicant under applicable Code to request an extension of such time or (b) it ceases for any reason for a period of three hundred and sixty five (365) days.

\_\_\_\_\_  
Gary Friedman  
Chair

\_\_\_\_\_  
Date:

FILED WITH THE CITY CLERK:

\_\_\_\_\_  
Yolanda Y. Vigil  
City Clerk

\_\_\_\_\_  
Date:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kelley Brennan  
Interim City Attorney

\_\_\_\_\_  
Date:

# City of Santa Fe, New Mexico

# memo

**DATE:** July 23, 2014 for the meeting of August 5, 2014

**TO:** Board of Adjustment

**VIA:** Matthew S. O'Reilly, P.E., Director, Land Use Department   
Tamara Baer, Planning Manager, Current Planning Division

**FROM:** Dan Esquibel, Land Use Planner Senior 

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## CHRISTIAN LIFE SPECIAL USE PERMIT

**Case #2014-68. 121 Siringo Road Special Use Permit.** Christian Life Fellowship, Inc., requests a Special Use Permit to include a day care, pre-school and on-line training for grades 1-12. The property is zoned R-1(residential one dwelling unit per acre).

## RECOMMENDATION

The Applicant is requesting an indefinite postponement of this case. Land Use Department recommends **postponement** this case.

*Exhibit 2'*

**ESQUIBEL, DANIEL A.**

---

**From:** Sue Parks <sue@clsf.us>  
**Sent:** Monday, July 21, 2014 1:57 PM  
**To:** ESQUIBEL, DANIEL A.  
**Subject:** Suspicious URL:RE:Special Use Permit

Hi Dan,

The Senior Pastor and the Board of Elders have decided at this point not to proceed with the Special Use Permit. They would like to put this permit on hold at this time.

They would appreciate, however, a copy of the letter being submitted to the Board of Adjustment so that we would know the items of concern for future consideration.

Thank you for your help on this , I appreciate it.

In His Service,

*Sue*

Susan J. Parks  
Administrator  
121 Siringo Road  
Santa Fe, NM 87505  
[sue@clsf.us](mailto:sue@clsf.us)  
[www.clsf.us](http://www.clsf.us)

# City of Santa Fe, New Mexico

# memo

**DATE:** July 23, 2014 for the meeting of August 5, 2014  
**TO:** Board of Adjustment  
**VIA:** Matthew S. O'Reilly, P.E., Director, Land Use Department *MSO*  
Tamara Baer, Planning Manager, Current Planning Division *TB*  
**FROM:** Dan Esquibel, Land Use Planner Senior *DE*

## 621 OLD SANTA FE TRAIL RESTAURANT SPECIAL USE PERMIT

Case #2014-69. 621 Old Santa Fe Trail Special Use Permit. Wayne Lloyd, agent for Orchard Metal Capital, requests a Special Use Permit to allow a restaurant use. The property is zoned RC8AC (Residential Compound Eight dwelling units per acre with Arts and Crafts Overlay).

### RECOMMENDATION

The Land Use Department recommends **APPROVAL** of the Special Use Permit subject to conditions listed below:

1. Applicant shall provide 4 accessible parking spaces with one van accessible parking space to be ADA compliant and all parking shall be developed in compliance with 14-8.6 "OFF-STREET PARKING AND LOADING".
2. Applicant shall install 15 bicycle parking spaces.
3. Shall Comply with International Fire Code (IFC) 2009 Edition. Any change or modification of use shall be in compliance with current IFC 2009 code requirements.

### I. REVIEW AND EXECUTIVE SUMMARY

Orchard Metal Capital is requesting approval of a Special Use permit to open a restaurant use at 621 Old Santa Fe Trail. The proposed restaurant will be established within an existing 2,200 square foot structure located on the property and include 800 square feet of outdoor seating to be located in a courtyard between buildings 1 and 2 (Reference Exhibit D).

The property is zoned Residential Compound/Eight dwelling units per acre, with an Arts and Crafts overlay. The overlay allows a variety of nonresidential uses including a restaurant use.

*Case# 2014-69. 621 Old Santa Fe Trail Special Use Permit  
Board of Adjustment: August 5, 2014*

*Page 1 of 6*

*Exhibit "3"*

However, restaurant and office uses require review and approval through a Special Use Permit process before the Board of Adjustment (BOA). The primary use criteria for an AC District are identified in Article 14-5.4 "ARTS AND CRAFTS DISTRICT" and 14-6-1-1 note 3 of Chapter 14 SFCC 1987 (below).

**(A) Purpose and Intent**

*It is the intent of the arts and crafts (AC) district to allow arts and crafts and other related commercial uses in eligible underlying districts. Within this overlay district, residential and limited office and retail commercial uses are intermixed with small arts and crafts shops, studios and galleries where the goods traded are custom-produced in small quantities and are often one of a kind; where the arts or crafts are taught to small numbers of people; or where small numbers of persons are engaged in arts and crafts activities.*

**(B) Land Eligible**

*An AC district may overlay any residential district or any portion of a residential district.*

**(C) Uses**

*The allowed principal uses, accessory uses, and special exceptions of the AC district are the same as the underlying zoning district with the addition of those uses specified in the corresponding column in Table 14-6.1-1 (Permitted Uses).*

**(D) Standards**

*The development and design standards within the AC district are the same as the underlying zoning district; however no more than three thousand (3,000) square feet of the gross floor area of any building may be used for nonresidential purposes.*

**14-6.1-1 Note 3**

*Amplified live entertainment or amplified music for dancing prohibited after 10 p.m.*

The building proposed to house the use does not exceed 3,000 square feet nor is there a proposal in the application to increase the size of the existing structure. Additionally, the applicant submittals do not include a proposal for amplified music. The restaurant use will be housed in the building which is slated for interior renovations only. The applicant's proposal identifies that internal restaurant seating will total 44 seats and external restaurant seating will total 38 seats for a total of 82 seats.

**Traffic and Parking:**

Two driveways provide ingress/egress to the property. The primary driveway is located on the west property line providing direct ingress/egress from Old Santa Fe Trail. The secondary driveway is located on the east property line providing direct ingress/egress off of Halona Street. The proposal identifies 3 existing buildings, garage and a total of 71 existing parking spaces (64 in the parking area and 7 in the garage).

The number of required parking spaces is a ratio based on a use factor to net leasable area. The following review is a breakdown utilizing parking requirements for Commercial, outdoor seating (serving area) and residential.

Building	Net leasable area	Use	Required Parking Spaces
Building 1	2040	Commercial (1:200)	10.2 (11)
Building 2	1870	Commercial (1:200)	9.35 (10)
Outside seating	800	Serving area (1:50)	16
Building 3	1740	Commercial (1:200)	9
Building 3	1000	Residential (2 per dwelling)	2
Total			48

In sum, the total number of existing parking spaces exceeds the maximum required for use. The applicant will need to provide 4 accessible parking spaces with one van accessible parking space to be ADA compliant. Additionally, the applicant will be required to install 15 bicycle parking spaces and provide a loading area in compliance with 14-8.6(D) "Loading Standards". All parking shall be developed in compliance with 14-8.6 "OFF-STREET PARKING AND LOADING".

Comments received from City Traffic Engineering reflect direct access from Old Santa Fe Trail and state that "usage will have a minimal immediate impact..." However, "...it may have a cumulative impact as other areas of the city grow or become denser." (reference Exhibit A1.)

**Water, Sewer, Environmental Services and Technical Review:**

City utilities provide service to the property. Water demand for the proposed use was not provided by the applicant. Comments received from the Water Division Engineer state that "The water meter size may need to be evaluated for a different use and backflow prevention and a fire service may be needed." No negative comments were received from the City Waste Water Division, Environmental Services regarding solid waste or Technical Review. (Reference Exhibits A-4.) Additional city review, impact fees and water offset fees may be required at the time of building permit.

**Fire:**

Fire Marshal comments and condition require compliance with IFC 2009 Fire code. (Reference Exhibit A5.)

Lighting and signage were not addressed in the application. Any proposed outdoor lighting or signage will be reviewed through the building permit process.

**Early Neighborhood Notification (ENN):**

An ENN meeting was conducted on May 14, 2014 at 621 Old Santa Fe Trail in the building planned to house the Restaurant use. There were 20 persons in attendance, including the applicant and Land Use Staff. The following concerns were raised (Reference Exhibit C):

- The additional traffic created by the restaurant to Old Santa Fe Trail when Old Santa Fe Trail was already dangerous.
- The small driveway utilized for ingress/egress by the applicant to Old Santa Fe Trail was not safe.
- The increase in traffic generated by the proposal that will be utilizing Halona Street which will produce noise and dust for the neighbors.
- The addition of beer and wine will increase the danger for people traveling on Old Santa Fe Trail and Halona Street as patrons leave the restaurant after they have had alcoholic beverages.

## II. APPROVAL CRITERIA

Per 14-3.6(D): *Approval Criteria and Conditions:*

(1) *Necessary Findings*

*To grant a special use permit, a land use board shall make the following findings:*

- (a) *that the land use board has the authority under the section of Chapter 14 described in the application to grant a special use permit,*
- (b) *that granting the special use permit does not adversely affect the public interest, and*
- (c) *that the use and any associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity of the premises under consideration.*

(2) *Conditions*

*The land use board may specify conditions of approval that are necessary to accomplish the proper development of the area and to implement the policies of the general plan, including:*

- (a) *special yards or open spaces;*
- (b) *fences, walls or landscape screening;*
- (c) *provision for and arrangement of parking and vehicular and pedestrian circulation;*
- (d) *on-site or off-site street, sidewalk or utility improvements and maintenance agreements;*
- (e) *noise generation or attenuation;*
- (f) *dedication of rights of way or easements or access rights;*
- (g) *arrangement of buildings and use areas on the site;*
- (h) *special hazard reduction measures, such as slope planting;*

- (i) *minimum site area;*
- (j) *other conditions necessary to address unusual site conditions;*
- (k) *limitations on the type, extent and intensity of uses and development allowed;*
- (l) *maximum numbers of employees or occupants permitted;*
- (m) *hours of operation;*
- (n) *establishment of an expiration date, after which the use must cease at that site;*
- (o) *establishment of a date for annual or other periodic review at a public hearing;*
- (p) *plans for sustainable use of energy and recycling and solid waste disposal;*
- (q) *any other appropriate conditions and safeguards, in conformity with Chapter 14 or provisions of other chapters of the Santa Fe City Code that regulate development and use of land; and*
- (r) *conditions may not be imposed that restrict the use to a specific person or group.*

### **III. CONCLUSION**

The proposed request is consistent with Chapter 14 for allowed use(s) in an Arts and Crafts Overlay District. The proposed use is an allowed use subject to approval by the Board of Adjustment. No more than three thousand (3,000) square feet of the gross floor area the proposed building is used for nonresidential purposes and the building and use are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity.

The Land Use Department has reviewed the application and determined that it complies with the necessary findings to recommend approval subject to conditions.

These findings include: 1) that the Board of Adjustment (BOA) has the authority under Chapter 14 to grant a Special Use Permit with conditions; 2) the City has reviewed the application for compliance to city standards and that granting the permit does not adversely affect the public interest; and 3) that the use and associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity.

The BOA may specify conditions of approval, including but not limited to those listed from 14-3.6 (D)(2) above.

#### **IV. EXHIBITS**

**Exhibit A: DRT Comments**

1. City Traffic Engineering Division
2. Water Division
3. Wastewater Division
4. Environmental Services
5. Fire
6. Land Use Technical Review Division

**Exhibit B: Maps**

1. Vicinity Map
2. Superimposed Site Plan

**Exhibit C: Early Neighborhood Notification (*ENN*) materials**

1. Meeting notes
2. ENN Guidelines

**Exhibit D: Applicant Submittals**

1. Letter of Application

August 5, 2014  
Board Of Adjustment  
Case # 2014-69  
**621 Old Santa Fe Trail Restaurant**  
**SPECIAL USE PERMIT**

# **EXHIBIT A**

DRT COMMENTS

# City of Santa Fe, New Mexico

# memo

**DATE:** July 15, 2014  
**TO:** Dan Esquibel, Land Use Division  
**VIA:** John J. Romero, Traffic Engineering Division Director *JR*  
**FROM:** Sandra Kassens, Engineer Assistant *SK*  
**SUBJECT:** 621 Old Santa Fe Trail – Special Use Permit. (Case# 2014-69)

---

**ISSUE:**

Wayne Lloyd, agent for Orchard Metal Capital, requests a Special Use Permit to allow a restaurant use. The Property is located at 621 Old Santa Fe Trail and is zoned RC8AC (Residential Compound eight dwelling units per acre with Arts & Crafts Overlay.)

**RECOMMENDED ACTION:**

Review comments are based on submittals received on July 2, 2014. The comments below should be considered as Conditions of Approval to be addressed prior to final approval unless otherwise noted:

1. The Traffic Engineering Division has reviewed the Special Use Permit application. The proposed restaurant use will generate less than 25 peak hour trips; therefore a Traffic Impact Analysis is not needed. This use would generate 16 vehicles per hour (vph) during the PM peak hour; that is 2 more vph than would be generated by an Arts and Crafts Store that is an allowable use under current RC8AC zoning designation. It is understandable, however, that although an increase in usage will have a minimal immediate impact, it may have a cumulative impact as other areas of the city grow or become denser.

If you have any questions or need any more information, feel free to contact me at 955-6697. Thank you.

*City of Santa Fe*  
**memo**

**DATE:** July 8, 2014  
**TO:** Dan Esquibel, Land Use Senior Planner, Land Use Department  
**FROM:** Dee Beingessner, Water Division Engineer   
**SUBJECT:** Case # 2014-69 621 Old Santa Fe Trail

---

There is an existing account for a 5/8" water service for 621 Old Santa Fe Trail. The water meter size may need to be evaluated for a different use and backflow prevention and a fire service may be needed. Fire protection requirements are addressed by the Fire Department.

# City of Santa Fe, New Mexico

# memo

**DATE:** July 7, 2014  
**TO:** Dan Esquibel, Case Manager  
**FROM:** Stan Holland, Engineer, Wastewater Division  
**SUBJECT:** Case #2014-69 – 621 Old Santa Fe Trail Special Use Permit

---

**The subject properties are accessible to the City sanitary sewer system.**

**The Wastewater Division has no objection to the Special Use Permit.**

**ESQUIBEL, DANIEL A.**

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**From:** MARCO, RANDALL V.  
**Sent:** Monday, July 21, 2014 10:33 AM  
**To:** ESQUIBEL, DANIEL A.  
**Subject:** RE: Special Use Permit for 621 Old Santa Fe trail - Revised Site Plan

Dan,

The location for a trash dumpster enclosure will work. I need drawings per City of Santa Fe ord. 21-10; Exhibit A.1 or A.2 ; enclosure spec's on the drawings.

Randall Marco  
Community Relations / Ordinance Enforcement  
Environmental Services Division  
Office : 505-955-2228  
Cell : 505-670-2377  
Fax : 505-955-2217  
[rvmarco@santafenm.gov](mailto:rvmarco@santafenm.gov)

---

**From:** ESQUIBEL, DANIEL A.  
**Sent:** Monday, July 21, 2014 10:12 AM  
**To:** MARCO, RANDALL V ([rvmarco@ci.santa-fe.nm.us](mailto:rvmarco@ci.santa-fe.nm.us))  
**Subject:** FW: Special Use Permit for 621 Old Santa Fe trail - Revised Site Plan

---

**From:** Sheb [<mailto:sheb@lloyd-architects.com>]  
**Sent:** Monday, July 21, 2014 8:21 AM  
**To:** ESQUIBEL, DANIEL A.  
**Subject:** Special Use Permit for 621 Old Santa Fe trail - Revised Site Plan

Dan,

Thanks again for your assistance on Friday.

Attached is the revised site plan. Please let me know if you have any questions.

I also wanted to confirm with you that the only thing needed in the mailed notices is the memo you gave me on Friday entitled "notice for public hearing"

Regards,  
Sheb

Gurushabad Mirando  
Lloyd & Associates Architects  
100 N Guadalupe, Suite 201  
Santa Fe, NM 87501  
Off. # 505.988.9789 x240  
Cell # 505.795.5167

# City of Santa Fe, New Mexico

# memo

**DATE:** July 15, 2014  
**TO:** Case Manager: Dan Esquibel  
**FROM:** Reynaldo D Gonzales, Fire Marshal *RDG*  
**SUBJECT:** Case #2014-69 621 Old Santa Fe Trail

---

I have conducted a review of the above mentioned case for compliance with the International Fire Code (IFC) 2009 Edition. Below are the following requirements that shall be addressed prior to approval by Planning Commission. If you have questions or concerns, or need further clarification please call me at 505-955-3316.

1. Shall Comply with International Fire Code (IFC) 2009 Edition.
2. If there is a change of use or modifications required you may be required to meet all the current IFC 2009 code requirements.

**ESQUIBEL, DANIEL A.**

---

**From:** ZAXUS, RISANA B.  
**Sent:** Wednesday, July 16, 2014 9:19 AM  
**To:** ESQUIBEL, DANIEL A.  
**Subject:** 621 Old Santa Fe Trail

Mr. Esquibel,

I have no review comments on Case # 2014-69, 621 Old Santa Fe Trail Special Use Permit.

RB Zaxus, PE  
City Engineer for Land Use  
City of Santa Fe

August 5, 2014  
Board Of Adjustment  
Case # 2014-69  
**621 Old Santa Fe Trail Restaurant**  
**SPECIAL USE PERMIT**

# **EXHIBIT B**

MAPS

BCDALA

# 621 Old Santa Fe Trail

BCDLOR

BCDEAS

CAPITOL

BCDBAR

BCDALA

RC8AC

CANYON

BCDSTA

CAPITOL

BCDBAR

DEVARGAS

ORCHARD

RC8AC

GARCIA

BCDSTA

PASEO DE PERALTA

DON GASPAR

BCDOLD

BCDDON

BCDDON

RC8AC

SANTA FE

OLD SANTA FE TRAIL

PINO

HALOMA

C1

C2

ACEQUIA MADRE

SANCHEZ

RC8

C1

WEBBER

BOOTH

site

RC8AC

C1

ARROYO TENORIO

DOUGLAS

R21 BUENAVISTA

RAC

CAMINO DE LAS ANIMAS

RCSAC

RC5

CAMINO ATALAYA

GILDERSLEEVE

BERGER

CAMINO MONTEVISTA

R3

HOUGHTON

WALDO

CROSS



August 5, 2014  
Board Of Adjustment  
Case # 2014-69  
**621 Old Santa Fe Trail Restaurant**  
**SPECIAL USE PERMIT**

# **EXHIBIT C**

EARLY NEIGHBORHOOD NOTIFICATION (*ENN*)



**City of Santa Fe  
Land Use Department  
Early Neighborhood Notification  
Meeting Notes**

<i>Project Name</i>	621 Old Santa Fe Trail
<i>Project Location</i>	621 Old Santa Fe Trail
<i>Project Description</i>	Special Use Permit for a restaurant use
<i>Applicant / Owner</i>	Orchard Metal Capital
<i>Agent</i>	Lloyd & Associates Architects
<i>Pre-App Meeting Date</i>	N/A
<i>ENN Meeting Date</i>	5/14/14
<i>ENN Meeting Location</i>	621 Old Santa Fe Trail
<i>Application Type</i>	ENN for a Special Use Permit
<i>Land Use Staff</i>	Dan Esquibel
<i>Other Staff</i>	
<i>Attendance</i>	20

**Notes/Comments:**

An ENN meeting was conducted on May 14, 2014 at 621 Old Santa Fe Trail in the building planned to house the Restaurant use. There were 20 persons in attendance, including the applicant and Land Use Staff. The following concerns were raised:

- The additional traffic created by the restaurant to Old Santa Fe Trail when Old Santa Fe Trail was already dangerous.
- The small driveway utilized for ingress/egress by the applicant to Old Santa Fe Trail was not safe.
- The increase in traffic generated by the proposal that will be utilizing Halona Street which will produce noise and dust for the neighbors.
- The addition of beer and wine will increase the danger for people traveling on Old Santa Fe Trail and Halona Street as patrons leave the restaurant after they have had alcoholic beverages.



## ENN GUIDELINES

### Applicant Information

Project Name: RESTAURANT 'SPECIAL USE' AT 621 OLD S.F. TRAIL

Name: LLOYD WAYNE  
Last First

Address: 621 OLD SANTA FE TRAIL BUILDING # 2  
Street Address Suite/Unit #

SANTA FE N.M. 87505  
City State ZIP Code

Phone: (505) 983-1973 E-mail Address: wlloyd@lloyd-architects.com

Please address each of the criteria below. Each criterion is based on the Early Neighborhood Notification (ENN) guidelines for meetings, and can be found in Section 14-3.1(F)(5) SFCC 2001, as amended, of the Santa Fe City Code. A short narrative should address each criterion (if applicable) in order to facilitate discussion of the project at the ENN meeting. These guidelines should be submitted with the application for an ENN meeting to enable staff enough time to distribute to the interested parties. For additional detail about the criteria, consult the Land Development Code.

(a) EFFECT ON CHARACTER AND APPEARANCE OF THE SURROUNDING NEIGHBORHOODS For example: number of stories, average setbacks, mass and scale, landscaping, lighting, access to public places, open spaces and trails.

BUILDING # 2 IS THE BUILDING PREVIOUSLY UTILIZED BY THE BIKE SHOP "MELLOW VELLO" - NO CHANGES TO THE EXTERIOR OF THE BUILDING IS BEING PURSUED AT THIS TIME.

(b) EFFECT ON PROTECTION OF THE PHYSICAL ENVIRONMENT For example: trees, open space, rivers, arroyos, floodplains, rock outcroppings, escarpments, trash generation, fire risk, hazardous materials, easements, etc.

NO AFFECT IS ANTICIPATED.

(c) IMPACTS ON ANY PREHISTORIC, HISTORIC, ARCHAEOLOGICAL OR CULTURAL SITES OR STRUCTURES, INCLUDING ACEQUIAS AND THE HISTORIC DOWNTOWN For example: the project's compatibility with historic or cultural sites located on the property where the project is proposed.

NO AFFECT IS EXPECTED.

(d) RELATIONSHIP TO EXISTING DENSITY AND LAND USE WITHIN THE SURROUNDING AREA AND WITH LAND USES AND DENSITIES PROPOSED BY THE CITY GENERAL PLAN For example: how are existing City Code requirements for annexation and rezoning, the Historic Districts, and the General Plan and other policies being met.

NO ANNEXATION OR REZONING IS REQUIRED, THE STRUCTURE IS LISTED AS 'CONTRIBUTING' IN THE HISTORIC ZONE BUT NO EXTERIOR CHANGES ARE BEING REQUESTED AT THIS TIME.

(e) EFFECTS ON PARKING, TRAFFIC PATTERNS, CONGESTION, PEDESTRIAN SAFETY, IMPACTS OF THE PROJECT ON THE FLOW OF PEDESTRIAN OR VEHICULAR TRAFFIC AND PROVISION OF ACCESS FOR THE DISABLED, CHILDREN, LOW-INCOME AND ELDERLY TO SERVICES For example: increased access to public transportation, alternate transportation modes, traffic mitigation, cumulative traffic impacts, pedestrian access to destinations and new or improved pedestrian trails. PARKING SPACES PRESENTLY EXIST FOR RESTAURANT USE.

(f) IMPACT ON THE ECONOMIC BASE OF SANTA FE For example: availability of jobs to Santa Fe residents; market impacts on local businesses; and how the project supports economic development efforts to improve living standards of neighborhoods and their businesses.

UTILIZING THIS BUILDING FOR A RESTAURANT WOULD CREATE 10 TO 20 NEW JOBS.

(g) EFFECT ON THE AVAILABILITY OF AFFORDABLE HOUSING AND AVAILABILITY OF HOUSING CHOICES FOR ALL SANTA FE RESIDENTS For example: creation, retention, or improvement of affordable housing; how the project contributes to serving different ages, incomes, and family sizes; the creation or retention of affordable business space.

THIS SPECIAL USE APPROVAL WOULD HAVE NO IMPACT ON AFFORDABLE HOUSING.

(h) EFFECT UPON PUBLIC SERVICES SUCH AS FIRE, POLICE PROTECTION, SCHOOL SERVICES AND OTHER PUBLIC SERVICES OR INFRASTRUCTURE ELEMENTS SUCH AS WATER, POWER, SEWER, COMMUNICATIONS, BUS SYSTEMS, COMMUTER OR OTHER SERVICES OR FACILITIES For example: whether or how the project maximizes the efficient use or improvement of existing infrastructure; and whether the project will contribute to the improvement of existing public infrastructure and services.

ALL OF THESE PUBLIC SERVICES ARE PRESENTLY IN EFFECT FOR THIS BUILDING. WATER USE WOULD INEVITABLY INCREASE FOR A RESTAURANT OVER A BIKE SHOP.

(i) IMPACTS UPON WATER SUPPLY, AVAILABILITY AND CONSERVATION METHODS For example: conservation and mitigation measures; efficient use of distribution lines and resources; effect of construction or use of the project on water quality and supplies.

NO NEW 'INFRA-STRUCTURE' IS ANTICIPATED; INCREASES IN THE AMOUNT OF WATER IS ANTICIPATED. WATER CONSERVING FIXTURES WILL BE UTILIZED AND THE SITE HAS INSTALLED RAINWATER CAPTURE FOR IRRIGATION OF SOFTSCAPE.

(j) EFFECT ON THE OPPORTUNITIES FOR COMMUNITY INTEGRATION AND SOCIAL BALANCE THROUGH MIXED LAND USE, PEDESTRIAN ORIENTED DESIGN, AND LINKAGES AMONG NEIGHBORHOODS AND RECREATIONAL ACTIVITY AND EMPLOYMENT CENTERS For example: how the project improves opportunities for community integration and balance through mixed land uses, neighborhood centers and/or pedestrian-oriented design.

THE PROPERTY IS PRESENTLY ZONED FOR A MIXTURE OF USES AND IS SURROUNDED BY MANY RESIDENTIAL UNITS WITHIN WALKING DISTANCE OF THIS LOCATION. PEDESTRIANS CAN GO FROM OLD SANTA FE TRAIL TO HALONA OR VICE VERSA.

(k) EFFECT ON SANTA FE'S URBAN FORM For example: how are policies of the existing City General Plan being met? Does the project promote a compact urban form through appropriate infill development? Discuss the project's effect on intra-city travel and between employment and residential centers.

THE PROJECT STRENGTHENS THE URBAN FABRIC BY INCREASING THE DINNING OPPORTUNITIES IN A 'MIXED USE' AREA OF THE URBAN CORE.

(l) ADDITIONAL COMMENTS (optional)

August 5, 2014  
Board Of Adjustment  
Case # 2014-69  
**621 Old Santa Fe Trail Restaurant**  
**SPECIAL USE PERMIT**

# **EXHIBIT D**

APPLICANT SUBMITTALS

**Lloyd & Associates**  
**A R C H I T E C T S**

**Attn. Dan Esquibel**

Land Use Department, The City of Santa Fe  
200 Lincoln Avenue, Santa Fe, NM 87504

**Re: Special Use Permit for Building#2 of 621 Old Santa Fe Trail**

June 30, 2014

Dear Mr. Esquibel,

On behalf of the owners of 621 Old Santa Fe Trail (621), Lloyd & Associates Architects would like to apply for a Special Use Permit regarding the previously mentioned property. The owner is seeking to have the Special Use Permit to have a Restaurant at Building #2 of the 621 site. This Building is currently vacant and was most recently a Bicycle sales and repair store.

**14-3.6(D) Approval Criteria and Conditions:**

- (a) As the zoning of the address under consideration is RC8AC, per table 14-6.1-1, the property is able to have a full service Restaurant with a Special Use Permit. The above mentioned table gives the land use board authority to grant a Special Use Permit for this application.
- (b) The proposed Special Use would not adversely affect the public interest. Quite the contrary the owners wish is to enrich the surrounding area of 621 with a fine dining establishment that would be a positive addition to the existing culture of the area. The site provides more than double the required parking for the special use. Because the previous use of Building 2 was also commercial the proposed location is already appropriately accessible to utilities, emergency services and meets ADA requirements for pedestrian access. The City's Staff has also confirmed that the site can adequately handle the increased vehicular traffic that would be likely caused by the proposed Special Use.
- (c) A fine dining restaurant would be compatible with the other businesses at 621 as its presence would attract business and vibrancy to the area and the parking and circulation to and from the restaurant would not interfere with any of the existing commercial tenants at 621. Building 2 has adequate setback and screening from the surrounding residential neighborhood, so that the increased pedestrian and vehicular traffic would not add significant noise or light pollution to any surrounding residential property.

Lloyd & Associates  
A R C H I T E C T S

Lloyd and Associates thanks The City of Santa Fe's Land Use Board and the Land Use Departments staff for the time and consideration taken in reviewing application.

Regards,

Wayne Lloyd, AIA  
Wayne S. Lloyd

Date: 6/30/14

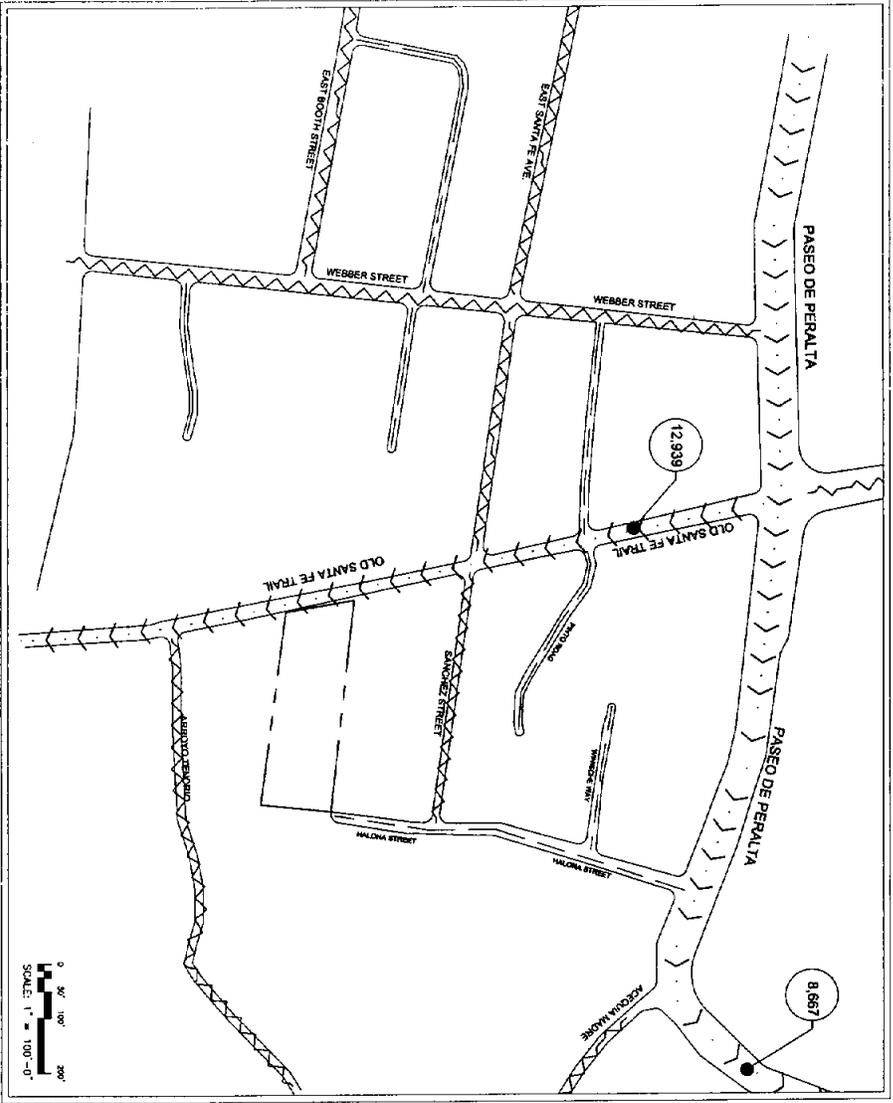




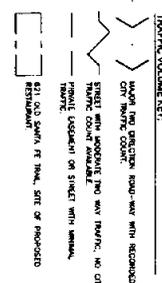




TRAFFIC FLOW IN VISINITY OF SITE

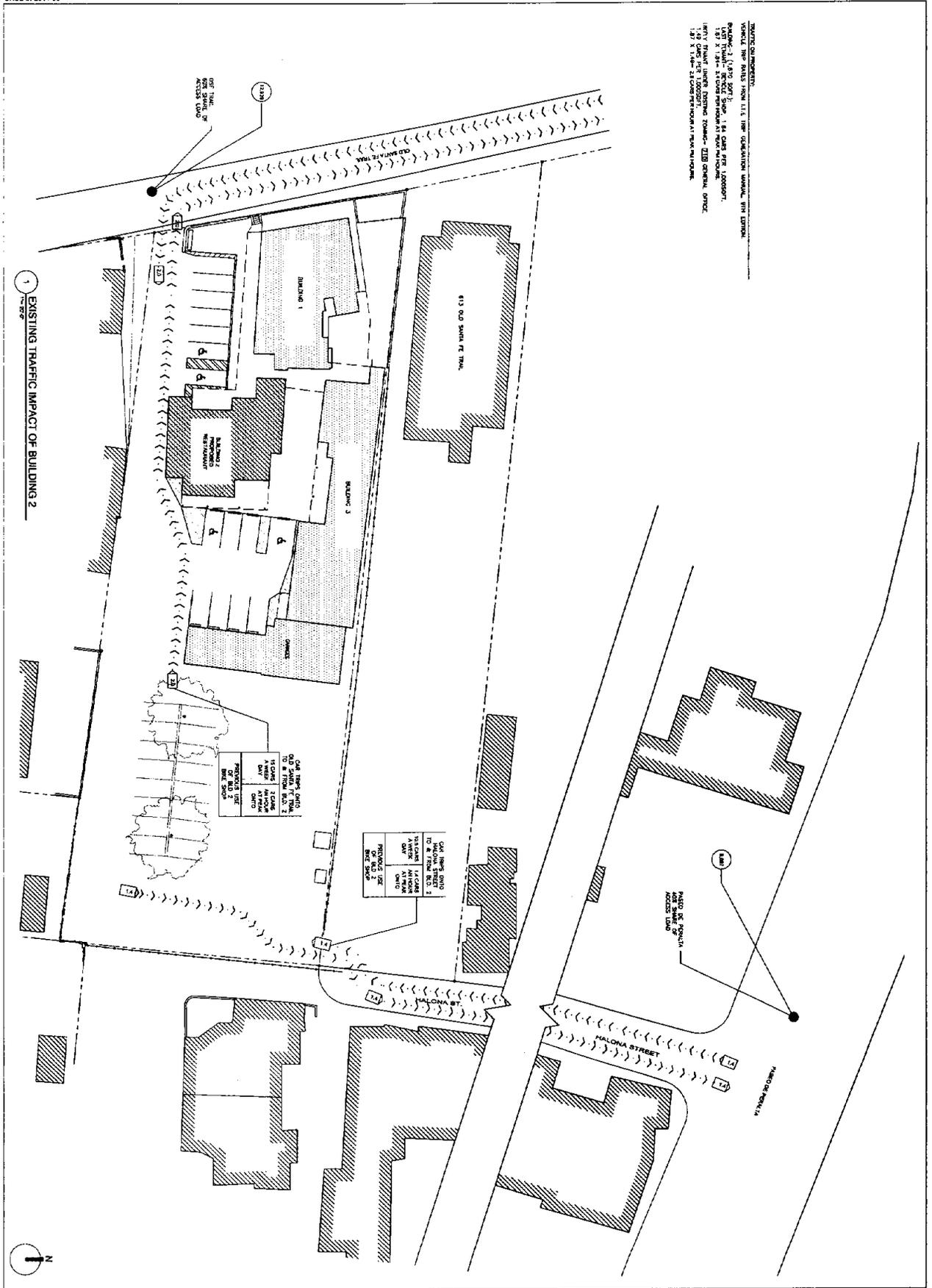


- GENERAL TRAFFIC COUNT NOTES:**
1. TRAFFIC COUNTS FROM 2011 ANNUAL AVENUE ONLY TRAFFIC COUNT REPORT. TRAFFIC COUNTS WERE TAKEN AT APPROXIMATELY 10:00 AM ON MONDAY, FEBRUARY 13, 2012. TRAFFIC COUNTS WERE TAKEN AT THE INTERSECTION OF OLD SANTA FE TRAIL AND PASEO DE PERALTA.
  2. THE TRAFFIC COUNT REPORTS ANNUAL AVERAGE OF TRAFFIC COUNTS FOR EACH HOUR OF THE DAY. TRAFFIC COUNTS WERE TAKEN AT THE INTERSECTION OF OLD SANTA FE TRAIL AND PASEO DE PERALTA.
  3. TRAFFIC COUNTS WERE TAKEN AT A POINT OF ALL LANE OR RECORDATION SECTION ON THE ROADWAY THAT WERE



	<h2 style="margin: 0;">621 O.S.F. TRAIL SPECIAL USE PERMIT</h2> <p style="margin: 0;">621 OLD SANTA FE TRAIL SANTA FE, NM 87505</p>	<p><b>Lloyd &amp; Associates ARCHITECTS</b></p> <p style="font-size: small;">100 N Guadalupe St., Suite 201 Santa Fe, NM 87501 Telephone: 505-988-0799 FAX: 505-986-1165 Web address: lloyd-architects.com</p>
<p style="font-size: x-large; font-weight: bold;">T-001</p>	<p style="font-size: small;">JOB NUMBER: 1121 DATE: 11/10/07</p>	

STAFF: J. GARDNER  
 DATE: 11/11/14  
 PROJECT: 621 OLD SANTA FE TRAIL  
 SHEET: T-100  
 SCALE: AS SHOWN  
 DRAWN BY: J. GARDNER  
 CHECKED BY: J. GARDNER  
 DATE: 11/11/14



<p>T-100</p>	<p>621 O.S.F. TRAIL                  SPECIAL USE PERMIT</p>		<p><b>Lloyd &amp; Associates</b>                  ARCHITECTS</p> <p>100 N. Guadalupe St., Suite 201                  Santa Fe, NM 87501                  Telephone: 505-988-0789 Fax: 505-986-1165                  Web address: lloyd-architects.com</p>
	<p>621 OLD SANTA FE TRAIL                  SANTA FE, NM 87505</p>		



Katz  
Ahern  
Herdman &  
MacGillivray PC

Janice M. Ahern  
Frank T. Herdman  
Leonard S. Katz  
Melanie E. MacGillivray

Colin T. Cameron  
Jenny F. Kaufman  
David J. Pumarejo

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A Professional Corporation | ATTORNEYS AT LAW

July 22, 2014

BY EMAIL AND FIRST CLASS MAIL

Mr. David Lamb  
Orchard Metal Capital Corp.  
P.O. Box 293  
Hoquiam, Washington 98550  
david.lamb@eii.cc

**RE: 621 Old Santa Fe Trail, Santa Fe, New Mexico**

Dear Mr. Lamb:

I represent the Acequia Compound Owners' Association (the "Association"), which is the condominium unit owners' association for the Acequia Compound Condominium. I am writing this letter in response to the application recently submitted by Orchard Metal Capital Corp. to the City of Santa Fe in which Orchard Metal Capital Corp. is requesting a special use permit for a proposed restaurant at 621 Old Santa Fe Trail (the "Property").

The documents submitted to the City as part of the foregoing application contemplate that the rear and eastern portion of the Property will include an exit/entrance that will be used for ingress and egress to and from the Property and that vehicles using the entrance/exit will travel over the 20-foot wide private easement located along the western boundary of the parcel on which the Condominium is located.

Please be advised that the foregoing easement is a private easement and that, based on our research, no rights have been granted to 621 Old Santa Fe Trail to use that easement for ingress and egress to and from the Property. The Association objects to any use of that easement for ingress and egress to and from the Property and hereby demands that any and all such use cease immediately. If you believe for any reason that Orchard Metal Capital Corp. has any rights to use the easement for ingress and egress to and from the Property, I request that you share that information with me immediately.

*Exhibit "4"*

Katz  
Ahern  
Herdman &  
MacGillivray PC

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Mr. David Lamb  
July 22, 2014  
Page 2

To ensure its delivery, a copy of this letter is being sent by email and regular first class mail to Wayne Lloyd, who is identified as the agent for Orchard Metal Capital Corp. on the application submitted to the City of Santa Fe.

Thank you.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

FRANK T. HERDMAN

cc: Acequia Compound Owners' Association  
Wayne Lloyd, Lloyd & Associates Architects

**L.R. LAROCHE**

442 ACEQUIA MADRE  
SANTA FE, NM 87505

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July 28, 2014

Dan Esquibel, Land Use Planner  
City of Santa Fe  
Land Use Department  
Current Planning Division  
200 Lincoln Ave., Box 909  
Santa Fe, NM 87504-0909

Re: Case #2014-69  
621 Old Santa Fe Trail, Special Use Permit

Dear Mr. Esquibel,

I may not be able to attend the above captioned meeting, so I am expressing my objections in writing.

When my wife and I bought our retirement home in August of last year (2013), we believed the zoning RC8AC would protect us from a restaurant at 621 Old Santa Fe Trail. We additionally expected almost no traffic on our dead-end private service road (Holona). This road, by the way, is approximately one lane wide, has no side walks, no curbs, no street lights, and is NOT meant to be a service road for restaurant delivery trucks. It also was not constructed to handle a 70 car restaurant parking lot.

My Address is: 442 Acequia Madre #1

My home is directly on the Acequia and my garden runs along the Acequia. The master bedroom window, the guest bedroom window, and the kitchen window are within 5-feet of Holona and the traffic noise from trucks would be unbearable for myself and my wife.

It is also my belief that the large trucks making deliveries to a restaurant would not be able to enter and exit on Old Santa Fe Trail without disrupting traffic on that street.

I would strongly ask that you keep the RC8AC zoning in place and deny the special use permit.

Regards,



L.R. LaRoche

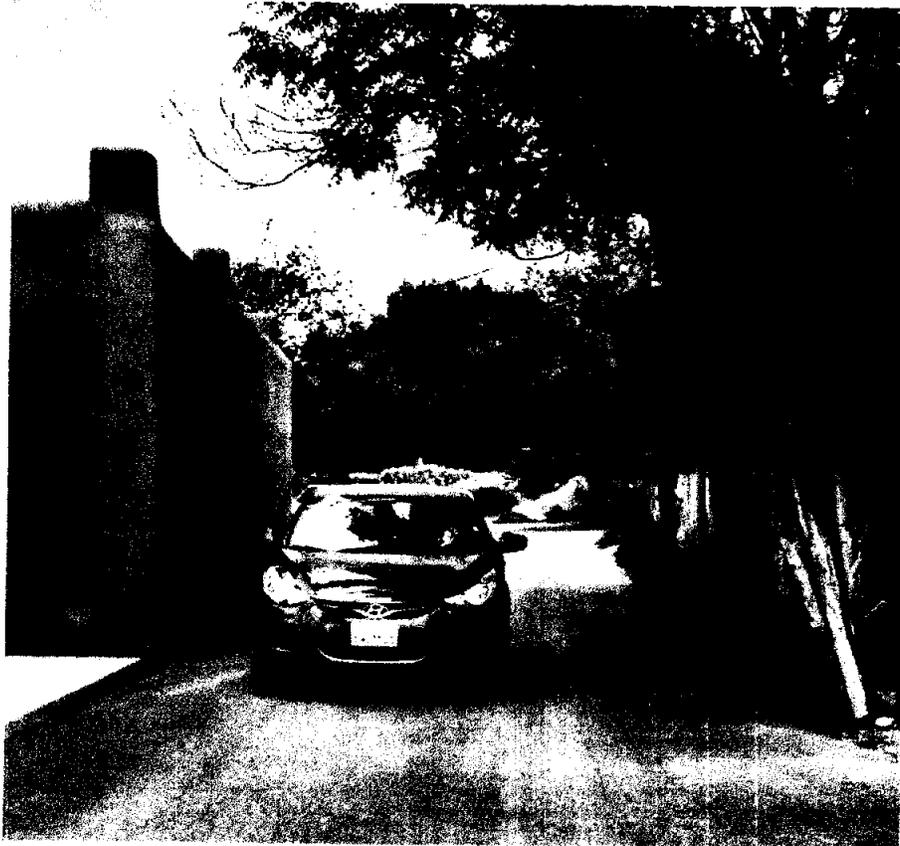
*Exhibit "5"*

ANNOTATED SITE PLAN



Exhibit "6"

**ACCESS TO REAR OF 621 OLD SANTA FE TRAIL  
AND PROPOSED NEW PARKING AREA  
MAXIMUM WIDTH EQUALS APPROXIMATELY 18 FEET, 5 INCHES**

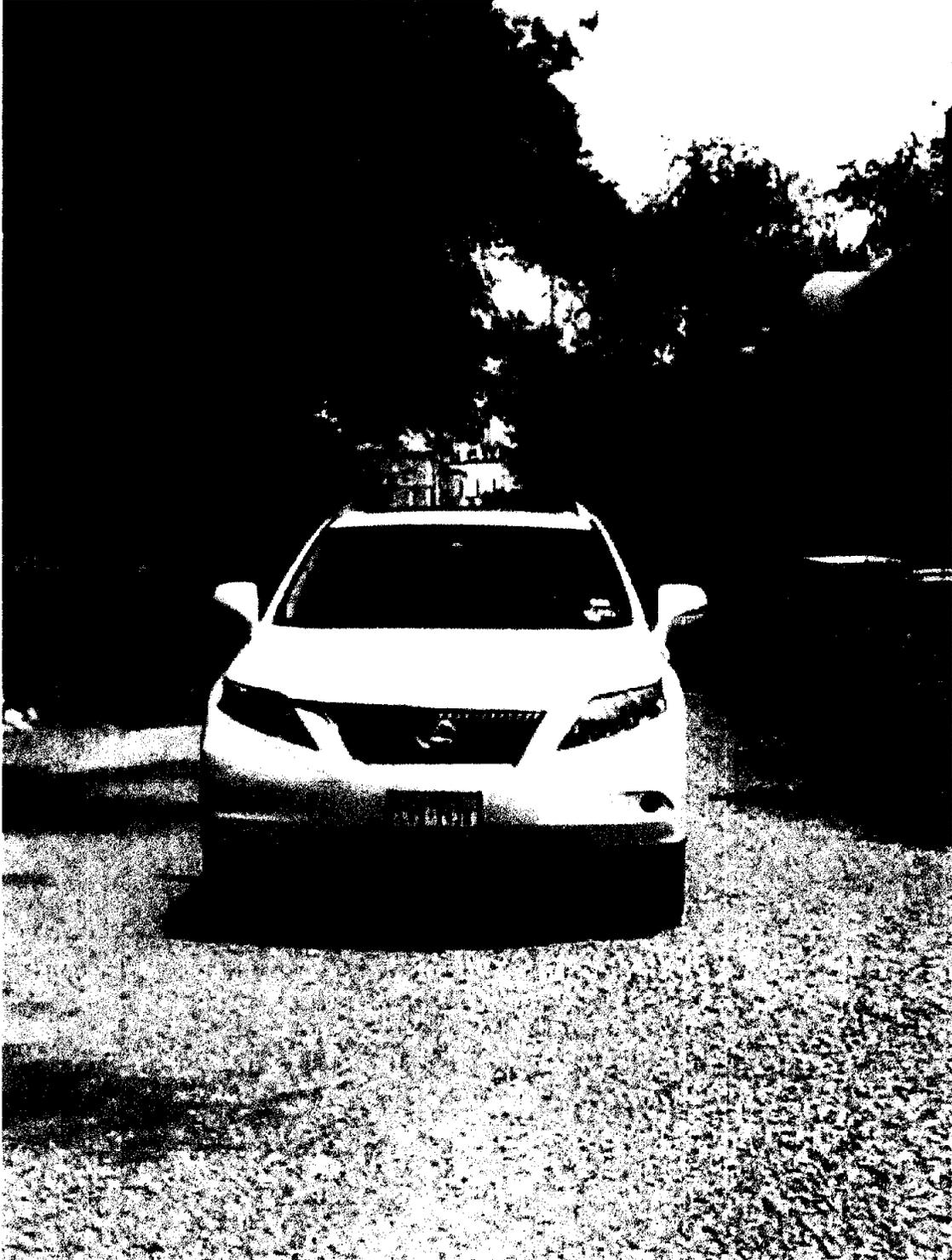


*Exhibit "71"*

**HALONA STREET  
(PRIVATE EASEMENT PORTION)**



**HOLANA STREET  
(PRIVATE EASEMENT PORTION)**



AM 8-5-14



ACEQUIA MADRE AT HALONA ST  
LOOKING WEST W/DEBRIS

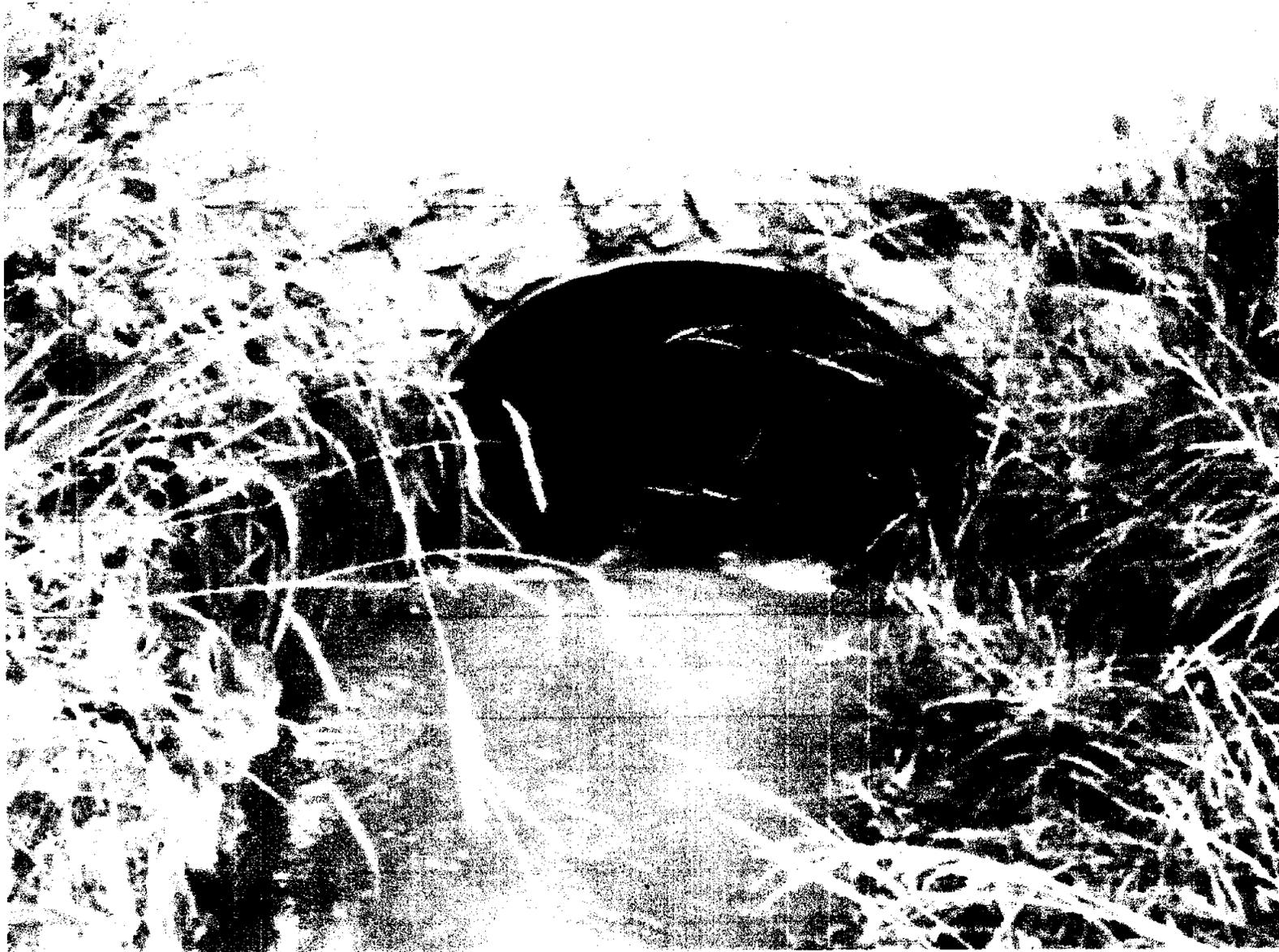
Exhibit 'B'

AM 8-5-14



ACEQUIA MADRE AT HALONA ST  
LOOKING EAST - W/EROSION

AM 8-5-14



42"X29" PIPE ARCH W/STONE  
HEAD & TAIL WALLS + CONCRETE PAD

PETER B. KOMIS  
DON GASPAR NEIGHBORHOOD ASSOCIATION  
610 DON GASPAR AVENUE  
SANTA FE, NM 87505-4428  
(505) 983-1166 FACSIMILE: (505) 983-2113

05 August 2014

CITY OF SANTA FE  
BOARD OF ADJUSTMENT  
P.O. BOX 909  
SANTA FE, NM 87504-0909

RE: CASE # 2014-69 - 621 Old Santa Fe Trail

Dear Chairman and Board members:

I am unable to speak at tonight's board meeting due to surgery I received yesterday afternoon. I am therefore requesting that former City Councilor Karen Heldmeyer speak on behalf of the association.

There are two points that I would like to make regarding this request for Special Use Permit.

1. The Don Gaspar Neighborhood Association did not receive formal notice of this request, even though our association is right across the street from the proposed project and should have been notified of the ENN.
2. Past restaurants in the area caused traffic and parking problems within the residential areas along East Santa Fe Avenue and Webber Streets. I also recall neighbors complaining to me regarding noise from departing customers due to alcohol use when the restaurants had liquor licenses. This problem was worse when the restaurants were open at night, especially when the customers were using parking along the residential streets.
3. We believe problems now could be worse than before because traffic is now heavier on Old Santa Fe Trail than what it was in past years when restaurants were there.

We support the immediate neighbors in their attempts to decrease or eliminate the impacts that such a project would have in the neighborhood.

Thank you.

Respectfully,



Peter B. Komis, President  
DON GASPAR NEIGHBORHOOD ASSOCIATION

*Exhibit "9"*

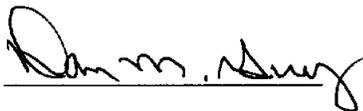
**Witness Statement of Dan M. Guy  
City of Santa Fe  
Board of Adjustments  
Case #2014-69  
621 Old Santa Fe Trail Special Use Permit**

My name is Dan M. Guy. I live at 438 Acequia Madre, Santa Fe, NM, 87505, in La Placita Chamisal Condominium Association (commonly known as Plaza Chamisal), which is East of Halona Street and directly North of the Acequia Compound. Plaza Chamisal and the Acequia Compound have exclusive easements that permit residents of those properties to use their private roads for ingress/egress to Halona Street (and also to Acequia Madre).

A significant concern that I have regarding the proposed restaurant at 621 Old Santa Fe Trail pertains to access by the Santa Fe Fire Department. According to the Land Use Department MEMO, dated July 3, 2014, from Dan Esquibel, Land Use Planner Senior, the recommended APPROVAL of the Special Use Permit is based, in part, on having a "secondary driveway" providing ingress/egress to Halona Street (see page 2 of 6). Since 621 Old Santa Fe Trail does not have access to Halona Street and the Fire Department may not have been aware of this restriction at the time of its evaluation, I respectfully request that Mr. Reynaldo D. Gonzales, Fire Marshal, reconsider the suitability of the proposed restaurant. In performing his reassessment, I request that the Fire Department do a site inspection and a fire truck/engine drive through with due consideration given to the planned 48 parking spaces (see page 3 of 6).

Finally, I agree with the concerns that have been expressed regarding the proposed restaurant. I oppose the Special Use Permit. In my opinion, a restaurant would also be incompatible with the historical nature of the area.

Thank you for your consideration.



August 5, 2014

*Exhibit 10*

Statement from Dena Aquilina, 327 Sanchez St. concerning the proposed special exception for 621 Old Santa Fe Trail

I am blessed to have lived on Sanchez St. most of my life - since 1975; we finished a partially built adobe home and raised a son on this quiet historic street and value the cohesiveness and peace.

Our little neighborhood has proved to not be a good environment for restaurants; none have lasted and some have closed in barely a year. We know the difficulty of entering and exiting the dense traffic on Old Santa Fe Trail and think this is one of the reasons for the failure of restaurants in this neighborhood. Our opposition to a restaurant is not theoretical – we lived through Ernie’s in the 90’s and that experience is a large part of our opposition to yet another restaurant. Alcohol-fueled patrons late at night were disorderly and loud, and did drunken things like urinating in the parking lot and neighbor’s yards. Amplified music in an outdoor patio was also quite disruptive. Our street is 11 feet wide and the closeness of the adobe homes and walls amplifies sounds. We have people in their 80’s and 90’s on our street and they also value the peaceful atmosphere. We urge you to recognize that this special exception is a wholly incompatible use in this neighborhood.

*Exhibit "11"*