



# Agenda

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**SUMMARY COMMITTEE**  
**Thursday, December 1, 2011 - 11:00am**  
**City Council Chambers**  
**City Hall 1<sup>st</sup> Floor - 200 Lincoln Avenue**

- A. ROLL CALL
- B. APPROVAL OF AGENDA
- C. APPROVAL OF MINUTES – November 3, 2011
- D. OLD BUSINESS
- E. NEW BUSINESS

1. **Case #2011-115. Los Piñones II, Inc. Lot Split.** Paul Armijo, Armijo Surveys, Inc., Agent for Gerald G. Ohlsen requests plat approval to divide approximately 2.523 acres into two residential lots. The property is located off Paseo Nopal, within Phase III Annexation, and is zoned R-1 (Residential – 1 dwelling unit per acre). (William Lamboy, Case Manager)

2. **Case #2011-116. 460 Camino de las Animas Lot Split.** Joseph Karnes, Sommer, Karnes & Associates, LLP, agent for Theodora H. Portago, requests plat approval to divide approximately 1.37 acres into two residential lots. The property is located off Camino Atalaya, between Camino de las Animas and Camino Monte Vista, and is zoned RC-5 (Residential Compound - 5 dwelling units per acre). (William Lamboy, Case Manager)

3. **Case #2011-117. Pendergrass Lot Split.** Robert K. Riecken, Southwest Mountain Surveys, agent for Richard D. Pendergrass, requests plat approval to divide approximately 1.001 acres into two residential lots. The property is located between Agua Fria Street and Montañño Street and is zoned R-5 (Residential-5 dwelling units per acre). (William Lamboy, Case Manager)

- F. BUSINESS FROM THE FLOOR
- G. STAFF COMMUNICATIONS
- H. MATTERS FROM THE COMMITTEE
- I. ADJOURNMENT

**NOTES:**

- 1) Procedures in front of the Summary Committee are governed by Roberts Rules of Order. Postponed cases are postponed 1) to a specific date, or 2) indefinitely until specific conditions have been resolved, or 3) to a specific date with the provisions that specific conditions be resolved prior to that date. Postponed cases can be removed from postponement by a motion and vote of the Summary Committee.
- 2) Due to time constraints not all issues may be heard and may be rescheduled to the next scheduled Summary Committee meeting. This agenda is subject to change at the discretion of the Summary Committee.
- 3) New Mexico law requires the following administrative procedures to be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearings before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and 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 special accommodations or the hearing impaired needing an interpreter please contact the City Clerk's Office (955-6520) 5 days prior to the hearing date.**

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CITY OF SANTA FE  
SUMMARY COMMITTEE  
December 1, 2011

| <u>ITEM</u>   | <u>ACTION</u>           | <u>PAGE</u> |
|---|-------------------------|-------------|
| CALL TO ORDER/ROLL CALL   | Quorum                  | 1           |
| APPROVAL OF AGENDA  | Approved [amended]      | 1           |
| APPROVAL OF MINUTES – November 3, 2011  | Approved                | 1-2         |
| OLD BUSINESS  | None                    | 2           |
| <u>NEW BUSINESS</u>   |                         |             |
| <u>CASE #2011-115.</u> LOS PIÑONES II, INC., LOT SPLIT. PAUL ARMIJO, ARMIJO SURVEYS, INC., AGENT FOR GERALD G. OHLSEN REQUESTS PLAT APPROVAL TO DIVIDE APPROXIMATELY 2.523 ACRES INTO TWO RESIDENTIAL LOTS. THE PROPERTY IS LOCATED OFF PASEO NOPAL, WITHIN PHASE III ANNEXATION, AND IS ZONED R-1 (RESIDENTIAL – 1 DWELLING UNIT PER ACRE)   | Approved                | 2-6         |
| <u>CASE #2011-116.</u> 460 CAMINO DE LAS ANIMAS LOT SPLIT. JOSEPH KARNES, SOMMER, KARNES & ASSOCIATES, LLP, AGENT FOR THEODORA H. PORTAGO, REQUESTS PLAT APPROVAL TO DIVIDE APPROXIMATELY 1.37 ACRES INTO TWO RESIDENTIAL LOTS. THE PROPERTY IS LOCATED OFF CAMINO ATALAYA, BETWEEN CAMINO DE LAS ANIMAS AND CAMINO MONTE VISTA, AND IS ZONED RC-5 (RESIDENTIAL COMPOUND – 5 DWELLING UNITS PER ACRE) | Postponed to 01/05/2012 | 6-16        |
| <u>CASE #2011-117.</u> PENDERGRASS LOT SPLIT. ROBERT K. RIECKEN, SOUTHWEST MOUNTAIN SURVEYS, AGENT FOR RICHARD D. PENDERGRASS, REQUESTS PLAT APPROVAL TO DIVIDE APPROXIMATELY 1.001 ACRES INTO TWO RESIDENTIAL LOTS. THE PROPERTY IS LOCATED BETWEEN AGUA FRIA STREET AND MONTAÑO STREET AND IS ZONED R-5 (RESIDENTIAL - 5  |                         |             |

| <b><u>ITEM</u></b>         | <b><u>ACTION</u></b>   | <b><u>PAGE</u></b> |
|----------------------------|------------------------|--------------------|
| DWELLING UNITS PER ACRE)   | Postponed to 01/06/012 | 16                 |
| BUSINESS FROM THE FLOOR    | None                   | 16                 |
| STAFF COMMUNICATIONS       | Information            | 16                 |
| MATTERS FROM THE COMMITTEE | Information/discussion | 16                 |
| ADJOURNMENT                |                        | 17                 |

**MINUTES OF THE MEETING  
OF THE CITY OF SANTA FE  
SUMMARY COMMITTEE**

December 1, 2011

A regular meeting of the City of Santa Fe Summary Committee, was called to order by Tom Spray, Chair, on December 1, 2011, at approximately 11:00 a.m., in the City Council Chambers, City Hall, Santa Fe, New Mexico.

**A. ROLL CALL**

**MEMBERS PRESENT:**

Tom Spray, Chair  
Commissioner Angela Schackel-Bordegary  
Commissioner Michael Harris

**OTHERS PRESENT:**

Tamara Baer, Current Planning Division  
William Lamboy, Current Planning Division  
Chris Martinez, Current Planning Division  
Melessia Helberg, Stenographer

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

**B. APPROVAL OF AGENDA**

Ms. Baer said there has been a request to postpone Item #E(3) Case #2011-117, to the January meeting of the Committee.

**MOTION:** Commissioner Harris moved, seconded by Commissioner Schackel-Bordegary, to approve the Agenda as amended.

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

**C. APPROVAL OF MINUTES – November 3, 2011**

**MOTION:** Commissioner Harris moved, seconded by Commissioner Schackel-Bordegary, to approve the minutes of the meeting of November 3, 2011, as presented.

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

**D. OLD BUSINESS**

There was no Old Business.

**E. NEW BUSINESS**

1. **CASE #2011-115. LOS PIÑONES II, INC., LOT SPLIT. PAUL ARMIJO, ARMIJO SURVEYS, INC., AGENT FOR GERALD G. OHLSEN REQUESTS PLAT APPROVAL TO DIVIDE APPROXIMATELY 2.523 ACRES INTO TWO RESIDENTIAL LOTS. THE PROPERTY IS LOCATED OFF PASEO NOPAL, WITHIN PHASE III ANNEXATION, AND IS ZONED R-1 (RESIDENTIAL – 1 DWELLING UNIT PER ACRE). (WILLIAM LAMBOY, CASE MANAGER)**

A Memorandum prepared November 18, 2011 for the Summary Committee Meeting of December 1, 2011, with attachments, to the Summary Committee, from William Lamboy, Senior Planner, Current Planning Division, is incorporated herewith to these minutes as Exhibit "1."

Two color photographs of the subject property, submitted for the record by William Lamboy, are incorporated herewith collectively to these minutes as Exhibit "2."

A copy of the *Lot Split Land Division Survey Plat* is on file with, and copies can be obtained in, the City of Santa Fe Land Use Department.

**Staff Report**

The staff report was presented by William Lamboy, Current Planning Division, which is contained in Exhibit "1," and Exhibit "2." Please see Exhibits "1" and "2" for specifics of this presentation. Mr. Lamboy noted the letter on the last page of the Committee packet which refers to more lots and a 50 ft. dedication to the City. He said the City is not accepting any dedications right now because "this is in Phase 3 of the Annexation and does not reflect the new plat which was proposed."

**Recommendation:** The Land Use Department recommends approval with the conditions of approval as outlined in this report [Exhibit "1"].

Commissioner Harris disclosed that he has known the Ohlsens for some time from the time they lived in Los Alamos and he was involved in work there. He asked if he should he recuse himself from participating on this case.

Ms. Baer said, "You may recuse yourself if you feel you can't make an impartial decision. Having disclosed your relationship, which apparently is casual and not financial with the applicant, if the other members of the Committee feel you can make an impartial decision and you also feel that, I don't see any reason to recuse yourself. I would say it's your decision and the decision of the Committee. There's certainly no obvious reason for you to do so simply because you are acquainted with the applicant."

Commissioner Harris they did do business together, but it was probably 25 years ago in Los Alamos. He said he would ask his fellow Commissioners their feelings about this, but he believes he can be impartial in this matter.

Ms. Baer said, "I would just add that conflict of interest is typically defined as a direct financial benefit."

Chair Spray and Commissioner Schackel-Bordegary said they have no issues with Commissioner Harris participating on this case.

### **Public Hearing**

**Paul Armijo, 33 Vereda Corte, land surveyor and agent for the applicant, was sworn.** Mr. Armijo said they have received the staff report and agrees with all conditions. He said he and Mr. Ohlsen are available to answer questions.

**Gerald Ohlsen, owner [previously sworn]** said he has nothing to add.

### **Speaking to the Request**

**Andrea Mueller, 58A Paseo Nopal was sworn.** Ms. Mueller said she lives in the area and saw the public meeting notice. She said this is a 2½ acre lot and the County hasn't allowed people to have more than 1 dwelling and a guest house on 2½ acres. She said she and her husband have lived in their home there since 1996, and they have 1 dwelling and a guest house on their 2½ acres. She is interested in what it takes to subdivide and what would be the restrictions, commenting she may be interested in doing this.

**Allen Grace, 331 Vereda Street, professional surveyor and agent for adjacent properties to this project, was sworn.** He said he has interest because he represents an adjoining landowner who currently is getting read to apply to do the same thing. He said he is here to see if the subject property meets the Codes under the new Annexation Rules and Regulations, so he can pass this information to the adjoining landowners. He said they are not in opposition to the lot split for any reason.

**The Public Testimony Portion of the Public Hearing was closed**

**Questions and Comments from the Committee**

Chair Spray asked that Ms. Baer talk about the process for the lot split and how it would impact the adjacent properties which are in the County, but will be in the City limits in the future..

Ms. Baer said in 2008, the City entered into a Settlement Agreement with Santa Fe County. She said part of the Settlement Agreement was that the City and County would adopt a joint ordinance which was adopted as the Subdivision, Platting, Planning and Zoning Ordinance, she believes in 2009. She said the Ordinance was approved by both the City and County, and it was agreed that from that time forward, the City would have zoning, platting, planning and subdivision authority over all areas within the presumptive City limits.

Ms. Baer said the Settlement Agreement which preceded the Ordinance established the phasing which would be followed by the City initiated annexation. She said this property is in Phase 3, which is anticipated to happen in 2013. However, even though the property actually is in the County, City regulations apply for planning and zoning purposes. She said part of the Subdivision Platting Planning and Zoning Ordinance was a map that was adopted at the same time which assigned zoning to all of the properties within the presumptive City limits, and in this case, the zoning is R-1 and the property and the property owners are subject to City regulations and City zoning and City procedures. This is the reason they are appearing before this City Board to request a lot split.

Ms. Baer said under City regulations for R-1 residential zoning, 1 dwelling unit per acre, the minimum lot size for a single family dwelling is 1 acre. She said in the County it used to be 2 ½ acres. She said we are seeing quite a few lot splits right now in the County because they can. She said it is a density issue, noting the property has to comply with all of the requirements that the City has established in Chapter 14 and other City ordinances, whether or not the property currently is in the City limits.

Chair Spray said then anyone on an adjoining property would have to work through the City staff and City regulations, and come to the appropriate City office to do a lot split or any other modification to what they have.

Ms. Baer said this is correct, and said they are welcome to come in or call City staff in this regard, and she will give them her business card, noting Mr. Grace knows where they are located.

Commissioner Harris asked if there are requirements for this lot split for an ENN, commenting he heard reference to a sign being posted. He asked if were mailings sent out.

Ms. Baer said an ENN is not required for a lot split, but they are required to notify by certified mail for the hearing, post the property, and the notice is on the agenda which is published in the newspaper. She said the notice requirement is to anyone within 200 feet of the property.

Commissioner Harris said then the mailings and postings are customary for lot splits, but there is an ENN process for the full Planning Commission.

Ms. Baer said it depends, and there are certain triggers which would require an ENN meeting, but a lot split does not.

Commissioner Harris said there is a requirement by the Fire Department that "All Fire Department access shall be 20 foot minimum width." He asked if that would apply only to B-2.

Ms. Baer said the Fire Department access is required regardless on which side of the road the house is built, and it would be applied at the time of building permit. She said if the building were to be located close to the roadway, they might not have that requirement, and it may apply only to the actual roadway itself, Calle Nopal, and they may not require it on the site. If the dwelling were located more than 150 feet from the edge of the roadway, they may require an additional 20 feet on the property so they can access every portion of the new house with the fire truck with 150 feet on that 20 feet.

Commissioner Harris said that is for the undeveloped lot for the new house. He said since they are splitting one lot and creating B-1 and B-2, he wants to know if the access requirement applies to B-1 as well.

Ms. Baer said it is her understand that the requirement would not be applied Lot B-1 until the time new construct was proposed through a building permit.



Chair Spray said the letter of application, dated October 6, 2011, which is in the packet, references Tract B-3 and B-4 as well, and asked Mr. Lamboy to speak to this, and Mr. Lamboy deferred to Mr. Armijo to answer the question, noting he alluded to this in his report.

Mr. Armijo said their initial submittal proposed dedicating the 50 ft. right of way that cuts through the property as a dedicated roadway to the City, thus creating Tract 3 on the west side of the property by exclusion. He said in meetings with Ms. Baer and Mr. Lamboy, he was told that the City couldn't "accept the dedicated roadway for that 50 foot right of way," which eliminated that submittal plat. He said the plat has been revised to show only two tracts, the existing house on one and the vacant land on the other. He had dedicated the dedicated right of way as Tract B-4 for descriptive purposes and that's been eliminated from the new plat.

Chair Spray said he wanted to make it absolutely clear the reason it is not on the plat.

**MOTION:** Commissioner Schackel-Bordegary moved, seconded by Commissioner Harris, to approve Case #2011-115, Los Piñones II, Inc., Lot Split, with all conditions of approval as outlined in the staff report [Exhibit "1"].

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

2. **CASE #2011-116. 460 CAMINO DE LAS ANIMAS LOT SPLIT. JOSEPH KARNES, SOMMER, KARNES & ASSOCIATES, LLP, AGENT FOR THEODORA H. PORTAGO, REQUESTS PLAT APPROVAL TO DIVIDE APPROXIMATELY 1.37 ACRES INTO TWO RESIDENTIAL LOTS. THE PROPERTY IS LOCATED OFF CAMINO ATALAYA, BETWEEN CAMINO DE LAS ANIMAS AND CAMINO MONTE VISTA, AND IS ZONED RC-5 (RESIDENTIAL COMPOUND – 5 DWELLING UNITS PER ACRE). (WILLIAM LAMBOY, CASE MANAGER)**

A Memorandum prepared November 18, 2011 for the Summary Committee Meeting of December 1, 2011, with attachments, to the Summary Committee, from William Lamboy, Senior Planner, Current Planning Division, is incorporated herewith to these minutes as Exhibit "3."

Four color photographs of the subject property, submitted for the record by William Lamboy, are incorporated herewith collectively to these minutes as Exhibit "4."

An aerial photograph of the subject property area, submitted for the record by William Lamboy, is incorporated herewith to these minutes as Exhibit "5."

A copy of the *Lot Split Survey Plat* prepared for Theodora Portago by Dawson Surveys, Inc., dated November 18, 2011, is incorporated herewith to these minutes as Exhibit "6."

### **Staff Report**

The staff report was presented by William Lamboy, Current Planning Division, as set out in Exhibit "3," and as shown in Exhibits "4" and "5" via the overhead.

Mr. Lamboy said staff proposes to add "new" to Condition 4, so that it reads: "Neither resulting lot has a metered service connection. An Agreement for Metered Service(s) (AMS) contract with the City Water Division will be required prior to the issuance of any new construction on any lot."

**Recommendation:** The Land Use Department recommends approval with the conditions of approval as outlined in this report [Exhibit " "].

### **Public Hearing**

**Karl Sommer, P.O. Box 2476, Santa Fe, NM, 87504, was sworn.** Mr. Sommer said he is here on behalf of the applicant, Ms. Theodora Portago. He said they have one objection to the conditions. He spoke with Mr. Lamboy and spoke with the City Attorney's Office about this. He said it is staff policy in the Land Use Department to require the connection to City water for new construction. However, there is nothing in the regulations that says that has to be done. He said if a person has an existing well in the City of Santa Fe and the person chooses to connect to the City's water system, the City requires that person to disconnect their well. He said there is nothing in the Land Use Code or the City's Water Utility that says the issue of a building permit is conditioned on the requirement to disconnect the well. He said it is only when a person connects to City water that they must disconnect their well.

Mr. Sommer said Ms. Portago has a well which serves this property and if she continues to use her well she is subject to the requirements of that well, as well as the City's water conservation policies. There is nothing in City Code that says if she does new construction she must give up her well. He said the Code says if you connect to City water you must give up your well.

Mr. Sommer said he believes the condition should simply read that she will comply with all regulations related to water and sewer use or connection, because that is what she is required to do. He said the proposed condition is a new condition, and Ms. Portago has a well with water rights associated with it. Mr. Sommer said, "The requirement that she quit using her water rights in order to enjoy the privilege of adding a room to her house, or, according to the condition, any new

construction permit, giving up her rights, one it's not required by the Code and it's unfair to her. The City's regulations address this specifically, so that is a problem in this particular case, and I know it's City Land Use practice, apparently, to do this, but it's not in the Code."

Mr. Sommer continued, "With that, I would say that we would propose the conditions simply read, 'The applicant shall comply with all regulations related to water and sewer use on the property at the time of new construction.' So, if there is a regulation at the time of new construction that says you have to connect, great. But there is no such regulation now. So, other than that, the conditions of approval are fine."

Mr. Sommer continued, "The Memo that I have does not have in it... the condition is really number 4 really, 'Neither resulting lot has a metered service connection. An Agreement for Metered Service(s) (AMS contract with the City Water Division will be required prior to issuance of any new construction permits for the lots.' I assume that's what it's going to read, or will read if you adopt it. I think that condition should simply read, 'If the applicant applies for water service she shall comply with the regulations related to the abandonment of her well.' That's what it really should read. And we would answer any questions you might have."

**Theodora Portago, property owner [previously sworn]**, said she has no remarks.

### **Speaking to the Request**

**Martha Abernathy, 718 Gildersleeve was sworn.** Ms. Abernathy said her only concern is that there is a pedestrian path between Camino Monte Vista and Camino Atalaya, and she wants to make sure that remains with the lot split.

### **The Public Testimony Portion of the Public Hearing was closed**

### **Questions and Comments from the Committee**

Commissioner Schackel-Bordegary, asked if Ms. Abernathy could approach the podium and identify the path on the plat.

Ms. Abernathy, along with Mr. Sommer and Ms. Portago, approached the Committee, and Ms. Abernathy indicated the location of the path on the plat.

Mr. Sommer said the path isn't on the subject property.

Ms. Abernathy said, "There is a lot near a couple of houses near a road that dead ends, and this is a dead end to the north. That. So I just wanted to make sure."

Mr. Sommer said, "For the record, the walking path we're talking about is not on the property. This property is fenced and the path she's talking about is south of that fence, and it's actually, I believe, on a public right of way that leads to Camino Atalaya."

Ms. Abernathy asked who is in charge of that and observed that people are throwing trash back there now.

Chair Spray said the City is in charge of that and that is a separate issue.

Commissioner Schackel-Bordegary asked staff to provide a response to this issue regarding mandatory hookup to City water service and private water wells, and you see it in this case.

Ms. Baer said, "We agree with Mr. Sommer that the Code doesn't specify that that connection is required. However, it has been long-standing City practice, and we feel strongly that that requirement should stand as amended by Mr. Lamboy, that with new construction.... I would clarify that by new construction we don't mean an addition, we don't mean someone adding a bathroom, but if there's a new primary residence or an accessory dwelling unit added to either of the lots, we feel that at that time, the connection should be made to City water and sewer. And I do have, and I would like to show you, and then enter into the record, a map that shows the presence of both City water and sewer lines immediately adjacent to this property [Exhibit "5"]."

Ms. Baer approached the Committee with Exhibit "5." She said, referring to Exhibit "5", "This is the property in question right here. The main house, the guest house, the brown is sewer lines so it's right there and here, and the blue dashed line is water, right there and here."

Mr. Sommer said the property is already connected to sewer service.

Ms. Baer shows presence of City water and sewer lines near. Showed the location.

Commissioner Schackel-Bordegary asked if it is mandatory to hook up to sewer, but not necessarily water according to City Code.

Ms. Baer said, "It is clear that the sewer connection is required, but as Mr. Sommer has pointed out they are already connected to sewer. And there is a condition from Stan Holland in Wastewater that says that any further construction would require separate metering of the sewer, and we would look for that for water as well. In the meantime, we did ask that until such time as there is any new construction, that easements be provided to the well so that both properties have access to it once it is divided."

Commissioner Schackel-Bordegary said then the purpose of this action is to split this a lot so there are two legal lots. She understands the lot the house is on now is one of the two lots and it has the well."

Mr. Sommer said, "There are two dwellings now, one is a guest house."

Commissioner Schackel-Bordegary said, "Then it is two dwellings on the one lot with the well. So the new lot being created, if it were to be approved today, would create a new lot without a well on that property and without any dwellings."

Mr. Sommer said, "It does have a house on it. It has the guest house, and the main house is on the other lot. The well is on the lot with the main house... guest house... it's up on top. I think it's shown."

Commissioner Schackel-Bordegary said she is now confused, and asked if the well is on the lot with the guest house.

Chair Spray asked Mr. Sommer to approach the Committee and show the location on Exhibit "5."

Mr. Sommer said, "The well is on this lot here. Here's the main house. You know where Victor Hanson used to live. This was their house, the Hanson's house. So, the well is on this lot."

Chair Spray noted Mr. Lamboy is also indicating the location on the map using the overhead.

Mr. Sommer said, "So anyway, that well would serve both properties."

Commissioner Schackel-Bordegary said, "Where I was going with that is this is an interesting case, because it is in the public interest that all new construction be connected to existing infrastructure. That's a sound planning principle, design, etc., and particularly this is in the

thick of the City. And as our staff showed, the lines are right there to connect to, so I don't see a logistical problem with that. I do recognize that if it's not in the Code that it would be... I don't think the applicant would be giving up any water rights, she would just be hooking onto the existing facility."

Commissioner Schackel-Bordegary continued, "I'm new on the Summary Committee and I think this is an interesting topic, so I would like to hear from my fellow Commissioners and staff about this, but I don't think it's an unreasonable requirement for the City staff to have new construction hook up into existing lines. It just makes sense."

Commissioner Harris said, "First of all I think that even the amended language would be too broad if we get to that point. Any new construction permit is any new construction permit. It doesn't really specify, it doesn't really limit it to the categories that you described, Ms. Baer, of primary residence... I can't repeat your language, but it certainly is much more specific than any new construction permit. So I think, at the very least that would have to be modified further. I do... my own opinion is that, and I understand the greater good, but I also believe that if it's, and you verified that it is not a requirement, it may have been the practice, but it's not a requirement presently to mandate a new water service, the circumstances that you described. I do believe that they are entitled to keep their well, even if they were to apply for a permit for a primary residents."

Commissioner Harris continued, "I think there might be an issue here, and I don't know quite how to sort this out, to have the one well service both lots. I think that there might be some middle ground there that would in fact require the lot, and I don't know which number that would be... the northernmost lot, A-1, since the well sits on A-2, perhaps there's a different condition for A-1. Again, those are my thoughts. I don't really have a real specific question on that, but generally, I would lean toward keeping consistent with the Code as it stands. And so I think there was no real dispute with what Mr. Sommer said, I think. Is that the case really."

Ms. Baer said, "We regularly and routinely ask that new construction of dwelling units, if the water is available, and sewer is available which it is in this case, that they connect. This is the standing practice for lot splits in my memory. And we did also check with the Office of the City Attorney who said once that practice is established, that it is almost going against that practice to break that practice, and she even said that sometimes if something has been practiced for so long, even though it is not codified, that you almost have to take some sort of formal action to stop that practice. So I would really caution against not doing it in this case. We always say that a new house or a new guest house, accessory unit or primary dwelling unit, is required to connect to City services and to be separately metered."

Commissioner Harris said it comes down to a legal opinion as Ms. Baer describes from Ms. Brennan, and he would like to hear her speak to this specifically, because this is an important issue, particularly if it's true that she things a vote here consistent with Mr. Sommer's position would reverse the practice. However, to him, the Code would have priority and the practice would be secondary. He asked if the new regulations, Chapter 14, speak to this issue at all.

Ms. Baer said she can't answer that, because she isn't that familiar with it.

Commissioner Schackel-Bordegary said, "As I understood it, not giving up well, but the new construction would be required to be connected. Now, is that what we're talking about here, or is that the well would not be surrendered. That's not a requirement. Do we have that authority."

Mr. Sommer said, "As a matter of the City's water connection, if you go to the City and ask for water service, they require you to abandon your well. They will not provide water service to this property, or either one of these properties without abandonment of the well. So you are correct, the condition doesn't say you shall abandon your well and connect to City water service, but the condition of the Code is you shall abandon your well, because you go for a meter, they will require you to abandon your well."

Commissioner Schackel-Bordegary said, "If it's two lots and the one lot that the well is on is serving that, I guess the guest house, the City would require you to abandon the well if you're developing the other lot and having to hook that lot up."

Mr. Sommer said, "You raise a very interesting question. The regulation says that when you apply for water service, if the property has a well and it's served by the well, the well shall be abandoned. But the point you raise is what if that well was serving the northern lot and you abandon it for service on the lot with the guest house, would it be then. I don't honestly know the answer what they would do in the instance there, whether they would allow you to leave the service from the well for the one lot the way it is with the easements that way, or whether they would abandon it and require it there. But if you get water service on this property, they would require that you abandon service for that property."

Ms. Portago said this is confusing for her. She said, My understanding right now is I have one property and to divided it into two separate properties, and suppose I were going to sell one property. So if I was to sell the guest house property which has the well on it and keep the main house, I could do one of two things. I could do a well share agreement, or if I decided to hook up the main house to City water, since there is no well on the main house, then that would be hooked up to City water, but it wouldn't affect the guest house properties because there is a lot split. If

there is no split and I want to hook up the main house to City water, I would have to abandon the well because it's one property. That's my understanding."

Commissioner Schackel-Bordegary said that makes sense to her. She said we have to creatively and legally address this, because there are some properties in the City that have wells, and we need to address this to meet the needs of the diminishing resource. She said there is a reason we have a policy and practice for hooking up to City service, and we recognize that. She said the way Ms. Portago just described it, if that's legal, that's the way she sees this working out.

Mr. Sommer said he doesn't know, and that is Ms. Portago's impression. However, in terms of the City's legal requirement of the water utility, he is unsure they would allow water service without the abandonment of well, and I don't think this particular instance is addressed.

Mr. Sommer said, "This raises the very point that is the problem with this practice. When, under this practice, is one required to abandon their well. When. I'll tell you when. They don't have an answer. Is it within 200 feet, is it within 100 feet. What if you have to bring sewer service 50 feet, what if you have to upgrade the infrastructure in the City's property because the water line isn't right adjacent to the property. That's the problem with this practice, and I understand it's a long standing practice and nobody's objected to it and that sort of thing. But it raises the problem. This should be covered by a regulation and not by a practice. A regulation will say when water is available, and define when water is available. The other problem here is this is a policy. One of the City's policies right now, the problem that has typically occurred with wells in the City is that, prior to the City's conservation efforts in the past 5 years is people were using their well to irrigate when everybody else was having to cut back or pay very steep penalties. They modified the regulation to say, I don't care where your water comes from, if it comes from a well, or it comes from the City service, you're stuck with our water conservation watering restrictions. So, that area of policy has been taken care of by their current regulations. You can't just go water just because you're on a well, you have to follow their water conservation policies."

Mr. Sommer continued, "In essence, the other problem this raises is at this point, the City has water available to allow connections for new development. But if tomorrow, at some point in the future the City says it doesn't have water available for you to connect to City sewer and you want to build another dwelling unit, we're not going to let you connect to City water or sewer. So you can see the problem with the policy is, it is an attempt to regulate something that should be regulated. It is an intent through a practice, which nobody objects to, because typically this isn't a problem you run into. It requires an applicant to be put in the situation of the unknowns. There is



no regulation and why I submit to you that this condition and any condition in the future should always read the applicant shall comply with all requirements of the City Code with respect to water and sewer service for all new development. Change the regulation."

Ms. Baer said while they agree with Mr. Sommer that it would be cleaner and better if the regulations were clearer and this is an issue we should be address, nevertheless as stated, the cleanest way to get this to happen, and staff's strong recommendation, is that this be adopted as a condition of the lot split. If you support that position and believe it is the right thing to do to connect to City water, because it goes beyond the issue of how much water is available. She said people are pulling water from a very densely developed part of the City, and we really don't control that, despite Mr. Sommer's statement that the City regulates water usage. We really don't do that very well. She said there are houses in close proximity and possibly a new house could be developed, it doesn't make sense from a planning perspective, a water use or environmental perspective. She said, "While it may not be clear in the regulations that this is a requirement, it has always been a condition of approval of lot splits. And it's very clean to attach it, whether it's clear in the regulations or not, and I agree it isn't. " She said it is up to this Committee to impose that condition.

Ms. Schackel Bordegary agrees with Ms. Baer, but she grave, serious concerns about the potential for the applicant to be forced to give up her well, and she isn't willing to let happen through process. She said she works in the State Engineer's Office, saying this raises an important issue for the City. She said this is where local Ordinance meet State law, and she said is helpful to understand how things get implemented. She said there is a problem with unrestricted individual wells, but people have rights with wells, and well permits must be issued by the SE. She said it is a private property right. She said, "While I'm well on side of the side of sustainable development and the practice and right of the City to require that new construction be part of existing structure, everyone is up against this State law allowing for private wells." She said the City has never had the authority to enforce people who have been over-watering with private wells, and she wants to be clear of what authority we have. She would like to postpone this because she needs more information of the legality of this and the process, and to know more from the Water office how this would work.

Commissioner Harris said in addition to what Ms. Baer said about land use considerations, environmental considerations and water policy, what came to his mind was what Ms. Schackel-Bordegary said, and he would add property rights to that list. He said he think this is a very substantive discussion and we need more information, and would like to hear from Ms. Brennan. He also would like to know if this is addressed under the Chapter 14 rewrite. He is generally in favor of postponement as well.

Chair Spray said his thoughts also move to postponement since we are unsure about some of the issues. He wants to see it in writing and answers to some of the questions asked today to submitted to the Committee in writing. He said he doesn't think he has sufficient information to make a decision on this case today, and wants to be sure we are doing right by everyone. .

Ms. Baer said, "This isn't a Chapter 14 issue. It is more of a Chapter 25 issue which regulates water use in the City, so I am quite sure that the Chapter 14 rewrite and revisions didn't address this. I would also say on the issue of property rights, that a lot split is not a property right, it is a request, and it is at the discretion of this Committee whether to grant the lot split or not, and that you can make conditions on a lot split." She said in 2008 there was a similar case. She said we're not asking that they cap the well, but asking with new construction they connect to City water. She said in 2008, there was a lot split with a similar request, and she believes it was challenged. She doesn't have the specifics, but she understands the City was taken to court and lost on the question of the requirement to cap the well. She said this needs to be clarified, but the question wasn't a requirement to connect to City water which stood, but the question was whether in conjunction with that there could be a requirement to discontinue the use of a well, and the City lost on that point.

Commissioner Harris asked what happens if the water rights aren't used, and would they be lost.

Mr. Sommer said it depends on the kind of well. Once you have proved beneficial use, noting there is a time frame to do this, but if you don't use them you will lose them by virtue of a policy of abandonments. He said the City did lose in the Stennis lawsuit, but it doesn't control in this set of facts. He said this set of facts says you will apply for water service, but Ms. Stennis didn't apply for water service. He said it is clear the Committee needs more information and clarity about the requirement, the history, the implications, etc. He asked, if this case is postponed, to postpone to a date specific. He met with Marcos Martinez and Kelley Brennan this morning and they confirmed that this requirement isn't in the Code.

Mr. Sommer would like to meet with staff before the next meeting and clarify the issues, and present his client's position, and then take this up at the next meeting.

Commissioner Harris would like part of the discussion to get clarity on what happens with one well serving two lots, commenting there may be a compromise down the road.

**MOTION:** Commissioner Schackel-Bordegary moved, seconded by Commissioner Harris, to postpone Case #2011-116 to the next meeting of the Summary Committee on January 5, 2011, so we can get more information, as discussed, so we can make a decision on this case.

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

3. **CASE #2011-117. PENDERGRASS LOT SPLIT. ROBERT K. RIECKEN, SOUTHWEST MOUNTAIN SURVEYS, AGENT FOR RICHARD D. PENDERGRASS, REQUESTS PLAT APPROVAL TO DIVIDE APPROXIMATELY 1.001 ACRES INTO TWO RESIDENTIAL LOTS. THE PROPERTY IS LOCATED BETWEEN AGUA FRIA STREET AND MONTAÑO STREET AND IS ZONED R-5 (RESIDENTIAL - 5 DWELLING UNITS PER ACRE). (WILLIAM LAMBOY, CASE MANAGER)**

A Memorandum prepared November 18, 2011, for the December 1, 2011 Summary Committee meeting, to the Summary Committee from William Lamboy, Senior Planner, Current Planning Division, requesting postponement of this case to the Summary Committee meeting of January 5, 2012, is incorporated herewith to these minutes as Exhibit "6."

**F. BUSINESS FROM THE FLOOR**

There was no business from the floor.

**G. STAFF COMMUNICATIONS**

Ms. Baer said Chapter 14 changes were approved last night at the City Council.

**H. MATTERS FROM THE COMMITTEE**

Commissioner Harris commented that many of the City services aren't available in all of the presumptive City limits, although they are available in this situation.

Chair Spray thanked the Committee for its thoughtful approach to very complicated and difficult issues, and the staff for its explanations and information provided so we can make the right decision.

**I. ADJOURNMENT**

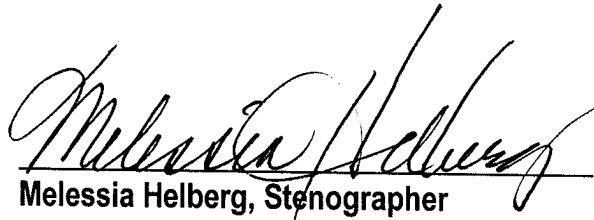
There was no further business to come before the Committee.

**MOTION:** Commissioner Harris moved, seconded by Chair Spray, to adjourn the meeting.

**VOTE:** The motion was approved unanimously on a voice vote, and the meeting was adjourned at 12:05 p.m.

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**Tom Spray, Chair**



**Melessia Helberg, Stenographer**