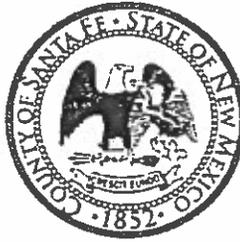


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. PCEV 14-5220
VACATION OF EASEMENT
MARK RUTTLE, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on August 12, 2014, on the Application of Mark Ruttle (hereinafter referred to as "the Applicant") for approval to vacate a platted fifteen foot (15') wide public access and utility easement and re-locate it as a thirty eight foot (38') wide public access and utility easement on 0.901 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests approval to vacate a platted fifteen foot (15') wide public access and utility easement that loops through the front yard of the residence. The Applicant's intent is to re-locate the easement as a thirty eight foot (38') wide public access and utility easement, alongside the existing boundary from the south to the north property boundary.
2. 29 Glowing Star Road (Lot 5) has a residence and an accessory structure located on the property. Both structures are legal non-conforming because they were

constructed prior to adoption of the 1981 Santa Fe County Land Development Code.

3. The Applicant and his wife acquired the real property by warranty deed recorded as instrument 1304730 in the Santa Fe County Clerk's records on the 9th day of December 2003.
4. In advance of a hearing on the Application, Applicant provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty one days on the property, beginning on July 21, 2014. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on July 22, 2014, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners.
5. The plat upon which the easement proposed for vacation and replat appears is from 1982 and is entitled Westrick Replat, approved by the Santa Fe County Extraterritorial Land Use Commission and recorded at Book 120, page 22 of the records of Santa Fe County. The plat reflects a thirty foot (30') wide right of way which then splits into two fifteen foot rights of way, one of which is proposed for vacation and relocation. The right of way was initially called out on a plat recorded with the Santa Fe County Clerk in 1934. The subject property is part of the Blue Sky Estates Subdivision.
6. Applicant submitted a written statement that a fifteen foot (15') wide road and utility access easement loops through the front yard of 29 Glowing Star and reconnects with the fifteen foot (15') wide road and utility access easement in front

of 29 Glowing Star Rd. According to the Applicant, this easement loop dates back to the time when 29 Glowing Star was the only house in area, long before the subdivision of the original property, as the house was built in 1918. The Applicant stated that the easement loop that runs through the front yard of 29 Glowing Star Rd. has not been used for public road access since 1978. The Applicant asserted that the easement loop does not contain any utility lines. The written statement went on to request “to vacate the portion of the existing easement where it leaves the road passing in front of 29 Glowing Star Rd., through the point where it rejoins the road passing in front of 29 Glowing Star Rd . . . We request to relocate the easement as a 38 foot, public access and utility access easement running along side the existing west boundary of the easement . . . from the south property boundary to the north property boundary. . . This will make the road easement at 29 Glowing Star Rd. consistent with the rest of the road as a 38 foot public access and utility access easement.”

7. Applicant gave written confirmation that PNM, New Mexico Gas Company, Comcast, and Century Link had been contacted and were reviewing the Application. None of the utilities appeared at the hearing to object to the request.
8. The Blue Sky Land Owners Association, the area home owners association, provided a letter acknowledging that they are in receipt of the proposed plat amendment and had voted to approve the proposed easement relocation.
9. No member of the public spoke at the public hearing on this matter either in favor or in opposition to the Application.

10. Article V, Section 5.7 of the Land Development Code states in part: “In approving the vacation of all or part of a final plat, the Board shall decide whether the vacation will adversely affect interests of persons on contiguous land or persons within the subdivision being vacated”.
11. The subject property (Lot 5) of the Blue Sky Estates subdivision was created between 1930 and 1982 and is considered a legal lot of record.
12. Article V, § 5.7.1 (Cause) of the Land Development Code states any Final Plat filed in the office of the County Clerk may be vacated or a portion of the Final Plat if:
 - a) The owners of the land proposed to be vacated sign an acknowledgment statement, declaring the Final Plat or a portion of the Final Plat to be vacated, and the statement is approved by the Board; or
 - b) The Board finds that a plat was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared by the County.
13. Article V, § 5.7.2 (Action) of the Code states action shall be taken at a public meeting. In approving the vacation of all or a part of a Final Plat, the Board shall decide whether the vacation will adversely affect the interests of persons on contiguous land or of persons within the subdivision being vacated. In approving the vacation of all or a portion of a Final Plat, the Board may require that roads dedicated to the County in the Final Plat continue to be dedicated to the County.
14. Article V, § 5.7.3 (Filing) of the Code states the approved statement declaring the vacation of a portion or all of a Final Plat shall be filed in the office of the County Clerk.

15. Staff recommends the following condition of approval: The Applicant shall record the portion of the Final Plat (Lot 5) affected by the vacation and relocation of the easement with the Santa Fe County Clerk's Office.

16. The Applicant agreed with staff's condition.

WHEREFORE, the Board of County Commissioners of Santa Fe County hereby approves the request to vacate a platted fifteen foot (15') wide public access and utility easement as shown as 29 Glowing Star Road., WestRick Replat II, Blue Sky Estates, and relocate it as a thirty-eight foot (38') wide public access and utility easement subject to the Applicant recording the portion of the Final Plat (Lot 5) affected by the vacated easement with the Santa Fe County Clerk's Office.

IT IS SO ORDERED.

This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____ 2014.

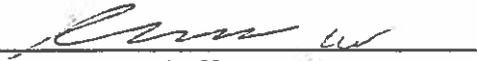
BOARD OF COUNTY COMMISSIONERS

By: _____
Daniel W. Mayfield, Chair

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

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VIII. B. 2. BCC Case # PCEV 14-5220 Mark Ruttle Vacation of Easement.
Mark Ruttle, Applicant, Requests Approval to Vacate and Relocate a Platted Fifteen Foot (15') Wide Public Access and Utility Easement on One Lot Totaling 0.901 Acres. The Property is Located in the Traditional Community of Tesuque At #29 Glowing Star Road, within Section 25, Township 18 North, Range 9 East, Commission District 1

MIGUEL "MIKE" ROMERO (Case Manager): Good evening, Commissioners. The subject property, Lot 5 of the Blue Sky Estates Subdivision, was created between 1930 and 1982. However, the plat which created the lot cannot be located. A replat of the subdivision in 1982 contained Lot 5 as well as a dedication of utility easements to the public forever. The 1982 replat was approved by the Extraterritorial Zoning Commission and the Santa Fe County Land Use Administrator pursuant to the Extraterritorial Zoning Ordinance. In 1985 a replat of the subdivision, which replat was referred to as WestRick Replat II, Blue Sky Estates, reflected eight lots, including Lot 5. An eight-lot subdivision is a Type III subdivision which is a summary subdivision. Lot 5 is considered a legal lot of record within the Blue Sky Estates Subdivision.

There is currently a residence with an accessory structure on the property. Staff has determined that both structures are legal non-conforming, pre-1981. Currently, the lot has a fifteen-foot wide public access and utility easement that loops through the front yard of the residence. The Applicant claims that the easement loop through the front yard of the residence of Lot 5 has not been used as a public access since 1978. The Applicant also claims that there are no utilities that run through the portion of the easement, but through the middle of Glowing Star Road.

The Applicant requests to vacate the portion of the existing easement where it leaves the road passing in front of the residence of Lot 5, through the point where it rejoins the road passing in front of his residence. The Applicant's intent is to relocate the easement as a thirty-eight foot wide public access and utility easement, alongside the existing boundary from the south to the north property boundary. The Applicant states this will make the road easement consistent with the rest of the road as a thirty-eight wide public access and utility easement. The Applicant also claims that this will not affect the existing utility lines as they are already contained in the proposed easement. This would essentially widen the easement from fifteen feet to thirty-eight feet through Lot 5. The Applicant has contacted all the appropriate utility companies that have utilities within Glowing Star Road.

The Applicant has provided correspondence from PNM, NM Gas Company, Comcast and Century Link regarding the proposed vacation and relocation of the public utility easement. All utility companies have consented to the vacation and re-location of the utility easement. The Applicant has also provided a signed letter by the majority of the property owners and HOA acknowledging that they are in receipt of the proposed easement change and have all voted to approve the easement relocation. The Applicant states that no property owners or utility companies will be adversely affected by this proposed easement location.

Staff recommendation: Approval to vacate a platted fifteen-foot wide public access

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and utility easement and relocate as a thirty-eight-foot wide public access and utility easement on another portion of the property totaling 0.901 acres, subject to the following condition. May I enter these into the record?

CHAIR MAYFIELD: Please, and read them in, Mr. Romero.

MR. ROMERO: Condition #1: The Applicant shall file the portion of the Final Plat, Lot 5, affected by the vacation and relocation of the easement with the County Clerk's Office.

I stand for any questions.

CHAIR MAYFIELD: Thank you. Commissioners, any questions of staff? Seeing none, this is a public hearing, do we have any one from the public or the applicant that wishes to comment on this case tonight? Kind of saw a head shake back there so the applicant is here tonight. Anybody else from the public wishing to comment on this? Seeing none, this portion of our public hearing is now closed.

COMMISSIONER HOLIAN: Mr. Chair.

CHAIR MAYFIELD: Commissioner Holian.

COMMISSIONER HOLIAN: I move for approval of BCC Case #PCEV 14-5220.

COMMISSIONER CHAVEZ: Second.

CHAIR MAYFIELD: I'll second that, I'll make the motion. It's in my district, but with that, Commissioners, seeing no other comments.

The motion passed by unanimous [5-0] voice vote.

~~VIII. B. 3. **CDRC Case # V14-5150 Lorenzo Atencio Variance.** Lorenzo Atencio, Applicant, Requests a Variance of Ordinance No. 2008-5 (Pojoaque Valley Traditional Community District), 12.5 (Density Standards) to Allow a Land Division of 1.45 Acres Into Two Lots. The Property is Located At 10 Frances Lane, within the Traditional Community of Pojoaque, within Section 7, Township 19 North, Range 9 East (Commission District 1) [*Exhibit 10: Quitclaim deed; Exhibit 11: Letter to property owners; Exhibit 12: Aerial views; Exhibit 13: McKay letter; Exhibit 14: McDougal memo; Exhibit 15(Applicant's exhibit AA): Plat of lot; Exhibit 16 (Applicant's exhibit BB): Plat of survey*]~~

JOHN LOVATO (Case Manager): Thank you, Mr. Chair. The subject lot was created in 1995 by way of a land division and is recognized as a legal lot of record. There is currently a residence under construction on the property. A permit for a 3,462 square foot home was issued on October 3, 2013.

The Applicant states a variance is needed due to his medical condition. The Applicant states he can no longer maintain the 1.45-acre parcel and wishes to sell one of the lots he is proposing to divide. The size of lots will be 0.725 acres each and the Applicant



