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Please refer to: 5873.000

May 17, 2013

NOTICE OF APPEAL

via Hand Delivery and Regular U.S. Mail

Councilor Dan Lewis
President of the City Council
One Civic Plaza NW, 9th Floor, Suite 9087
Albuquerque, New Mexico 87102

**Re: Appeal of Notice of Decision of Technical Standards Committee in the
Matter of Notice of Violation on Property Located at 8801 Glendale Ave. NE
Albuquerque, New Mexico 87122**

Dear President Lewis:

I represent Gary Padilla, the owner of the property at 8801 Glendale Ave. NE, Albuquerque, New Mexico 87122. On January 23, 2013, Mr. Padilla was cited by the City of Albuquerque that the construction on his property was in violation of Section 14-5-2-12 R.O. Albuquerque (1994). On February 8, 2013, Mr. Padilla appealed the Notice of Violation dated January 23, 2013 to the Technical Standards Committee as required by Section 14-5-2-15(a). The Technical Standards Committee held a hearing on April 4, 2013 and issued a Notice of Decision on April 19, 2013. This letter constitutes an appeal of the Decision of the Technical Standards Committee pursuant to Section 14-5-12-15 (B). A copy of the Notice of Decision is attached hereto as Exhibit A.

The basis of the appeal is that the Decision of the Technical Standards Committee is in error in requiring that all construction be removed from the floodplain. Section 14-5-2-12(B)(1) states that construction, grading or paving on any lot within the jurisdiction of the City shall not increase the damage potential to upstream, downstream or adjacent properties or public facilities. The construction, grading and paving on the above lot does not increase the damage potential to upstream, downstream or adjacent properties or public facilities.

Thank you for your attention to this matter.

Sincerely,

HUNT & DAVIS, P.C.


Catherine F. Davis

CFD:ja

Enclosure

c: Kevin Curran (*via e-mail and Regular Mail*)
City Attorney's Office
Post Office Box 248
Albuquerque, NM 87103-2248

5873

**NOTICE OF DECISION
TECHNICAL STANDARDS COMMITTEE
HEARING APRIL 4, 2013**

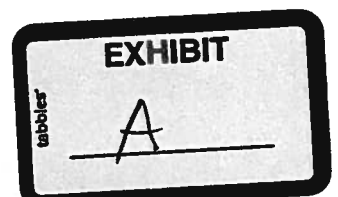
Re: In the matter of Notice of Violation on Property Located at 8801 Glendale Ave. NE Albuquerque, New Mexico 87122, and more particularly described as:

LOT NUMBERED TWENTY-TWO (22) IN BLOCK NUMBERED SIXTEEN (16) IN TRACT NUMBERED ONE (1) OF UNIT NUMBERED THREE (3) OF NORTH ALBUQUERQUE ACRES, SUBDIVISION IN BERNALILLO COUNTY, NEW MEXICO AS THE SAME IS RECORDED IN THE OFFICE OF THE BERNALILLO COUNTY CLERK ON SEPTEMBER 10, 1931 IN PLAT BOOK D. FOLIO 121.

Decision

This matter having come before the Technical Standards Committee on April 4, 2013 at 2:00 pm regarding drainage violations not in conformance with the approved Grading and Drainage Plan on property located at 8801 Glendale Ave. NE Albuquerque, New Mexico 87122 by a vote 5-0 the Technical Standards Committee voted to affirm the decision of the City Engineer with the following modifications and conditions:

1. Applicant shall remove from the floodplain:
 - a. all walls;
 - b. fill;
 - c. driveway;
 - d. driveway bridge; and
 - e. all concrete. (collectively "Improvements")
2. Applicant shall satisfy the retention ponding requirement set forth on the approved Grading and Drainage Plan or prepare and submit a revised plan prepared by a New Mexico Professional Engineer for review and subsequent approval by the City Engineer.
3. Applicant shall protect the house, as-constructed, by the design and construction of a scour wall. The scour wall design shall be prepared by a New Mexico Professional Engineer and submitted for review and subsequent approval by the City Engineer.
4. Following removal of the above referenced Improvements from the floodplain, the Applicant may submit a revised plan prepared by a New Mexico Professional Engineer for construction of a driveway across the floodplain. The revised plan shall follow the



contour of the preconstruction arroyo within the floodplain. The revised plan shall be submitted for review and subsequent approval by the City Engineer.

Findings

On April 18, 2013 the Technical Standards Committee voted 5 to 0 to adopt the following Findings 1 through 17.

1. This appeal came before the Technical Standards Committee pursuant §14-5-2-15 of the City of Albuquerque's Flood Control Hazard and Drainage Control Ordinance on March 7, 2013.

2. The March 7, 2013 hearing was continued to April 4, 2013 to allow additional time to the Applicant and the City Engineer's office to disclose and exchange information to be included in the record.

3. A Grading and Drainage Plan dated 09-01-2011 was approved by the City Engineers' office as a condition of a building Permit approval for 8801 Glendale Ave NE .

4. Grading occurred in the floodplain at 8801 Glendale Ave NE in violation of the Drainage Ordinance, Chapter 22 of the City's Development Process Manual ("DPM") and the Floodplain Permit dated September 27, 2011. The Floodplain Permit is a National Flood Insurance Program requirement.

5. Walls, fill, driveway, driveway bridge and concrete construction occurred at 8801 Glendale Ave NE within the FEMA designated AO Flood Hazard Zone as shown and designated on the mapping in effect at the time of Grading and Drainage Plan approval.

6. The above referenced Improvements were not constructed in accordance with the approved Grading and Drainage Plan and therefore the Improvements are in violation of the approved Grading and Drainage Plan.

7. The hydraulic analyses presented by the Applicant at the April 04, 2013 hearing demonstrated that the Improvements constructed within the floodplain diminished and restricted the arroyo hydraulic capacity.

8. The hydraulic analyses presented by the Applicant at the April 04, 2013 hearing demonstrated that Improvements constructed within the floodplain altered the horizontal and vertical extents of the floodplain.

9. The hydraulic analysis presented by the Applicant at the April 04, 2013 hearing failed to demonstrate that the Improvements within the floodplain will not have an adverse impact on downstream properties.

10. A portion of the house at 8801 Glendale Ave NE was constructed within the FEMA designated AO Flood Hazard Zone as shown and designated on the mapping in effect at the time of the Grading and Drainage Plan approval.

11. Removal of the house from the Floodplain would not be required provided that the Applicant designs and constructs a scour wall acceptable to the City Engineer to provide adequate protection of the encroaching improvement.

12. Applicant constructed a basketball court within an area designated for retention ponding on the approved Grading and Drainage Plan.

13. The construction of the basketball court within the area designated for retention ponding is in violation of the approved Grading and Drainage Plan.

14. The ponds constructed by Applicant are detention in nature and therefore do not satisfy the design intent of the approved Grading and Drainage Plan.

15. In lieu of removing the Basketball court and constructing the as-approved retention pond. Applicant may, subject to the approval of the City Engineer, satisfy the retention ponding requirements elsewhere on the site.

16. A scour wall was not constructed in accordance with the approved Grading and Drainage Plan.

17. As built drawings for the walls, as constructed, have not been provided therefore it is not possible to evaluate or determine if the walls constructed satisfy the design intent of the approved Grading and Drainage Plan.

Appeal

The City Engineer, the Applicant or any person aggrieved by this Decision may appeal the Decision to the Albuquerque City Council by submitting a Notice of Appeal in writing to the President of the City Council within 30 days after the date a copy of the Decision is mailed to the Applicant.

St. J. Metro

Steven J. Metro

Chairman, Technical

Standards Committee

Date: 4-19-13