HYDROLOGY E18/D1.4 THREE PLAN

F18-D14

3 PLANS

Mr. Stevens

CITY OF ALBUQUERQUE, NEW MEXICO
CITY ENGINEER'S OFFICE

MEMORANDUM - April 24, 1973

TO: Mr. Frank Horan, City Attorney
FROM: V. M. Kimmick, City Engineer
W. T. Stevens, C.I.P. Coordinator W.T.S.
SUBJECT: BEAR ARROYO - RHODES ACRES

This memorandum is intended to allow response to the AMAFCA letter of April 6, 1973.

1. The existing Zoning Ordinance states all land within 125 feet of the centerline of the major arroyos shown on the Zone Map . . ." The Zone Map shows some arroyos, but not all Some interpretations say these are the arroyos shown in the Zone Atlas. In any case, the Bear Arroyo is not shown on either the Zone Map or in the Zone Atlas, as an arroyo.

2. When a permit is requested and the area falls in the category above, the Zoning Administration refers the permit to the City Engineer. Rhodes Acres was not seen by this office until 4-23-73, and it was already stamped by the Zoning Administration.

3. The Bear Arroyo is a major arroyo estimated to carry 13,500 cfs under the Standard Project Flood. Under the AMAFCA definition (4000 cfs or over) or the City Storm Drainage policy (6000 cfs or over) definition, it is a major arroyo. Under present policy, the City is responsible to permanently line the channel and to maintain it. The developer is responsible to dedicate necessary right-of-way and cut the channel. It is unknown if the channel is cut to proper size. A channel design was approved when the plat was authorized originally in the fall of ~~1970~~ 1969

4. There are facts which must be considered in this area:

A. The dam in the golf course offers some protection to this area.

B. The development in the Bear Arroyo water shed is minimal. This means the actual run-off from even the Standard Project Flood would produce flows about 1/2 of those with full development.

C. The earth channel, when constructed to the proper size, will carry the present and full SPF flow with some precautions. The East side of Rhodes Acres could receive damage unless the flow from the golf course is channelized where it enters Rhodes Acres. Also, an earth channel would erode rather severely under storm water flows. This would place larger loads in the Street Maintenance Division.

D. In long range plans, it is proposed to concrete line the Bear from North Diversion Channel to Tramway. It is proposed to line the channel from Rhodes Acres to San Mateo with funds from the proposed 1974 Bond Issue. If the dam in the golf course is removed the lining would have to be continued to Wyoming. No funds have been requested for this portion.

E. The original intent of the 125 foot limitation was to prevent construction within the natural arroyos. If arroyos were channelized with an adequate section to carry the flows, it was not anticipated the limitation would apply.

F. To my knowledge the AMAFCA Drainage Resolution has not been adopted by the City of Albuquerque, formally. However, we are enforcing its provisions to the best of our ability. Section 7, regarding building permits, is not being administered. In order to comply with this section EVERY building permit request (in categories outlined in Section 7) would have to be examined by the City Engineer and by the Zoning Administration. There is no staff to perform this function. A Hydrology Engineer has been authorized, but we have been unable to obtain a person meeting the qualifications due to the inadequate salary offered. Even if the position were filled, the time would be fully occupied reviewing drainage aspects of plats and PUD's. Little time could be devoted to review of building permits without additional staffing.

~~Hannick~~ Stevens

City of Albuquerque

CITY HALL 400 MARQUETTE, N.W. RM. 703
P. O. BOX 1293, ALBUQUERQUE, NEW MEXICO 87103 TELEPHONE (505) 766-7411

April 27, 1973

TO: Herbert H. Smith, City Manager

FROM: Frank Horan, City Attorney FH

RE: Request for Brief and Opinion Concerning the Matter of Application of Virgil Rhodes for a Building Permit

By memo received last Friday, April 20th, you asked for:

"A brief and an opinion regarding the City's position in the Virgil Rhodes matter.

Does the City zoning ordinance as now written bear on this matter?

What is the position of the City in having issued foundation permits?

Does AMAFCA have the authority to request the City to withhold further permits?

What is the possibility of the City being held liable in case of a suit for damages?

What is the advice of Legal Department as to future action in this matter by the City and City Commission?

(Opinion required before April 30, 1973)."

Since the actions concerned originated in operating departments, I requested from Public Works, Planning, Parks, and Building and Inspection Division their narrative reports of

LEGAL DEPARTMENT
CITY ATTORNEY — Frank L. Horan
ASSISTANT CITY ATTORNEYS — Harley A. Lanning - Frank M. Mims - Thomas J. McMahon - Patrick L. McDonald, Frank R. Martinez, Cornelius J. Finnen, Douglas C. Henson, Elizabeth N. Love

cc: E. F. Hensel
H. R. Orr
H. T. Stevens

the actions which took place relevant thereto.

These were prepared hastily in response to my request and are assumed to correctly reflect actual occurrences and practices. Their comments, where relevant to the discussion, are excerpted, and in some cases, attached in full. It is conceivable that there are other relevant matters which have not come to our attention.

SUMMARY

The salient facts are these: Rhodes Acres plat S-69-18 was approved finally by the City Commission on the 17th day of November, 1969, and it was recorded in the Office of the County Clerk of Bernalillo County. The proposed construction would be located on a portion of Lot F. An extract of the Subdivision plat showing the lot is attached. (Exhibit #1) The extract also reveals that a drainage easement of 100 ft. width was dedicated by the subdividers, Virgil O. Rhodes and Virginia L. Rhodes.

The City Zoning Ordinance was amended by Ordinance 153-1968, adopted on December 3, 1968, and by Ordinance 250-1972, adopted December 18, 1972, at Section 24 thereof, as to the topic, "drainage channels" as follows in relevant part.

> "E. DrainageChannels. The provisions of this subsection apply to all land within 125 feet of the centerline of the major arroyos shown on the Zone Map and are intended to protect persons and property from periodic flooding and to preserve the location, character, and extent of natural drainage courses.
>
> 1. No building or structure may be constructed, altered or occupied, no materials or equipment may be stored, and no mining, excavation, or land filling may be performed, except upon issuance of a certificate of approval by the Enforcement Officer.

2. Procedures:

a. An application for a certificate of approval must include a contour map referenced to the appropriate datum plane approved by the City of Albuquerque, prepared by a registered New Mexico civil engineer, which indicates the extent and elevations of all proposed construction alterations, mining, excavation, and land filling.

b. An application must contain other studies as may be required to determine the effect of flooding on the proposed structure or activity and the effect of the proposed structure or activity on the arroyo or flood drainage channel.

c. Prior to the issuance of a certificate of approval, the Enforcement Officer must find that the building, structure, or activity will not constitute a hazard to persons or property, will not divert water from or obstruct the natural flow of water in the arroyo or flood drainage channel, will not cause flooding of land outside the natural drainage course, and will not reduce or endanger the water-carrying capacity of the arroyo or flood drainage channel.

d. The applicant may be required to erect dikes, barriers, or other structures or improvements necessary to guarantee protection to the public as a condition to the issuance of certificate of approval.

3. The issuance of a certificate of approval will not constitute a representation, guarantee or warranty of any kind or nature by the City of Albuquerque or by any political subdivision, or by an officer or employee of any of them, of the practicability or safety of any structure or activity, and will create no liability upon or cause of action against any public body, officer, or employee for damage that may thereby result.

4. In the event of a conflict between the location of a major arroyo as shown on the Zone Map and the actual location of the arroyo on the ground, the centerline of the actual location of the arroyo controls for the purposes of these regulations."

It will be noted that the provisions of Subsection E, "apply to all land within 125 feet of the centerline of the major arroyos shown on the zone map."

Subsequently, in early 1972, the Albuquerque Metropolitan Arroyo Flood Control Board of Directors, becoming aware of the infringement on watersheds by construction, proposed and subsequently adopted Drainage Resolution Number 1972-2, which was adopted on the 13th day of July, 1972, and became effective immediately. That resolution being lengthy is not quoted in full but references will be made to the appropriate language. Among other practices prohibited, are the filling in of natural drainage areas or the issuance of a building permit by the City where the parcel of land is located wholly or partly within a water course unless documents described in and prepared in accordance with Section 7 of the regulation have been incorporated by reference in, and performance of the alteration in the manner set forth therein made a condition of approval of, such building permit. Section 7 in turn provided, in summary, that all applications for building permits, for multiple housing or commercial or industrial buildings, filed with any state or local governmental subdivision, ... within the territory of the authority, incorporate by reference or have attached thereto, a topographic survey or contour map prepared under the direction of and signed by a registered professional engineer or surveyor, a drainage report and plan prepared under the direction of and signed by a registered professional engineer, and a grading plan prepared under the direction of and signed by a registered professional engineer, architect or surveyor. Subsequently in the Fall of 1972, the water course known as the Bear Canyon was further channelized and deepened and fill earth was moved about in the subject areas along artificial channel -- all of which is a part of the natural water course and is located within 125 feet of the centerline of the water course. The owner of this property is Mr. Virgil Rhodes or Rhodes Enterprises, a corporation, or some

other entity in which Mr. Rhodes is a principal. In any event, an application was made by Rhodes Enterprises, Inc. by R. C. Kennedy, General Superintendent, for a foundation permit for several buildings to be located at 6141 Osuna, N.E., Albuquerque, New Mexico, on December 26, 1972, and a foundation permit was issued for the foundation only and a fee of $74.00 paid on the 26th day of December, 1972. (Exhibit No. 2) At the time the foundation permit was issued an extract of the Building Code relative to the matter was issued to the applicant and receipted for by Mr. Kennedy, of which extract and receipt, a copy is attached. (Exhibit No. 3) Subsequent thereto, on April 6, 1973, Mr. John B. Robert, Executive Engineer, of the Albuquerque Metropolitan Arroyo Flood Control Authority, wrote a letter to Mr. Herbert H. Smith, City Manager of the City of Albuquerque, asking that the application for building permit be denied until the applicant had obtained a permit for his land filling from the Authority. (Exhibit 4) A copy of that letter is also attached.

Subsequent thereto, the City Commission informally considered the problem raised and as a result, the question posed at the beginning of this letter was framed.

THE ZONING ORDINANCE

Section 24E, above quoted, provides that all land within 125 feet of the centerline of the major arroyos shown on the zone map are protected by procedures for a Certificate of Approval for constructing, altering, occupying, buildings in that area. However, we are told that the Bear Canyon Arroyo is not shown on the zone map (see Donald Peterson's memo to the writer, dated April 26, 1973). (Exhibit No. 5) In practice, however, the operating departments have tried to effectuate the terms of the ordinance. It requires that an application for a Certificate of Approval must include a contour map prepared by a registered New Mexico civil engineer, indicating the extent and elevations of proposed construction, alterations, mining, excavation and land filling. No such application was submitted.

It further provides that prior to the issuance of a Certificate of Approval, the enforcement officer must examine the plans and the land of the applicant. The Zoning Administrator, a City Enployee designated by the Planning Director, is the Enforcement Officer, so designated by Ordinance No. 144-1972. Mr. Donald A. Peterson is the Zoning Administrator. He advises that the Certificate of Approval is not a formal document but is rather an endorsement by him as such Zoning Administrator on the plans of a proposed structure to the effect that the proposed construction conforms to Section 24 E of the Zoning Ordinance. This endorsement was not, in fact, given relative to the building plans submitted by Mr. Rhodes, and, of course, such building plans were not a part of the application for the foundation permit.

Mr. Peterson advises further that, had the applicant sought a Certificate of Approval, that the item would have been referred to Mr. Vern M. Kimmick, City Engineer, to make a physical inspection of the site and that Mr. Kimmick would have reported back to Mr. Peterson so that Mr. Peterson could either approve or disapprove the application for the Certificate of Approval.

THE FOUNDATION PERMIT

Going now to Mr. Volz, who issued the permit for the foundation, we attach a copy of his memo dated April 23rd, and call attention to the Certificate of Receipt from Rhodes Enterprises of the excerpt of the Ordinance to the effect that the issuance of the foundation permit does not obligate the City to issue a building permit. Further inquiry of Mr. Volz indicates that it is the practice of the Building and Inspection Division to rely on the Planning Department's prior endorsement for a determination that the location of the proposed structures conform to Zoning Ordinance requirements such as nature and set-back and that a determination as to the quality of the ground soils to support any proposed construction is left to the architect or engineer and a certificate by one or the other on the foundation plan is accepted by the Building and Inspection Division as a security for this purpose. A certificate by Water Gathman, architect was shown on the application for the foundation plans submitted by Rhodes Enterprises.

INTERPRETATION

Question 1. "Does the City Zoning Ordinance as now written bear on this matter?"

Answer: The section of the Zoning Ordinance relating to drainage channels is relevant but since its provisions were not complied with by the City administration, either by defining the Bear Canyon as an arroyo on the Zone Map or by administrative procedures to comply with the language of the ordinance itself, it is not controlling in this instance to this set of facts.

The foundation permit issued as aforesaid, was qualified by a statement from the ordinance which is to the effect that "the building official may issue a permit for the construction of part of the building (such as foundation) provided that adequate information and detailed statements have been filed complying with all permanent requirements of the Code. The holder of the permit shall proceed at his own risk without assurance that the permit for the entire building or structure will be granted." This language relates most directly to the construction specifications and plans rather than to the site location, but the provision there relating to "complying with all pertinent requirements of the Code" has a broader application.

At Section 302.A, treating of the issuance of building permits, is found the language: "The application, plans, and specifications filed by an applicant for a permit shall be checked by the building official. Such plans shall be reviewed by other departments of the City to check compliance with the laws and ordinances under their jurisdiction. If the building official is satisfied that the work described in an application for permit and the plans and specifications filed therewith conform to the requirements of this Code and other applicable laws and ordinances, he shall issue a permit. The underlined phrase, other applicable laws and ordinances, will include the drainage regulation of AMAFCA, which describes a major arroyo in the language, again quoting:

"that portion of an arroyo whose watershed above that point would produce a storm water runoff of more than 4,000 cubic feet of water per second in the event a standard project storm occurred upon such watershed." The City Engineer, as evidenced by memorandum dated April 24, 1973, (Exhibit Number 6) to the writer, states in paragraph three that the Bear Canyon Arroyo, "Is a major arroyo estimated to carry 13,500 cfs under the standard project flood." The City will contend then that the building official is bound to consider the provisions of the AMAFCA resolution in granting the permit or denying it.

Question 2. "What is the position of the City in having issued foundation permits?

Answer: The question is answered generally in Rathkopf, The Law of Zoning and Planning, Volume 3, Ch. 56 §1.

As set forth in Chapter 55, an administrative officer to whom the duty and authority to issue permits has been delegated has only such power with respect to permits as the ordinance has given him. A permit issued for a use or structure which is forbidden by the ordinance is beyond the power of the officer to issue; consequently, it has no legal status, is invalid, and is itself entirely without power to clothe its holder with any legal rights thereunder.

Question 3. Does AMAFCA have the authority to request the City t withhold further permits?

Answer: The question is answered affirmatively by the City's Building Code discussed above and its incorporation of valid regulations of other bodies having jurisdiction. It should be noted here that the regulations are issued pursuant to the Albuquerque Metropolitan Arroyo Flood Control Act of 1963, Chapter 311, Section 22 (§75-36-22 EE). As such, they are specifically authorized by the statute, have been adopted according to apparently authorized processes, and no attack on their validity has been made.

Question 4. What is the possibility of the City being held liable in case of a suit for damages.

Answer: Again quoting Rathkopf at §56-12:

"A person to whom a permit is illegally issued may not claim he was misled or deceived into acting in reliance thereon since he is presumed to know the extent of the authority of the officer who has issued the permit, even where there has been a change in the ordinance since the date of application and filing.

"It is obvious that if the innocent 'misrepresentation' as to the restrictions existing at the time of issuance results in an invalid permit subject to revocation, a permit issued as a result of a mistake of fact or actual fraud also must be void and subject to revocation."

Liability of the City for any action done or refused must be within the statutory liability allowed by law or permitted through judicial interpretation. No statute allows it in New Mexico and the Supreme Court of this State in discussing the subject at great length in Barker vs. City of Santa Fe, 47 N.M. 85, and subsequent cases has continued to rely on the distinction between governmental and proprietary functions, holding the former immune and the latter subject to suit. The issuance of building permits would thus be protected until the Supreme Court of New Mexico adopts a different rule.

McQuillan, Municipal Corporations, Third Edition, Vol. 7, p. 522.

"§24.507. Municipal Building codes and ordinances.

"Municipal corporations frequently have adopted building codes or ordinances, which in many instances are standard codes recommended for adoption by municipal corporations. If valid

and constitutional, municipal building codes, ordinances and regulations have the force of law. They usually may be and are penal in character and hence they require a strict construction in favor of those against whom they are enforced. . .The enactment and enforcement of building codes and ordinances constitute a governmental function." (Emphasis added)

RECOMMENDATIONS

1. Withhold the building permit until the Authority approves its issuance, or the issue is otherwise determined.

2. Decline any claim for damages and invite AMAFCA to participate in the defense thereof.

We further suggest as affirmative steps, the following:

1. Determine the issue of retention or removal of the earthen dam so that the golf course can be appropriately developed, bearing in mind that this is related to further treatment of the Bear Canyon Arroyo within the City park land, within the Rhodes Acres site and elsewhere.

2. Amend the Zone Maps to conform to the Zoning Ordinance and identify the arroyos, establish appropriate responsibilities therefor and fund the administrative staff to administer these responsibilities or in the alternative, request AMAFCA to perform these functions.

3. Adopt the AMAFCA or equivalent regulations by ordinance and incorporate them into the review process so as to assure their effectuation and avoid oversights.

4. Make an inventory of the present situation of all watersheds and adopt appropriate policies for treatment where needed.

5. Encourage present efforts to draft and adopt an effective flood-plain zoning ordinance.

Enclosures:
Exhibits 1 through 6

cc: Robert Burgan
Erv Hensch
Charles Volz
Vern Hagen

Extract of Plat of
RHODES ACRES, S-69-18
Including Topography on April 6, 1973
As Obtained by Koogle & Prule Engineering

EX. NO. 1

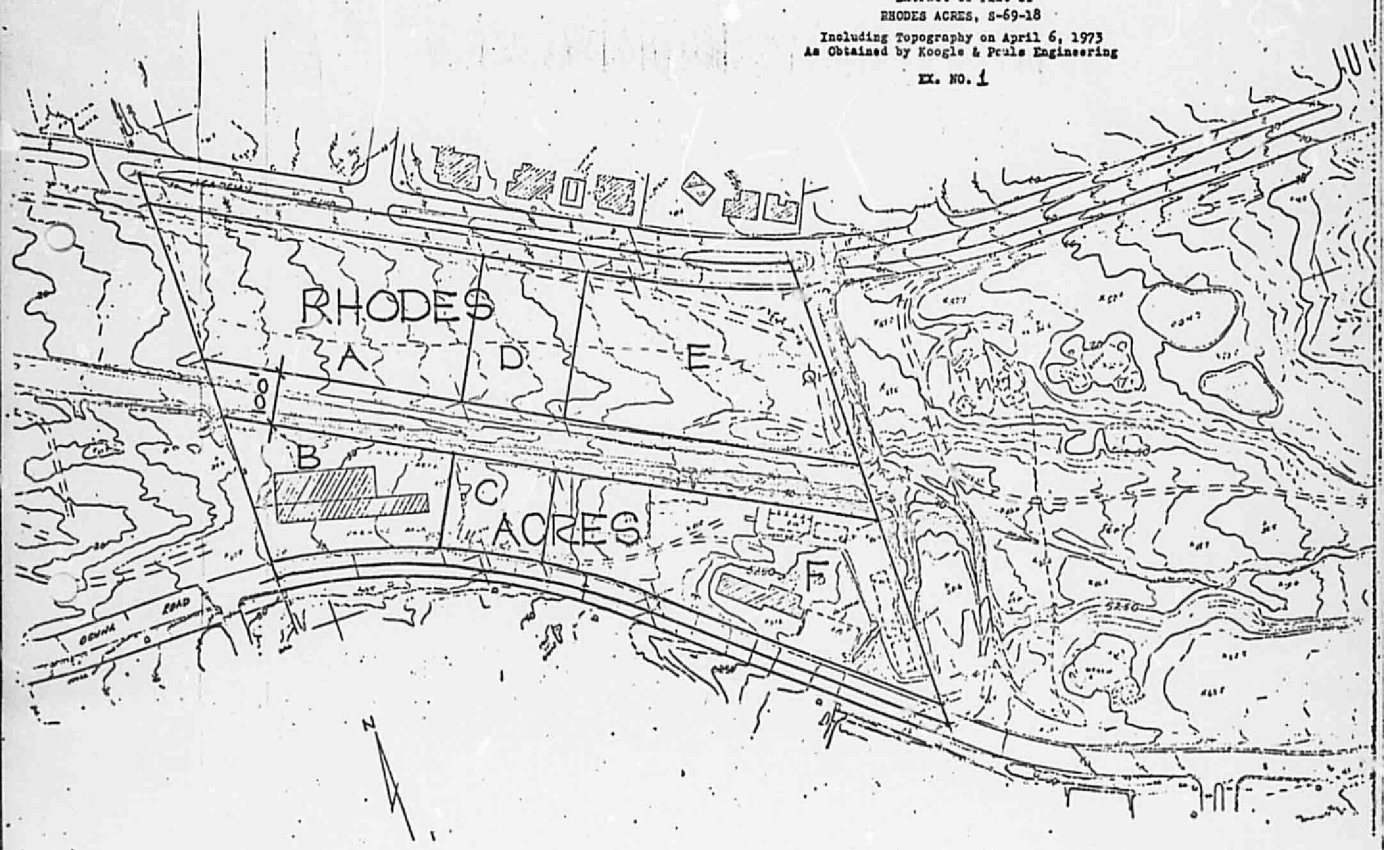


Exhibit 2-A

950

Date _____

CITY OF ALBUQUERQUE

DIVISION OF BUILDING AND INSPECTION

APPLICATION AND PERMIT FOR BUILDING AND CERTIFICATE OF OCCUPANCY

✓ No. BL 85324

Receipt No. _____ Date Issued 12-26-72 Total Fee $ 74.00

Building Address 6141 Osuna NE

Nearest Cross St. _____

Lot No. _____ Blk. No. Portion of T

Subdivision Rhodes Acres

Permittee
Name _____
Address _____
City Virgil Rhodes

Architect Engineer
Name _____
Address _____
City _____
State License No. _____ Tel. No. _____

Contractor
Name Rhodes Enterprises
Address 6001 Osuna NE
City _____
State License No. 5071 Tel. No. _____

Type of Construction: I, II, III, IV, V, N, 1-Hour, H.T.

Description Foundation

Occupancy Group: A, B, C, D, E, F, G, H, I, J
Division 1, 2, 3, 4, 5,

Land use zone:

Fire zone 1, 2, 3,

CLASS OF WORK			
New			
Alteration		Remodel	
Addition		Repair	

Use of Building Res

CONSTRUCTION	FEES
Building	74.00
Curb and Gutter	
Sidewalk	
Walls and Fences	
Drive Pads	26-12-72 0065 ****74.00
Demolition	
Miscellaneous	
Total Fees	74.00

Roof load (lbs. per sq. ft.)

Total sq. footage of floor area in bldg.

Construction cost of building $ 20,000

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all city ordinances, and state laws regulating building construction. The issuance of a permit shall not prevent the building division from thereafter requiring the correction of errors.

Signature of Permittee Rhodes Ent. Inc By Kathryn E. By _____

NOTICE: THIS PERMIT EXPIRES UNLESS WORK IS STARTED

Exhibit 2-B

C 494

DATE 1/11/73

APPLICATION AND PERMIT FOR:
BUILDING, ADDITION, ALTERATION, REPAIR, REMODEL, DEMOLITION, MOVING, AND MISC.

THIS PERMIT VALID ONLY FOR ITEMS CHECKED AND PAID FOR BELOW

BUILDING ADDRESS 6141 Osuna NE ZIP CODE

LOT NUMBER — BLOCK NUMBER Lot 7 STREET SLD 44920 NM 7101

SUBDIVISION Rhodes Acres

PERMITTEE
NAME Virgil Rhodes
ADDRESS
CITY AND STATE ZIP CODE

ARCHITECT / ENGINEER
NAME
ADDRESS
CITY AND STATE ZIP CODE
STATE LICENSE NO. PHONE

CONTRACTOR
NAME Rhodes Enterprises
ADDRESS 3616 San Pedro NE
CITY AND STATE ZIP CODE
STATE LICENSE NO. 5071 PHONE

			FEES
1	NEW BUILDING		
2	ALTERATION	NO. OF UNITS ADDED / NO. OF UNITS DELETED	
3	ADDITION	NO. OF DWELLING UNITS	
4	REMODEL		
5	REPAIR		
A	BUILDING		
B	CURB AND GUTTER		
C	SIDEWALK		
D	BLOCK WALLS		
E	FENCES		
F	DRIVE PADS		
G	DEMOLITION		
H	PLAN CHECK FEE		
J	HOUSE MOVING		
K	SWIMMING POOL		
L	SIGNS		
M	BILLBOARDS		
N ✓	FOUNDATIONS		5.00
P	BUILDING CODE BOOK		
Q	PLUMBING AND GAS CODE BOOK		
R	ELECTRICAL CODE BOOK		
S	BOILER CODE BOOK		
T	TEAM INSPECTION		
U	BOILER INSPECTION		
V	RE-INSPECTION		
W	ELEVATOR		
X	OTHER-SPECIFY		
		TOTAL FEES	5.00

ROOF LOAD LBS. SQ. FT.	HEIGHT IN STORIES	TOTAL SQ. FT. OF FLOOR AREA	CONSTRUCTION COST OF BUILDING 500
TOTAL LAND AREA SQ. FT.	APARTMENT BUILDING - NUMBER OF: UNITS ROOMS		TRANSIENT MOTEL OR HOTEL - # OF UNITS
LAND USE CODE 0610	CITY ZONE	SIC	CODE INDEX SEQ. NO. 002324	ZONING MAP
OWNERSHIP 1 PUBLIC 2 PRIVATE	SEWAGE DISPOSAL 1 PUBLIC 2 PRIVATE	WATER SUPPLY 1 PUBLIC 2 PRIVATE	
TYPE OF HEATING FUEL 1 GAS 2 ELECT. 3 OIL 4 COAL 5 OTHER	AIR CONDITIONING 1 CENTRAL 2 RFRG 3 EVAP	DATE ISSUED / /	

TYPE OF CONSTRUCTION: I 1 V 5 / II 2 N 6 / III 3 1HR 7 / IV 4 H.T. 8

OCCUPANCY GROUP: A B C D E / F G H I J

DIVISION: 1 2 3 4 5

FIRE ZONE: 1 2 3

DESCRIPTION Foundations only

USE OF BUILDING Res

"I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all city ordinances and state laws regulating building construction or the phase of work for which this permit is being secured as indicated above. The Plan Check Base Fee, however, is not a permit. The issuance of a permit shall not prevent the Building Division from thereafter requiring correction of errors."

SIGNATURE OF PERMITTEE Rhodes Enterprises [signature]

BY

NOTICE ▷ THIS PERMIT NOT VALID UNTIL FEE IS PAID

Exhibit 3

Section 302 (a) of the Building Code of the City of Albuquerque reads in part as follows:

> "The building Official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved provided adequate information and detailed statements have been filed complying with all pertinent requirements of this Code. The holder of such permit shall proceed at his own risk without assurance that the permit for the entire building or structure will be granted."

The issuance of a foundation permit does not preclude the possibility that changes might be necessary to meet code requirements when a complete plancheck has been made. The owner proceeds at his own risk with the understanding that the building permit may or may not be granted and that any changes in construction necessary to meet code requirements after planchecking has been completed are to be made by the owner with no liability attached to the City for issuing the foundation permit.

I have read the above and hereby agree to accept the responsibility for any changes in construction necessary to meet all code requirements after planchecking has been completed.

Owners Signature Rhodes Enterprises Inc.
By R. Kennedy Gen. Supt.

PROJECT ADDRESS 6141 ~~6121~~ OSUNA N.E.

File

JOHN B. ROBERT
EXECUTIVE ENGINEER

B. H. SWITHENBE, CHAIRMAN
FRED LUTTY, JR., VICE-CHAIRMAN
RICHARD H. FLOURNOY, SECRETARY-TREASURER
WILLIAM V. HOBLITZELL, DIRECTOR
FRANCES MERRY, DIRECTOR

Albuquerque
Metropolitan
Arroyo
Flood
Control
Authority
2112 PIRARO N.E.
P. O. BOX 25051 - ALBUQUERQUE, N. M. 87125
TELEPHONE 265-4519

cy - Herb
Charles Wells

April 6, 1973

APR 9 1973
CITY MANAGER'S OFFICE

Mr. Herbert H. Smith
City Manager
City of Albuquerque
Post Office Box 1293
Albuquerque, New Mexico 87103

Subject: Encroachment on Bear Arroyo Flood Plain
Rhodes Acres Addition

Dear Mr. Smith:

It has been called to our attention that the City is processing an application for a building permit for the construction of dwellings or apartments on the south bank of the Bear Arroyo, immediately west of the Arroyo Del Oso Golf Course lands.

As you will recall, the Albuquerque Metropolitan Arroyo Flood Control Authority adopted a drainage regulation in July of 1972 which, among other things, prohibited placement of fill in the flood plain of any arroyo in the community.

Examination of the site, and aerial photographs disclose that filling took place in November of 1972. We request that any building permit application be denied until the applicant has obtained a permit for his land filling from the Authority. In the event such denial on the part of the City results in litigation, the Authority will be glad to defend same at no expense to the City.

While the drainage regulation does not require that building permits be submitted to the Authority for approval, it does require Authority approval of topographic operations by grading and land filling.

Yours very truly,

John B. Robert

John B. Robert
Executive Engineer

JBR/cj

Exhibit No. 5

CITY OF ALBUQUERQUE

ALBUQUERQUE, NEW MEXICO
April 26, 1973

INTER-OFFICE CORRESPONDENCE

REF. NO._____

TO: Frank Horan, City Attorney

FROM: Donald A. Peterson, Zoning Administrator

SUBJECT: INTERPRETATION OF SECTION 24-E OF THE ZONING ORDINANCE: DRAINAGE CHANNELS

With reference to the Rhodes Acres Apartments situation, I wish to supplement Vern Hagen's memo to you of yesterday.

My interpretation of the Zoning Ordinance, Section 24-E, has been that any arroyo shown on the zone maps adopted by the City is by virtue of its being designated an arroyo on those maps is a "major arroyo" as discussed in this subsection. For example, note Zoning Atlas sheet D-19 where several are shown. Where a "drainage easement" is shown but there is no designation that there is an arroyo, it places me in a very awkward situation. Some of these should not properly be considered major arroyos; notice the example of Zoning Atlas sheet H-19 (SW corner). Therefore, my interpretation of the ordinance was that a drainage easement noted on the zoning maps is not a major arroyo in the meaning of 24-E unless the area is also designated as an "arroyo".

Bear Arroyo is not called an arroyo by the zone maps, even though it is in fact a major arroyo.

I have been placed in a very difficult position. We do not have a reasonable set of major arroyos designated on the zone map. I have been discussing this problem with the City Engineer over the past year. He is finally in a position where he has assured me that he will have a set of carefully delineated major arroyo centerlines suitable for adoption in my hands by May 11. I intend to place this matter on the June EPC agenda as a map amendment.

According to Voltz and Lawrence, a policy on this matter was not set during Voltz's tenure as zoning enforcement officer.

If you advise me to change my interpretation of major arroyos on the maps in the interim period until the EPC adopts the new arroyo lines, I will be guided by your advice.

DAP:pe

Exhibit No. 6

CITY OF ALBUQUERQUE, NEW MEXICO
CITY ENGINEER'S OFFICE

MEMORANDUM - April 24, 1973

TO: Mr. Frank Horan, City Attorney
FROM: V. M. Kimmick, City Engineer VMK
W. T. Stevens, C.I.P. Coordinator W.T.S.
SUBJECT: BEAR ARROYO - RHODES ACRES

This memorandum is intended to allow response to the AMAFCA letter of April 6, 1973.

1. The existing Zoning Ordinance states all land within 125 feet of the centerline of the major arroyos shown on the Zone Map . . ." The Zone Map shows some arroyos, but not all. Some interpretations say these are the arroyos shown in the Zone Atlas. In any case, the Bear Arroyo is not shown on either the Zone Map or in the Zone Atlas, as an arroyo.

2. When a permit is requested and the area falls in the category above, the Zoning Administration refers the permit to the City Engineer. Rhodes Acres was not seen by this office until 4-23-73, and it was already stamped by the Zoning Administration.

3. The Bear Arroyo is a major arroyo estimated to carry 13,500 cfs under the Standard Project Flood. Under the AMAFCA definition (4000 cfs or over) or the City Storm Drainage policy (6000 cfs or over) definition, it is a major arroyo. Under present policy, the City is responsible to permanently line the channel and to maintain it. The developer is responsible to dedicate necessary right-of-way and cut the channel. It is unknown if the channel is cut to proper size. A channel design was approved when the plat was authorized originally in the fall of ~~1970~~ 1969

4. There are facts which must be considered in this area:

A. The dam in the golf course offers some protection to this area.

B. The development in the Bear Arroyo water shed is minimal. This means the actual run-off from even the Standard Project Flood would produce flows about 1/2 of those with full development.

C. The earth channel, when constructed to the proper size, will carry the present and full SPF flow with some precautions. The East side of Rhodes Acres could receive damage unless the flow from the golf course is channelized where it enters Rhodes Acres. Also, an earth channel would erode rather severely under storm water flows. This would place larger loads in the Street Maintenance Division.

D. In long range plans, it is proposed to concrete line the Bear from North Diversion Channel to Tramway. It is proposed to line the channel from Rhodes Acres to San Mateo with funds from the proposed 1974 Bond Issue. If the dam in the golf course is removed the lining would have to be continued to Wyoming. No funds have been requested for this portion.

E. The original intent of the 125 foot limitation was to prevent construction within the natural arroyos. If arroyos were channelized with an adequate section to carry the flows, it was not anticipated the limitation would apply.

F. To my knowledge the AMAFCA Drainage Resolution has not been adopted by the City of Albuquerque, formally. However, we are enforcing its provisions to the best of our ability. Section 7, regarding building permits, is not being administered. In order to comply with this section EVERY building permit request (in categories outlined in Section 7) would have to be examined by the City Engineer and by the Zoning Administration. There is no staff to perform this function. A Hydrology Engineer has been authorized, but we have been unable to obtain a person meeting the qualifications due to the inadequate salary offered. Even if the position were filled, the time would be fully occupied reviewing drainage aspects of plats and PUD's. Little time could be devoted to review of building permits without additional staffing.

Bill Stevens

May 1, 1973

Mr. Virgil Rhodes
President
Rhodes Enterprises, Inc.
6001 Osuna, N.E.
Albuquerque, New Mexico

Dear Virg,

This letter is being written to you at the direction of the City Commission concerning your application for a building permit for certain buildings on Lot "F" of Rhodes Acres, near the Bear Canyon Arroyo. You filed an application for a building permit and for a foundation permit, the latter having been issued and the former being held up since about April 6, 1973.

The reason for withholding the issuance is that the proposed construction is located within 125 feet of the water course of the Bear Canyon Arroyo. You have already installed the foundations, as I understand it, of these structures and are critical of the City for having issued you a permit for such without pointing out to you the existence of the requirements for special handling and treatment of the sites located within the water courses.

The Zoning Ordinance of the City comes first to mind and it contains a provision applying to construction within 125 feet of the centerline of major arroyos shown on the Zone Map of the City. In passing on your application for foundation permit, it was not noted that the site is so located and, indeed, the terms of the Ordinance itself require that the arroyos in which this treatment is required

are those designated on the Zone Map. Since areas are not so designated we consider the provisions are ineffectual as to your permit.

The area in question and, indeed, all of the City, are also located within the jurisdiction of the Albuquerque Metropolitan Arroyo Flood Control Authority. AMAFCA is a special taxing district specifically authorized by statute, organized for the purpose of exercising controls against arroyo flooding, to design, construct and finance structures and to establish administrative procedures to carry out this purpose. In this capacity the Authority can issue and it has issued, a regulation having the force of law which requires special treatment of land within the water course.

It appears to the City and to the Authority that the sites on which you were proposing to erect the two buildings in question are, indeed, within the area for which particular treatment is required and for this reason the City refused to go ahead with issuing the permit until compliance with the regulations was established. It is a condition of the Building Code that no permits are to be issued unless all applicable ordinances, regulations and laws are complied with and, of course, the regulation of the Authority is applicable to any person seeking to build in the prescribed area whether or not the included political jurisdictions, that is, the City or County, have similar provisions or have failed in any way to enforce them.

It is the position of the City then that it must respect the regulation of the Albuquerque Metropolitan Arroyo Flood Control Authority and that you and other persons similarly situated must do likewise.

The City is attempting to work with the Authority in handling matters of common concern and you are assured that it will work expeditiously with the Authority and with you to

facilitate whatever steps are necessary to have your proposed construction meet the requirements of the regulation with minimum inconvenience to you. Acting in this way will protect other persons from the undue hazards of flooding, will assure the stability of the structures you are building, and will, in the last analysis, benefit both the general public and yourself.

You are assured that the City administration will be responsive to your further efforts in this direction.

Very truly yours,

Frank Horan
Frank Horan
City Attorney

FH/mp

(Note cc's sent to Smith & Commissioners

State of New Mexico
Second Judicial District

July 19, 1973

H. VERN PAYNE
DISTRICT JUDGE
DIVISION EIGHT
505/842-3089

POST OFFICE BOX 489
ALBUQUERQUE, N. M. 87103

Mr. Stanley P. Zuris, Esq.
216 Fourth Street N.W.
Albuquerque, New Mexico 87101

Mr. Norman Thayer, Esq.
P.O. Box 1945
Albuquerque, New Mexico 87103

Mr. Charles Barnhart, Esq.
P.O. Box 1849
Albuquerque, New Mexico 87101

Mr. Frank Horan
City Attorney
400 Marquette N.W.
Albuquerque, New Mexico 87101

Re: VIRGIL O. RHODES -vs- THE CITY OF ALBUQUERQUE, et al
Cause No. 5-73-08013

Gentlemen:

I have very carefully reviewed the pleadings and the briefs filed in the case of Rhodes -vs- The City of Albuquerque, et al., and have reached the following conclusions:

1. The issues presented at the hearing involve issues of law and not issues of fact. I do not feel that it will be essential to hold a factual hearing by this Court or determination of any of the factual matters presented as I believe the law will adequately cover the case in its present posture.

2. I am specifically ruling as a matter of law that the AMAFCA has authority granted by statute under Section 75-36-20 and Section 75-36-22(RR) to enact regulations which directly or indirectly control the development of property or building of buildings within the areas of its jurisdictional boundaries. Section 75-36-103 provides that the act should be liberally contrued to effect the purposes of protecting the lives of persons as well as property.

3. The AMAFCA did not enact any such regulations until July 12, 1972. This was after the acceptance of the petitioner's subdivision plat by the City in October of 1969. Assuming that the channel built by the petitioner to handle flow of water through his property was built before July 12, 1967, (notwithstanding the fact that this was based upon the retention dam on the City property) I feel that the statute recognizes that "encroachments" that existed within the waterways prior to the enactment of the regulation must be recognized by the AMAFCA.

4. All building permits issued by the City after July 12, 1972 with regards to the subject property would fall within the scope of the regulations of the AMAFCA and are granted pursuant to the provision that provides that the builder will "proceed at his own risk". The storm drain policies adopted by the City are merely "policies" and are not binding as are City ordinances and the regulations adopted by the AMAFCA through its resolution of July 12, 1972.

5. I believe that the petitioner in this case is required to comply with the administrative procedures provided for in the 1972 resolution, (see Section 13) which indicates that the City also must comply with certain requirements before issuing the permit. I believe that this must necessarily result in a factual determination of whether or not the present position of the lots of the petitioner are "within the water course" and more specifically whether the water course exceeds the visual banks of the channel placed across petitioners property prior to the adoption of the resolution. My impression is that the water course on the date of passage of the resolution must be restricted to the channel. I do not feel, however, that the Court would have jurisdiction until this determination is made administratively either by the City with regards to the issuance of the permit or by the AMAFCA.

In summary, I am denying the relief sought by the petitioner, but in so doing, I attempted to set a guideline as to my interpretation with regards to the appropriate statutes and regulations in hopes that they will be of some help in resolving this matter or that in the alternative an appeal may be taken from this decision and the Supreme Court can clarify the overlapping jurisdiction of the City and the AMAFCA with regards to matters of this kind. Please prepare the appropriate orders if you feel they are necessary. If further arguments or discussion of this matter is desired, please advise immediately.

Very truly yours,

H. Vern Payne
Presiding District Judge
Division VIII

HVP:bas

CITY OF ALBUQUERQUE

ALBUQUERQUE, NEW MEXICO

INTER-OFFICE CORRESPONDENCE July 24, 1973 REF. NO._____

TO: Herbert H. Smith, City Manager

FROM: Jim Finnen, Assistant City Attorney

SUBJECT: Virgil O. Rhodes vs The City of Albuquerque, et al, Cause No. 5-73-08013

Enclosed please find the Findings of Fact and Conclusions of Law of Judge Payne in the above entitled cause.

The Court denied the relief sought by the Petitioner. I will prepare an Order to that effect and have same entered with the Court

JF/mp
1 Encl.

CITY OF ALBUQUERQUE

ALBUQUERQUE, NEW MEXICO

AUG 1 1973

OFFICE CORRESPONDENCE

July 30, 1973

REF. NO._____

TO: VERN HAGEN, PLANNING DIRECTOR

FROM: HERBERT H. SMITH, CITY MANAGER

SUBJECT: VIRGIL O. RHODES, -vs- CITY OF ALBUQUERQUE

I am attaching a copy of a memorandum from Jim Finnen together with the opinion of Judge Payne in the above matter. I thought that you would find this of interest and perhaps you might like to have copies made and pass on to the members of the Environmental Planning Commission.

Should you have any further questions on this, please get in touch with Jim Finnen in the Legal Department.

HHS/nre

cc: Vice-Chairman Nancy Koch, w/att
E. F. Hensch, w/att
CM Circulation, w/att

cc/ Ken
Rip
Bill S.

5 Apr 76

PMP Hydrology Arroyo de Oso Dam

Design of Small Dams pg. 86

A.

1. west of 105° 9603 acres 15 sq. mi

2. PMP 6hr general 5"
   Thunderstorm 11.5"

3. Soil Group 87

4. $T_c = \left[\frac{11.9L^3}{H}\right]^{.385}$ L miles, H feet

H -- 9260 − 5320 = 3940

L = 9.47

$$T_c = \left[\frac{(11.9)\,\overline{9.47}^{\,3}}{3940}\right]^{.385} = 1.44 = 86.2 \text{ min}$$

B. 1.

a. 1. 11.5"

2. .76 = 8.74"

3.

15	4.20	4.20	1	3	1.48
30	6.21	2.01	2	2	2.01
45	7.69	1.48	3	1	4.20
60	8.74	1.05	4	4	1.05
		8.74			

CN 85

8.

1.48	1.48	.46	.46
2.01	3.49	2.02	1.56
4.20	7.69	5.92	3.90
1.05	8.74	6.94	1.02

9. $L = (.6)(1.44) = .86$

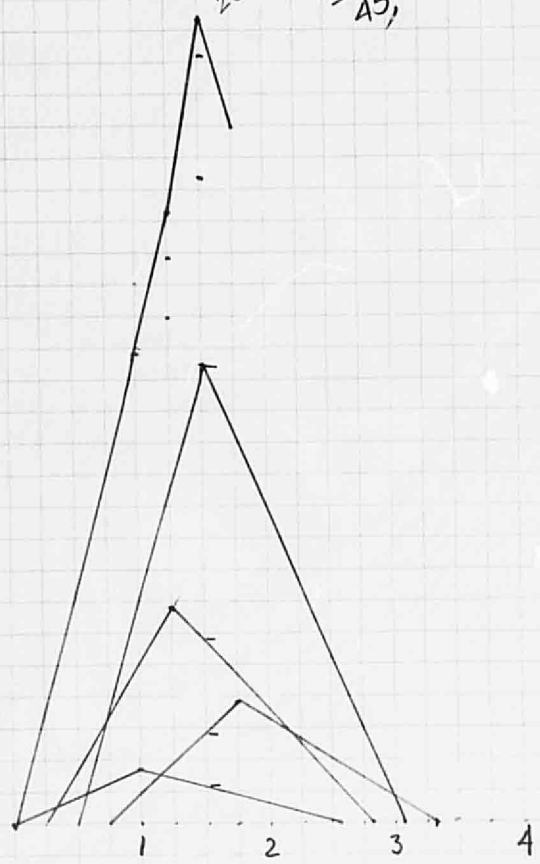
$T_p = .12 + .86 = .98$

$T_b = (2.67)\cdot .98 = 2.62$

$$q_p = \frac{(484)(15)(1)}{.98} = 7410$$

			Begin	Peak	End
10.	(A10)	.46	3,408 0	1.00	2.62
		.156	11,560.25	1.25	2.87
		3.90	28,900.50	1.50	3.12
		1.02	7,560.75	1.75	3.37

25.A = 50,800
5600
45,000



General Form

1. 5"
2. .98 = 4.9

Time		4.9		
0				
.05	.17	.83		
1.0	.30	1.47	1.47	.54
1.5	.40	1.96		
2.0	.48	2.35	0.88	.68
2.5	.56	2.74		
3.0	.63	3.09	0.74	.74
3.5	.70	3.43		
4.0	.77	3.77	.68	1.47
4.5	.83	4.07		
5.0	.89	4.36	.59	.88
5.5	.95	4.66		
6.0	1.00	4.90	.54	.59
			4.90	4.90

6. S=1.49 P=.3

.2	.2
.75	.55
1.45	.70
2.85	1.40
3.75	.90
4.33	.58

8. D = 1

$L = (.6)(1.44) = .86$

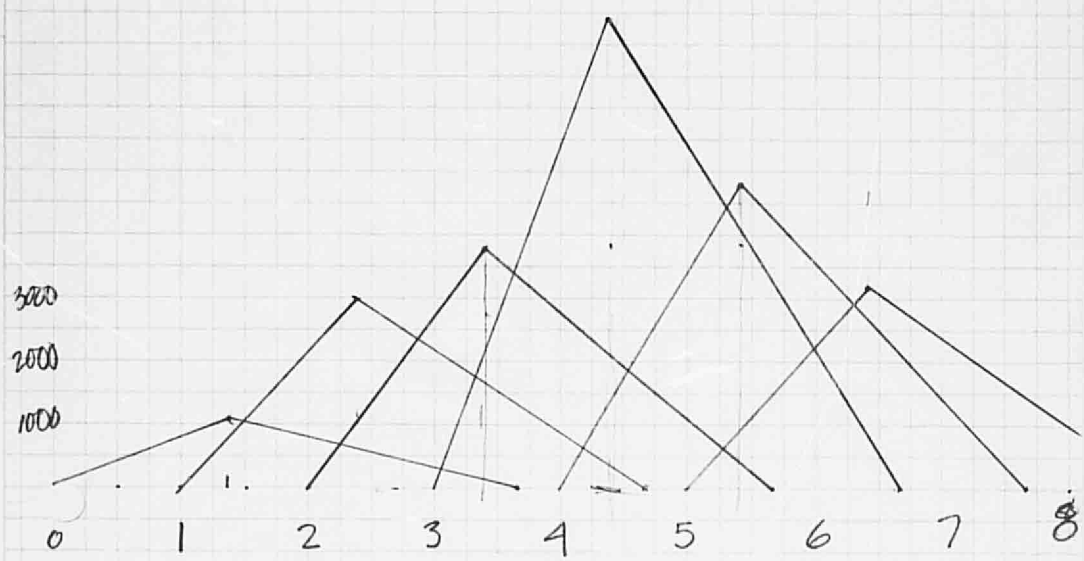
$T_p = .5 + .86 = 1.36$

$T_b = (2.67)\,1.36 = 3.63$

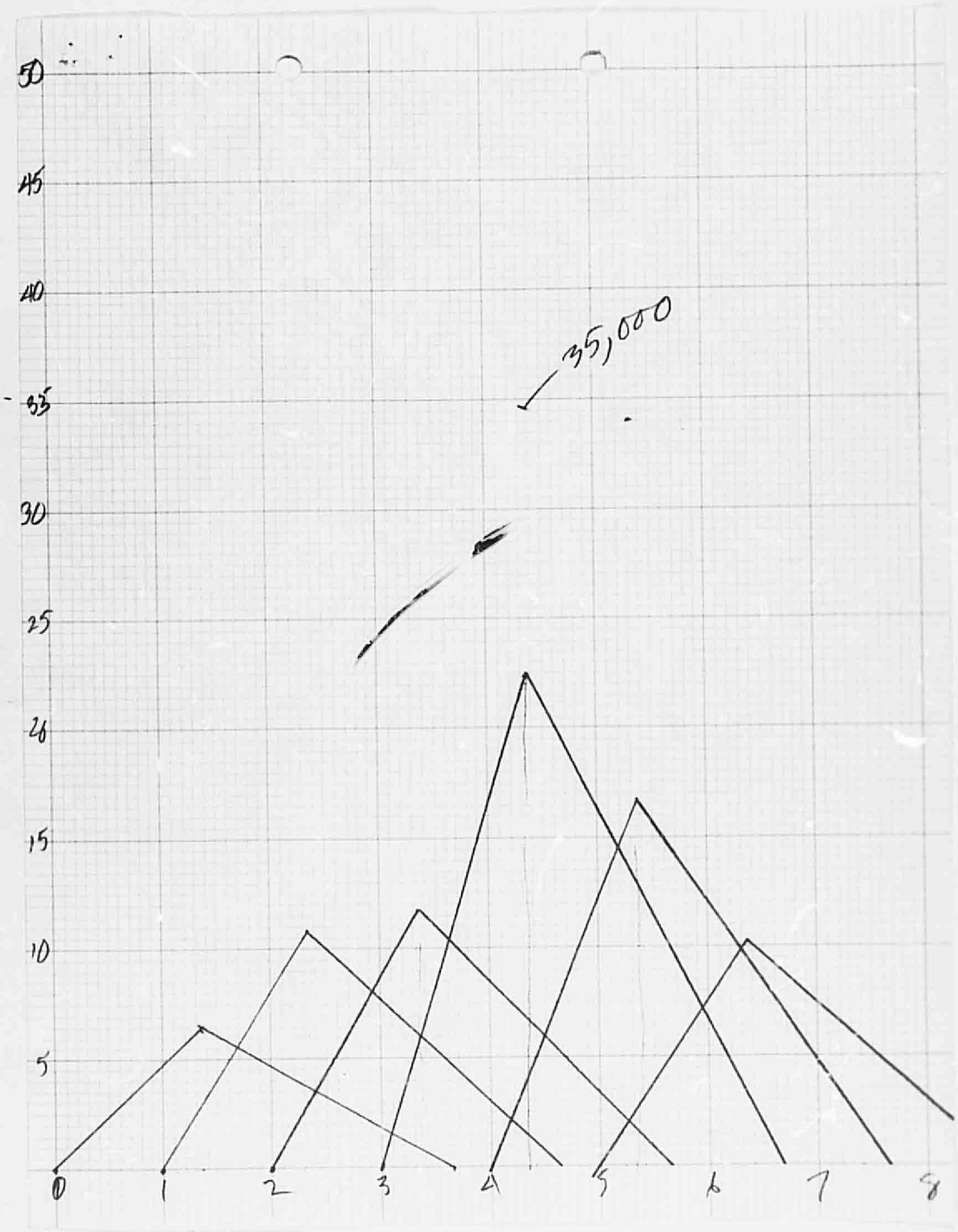
$$q_b = \frac{(484)(15)}{1.36} = 5340$$

			Peak	End
9. 5340 (.2)	1070	8	1.36	3.63
(.55)	2940	1	2.36	4.63
.70	3740	2	3.36	5.63
(1.40)	7480	3	4.36	6.63
(.90)	4800	4	5.36	7.63
(.58)	3100	5	6.36	8.63

11,500



5340	(1.2) =	6400
	(2.0)	10,700
	(2.2)	11,700
	(4.2)	22,400
	(3.1)	16,400
	(1.9)	10,200


50
45
40
35
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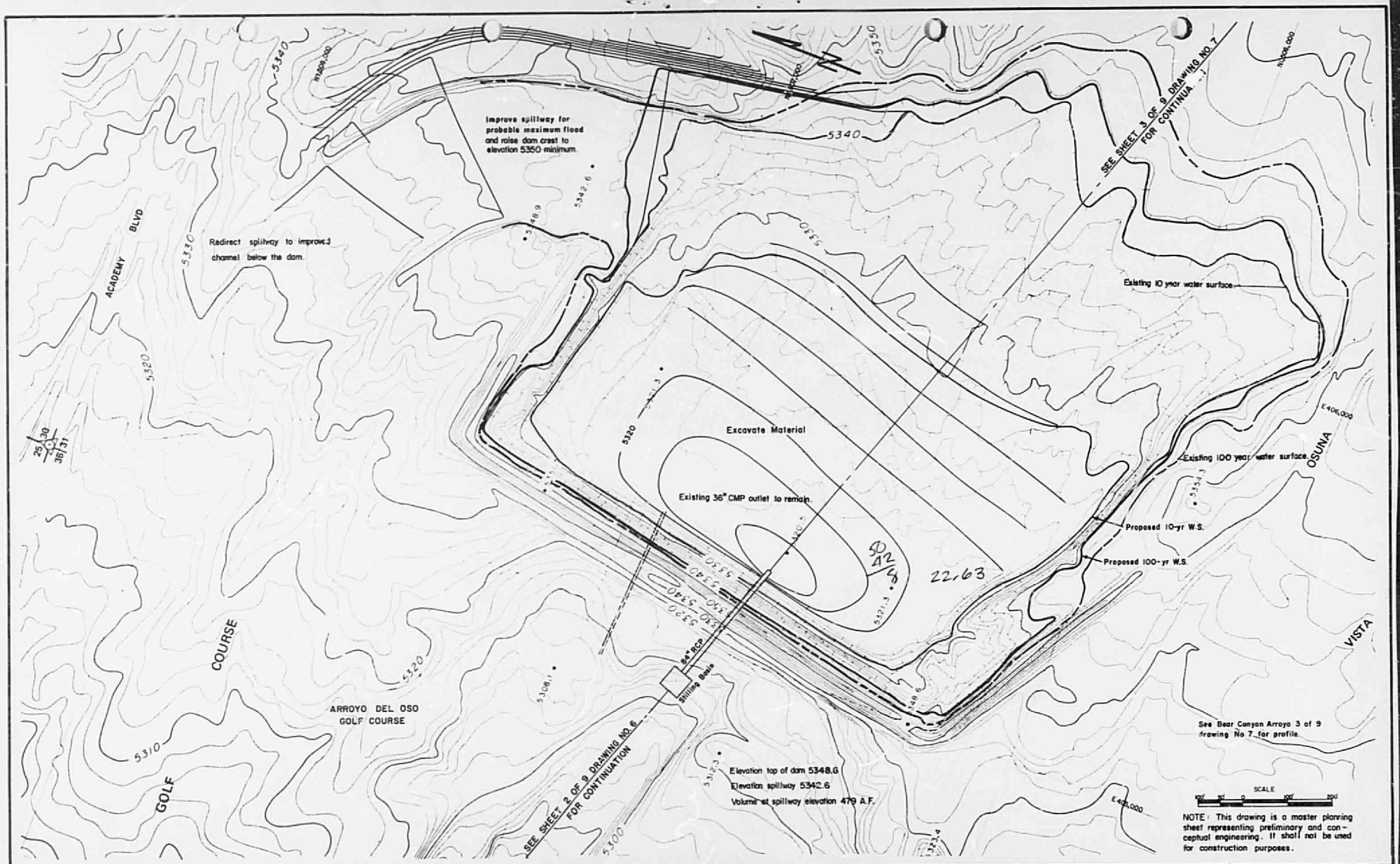
25
20
15
10
5
0
1
2
3
4
5
6
7
8
35,000



GROUND CONTROL SURVEY BY CITY OF ALBUQUERQUE
AERIAL PHOTOGRAPHY BY BOHANNAN - WESTMAN - HUSTON
TOPOGRAPHIC MAPPING BY BOHANNAN - WESTMAN - HUSTON
CONTOUR INTERVAL 2 FEET DATE FLOWN 5/15/73

Leonard Rice Consulting Water Engineers, Inc.
Denver Albuquerque

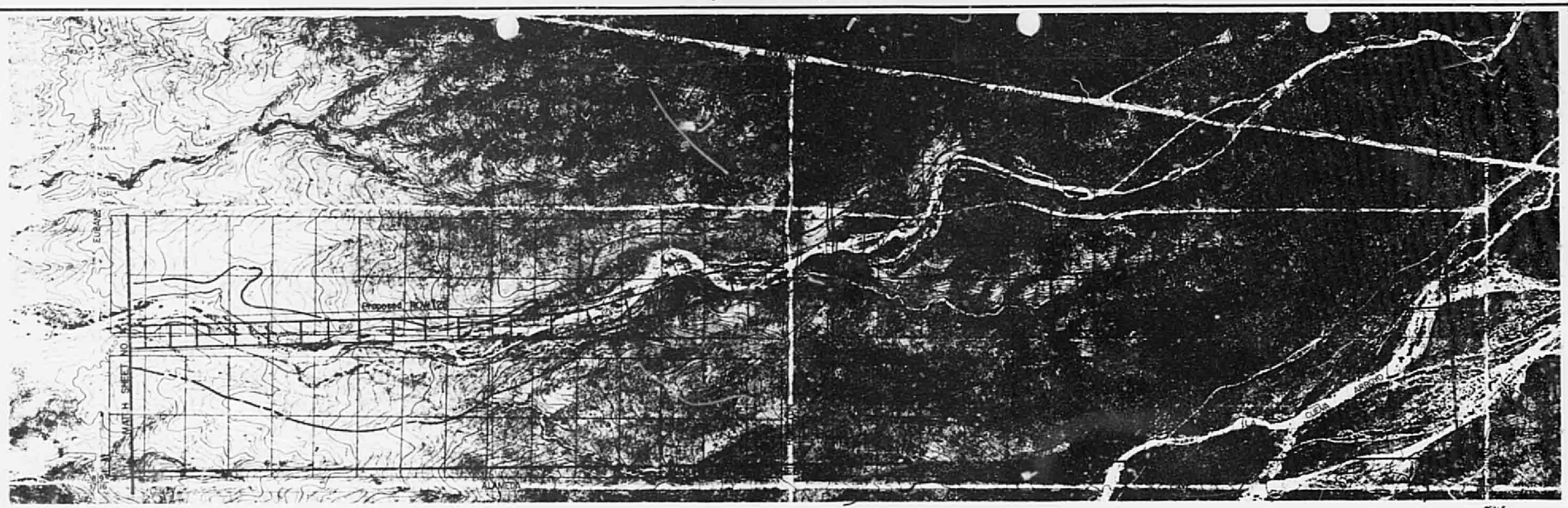
DESIGNED	L.H.B.	DATE	DEC. 1974
DRAWN	D.J.B.	DATE	DEC. 1974
CHECKED	K.M.L.	DATE	JAN. 1975
REVISED		DATE	

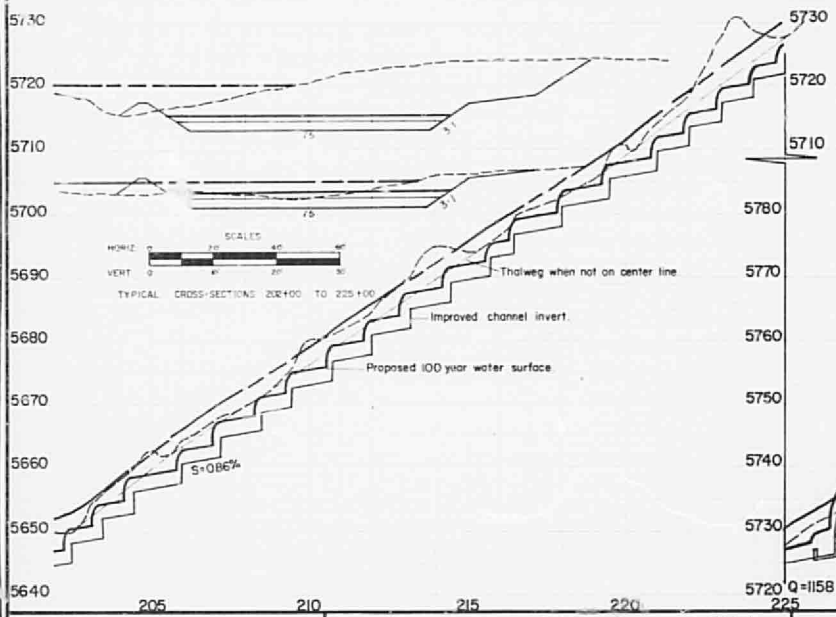
ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTROL AUTHORITY

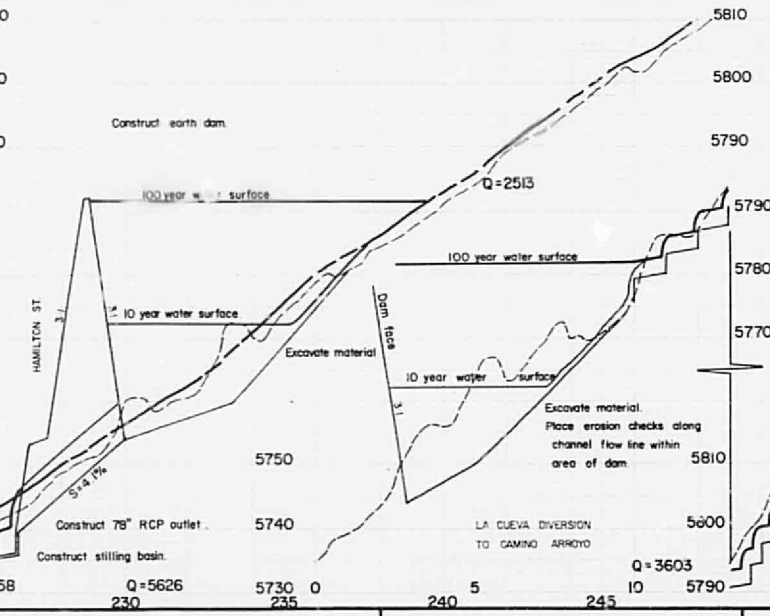
DRAINAGE MANAGEMENT PLAN
NORTHEAST HEIGHTS

BEAR CANYON ARROYO
ARROYO DEL OSO DAM

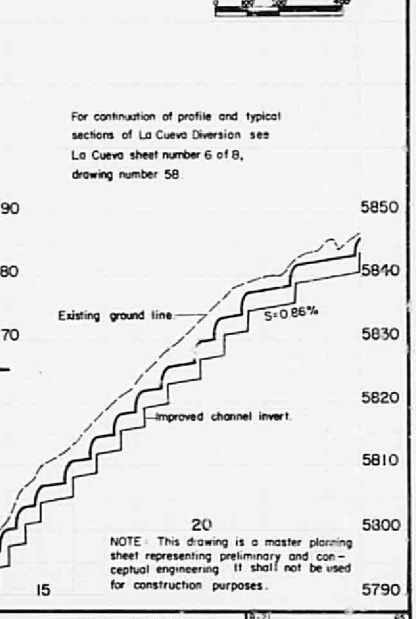
F19 66
SHEET NUMBER
1 OF 7







For continuation of profile and typical sections of La Cueva Diversion see La Cueva sheet number 6 of 8, drawing number 58.



NOTE: This drawing is a master planning sheet representing preliminary and conceptual engineering. It shall not be used for construction purposes.

GROUND CONTROL SURVEY BY CITY OF ALBUQUERQUE
AERIAL PHOTOGRAPHY BY BOHANNAN WESTMAN HUSTON
TOPOGRAPHIC MAPPING BY BOHANNAN WESTMAN HUTTON
CONTOUR INTERVAL 2 FEET DATE FLOWN 5/15/73

Leonard Rice Consulting Water Engineers Inc
Denver Albuquerque

DESIGNED K.H.L. DATE JAN. 1975
DRAWN S.L.B. DATE JAN. 1975
CHECKED L.H.B. DATE JAN. 1975
REVISED DATE

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTROL AUTHORITY

DRAINAGE MANAGEMENT PLAN
NORTHEAST HEIGHTS

CAMINO ARROYO
STA. 202+00 TO STA. 248+00
LA CUEVA ARROYO
STA. 0+00 TO STA. 25+00

B-21 65
SHEET NUMBER
5 OF 5

RALPH K. HICKS and Associates, Inc.
REGISTERED LAND SURVEYORS
LAND PLANNING CONSULTANTS
4000 SAN PEDRO DRIVE, N.E. • PHONE (505) 881-0012 • ALBUQUERQUE, NEW MEXICO 87110

JUNE 22, 1976

Received June 25, 76

CITY OF ALBUQUERQUE
DEPT. OF PUBLIC WORKS.

ATTENTION: MR. KLESTON LAWS.
ASSISTANT CITY ENGINEER - HYDROLOGY

RE: LOT "E", RHODES ACRES ADDITION
MAP F-18

GENTLEMEN:

THE ABOVE LOT LIES AT THE NORTHWEST CORNER OF THE BEAR ARROYO AND THE LATERAL CHANNEL OUTLET FOR THE TRANSVERSE INLET STRUCTURE IN ACADEMY ROAD N.E. AS THE SUBJECT LOT IS FULLY IMPROVED AND WITHIN A PREVIOUSLY APPROVED SUBDIVISION, RECORDED NOVEMBER 18, 1969, OUR CLIENTS ARE DESIREOUS OF CONSTRUCTING RENTAL APARTMENTS WITHIN THE FRAMEWORK OF THE EXISTING R-3 ZONING.

IT IS UNDERSTOOD THAT A FORMAL DRAINAGE STUDY WILL BE REQUIRED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT. AFTER PRELIMINARY EVALUATION OF THE SITE WE HAVE DETERMINED THAT THE SOUTHERN & EASTERN PORTIONS OF THE PROPERTY LIE WITHIN THE 100 YEAR FLOOD LIMITS AS SHOWN ON SHEET 2 OF 9, PROFILE REACH, BEAR CANYON ARROYO, STA. 55+00 TO 113+00 OF THE "NORTHEAST HEIGHTS DRAINAGE MANAGEMENT PLAN" PREPARED BY LEONARD RICE CONSULTING WATER ENGINEERS, INC. FURTHER THAT THIS FLOODING IS CAUSED BY THE INABILITY OF THE WATER-BLOCK & TRANVERSE INLETS AT THE NORTHEAST CORNER TO DIVERT THE FLOW IN ACADEMY ROAD INTO THE CHANNEL BOARDERING THE EASTERN EDGE OF THE PARCEL. CURRENT FLOW OVER THE SITE IS CONTROLLED BY THE GRADING OF EXCESS MATERIAL FROM CHANNEL EXCAVATION IN THE BEAR ARROYO THUS CAUSING THIS WATER TO TRAVEL SOME DISTANCE TO THE WEST PRIOR TO ENTERING THE MAIN CHANNEL.

AS I'AM SURE YOU ARE AWARE, THE ABOVE CHANNELS ARE OPERATING EFFECTIVELY AND THAT THE 100 YEAR FLOW WITHIN THE BEAR CHANNEL IS WELL WITHIN THE LIMITS OF THE CURRENT CHANNEL. THE LATTER PRESENTING NO HAZARD OF TOPPING ITS BANKS ONTO THE SUBJECT LOT.

THEREFORE THE THRUST OF OUR STUDY IS PROPOSED TO ADDRESS:

1. THE DETENTION OF INCREASED STORM WATER FLOWS WITHIN THE PARCEL.

2. THE CONTROLL AND DIRECTION OF THE EXCESS FLOW FROM ACADEMY ROAD THROUGH THE PROJECT WITH DEPOSITION INTO THE BEAR CHANNEL VIA PARKING LOT LAYOUT AND GRADING SO AS TO ALLOW ONLY LIMITED DISTURBANCE TO THE RESIDENTS AND EMERGENCY SERVICES.

3. THAT IN THE LIGHT OF THE ABSENCE OF DEFINITE CONSTRUCTION PLANS FOR THIS REACH OF THE BEAR ARROYO AND IT'S TRIBUTARY, WE PROPOSE ONLY TO MODIFY AND IMPROVE THE EXISTING CHANNEL SLOPES AS NECESSARY TO PREVENT DAMAGE TO THE IMPROVEMENTS WITHIN THIS PARCEL

   AS THE RECENT RESOLUTION 309 CALLS FOR THE "LAND OWNER" TO ADDRESS QUESTIONS OF FORMAL CHANNEL IMPROVEMENTS AND THE RIGHT-OF-WAYS FOR BOTH CHANNELS HAVE BEEN PREVIOUSLY DEDICATED TO THE CITY, NO REQUIREMENT WILL BE MADE WITHIN THE FRAMEWORK OF THE STUDY TO FORMALLY IMPROVE EITHER CHANNEL.

WE ASK YOUR CONSIDERATION OF THE BASIC OUTLINE OF THE PROPOSED STUDY, FURTHER THE COMMUNICATION OF THE CITYS POSITION WITH REGUARD TO THE ADEQUACY OF OUR COMPLIANCE WITH THE GENERAL PRINCIPALS OF EXISTING ORDINANCES AND POLICIES GOVERNING THIS MATTER

YOUR EARLY REPLY WOULD BE GREATLY APPRECIATED.

VERY TRULY YOURS.

RALPH K. HICKS & ASSOC.

THOMAS J. [illegible]

CC: MR. CHARLES BACHELOR
TIPTON & ASSOC., REALTORS

Bear Canyon Arroyo

THE VAUGHAN COMPANY

RECEIVED
JUN 30 1977
AMAFCA

Ex. Engr. AAS
Asst. Engr.
Engineer
Admin. Asst.
Rel. Est. Off.
Secretary
Foreman
Return to
File in
Hold Till

June 27, 1977

Le FILE
F18- D14

Mr. H.R. Orr, Jr.
Acting Director of Public Works
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

RE: City of Albuquerque Drainage Policy Resolution 59-1976 as it affects development of Tract A-4 Rhodes Acres, backing onto the Bear Canyon Arroyo

Dear Mr. Orr:

This letter when executed on behalf of the City of Albuquerque will be an agreement between the City and Blue Chip I, a general partnership comprised of Douglas F. Vaughan, Samuel H. Carnes, James C. Salazar and Wayne W. Burch, with regard to the improvement of storm drainage facilities for the above referenced property.

Blue Chip I is in the process of acquiring the parcel of land set forth above and wishes to develop thereon, a proposed office building for its own use. Blue Chip I recognizes its responsibility that when it places improvements on the land, as is intended here, that it must deal with any surface runoff passing through or originating on said land such that other property is not adversely affected by the proposed improvements.

The City of Albuquerque and Blue Chip I recognize that preservation of life and protection of property is the major consideration in the planning of drainage and flood control systems; and, as such, storm drainage management and flood control systems are necessary and these systems should optimize the social, environmental and economic benefits to the community while not only allowing but also encouraging development of valuable lands appurtenant to these various drainage management and flood control systems in order that lands within the city limits of Albuquerque may be developed on a logical and consistent basis.

"3 Locations & 50 Associates To Serve You"

6400 UPTOWN BLVD., N.E., SUITE 518E • ALBUQUERQUE, NEW MEXICO 87110 • PHONE (505) 293-3466

Twenty-Four Thousand Twenty-Eight and 32/100 Dollars

Therefore, it is in the best interests of the City and Blue Chip I that an agreement be entered into allowing development of the above parcel prior to the finalization of plans for the imrpovement of storm drainage facilities.

Blue Chip I hereby agrees to pay 100% of its share of the cost of construction of necessary storm drainage facilities when and if the arroyo is lined or other drainage facilities are installed. Our share will be equal to one-half the per lineal foot cost of said improvements based upon the number of lineal feet fronting on the right of way (approximately 200 feet). In return for Blue Chip I's agreement to pay these costs the City agrees that Blue Chip I's commitment satisfies fully the spirit and intent of resolution 59-1976 and other applicable rules, regulations, and resolutions and that we will not be refused a building permit due to our failure to improve the entire arroyo or our portion thereof at the time of development, or the failure of other property owners in the area to so improve the arroyo, or the lack of a current master plan for the arroyo. This approval assumes that our building and site plans include sufficient controls to deal with surface runoff passing through or originating on our land and comply with all other current local building regulations.

As time is of the essence in our plans, your earliest response would be greatly appreciated. If you have any questions, please feel free to call. I am, thanking you in advance.

Very truly yours,

S/

DOUGLAS F. VAUGHAN

DFV:lkm
cc: Mr. Jim Smith, AMAFCA
Mr. Malcolm deVesty, City Attorney
Mr. Varne Kimmick, City Engineer

AGREED:
The City of Albuquerque

BY: _____
TITLE: _____

amount of Fifty-Four Thousand Twenty-Eight and 32/100 Dollars

CITY OF ALBUQUERQUE DRAINAGE REPORT

ZONE ATLAS NO.	NAME OF CONSTRUCTION	OBSERVER	DATE OBSERVED
	Apartment Complex	William R. Pedersen	4-4-79

ADDRESS: 6101 OSUNA N.E.

Reason for Field Check: For the drainage report on this apartment complex.

FINDINGS AND CONCLUSION: At this time we are only given a conditional approval for the two last blds. There is still ponding area, C on the middle of the complex that retains water from the two north blds. and two more on the south of the complex that retains from the middle parking lot and the two south blds. Everything is OK and the contractor has been very helpful.

FOLLOW UP ACTION REQUIRED: A follow-up will be needed because the two last blds. aren't finished and find A and B aren't finished also. We agree to meet together about a week from today for the final. Also the side walk isn't built down yet.

SKETCH:

Disapproved 4-4-79

William R. Pedersen
OBSERVER

RICHARD E. LEONARD
EXECUTIVE ENGINEER

B. H. SWINBURNE, CHAIRMAN
WILLIAM V. HEREFORD, VICE-CHAIRMAN
FRANCES McCOY, SECRETARY-TREASURER
VERNON DOAK, DIRECTOR
RICHARD H. CLOUGH, DIRECTOR

Albuquerque
Metropolitan
Arroyo
Flood
Control
Authority
2600 PROSPECT AVE. N.E.
P. O. BOX 25851 - ALBUQUERQUE, N. M. 87125
TELEPHONE 344-3516

September 1, 1978

Mr. Walt Gathman
Gathman-Matotan Architects-Planners, Inc.
230 Truman, N. E.
Albuquerque, New Mexico 87108

Dear Mr. Gathman:

Reference previous correspondence, conferences, and phone call(s) concerning Chateau Acres on the south bank of Arroyo del Oso.

This is to advise you that, although it is still recommended, temporary rip rap bank lining will not be required as a condition of construction. You are advised, however, that risk is involved if you elect to proceed without bank protection. Responsibility for future damages must be assumed by you and your client.

Sincerely,

Richard E. Leonard

Richard E. Leonard
Executive Engineer

cc: D. Sheppard
B. Conegliano
S. Zuris

REL:sls

Department of Municipal Development
City of Albuquerque
P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

MAYOR
David Rusk

January 9, 1979

William H. Wilson
207 San Pedro Dr. N.E.
Albuquerque, New Mexico 87108

Re: Auto Sales and Service

Dear Mr. Wilson:

I have reviewed with Mr. Conegliano the drainage report and construction plan for the captioned property. The drainage report is conceptually acceptable but too general in regard to the treatment on the arroyo. The construction plans will have to supply a flowline and top of the bank profile of the arroyo along this property together with cross sections indicating the rip rap protection that will be constructed. I am concerned with the possible existence of bank stability problems arising from the proximity of the ponds to the arroyo bank, but without actual cross sections, it is difficult to assess the extent of this problem. I am sure that your engineer, Mr. John Bettis, will submit a design that takes into account this potential problem. Due to the partial nature of this protection of the property, adequate cut off walls will have to be provided at the upstream and downstream end of the property, the rip rap protection must extend a minimum of 2.5 ft. below the existing flow line of the channel.

Please forward a copy of the bank protection plan and detail to Mr. Dwayne Sheppard, Assistant City Engineer-Construction, who will have to inspect the construction and acceptability for the City.

If you have further questions on this project, please do not hesitate to contact me.

Very truly yours,

Richard S. Heller

Richard S. Heller
City Engineer

BC/RSH/fs

cc - Dick Heller
Dwayne Sheppard
Rich Leonard
Dr. File
Charles Voltz

CITY OF ALBUQUERQUE, NEW MEXICO
CITY ENGINEER'S OFFICE

MEMORANDUM - January 9, 1979

TO: Charles Voltz, Supt. Building & Inspection Div.
FROM: Bruno Conegliano, Asst. City Engineer - Hydrology B.C.
SUBJECT: Building Permit for Auto Sales and Service - 6012 Academy Rd. N.E.

The conditional approval for drainage is granted to this project with the provision that the channel improvements discussed in the attached letter must be included with the plans. I hereby request a withholding of Certificate of Occupancy until certification by Dwayne Sheppard, Assistant City Engineer - Construction, that the work mentioned above, has been performed with the satisfaction of the City.

BC/fs
Enclosure
cc - Dick Heller
Dwayne Sheppard
Drainage File

6020 ACADEMY RD NE

DRAINAGE REPORT
LOT A-4 OF RHODES ACRES ADDITION

July 18, 1979

FOR:

Pacheco and Graham, Architects
807 Eighth Street, N.W.
Albuquerque, New Mexico 87102

BY:

Synergetic Sciences, Inc.
4100 Silver S.E., Suite F
Post Office Box 4484
Albuquerque, New Mexico 87196

Approved By:

C.A. Coonce, N.M.P.E. 2234

DESCRIPTION:

This Drainage Report is for Lot A-4 of Rhodes Acres Subdivision, comprising approximately 1.257 acres, shown on page E18Z of the City of Albuquerque Zone Atlas. The soil is fine to medium grained reworked alluvium with sparse vegetation.

The surface contour is southwesternly at a slope of approximately 2%. The existing drainage pattern is not altered by this proposed Drainage and Grading Plan.

ON SITE DRAINAGE:

The assumptions used for the drainage calculations are as follows:

1. C undisturbed = 0.35
2. C roof, concrete, and asphalt = 0.90; i.e. depression storage and absorbtion = 0.10
3. C landscaped area = 0.0, i.e. curbing provides total retention

100 year 6 hour rainfall = 2.4 inches

Lot area = 56,000 ft^2 = 1.257 acres

Landscaped area = 10,510 ft^2

Roof and parking area = 45,490 ft^2

Fraction of rainfall needed to store = 0.90-0.35 = 0.55

Volume needed in storage $\frac{(0.55)(45490)(2.4)}{12}$ = 5004 ft^3

Volume provided = 6304 $ft.^3$

OFF SITE DRAINAGE:

This property is bordered on the South by Arroyo del Oso. According to the city drainage plans, this arroyo carries 1300 cubic feet per second maximum flow. Albuquerque Resolution 59-1976 provides that drainage courses carrying less than 2000 cfs shall

be improved at the expense of the adjoining property owners. There is no question as to the validity or desirability of the resolution; however, it is believed that it should be inforced uniformily upon the surrounding properties. The adjacent property to the West has been completed within the last 30 days and no improvements were made to the arroyo channel. All of the properties between Arroyo Del Oso Golf Course and the lined channel starting East of San Mateo, are developed except for 2 on the North and 1 on the South. Uniform improvements for the approximately 1300 LF of this reach of Arroyo Del Oso should be made by the City of Albuquerque Block to Block Contract and each property owner assessed in accordance with the proportion of property along the arroyo easement.

RECOMMENDATIONS:

1. It is recommended that the attached drainage and grading plan be accepted and construction be allowed to proceed.
2. The City of Albuquerque set uniform specifications for the unimproved reach of Arroyo Del Oso from Arroyo Del Oso Golf Course westward to the recently completed section, a distance of approximately 1300 feet.

C.A. COONCE
N.M.P.E. 2934

Wallin & Associates, Inc.
Construction
Post Office Box 13596 • Station E • Albuquerque, New Mexico 87192
Lic. #15388

September 4, 1979

Fred Aguirre
City of Albuquerque
Drainage Dept.

RE: Bear Canyon Estates, Unit 2, Tract A

Dear Mr. Aguirre,

This letter is to confirm that the arroyo along the south side of the above referenced property will be lined along the north side of the arroyo as agreed upon by Mr. Bruno Conegliano and Meurer, Serafini and Meurer, Inc., engineers for the project.

Sincerely,

Rick C. Wallin

Rick C. Wallin, President

RW/cw

CITY OF ALBUQUERQUE

ALBUQUERQUE, NEW MEXICO

INTER-OFFICE CORRESPONDENCE September 6, 1979 REF. NO._____

TO: Phyllis Dow

FROM: Bruno Conegliano B.C.

SUBJECT: LOT A-4 OF RHODES ACRES ADDITION

I'm enclosing a copy of a drainage report prepared by Mr. C. A. Coonce for the referenced development. Localized severe erosion has been experienced by the City along the Bear Canyon Arroyo, and I find it imperative that property owners developing sites bordering this arroyo provide the necessary protection to their own property line in concordance with the Drainage Policy Resolution 59-1976. The approach that I have taken in the past has been that of requesting either the construction of the necessary protection or the submission of a recordable document that commits the developer to a financial contribution (to be established on the basis of existing and adopted master plans) with a five-year expiration date in those cases where piecemeal improvements of the arroyo may be more detrimental than beneficial.

I find that the suggestion by Mr. Coonce that the City construct the facilities and assess the property owners is not a viable alternative, and I would like to receive your suggestion on the best approach to this problem. This matter is somewhat urgent because it conditions the approval of the drainage report submitted and the granting of the building permit.

Regarding the observation by Mr. Coonce that no improvements have been made to the channel with the construction of the development to the west, has no bearing because a commitment to the financial participation has been received in the manner outlined above.

Your early attention to this matter will be appreciated.

BC:bm
Enclosure
CC: Richard Heller
Fred Aguirre
Drainage File

0320

HYDROLOGY E18/D14 4 PLANS

E18/D14

4 Plans

STATE OF NEW MEXICO
HIGHWAY DEPARTMENT

TONEY ANAYA
GOVERNOR

COMMISSION

Sosimo Padilla
Chairman, Albuquerque

Bill Lee
Vice-Chairman, Lovington

Emerlinda De Brine
Secretary, Socorro

James W. Chaney
Member, Moriarty

Chris Gallegos
Member, Las Vegas

DEPARTMENT

Chief Highway
Administrator
L. A. Larranaga

General Office
P.O. Box 1149
Santa Fe, N.M.
87504-1149
505 983-0100

District One Office
P.O. Box 231
Deming, NM
88031-0231
505 546-2603

District Two Office
P.O. Box 1457
Roswell, NM
88202-1457
505 622-8441

District Three Office
P.O. Box 3768
Station D
Albuquerque, NM
87109-3768
505 841-2700

District Four Office
P.O. Box 30
Las Vegas, NM
87701-0030
505 425-7527

District Five Office
P.O. Box 4127
Coronado Station
Santa Fe, NM
87502-4127
505 983-0221

AN EQUAL
OPPORTUNITY
EMPLOYER

TRANSMITTAL MEMORANDUM

TO: John A. Myers, Esq.
6400 Uptown Blvd., NE
Suite 200-West
Albuquerque, NM 87110

DATE: December 27, 1983

RE: SHD v. Strosnider, et al.
Bernalillo County Cause No. 83-06631

THE FOLLOWING DOCUMENTS ARE ENCLOSED:

Intra-Departmental Correspondence from K. Bower to R. Russell, dated October 26, 1983

__ PRESENT TO COURT FOR SIGNATURE

__ FILE

__ RECORD

__ APPROVE, SIGN, AND RETURN

__ FOR YOUR INFORMATION

__ SERVE

__ OTHER As per your request of 12-27-83

X PER YOUR REQUEST

__ BILL US FOR PROMPT REMITTANCE

__ RETURN ENDORSED, CONFORMED, APPROVED OR RECORDED COPY(IES)

__ SELF ADDRESSED, STAMPED ENVELOPE

__ COPY FOR YOUR FILES

BY: /bj/
RICHARD L. RUSSELL
SHD Assistant Attorney Gener

bj/
encl.

Form No. A-110
Rev. 8-20-70

NEW MEXICO STATE
HIGHWAY DEPARTMENT

INTRA-DEPARTMENTAL CORRESPONDENCE

SUBJECT State Highway Department vs Strosnider, et al., Clause No. 83-06631 CV, Bernalillo County

DATE October 26, 1983

FILE REFERENCE:

ATTENTION OF

TO Mr. Richard L. Russell
S.H.D. Assistant Attorney General

FROM Mr. Kenneth E. Bower
Director of Technical Support

Subject property is located at the southeast quadrant of the proposed I-25/ Los Angeles Interchange to be constructed under Highway Project I-IR-025-4(66)227. Right-of-way for the project is being acquired under Project UI-025-4(52)228.

This will confirm that a median opening will be included in the project plans and constructed beginning at the easterly end of the Access Control Line on Los Angeles Drive, which ends at Station 26+81±. This median opening will be designed and constructed to State Highway Department Standards. By copy of this correspondence, I am instructing the Technical Services Engineer to have this median opening incorporated into the plans.

With respect to driveways to subject property on Los Angeles Drive, our policy is to construct new driveways only at locations that are currently served by driveways. None exist at subject location. When the owner is ready to construct a driveway, a permit is required from the Department's District 3 Office in Albuquerque. This permit will be issued provided that the driveway does not violate Access Control and conforms to the Department's Driveway Regulations.

Access Control on the south side of Los Angeles extends only 50 feet east of the Frontage Road. Driveways will be permitted east of this point; therefore, from an engineering and safety standpoint, I can see no reason to deny a permit if the driveway is in accordance with our Regulations. In general these Regulations pertain to driveway width, spacing between driveways and safe highway approach grade, none of which should be a problem for the property in question.

I have discussed the driveway situation with Paul Myers of the District 3 Permit Section. Mr. Myers confirmed that driveway permits would be issued as outlined above.

Kenneth E. Bower, Jr.
Director of Technical Support

KEB/arm
cc: J. D. Winton
C. E. Serna
L. D. Duffy
District 3

Edwards, Linscott & Company
INCORPORATED

November 17, 1977

Mr. V. M. Kimmick, City Engineer
City Hall, 400 Marquette NW
Albuquerque, New Mexico 87102

Re: Brentwood Gardens Apartment Complex,
Application for Building Permit

Dear Mr. Kimmick:

Academy Acres Unit V, Ltd. for which I am the General Partner, represents the owners of the parcel of land generally described as Academy Acres Unit V, which includes all of the vacant land south of Harper Drive bound on the west by the freeway frontage road, on the east by the developed Academy Acres Unit I, and on the south by Farr North Shopping Center. We are selling 7.472 acres at the southeast corner of this tract to Brentwood, Ltd., who will build thereon a multi-family housing project for senior citizens to be known as Brentwood Gardens.

On November 2, 1977 Mr. Bruno Coneglizno, Assistant City Engineer, wrote Mr. Ron Shafer, Project Architect, a letter indicating that while on-site drainage plans were acceptable, it would be necessary to develop acceptable plans to stabilize the drainage channel which abuts this property on the south in accordance with Drainage Policy Resolution 59-1976.

I understand that you and Mr. Conegliano met with representatives of Brentwood, Ltd. on November 14, 1977 to discuss this problem. I also understand it was pointed out at this meeting that the drainage channel in question is located on land which does not belong to us, and in fact, is owned by the owners of the Farr North Shopping Center; that the drainage resolution in question mentions only the "landowner", which does not apply to either Brentwood, Ltd. or to us; that the current flow of the channel endangers Farr North Shopping Center more than the land to the north; that the flow in the channel has increased due to massive development to the east; and that we as well as the owners of Brentwood, Ltd. are willing to pay our

Elco Securities Corporation - Sierra Management Company
2727 San Pedro, NE · Suite 110 · Albuquerque, NM 87110 · (505) 292-0424

Edwards, Linscott & Company
INCORPORATED

November 17, 1977

Mr. V. M. Kimmick, City Engineer
City Hall, 400 Marquette NW
Albuquerque, New Mexico 87102

Re: Brentwood Gardens Apartment Complex,
Application for Building Permit

Dear Mr. Kimmick:

Please be advised that we are the owners of the land through which the access road for the Brentwood Gardens Apartment Complex will be built. We have agreed to pay the costs of providing this access road and understand that before you issue the building permit for this project, you would like design and drainage information concerning this access road.

We have just recently hired the firm of Chambers, Campbell, Isaacson and Chaplin, Inc. to design this road and have instructed them to design the road to conform with your requirements as they relate to both engineering and drainage. If for any reason a drainage easement is required from the road we own all of the land south of Harper Drive over to the drainage easement on the south side of the property, and thus will be able to provide such an easement.

I hope this letter will satisfy your needs so that construction can begin on Brentwood Gardens.

Sincerely,

ACADEMY ACRES UNIT V, LTD.

Bruce V. Linscott
General Partner

Elco Securities Corporation - Sierra Management Company
2727 San Pedro, NE · Suite 110 · Albuquerque, NM 87110 · (505) 292-0424

fair share to stabilize the channel on the basis of the benefit this stabilization has to our land.

I am aware of the fact that you are willing to approve the issuance of a building permit for Brentwood Gardens, so long as you are assured that when you are able to work out a fair and equitable pro-ration of the costs involved to achieve the proper stabilization of this channel, that the landowners will pay their fair share of these costs. We are agreeable to this arrangement and hereby make the assurances necessary provided that the engineering solution will be one that is agreeable with our engineer, and that the cost pro-ration will be based on a benefit theory with payment due by us at the same time payment is made by other landowners also benefiting by said improvements.

Sincerely,

ACADEMY ACRES UNIT V, LTD.

Bruce V. Linscott

Bruce V. Linscott
General Partner

eb

City of Albuquerque
P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

MAYOR
Harry E. Kinney

CHIEF
ADMINISTRATIVE OFFICER
Frank A. Kleinhenz

November 2, 1977

Mr. Ron Shafer
Chambers Campbell Issacson & Chaplin Inc.
3500 Indian School Rd.,NE
Albuquerque, New Mexico

E18-014

RE: Brentwood Gardens Apartment Complex

Dear Ron:

I have reviewed the drainage plan for the above referenced complex and while I am in agreement with the on site drainage scheme, there is no reference, in the plan to the necessary channel improvements. As such the plan is not in compliance with the City of Albuquerque Drainage Policy Resolution 59-1976.

Since the anticipated 100 yrs. discharge is estimated in 899 cfs., the protection works necessary to fully stabilize the channel are the sole responsibility of the developer. The term "channel stabilization" is used to indicate that means must be provided to insure non erosive velocities (less than 3 fps.) with a 10 yrs. frequency storm and bank protection against the damages likely to result from a 100 yrs. frequency storm.

In additon the plans must include the design and drainage information for the access road, even though the construction of this road may not be part of the contract plans. If you want to discuss the matter further do not hesitate to contact me.

Very truly yours,

Bruno Conegliano

Bruno Conegliano
Asst. City Engineer-Hydrology

BC/gm

cc; Jim Smith
V.M. Kimmick
Drainage file

2 0 7 9