

H13/0025R

Railroad Easement

This Railroad Easement is made by and between ABQ Real Estate, L.L.C., a New Mexico limited liability company, as Grantor, and the City of Albuquerque, a New Mexico municipal corporation, whose address is P.O. Box 1293, Albuquerque, New Mexico 87103, as Grantee.

1. Recital. Grantor is the owner of Tracts B-1-A-2 ("Property") as shown and designated on the Replat of Lot B-1-A, Duke City Lumber Company Addition in Albuquerque, Bernalillo County, New Mexico.

2. Grant of Easement. Grantor, for consideration paid, hereby grants to Grantee, its successors and assigns, a railroad easement, including, without limitation, the right, privilege and easement to construct, maintain, repair, renew, use, operate over, replace or remove railroad tracks, drainage facilities and appurtenances thereto in, along, over, upon or across that portion of the Property as shown or described on attached Exhibit "A";

To have and to hold the easement for so long as it is used or required for railroad purposes and until the Grantee, its successors or assigns, shall remove all such facilities from the premises with the intent to abandon the easement.

3. Warranty of Title. Grantor covenants and warrants that Grantor is the owner in fee simple of the Property and that Grantor has a good lawful right to grant this easement and that the Grantor will forever warrant and defend that title to the Property against all claims from all persons or entities.

4. Grade Crossing. If the City of Albuquerque or the Burlington Northern Santa Fe Railway requires that a grade crossing ("Grade Crossing") be installed on Industry

Hurcine/Sawmill Railroad easement



Mary Herrera

Bern. Co. ERSE

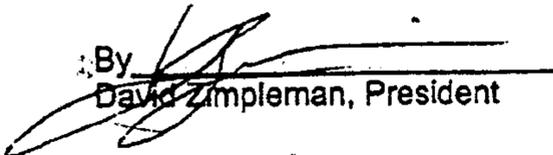
R 17.89

2003195059
2570001
Page: 1 of 5
10/24/2003 10:22A
Bk-867 Pg-4553

Track Number 598 to provide ingress and egress to and from the Property and Aspen Avenue. Grantee shall, upon the written request of Grantor and at Grantee's cost and expense, construct or cause to be constructed the Grade Crossing. The Grade Crossing shall be constructed within six (6) months after the date of Grantor's written request to the Grantee, at a location that is agreed upon by the Grantor and the Grantee, by a contractor that is New Mexico licensed and approved by Burlington Northern Santa Fe Railway, and in accordance with the standards and specifications approved by Burlington Northern Santa Fe Railway. Notwithstanding the above, whether or not Grantor gives Grantee a written request to construct the Grade Crossing, Grantee shall construct the Grade Crossing as provided in this paragraph within twenty-four (24) months after the date of this Easement.

Witness my hand and seal this 19 day of September, 2003.

ABQ Real Estate, L.L.C.

By 
David Zimpleman, President

Accepted:
City of Albuquerque

By 
Jay Czar, Chief Administrative Officer

Housing/Sawmill Railroad easement Mary Herrera



Bern. Co. EASE

R 17.00

2003195953

Page: 2 of 5

19/24/2003 19:22A

BX-A67 Pg-4653

LEGAL DESCRIPTION
FOR
A 17' WIDE RAILROAD EASEMENT
WITHIN
A PORTION OF TRACT B-1-A-2
DUKE CITY LUMBER COMPANY ADDITION.

Being that certain strip of land situate within the Town of Albuquerque Grant in projected Section 7, Township 10 North, Range 3 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico comprised of a portion of Tract B-1-A-2, Duke City Lumber Company Addition, plat of which was filed in the Office of the County Clerk of Bernalillo County, New Mexico, on December 15, 1995, in Volume 95C, Folio 451, and said strip of land being also 8.5 feet on either side of the following described centerline:

BEGINNING at a point on the northerly boundary line of said Tract B-1-A-2 whence the most northerly corner of said Tract B-1-A-2 bears N. 24°39'11" W., a distance of 11.70 feet; thence,

N. 87°36'27" W., a distance of 5.32 along the centerline of the strip of land herein described to a point of curvature; thence,

Along the arc of a curve to the left a distance of 490.08 feet (said arc having a radius of 373.31 feet, a central angle of 75°13'04", and a chord which bears S.54°47'02" W., 455.64 feet) to a Point of Tangency; thence,

S. 18°25'02" W., a distance of 30.68 feet distance to a point being the end of the centerline of the strip of land herein described, prolonging or shortening to the boundary lines of the grantor, and said strip of land containing 9,050 square feet (0.2078 acre), more or less.

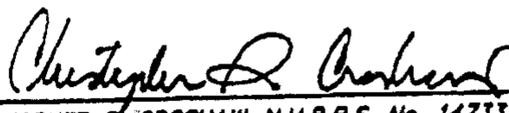
SEE ATTACHED EXHIBIT "A"



2683195659
5478881
Page: 4 of 5
18/24/2003 10:22A
Bk-A67 Pg-4653

SURVEYORS CERTIFICATION

I, Christopher S. Crshaw, New Mexico Registered Professional Surveyor No. 14733, do hereby certify that this Legal Description and Exhibit were prepared by me or under my supervision and direction, meets the Minimum Requirements for Land Surveys in the State of New Mexico, and is true and correct to the best of my knowledge and belief.


CHRISTOPHER S. CROSHAW, N.M.R.P.S. No. 14733



15 AUGUST 2003

SHEET 1 OF 2

EXHIBIT "A"

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

) ss
)

This instrument was acknowledged before me on September 19, 2003,
2003, by David Zimpleman, president of ABQ Real Estate, L.L.C..

Shirley F. Burns

Notary Public

My Commission Expires:

March 28th 2005

Housing/Sawmill Railroad easement



Mary Herrera

Bern. Co. ERSE

R 17.00

2003195859

5978891

Page: 3 of 5

10/24/2003 10:22A

Bk-A67 Pg-4553

LOT B-1-A-1
DUKE CITY LUMBER
COMPANY ADDITION
FILED: 12-15-1995
VOLUME: 95C
FOLIO: 451

(R=383.73')
(L=503.51')
(Δ=75°10'50")
(CH=S.54°51'24"W.)
(468.16')

(S.24°3'42.26')
D. REBAR
W/CAP STAMPED
"LS 11808"

ASPEN AVENUE, N.W.
(S.75°53'11"E., 457.00')

E EXISTING
R/R TRACKS
598 CLC-0555

N.87°36'27"W.
5.32'

EXISTING 20' WIDE "NON-EXCLUSIVE
EASEMENT FOR RAILWAY PURPOSES"
BY SPECIAL WARRANTY DEED
FILED: 01-24-1980
BK. 0113-A, PG. 278

R=373.31'
L=490.08'
Δ=75°73'04"
T=287.58'
CH=S.54°47'02"W.
455.64'

CENTERLINE OF 17' WIDE
RAILROAD EASEMENT

(87.82')
(S.18°25'02"W.)
S.18°25'02"W.
85.22'

LOT B-1-A-2
DUKE CITY LUMBER
COMPANY ADDITION
FILED: 12-15-1995
VOLUME: 95C
FOLIO: 451



SCALE: 1" = 100'

FND. REBAR
W/CAP STAMPED
"LS 9750"

FND. 5/8" REBAR

(488.26')
(S.86°09'28"E., 506.18')

FND. 1/2"
REBAR

(N.11°43'06"W., 162.76')

FND. REBAR
W/CAP STAMPED
"LS 11808"

LOT B-2-A
DUKE CITY LUMBER
COMPANY ADDITION
FILED: 09-17-1990
VOLUME: 90C
FOLIO: 222

(N.18°03'00"W.)
(92.29')

FND. 5/8"
REBAR

LOT B-1-A-3
DUKE CITY LUMBER
COMPANY ADDITION
FILED: 12-15-1995
VOLUME: 95C
FOLIO: 451

(S.04°18'E.)
(52.00')

FND. 5/8"
REBAR

(S.08°29'W.)
(73.00')

FND. 5/8"
REBAR

(S.12°04'E.)
(54.00')

FND. 5/8"
REBAR

FND. 5/8"
REBAR
(LINE ONLY)

(S.12°38'W.)
(98.90')

**WILSON
& COMPANY**

4900 LANG AVENUE N.E.
ALBUQUERQUE, NEW MEXICO
87109
(505) 348-4000

SHEET 2 OF 2



2693195659
5878681
Page: 5 of 5
18/24/2003 10:22A
Bk-867 Pg-4553

Mary Herrera Bern. Co. ERSE R 17.68

(N.85°08'16"W., 721.46')

FND. 5/8"
REBAR (rejected)

[Handwritten signature]

January 3, 2012

John M. Provine, P.E.
Molzen-Corbin
2701 Miles Rd SE
Albuquerque, NM 87106

**Re: Fire Station No. 7, Grading and Drainage Plan
Engineer's Stamp dated 12-9-11 (K11/D079)**

Dear Mr. Provine,

Based upon the information provided in your submittal received 12-19-11, the above referenced plan cannot be approved for Building Permit until the following comments are addressed:

- Provide a narrative, drainage calculations and Flood Zone information.
- The items to be built by Work Order (infrastructure List items), should have a note similar to "to be constructed by Work Order".
- Add TW/BW elevations for the wall east of the building.
- Hydrology approved a 2' wide sidewalk culvert on 57th st at DRB. The capacity of these culverts is approximately 1.8 cfs/linear foot, limited by the entrance condition. What is the proposed flow to the sidewalk culvert and is it the correct size?

If you have any questions, you can contact me at 924-3986

Sincerely,

Curtis Cherne, P.E.
Principal Engineer, Planning Dept.
Development and Building Services

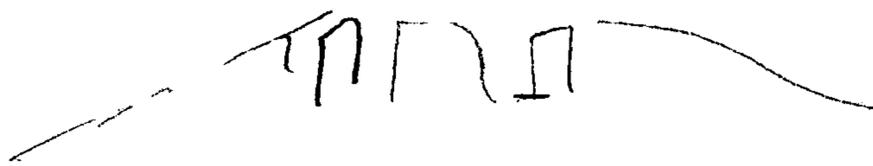
Copy: e-mail

Do RR X rights transfer to
the new owner?

Linda contact for email
mtg 1-4-12 Kevin Curran, Kirk (Lewken), Curtis

find out what is req'd from ~~BNSF~~ ^{DOT}

DOT has right to remove the tracks



There are other agreements after this
one that assigns agreements to BNSF

Dourte, Richard H.

From: Cloud, Jack W.
Sent: Friday, March 30, 2012 2:59 PM
To: Whitcomb, Blake
Cc: Curran, Kevin J.; Dourte, Richard H.
Subject: RE: Railroad Easement Vacations

Regarding the vacation on Wednesday, please advise if there is a Condition of Approval that would be appropriate for releasing/ withdrawing all provisions of the easement?

If someone could come up with some wording for the condition of approval, we could probably make a Finding that the public welfare is no way served by retaining the easement IF all provisions are released/ withdrawn –

Conversely, we could deny the vacation because there is no benefit to the public welfare if the public is obligated to build a crossing for an easement that would no longer be there if it is vacated -

From: Whitcomb, Blake
Sent: Thursday, March 29, 2012 4:56 PM
To: Cloud, Jack W.
Cc: Curran, Kevin J.
Subject: RE: Railroad Easement Vacations

Jack,

I believe the City used to own a portion of that easement and Mark Goodwin & Assoc. is currently claiming that the City is still obligated to build a grade crossing into the bordering subdivision. We have a meeting scheduled tomorrow to determine how we want to proceed. I'm not sure if this vacation would affect the outcome of that meeting but I appreciate you bringing it to our attention. I'll keep you posted.

Thank you,

Blake Whitcomb

From: Cloud, Jack W.
Sent: Thursday, March 29, 2012 4:46 PM
To: Whitcomb, Blake; Curran, Kevin J.
Subject: RE: Railroad Easement Vacations

Project# 1009046
12DRB-70094 VACATION OF PUBLIC EASEMENTS

MARK GOODWIN AND ASSOCIATES, P.A. agent CROSSINGS, LLC request(s) the referenced/ abc certain RAILROAD EASEMENTS on a portion of CITY LUMBER CO ADDITION, zoned SU-2/S-1 (prop PRD), located on the south side of ASPEN AVE NW bet and 19th ST NW containing approximately 6.9292 acre

6/26/2012

From: Whitcomb, Blake
Sent: Thursday, March 29, 2012 4:45 PM
To: Cloud, Jack W.; Curran, Kevin J.
Subject: RE: Railroad Easement Vacations

I do know of one railroad easement in Sawmill Village but do not know if it is up for vacation. I would be very interested if they are one in the same. Do you know who is submitting the application?

Thank you,

Blake Whitcomb

From: Cloud, Jack W.
Sent: Thursday, March 29, 2012 4:12 PM
To: Curran, Kevin J.; Whitcomb, Blake
Subject: RE: Railroad Easement Vacations

Thanks Kevin for the quick response on the Trails –

Do either of you know anything how some railroad easements that are up for vacation next Wednesday down in Sawmill Village?

Dourte, Richard H.

From: Conrad, Matt A.
Sent: Monday, March 26, 2012 4:04 PM
To: Curran, Kevin J.; Whitcomb, Blake; Dourte, Richard H.; Terrasas, Amber
Cc: Stover, Debbie L.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area
2:00 is good for me also.

From: Curran, Kevin J.
Sent: Monday, March 26, 2012 3:41 PM
To: Whitcomb, Blake; Dourte, Richard H.; Terrasas, Amber
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

2:00 is good for me also. Thanks.

Kevin J. Curran
Managing Assistant City Attorney
Real Estate and Land Use Division
Office of the City Attorney
1 Civic Plaza NW
P.O. Box 2248
Albuquerque, NM 87103
505-768-4657/768-4525 Fax
kcurran@cabq.gov

From: Whitcomb, Blake
Sent: Monday, March 26, 2012 2:42 PM
To: Dourte, Richard H.; Curran, Kevin J.; Terrasas, Amber
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

It works for me.

Sincereley,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
F: (505) 768-4525
bwhitcomb@cabq.gov

6/26/2012

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From: Dourte, Richard H.
Sent: Monday, March 26, 2012 2:09 PM
To: Curran, Kevin J.; Terrasas, Amber; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

How does 2:00 pm on Friday the 30th work for everyone??

Richard

From: Curran, Kevin J.
Sent: Monday, March 26, 2012 12:13 PM
To: Dourte, Richard H.; Terrasas, Amber; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

Richard,

Anytime Friday is OK, but no time on Thurs. is good. Blake is OK with Friday as well.

Kevin J. Curran
 Managing Assistant City Attorney
 Real Estate and Land Use Division
 Office of the City Attorney
 1 Civic Plaza NW
 P.O. Box 2248
 Albuquerque, NM 87103
 505-768-4657/768-4525 Fax
kcurran@cabq.gov

From: Dourte, Richard H.
Sent: Monday, March 26, 2012 9:41 AM
To: Terrasas, Amber; Curran, Kevin J.; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

When is everyone available??? Say Thursday this week??

From: Montano, Gilbert A.
Sent: Saturday, March 24, 2012 11:04 AM
To: Dourte, Richard H.
Cc: Stover, Debbie L.; Conrad, Matt A.; Curran, Kevin J.; Whitcomb, Blake; Terrasas, Amber
Subject: Re: Railroad easement and at grade crossing issue for development in Sawmill area

6/26/2012

Let's try and discuss this issue later this week. I have a few questions before we contact the developer with our position.

Sent from my iPad

On Mar 23, 2012, at 11:58 AM, "Dourte, Richard H." <RDourte@cabq.gov> wrote:

Mr. Montano,

As you may recall Kevin Curran, Blake Whitcomb and myself met with you about two weeks ago regarding a Railroad Easement for a spur that the City entered into with the owner of a parcel within the Sawmill area back in September 19, 2003 (attached). This easement included language indicating the City may be responsible for a grade crossing of that railroad spur in the Sawmill area. The developer's representative (John McKenzie of Mark Goodwin and Assoc.) is requesting that the City install this grade crossing at this time where the proposed development wishes to take access to Aspen road. At this meeting you requested that we look into this issue in greater detail.

After further review, the easement indicates that the grade crossing of the railroad spur be constructed within twenty four months after this easement was executed, September 19, 2005 or within six months of the request by the land owner, whichever is the earlier. It is my understanding that there is a three year statute of limitations for an agreement such as this one, thus the easement with respect to this crossing should have been enforced by September 19, 2008.

This being the case, the City may not be obligated to pay for such a grade crossing of the railroad spur.

It may be prudent to have this spur removed, but that would involve the owner of the tracks (NMDOT as I understand it) and other owners of the rights to this spur.

If you wish for me to contact the developer's representative regarding this issue and how the City wishes to participate, if at all, please let me know.

Hope this helps,

Richard

<Sawmill railroad easement.pdf>

Dourte, Richard H.

From: Conrad, Matt A.
Sent: Friday, March 23, 2012 11:24 AM
To: Dourte, Richard H.
Cc: Stover, Debbie L.
Subject: RE: Railroad Easement and the grade crossing within the Sawmill area

I received your message. This looks fine.

From: Dourte, Richard H.
Sent: Friday, March 23, 2012 9:20 AM
To: Conrad, Matt A.
Subject: FW: Railroad Easement and the grade crossing within the Sawmill area

Matt,

Shall I send the email at the bottom of this string??

Not a big issue, but don't want to send something to the COO, if you disagree.

Thanks,

Richard

From: Dourte, Richard H.
Sent: Tuesday, March 20, 2012 4:08 PM
To: Stover, Debbie L.; Conrad, Matt A.
Subject: FW: Railroad Easement and the grade crossing within the Sawmill area

Ok to send??? With that change of course.

From: Curran, Kevin J.
Sent: Tuesday, March 20, 2012 3:22 PM
To: Dourte, Richard H.; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.
Subject: RE: Railroad Easement and the grade crossing within the Sawmill area

Richard,

Blake and I agree your e-mail to the COO looks fine. One typo third line, change *Mark* McKenzie to *John* Mackenzie. Thanks.

Kevin J. Curran
 Managing Assistant City Attorney
 Real Estate and Land Use Division
 Office of the City Attorney
 1 Civic Plaza NW
 P.O. Box 2248
 Albuquerque, NM 87103

6/26/2012

505-768-4657/768-4525 Fax
kcurran@cabq.gov

From: Dourte, Richard H.
Sent: Tuesday, March 20, 2012 1:55 PM
To: Whitcomb, Blake; Curran, Kevin J.
Cc: Stover, Debbie L.; Conrad, Matt A.
Subject: Railroad Easement and the grade crossing within the Sawmill area

Blake, Kevin,

This is what I propose to send to the COO...

Mr. Montano,

As you may recall Kevin Curran, Blake Whitcomb and myself met with you about two weeks ago regarding a Railroad Easement for a spur that the City entered into with the owner of a parcel within the Sawmill area back in September 19, 2003. This easement included language indicating the City may be responsible for a grade crossing of that railroad spur in the Sawmill area. The developer's representative (Mark McKenzie of Mark Goodwin and Assoc.) is requesting that the City install this grade crossing at this time where the proposed development wishes to take access to Aspen road. At this meeting you requested that we look into this issue in greater detail.

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It may be prudent to have this spur removed, but that would involve the owner of the tracks (NMDOT as I understand it) and other owners of the rights to this spur.

If you wish for me to contact the developer's representative regarding this issue and how the City wishes to participate, if at all, please let me know.

Hope this helps,

Richard

6/26/2012

Dourte, Richard H.

From: Metro, Kristal D.
Sent: Tuesday, May 01, 2012 12:56 PM
To: Dourte, Richard H.
Subject: RE: Sawmill development RR crossing

Thanks Richard. Should we include the agreement on the infrastructure list?

Sincerely,
 Kristal Metro, City of Albuquerque Transportation Development

From: Dourte, Richard H.
Sent: Tuesday, May 01, 2012 12:07 PM
To: Metro, Kristal D.
Subject: RE: Sawmill development RR crossing

NMDOT will approve the construction plans, however an agreement that includes the developer, City and NMDOT will be required.

From: Metro, Kristal D.
Sent: Tuesday, May 01, 2012 11:13 AM
To: Dourte, Richard H.
Subject: RE: Sawmill development RR crossing

Richard,

Who has jurisdiction over the RR crossing? The City or the NMDOT? Will the crossing go through the DRC process?

Sincerely,
 Kristal Metro, City of Albuquerque Transportation Development

From: Dourte, Richard H.
Sent: Tuesday, April 24, 2012 12:09 PM
To: Whitcomb, Blake
Cc: Cloud, Jack W.; Metro, Kristal D.
Subject: Sawmill development RR crossing

Blake,

Looks like EPC approved the location and indicates that it is to be public. John MacKenzie caught me at the front counter to get confirmation that can be sent to NMDOT verifying that it is a public crossing. This needs to be done so the NMDOT will provide John with details on how to design crossing... It does look like the developer is going to pay for this crossing. It also looks like it would be in existing public r/w., likely little chance for us to require these streets/rr crossing to be private.

From what I see, it looks like the City already agreed to a public crossing.

What do you think??

Thanks,

Richard

6/26/2012

Dourte, Richard H.

From: Curran, Kevin J.
Sent: Tuesday, March 20, 2012 3:22 PM
To: Dourte, Richard H.; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.
Subject: RE: Railroad Easement and the grade crossing within the Sawmill area

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6/26/2012

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Hope this helps,

Richard

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Sent: Monday, March 26, 2012 3:41 PM
To: Whitcomb, Blake; Dourte, Richard H.; Terrasas, Amber
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

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Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

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Sincereley,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
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Kevin J. Curran
Managing Assistant City Attorney
Real Estate and Land Use Division
Office of the City Attorney
1 Civic Plaza NW
P.O. Box 2248
Albuquerque, NM 87103
505-768-4657/768-4525 Fax
kcurran@cabq.gov

From: Dourte, Richard H.
Sent: Monday, March 26, 2012 9:41 AM
To: Terrasas, Amber; Curran, Kevin J.; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

When is everyone available??? Say Thursday this week??

From: Montano, Gilbert A.
Sent: Saturday, March 24, 2012 11:04 AM
To: Dourte, Richard H.
Cc: Stover, Debbie L.; Conrad, Matt A.; Curran, Kevin J.; Whitcomb, Blake; Terrasas, Amber
Subject: Re: Railroad easement and at grade crossing issue for development in Sawmill area

Let's try and discuss this issue later this week. I have a few questions before we contact the developer with our position.

Sent from my iPad

On Mar 23, 2012, at 11:58 AM, "Dourte, Richard H." <RDourte@cabq.gov> wrote:

6/26/2012

Mr. Montano,

As you may recall Kevin Curran, Blake Whitcomb and myself met with you about two weeks ago regarding a Railroad Easement for a spur that the City entered into with the owner of a parcel within the Sawmill area back in September 19, 2003 (attached). This easement included language indicating the City may be responsible for a grade crossing of that railroad spur in the Sawmill area. The developer's representative (John McKenzie of Mark Goodwin and Assoc.) is requesting that the City install this grade crossing at this time where the proposed development wishes to take access to Aspen road. At this meeting you requested that we look into this issue in greater detail.

After further review, the easement indicates that the grade crossing of the railroad spur be constructed within twenty four months after this easement was executed, September 19, 2005 or within six months of the request by the land owner, whichever is the earlier. It is my understanding that there is a three year statute of limitations for an agreement such as this one, thus the easement with respect to this crossing should have been enforced by September 19, 2008.

This being the case, the City may not be obligated to pay for such a grade crossing of the railroad spur.

It may be prudent to have this spur removed, but that would involve the owner of the tracks (NMDOT as I understand it) and other owners of the rights to this spur.

If you wish for me to contact the developer's representative regarding this issue and how the City wishes to participate, if at all, please let me know.

Hope this helps,

Richard

<Sawmill railroad easement.pdf>

Dourte, Richard H.

From: Whitcomb, Blake
Sent: Monday, May 07, 2012 4:42 PM
To: Dourte, Richard H.
Subject: RE: Crossing Agreement for Access to Sawmill Crossing Development

Richard,

Okay, I'm just asking about possibilities. I'll work on a limited agreement that provides for termination if Sawmill Crossing decides not to go ahead with construction. Thanks for your input.

Blake

From: Dourte, Richard H.
Sent: Monday, May 07, 2012 4:39 PM
To: Whitcomb, Blake; Curran, Kevin J.
Subject: RE: Crossing Agreement for Access to Sawmill Crossing Development

Blake,

The estimate seems like it is in the ballpark. As far as the procedure "c" goes, I am not in favor of this, that would take much coordination with DMD and they likely would not want to do it, and I can see their side of it.

Richard

From: Whitcomb, Blake
Sent: Monday, May 07, 2012 4:29 PM
To: Dourte, Richard H.; Curran, Kevin J.
Subject: FW: Crossing Agreement for Access to Sawmill Crossing Development

Apparently, NMDOT isn't going to give Sawmill Crossing any indication of the cost to construct the crossing until after the City signs a crossing agreement. I'm formulating some ways that the City can sign the agreement and have it "expire" if Sawmill Crossing decides they do not want to pay for the crossing. Also, NMDOT suggested "Gandy Dancer" might be able to give Sawmill Crossing a rough estimate of the cost of the crossing (suspected to be \$200K).

Also, I thought we might propose to Sawmill Crossing that we build the crossing under a "Procedure C" because it will likely be easier for the City to negotiate all the contracts and permitting requirements.

Do either of you have any thoughts?

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney

6/26/2012

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From: Craven, William, NMDOT [mailto:William.Craven@state.nm.us]
Sent: Monday, May 07, 2012 3:12 PM
To: Whitcomb, Blake
Cc: Fine, Robert, NMDOT
Subject: Crossing Agreement for Access to Sawmill Crossing Development

Blake,

I thought I'd touch base with you and find out where the City is in regards to the proposed railroad grade crossing from Aspen Street to Sawmill Crossing. The developer has been pestering Herzog for a pricing quote, despite repeated communications from NMDOT indicating that NMDOT will not allow crossing construction to proceed until there is a crossing agreement in place between NMDOT and the City of Albuquerque.

If the City has decided to proceed with creating a new public crossing for Sawmill Crossing please let me know, and I will wait for a response from the City to the draft agreement that was sent last month as a starting point for negotiations on a crossing agreement. If the City is still exploring other options such as convincing Explora to surrender rail access to the property, allowing removal of the rail line, it would be helpful to learn that as well.

Bill

Bill Craven
Acting Rail Bureau Manager
New Mexico Department of Transportation
(505) 827-5263

6/26/2012

Dourte, Richard H.

From: Whitcomb, Blake
Sent: Wednesday, April 25, 2012 12:23 PM
To: Curran, Kevin J.; Dourte, Richard H.; Rael, Jane E.
Subject: FW: Sawmill RR Crossing
Attachments: 18.014.0004.pdf

From: Craven, William, NMDOT [mailto:William.Craven@state.nm.us]
Sent: Wednesday, April 25, 2012 9:48 AM
To: Whitcomb, Blake
Subject: RE: Sawmill RR Crossing

Blake,

For a public crossing, NMDOT and the City will need to execute a crossing agreement before we can allow construction to begin. As part of that, the City will need to agree to make BOTH sides of the crossing public roadways for a certain distance; I don't recall if there's a minimum distance required, but the City wouldn't need to extend the public roadway beyond the proposed intersection south of the rail line in any case.

NMDOT will need to follow the procedures described in NMAC 18.14.4 (attached), with 18.14.4.9, 18.14.4.10, and 18.14.4.14 being the most relevant sections. We'll want to have a diagnostic team meet at the location after the agreement is executed to determine whether any signage beyond what's listed in 18.14.4.10(D) is required; NMDOT, the City, Rio Metro RTD, and the developer should all participate on the diagnostic team. We'll also have to follow the steps in 18.14.4.14 regarding opening a new crossing, even though the requirement to inform the City of its own request to open a crossing is redundant.

I don't see a conflict with the agreement if the developer pays for the crossing work.

I'm heading to Las Cruces shortly and won't be back in the office until next Tuesday. Let's try and talk more about this then.

Bill

From: Whitcomb, Blake [mailto:bwhitcomb@cabq.gov]
Sent: Wednesday, April 25, 2012 9:02 AM
To: Craven, William, NMDOT
Subject: RE: Sawmill RR Crossing

Bill,

The City has discovered that it probably already committed to a public crossing—so essentially yes. However, the construction of the crossing and any other necessary improvements will be completed by the developer. It is my understanding that this has been done before but I have not yet located the documents used in the construction of that crossing. Given that this scenario doesn't fit with the draft contract you sent me, do you know how this should be done in a legal sense?

Regarding maintenance and future responsibility after completion of the construction, what will the City's specific responsibilities be? Also, would the developer dedicate the crossing to the City or NMDOT after construction?

6/26/2012

Thank you,

Blake Whitcomb

From: Craven, William, NMDOT [mailto:William.Craven@state.nm.us]
Sent: Wednesday, April 25, 2012 8:30 AM
To: Whitcomb, Blake
Subject: FW: Sawmill RR Crossing

Blake,

Has the city decided it wishes to proceed with establishing a public crossing?

Bill

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Wednesday, April 25, 2012 8:15 AM
To: Craven, William, NMDOT
Cc: Keith Cheshire
Subject: FW: Sawmill RR Crossing

Bill,

Here is the public/private determination from the city on the crossing at this project. Please forward the public crossing detail to me.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Tuesday, April 24, 2012 4:22 PM
To: John MacKenzie
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: Sawmill rr crossing

John,
All the documentation provided to this date indicates that this crossing will be a public railroad crossing.

Richard

6/26/2012

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 14 RAILROADS
PART 4 GRADE CROSSINGS ON LAND AND RAILROAD TRACKS CONTROLLED BY THE
DEPARTMENT OF TRANSPORTATION

18.14.4.1 ISSUING AGENCY: New Mexico Department of Transportation.
[18.14.4.1 NMAC - N, 12/1/2010]

18.14.4.2 SCOPE: All government, private and public entities.
[18.14.4.2 NMAC - N, 12/1/2010]

18.14.4.3 STATUTORY AUTHORITY: Section 67-3-11, 67-3-12, 63-3-35, 63-3-36, 63-3-37, 63-3-38,
and 67-3-67 through 67-3-70 NMSA 1978.
[18.14.4.3 NMAC - N, 12/1/2010]

18.14.4.4 DURATION: Permanent.
[18.14.4.4 NMAC - N, 12/1/2010]

18.14.4.5 EFFECTIVE DATE: December 1, 2010, unless a later date is cited at the end of a section.
[18.14.4.5 NMAC - N, 12/1/2010]

18.14.4.6 OBJECTIVE: To create procedures and standards for any new and all existing grade crossings on
land and railroad tracks controlled by the department of transportation.
[18.14.4.6 NMAC - N, 12/1/2010]

18.14.4.7 DEFINITIONS:

A. “Active traffic control device” means those traffic control devices activated by the approach or
presence of a train, such as flashing light signals, automatic gates and similar devices, all of which display to
motorists positive warning of the approach or presence of a train.

B. “Agreement” means a contract between the department as the owner of the railroad and the party
or parties who own, use, or have responsibility for a road that cross the rail line that describes responsibility for the
grade crossing construction, repair, maintenance, inspection, and liability for the crossing and other items as may be
appropriate at the grade crossing and adjacent traffic control signs. An agreement shall be negotiated between the
department and the party or parties when approval for the construction or modification to the crossing has been
given by the department secretary. A template agreement will be made available to any party requesting such
document, but the final terms of the agreement will be subject to negotiation by the parties thereto.

C. “Applicant” means an individual or company or local government or any other entity that submits
a request in writing to the department rail manager for a new crossing, modification to an existing crossing, a change
in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a
crossing, and who or which must be an adjacent property owner, the property owner's authorized representative or a
governmental agency that maintains the road approaches to a crossing.

D. “Crossing” means a general area where a highway and the department's railroad right-of-way
cross at the same level, within which are included the railroad tracks, highway or other roadway either publicly or
privately owned or pedestrian crossing and any traffic control devices for highway traffic traversing that area. The
crossing shall include the area of department owned railroad property from the property boundary on one side of the
track to the property boundary on the other side.

E. “Department” means the New Mexico department of transportation.

F. “Diagnostic study” means a study of a highway railroad grade crossing and any adjacent factors
that will have an impact upon the operation at the grade crossing. This study shall be initiated by the department rail
manager and shall be conducted by a diagnostic team constituted by the rail manager. Any reports submitted shall be
stamped and signed by a registered engineer licensed in the state of New Mexico. A diagnostic study of a crossing
shall be based on criteria and standards identified in the reference documents in subsection B of 18.14.4.8 NMAC.

G. “Diagnostic team” means a group of knowledgeable representatives of the parties of interest in a
railroad highway crossing or a group of crossings. A diagnostic team composition will be determined by the
department rail manager and shall have the following members:

- (1) a railroad engineering professional (preferably an experienced professional engineer);

- (2) a railroad signal professional (or consultant);
- (3) a highway engineer from the department as designated by the district engineer for the department district where the highway-railroad grade crossing is located;
- (4) a person from an appropriate local government who deals with roadways at the crossing if a local government does maintenance of the road that crosses the department owned tracks;
- (5) the rail manager or their designated staff member;
- (6) an appropriate regulatory or law enforcement professional from the local government where the crossing is located;
- (7) an individual or individuals from any railroad or railroads that operate trains on the department owned track that is being examined;
- (8) any additional personnel that may be needed depending on the individual circumstances at a crossing location as determined by the department rail manager.

H. "FHWA" means the United States department of transportation federal highway administration.

I. "FRA" means the United States department of transportation federal railroad administration.

J. "Highway, road or roadway" means a general term denoting a public or private way for purpose of vehicular and other modes of travel. The names usually apply to the entire area within the right of way limits.

K. "License" means permission to a revocable non-possessory interest in land which the department grants for specific purposes without being subject to an action and trespass.

L. "Local government" means a municipality or county or agency or local authority that has jurisdiction for or control of the road or roadway that crosses or is proposed to cross land and railroad tracks controlled by the department. Local governments shall include Indian tribes or tribal governments as defined in federal law at 25 USC 450b(e) and other sections.

M. "MUTCD" means the most current version of the federal highway administration manual on uniform traffic control devices.

N. "NMDOT" means the New Mexico department of transportation.

O. "NMDOT grade crossings" means crossings of railroad tracks that are owned by the department or the state transportation commission.

P. "Passive warning traffic control device" means those types of traffic control devices, including signs, markings and other devices, located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train.

Q. "Permit" means a temporary short or long term document approved by an applicant and the department with terms and conditions (i.e. contract, license or agreements), giving permission to enter department railroad property for a specific purpose and limited period of time to construct or maintain a crossing and for the crossing itself.

R. "Private crossing" means a crossing that is not on a public road and was opened by a private railroad or the department under the terms and conditions of an agreement with the department or a private railroad. At private crossings, the roadway is privately owned, as might be found on a farm or within an industrial complex, where the road is not intended for public use and is not maintained by a public entity.

S. "Public crossing" means a crossing where a public entity maintains the approach roads to the railroad grade crossing on both sides of the railroad track within the department owned railroad property.

T. "Rail manager" means the department rail section manager.

U. "Second party" means an individual or company or local government or any other entity that enters into an agreement with the department for a highway-railroad grade crossing of department owned railroad track.

V. "Secretary" means the New Mexico department of transportation secretary.

[18.14.4.7 NMAC - N, 12/1/2010]

18.14.4.8 REFERENCES:

A. The reference documents listed in Subsection B of 18.14.4.8 NMAC are supplementary and will be used by the department to evaluate requests for a new crossing or modification to an existing crossing or a request for a change in designation from a private crossing to a public crossing or the closing of a crossing or the grade separation of a crossing or in any diagnostic study of a crossing that is conducted. The most recent edition of each technical reference shall be used.

B. Technical reference documents.

(1) FHWA, railroad-highway grade crossing handbook.

(2) FHWA, MUTCD.

(3) Institute of transportation engineers, *geometric design criteria for highway-rail intersections (grade crossings)*.

(4) Institute of transportation engineers, *traffic engineering handbook*.

(5) The department railroads and utilities manual, most current version.

(6) Any applicable department engineering standards.

[18.14.4.8 NMAC - N, 12/1/2010]

18.14.4.9 CROSSING REQUEST PROCESS:

A. Crossing request general requirements.

(1) Requests for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing shall be made by any adjacent property owner, the property owner's authorized representative or a local government representative that maintains the road approaches to a crossing.

(2) All requests for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing shall be submitted in writing to the rail manager with proof of ownership of the adjacent property that the crossing will serve. The request shall also contain a description of the crossing that includes a to-scale engineering drawing of the location where the crossing will be constructed or modified at the railroad tracks and the approach roads to the crossing and any other features in the area and will acknowledge that the requestor accepts all liability for the crossing and will pay all maintenance costs for the crossing.

(3) Any request by an applicant for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing may be refused by the department if necessary and relevant information is missing. If the request is refused, the department shall notify the applicant within ten (10) working days of receipt of the request and shall indicate the reason or reasons for refusal.

(4) Each applicant understands and agrees as a condition of issuance of any agreement, that if the department determines that any violation of the agreement has or may result in the creation of any safety or traffic hazard, the department may immediately take such action as the department deems necessary to correct, prevent, eliminate or mitigate such hazard, without the need for the completion of any review process.

(5) The review process shall begin with the acceptance of a request by the department rail manager.

(6) From the date of acceptance of a written request for modifications to an existing crossing or construction of a new crossing or the grade separation or elimination of a crossing by the rail manager the process time for any request will normally take ninety (90) days. The process may be extended by the department when further action is required by the department. Transmittal of a completed agreement, approved by the department secretary or transmittal of a denied request constitutes action on the request.

(7) Upon receipt and review of a written request for a new crossing, modification to an existing crossing, a change in designation from a private crossing to a public crossing, the closing of a crossing or the grade separation of a crossing the rail manager shall form a diagnostic team who will then conduct a diagnostic study of the proposed action. A report of the diagnostic study will then be prepared and submitted to the secretary with a recommendation by the rail manager as to whether the request should be approved or denied.

(8) The secretary shall approve or deny any and all crossing requests or proposals regarding crossings on any department owned railroad property.

(9) If the secretary approves a request from an applicant, an agreement shall be prepared by the rail manager and transmitted to the applicant who will become the second party to the agreement. If the applicant does not agree to all terms and conditions of the agreement, the agreement shall not be executed.

(10) In accepting the agreement, the applicant agrees to all terms and conditions of the agreement. Should the applicant choose to appeal a denied request, or the terms and conditions of an agreement, the appeal shall be filed with the rail manager within sixty (60) days of the date the denial notice or the approved agreement is transmitted.

(11) The issue date of the agreement is the date the department secretary signs the agreement.

(12) The granting of an agreement for a crossing conveys no rights, title or interest in department property to the applicant. An agreement for a crossing does not entitle the applicant to control or have any rights or interests in any portion of the design, specifications or operation of the rail line, including those portions of the rail line built pursuant to the terms and conditions of the agreement.

(13) If the department denies a request, the department rail manager shall provide the applicant a copy of the written request marked "denied" along with any attachments and a written explanation for the decision.

(14) Denial of a request for modification to an existing lawful crossing does not constitute a revocation of the existing crossing.

B. Fees: The secretary may establish a reasonable schedule of fees for crossing agreements issued pursuant to 18.14.4.12 NMAC.

C. Appeals of denied requests for crossings.

(1) If the requestor objects to the denial of a crossing request by the department or objects to any of the terms or conditions of the agreement placed therein by the department, a written appeal may be filed with the rail manager within sixty (60) days of the transmittal of notice of denial or transmittal of the approved agreement. The request shall include reasons for the appeal and may include recommendations by the requestor.

(2) The rail manager will review the appeal and provide a recommendation to the secretary regarding the appeal.

(3) Upon review the secretary will approve or deny the appeal recommendation.

[18.14.4.9 NMAC - N, 12/1/2010]

18.14.4.10 STANDARDS TO BE USED FOR ALL CROSSINGS OF DEPARTMENT OWNED RAILROAD PROPERTY:

A. All crossings shall be subject to an agreement between the department and a second party.

B. An agreement between the department and the second party at the crossing shall address the party that is responsible for the maintenance, repair and replacement of the crossing and installation and maintenance, repair and replacement of any traffic control signage at the crossing.

C. The department shall require the second party at the crossing to pay the department for the installation and maintenance, repair and replacement as needed of the traffic controls and signage determined to be necessary based upon a diagnostic study of the crossing and as approved by the secretary. If payment is not provided the department may close the crossing after providing written notice to the second party.

D. The following passive warning traffic control devices will be installed and maintained at all crossings unless the secretary determines that additional passive warning traffic control devices or active traffic control devices are required at a crossing. All passive warning traffic control devices shall be installed as specified in section 8B.04 of the MUTCD and shall include:

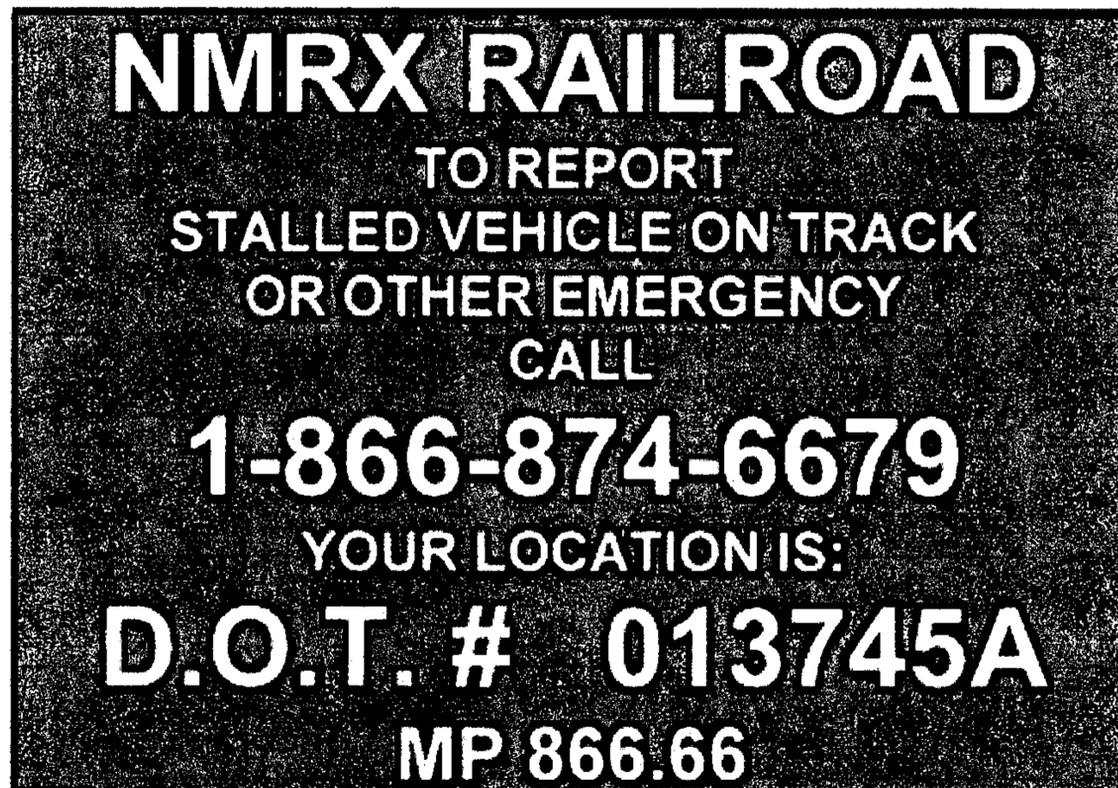
(1) a yield sign (an R1-2 sign as shown in figure 8B-1 and sized as shown in table 8B-1 of the MUTCD) shall be the default traffic control device, unless the secretary or a diagnostic study determines that a stop sign (an R1-1 sign as shown in figure 8B-1 and sized as shown in table 8B-1 of the MUTCD) is appropriate and shall be installed in compliance with the provisions of Part 2 of section 2B.10 of the MUTCD and figures 8B-2 and 8B-3 of the MUTCD;

(2) a railroad cross buck sign (an R15-1 sign as shown in figure 8B-1 and sized as of Table 8B-1 of the MUTCD) that complies with the provisions of section 8B.03 of the MUTCD;

(3) a sign indicating the number of tracks at the crossing at the location if two or more tracks are present that complies with the provisions of section 8B.03 of the MUTCD;

(4) reflective striping on the front and back of the signpost but may be omitted from the back sides of crossbuck sign supports installed on one-way streets;

(5) an emergency notification sign as shown in figure 1 below with a telephone number for the railroad dispatcher who dispatches trains using the tracks at the crossing;



DOT Crossing Number is specific to the location of the crossing
The Mile Post (MP) is specific to the locations of the crossing

Figure 1

- (6) roadway striping where appropriate;
- (7) advance highway-railroad grade crossing warning signs for each direction of traffic.
- E. It shall be the responsibility of the department to ensure that all federal and state laws and regulations, department procedures and industry standards are followed.
- F. The rail manager shall conduct inspections of all department-owned crossings on a regular basis at least every two years to evaluate the sufficiency of traffic control devices and signage. The rail manager shall utilize the references in section b of 18.14.4.8 NMAC in conducting the inspection. The rail manager shall make a recommendation regarding any modifications to a crossing to the department secretary. The department secretary shall decide whether modifications to a crossing shall be made.
[18.14.4.10 NMAC - N, 12/1/2010]

18.14.4.11 ADDITIONAL REQUIREMENTS FOR PRIVATE CROSSINGS OF DEPARTMENT OWNED RAILROAD PROPERTY:

- A. All liability at a private crossing will lie with the second party named in any existing or future crossing agreement. The department will bear no liability for these crossings.
 - B. The liability for the use and the responsibility for funding the inspection, maintenance and improvement of a private crossing shall be the responsibility of the second party, as the owner of the road that crosses the department owned railroad property.
 - C. If the department can not locate or acquire a valid agreement that has been issued to allow a private crossing of the department owned railroad property, and the department is unable to execute an agreement with an applicant for the crossing, the department shall initiate a process to consider closing the crossing utilizing the procedures included in 18.14.4.13 NMAC.
 - D. The department shall have the right to terminate an agreement in the event that the department determines any of the following:
 - (1) the crossing is being used for a purpose or in a manner not set forth in the agreement; or
 - (2) there is a significant change in the volume or nature of road traffic at the crossing; or
 - (3) the second party has in any way breached the terms or conditions of any applicable agreement.
- [18.14.4.11 NMAC - N, 12/1/2010]

18.14.4.12 FOR REQUESTS THAT A DESIGNATION OF A PRIVATE CROSSING BE CHANGED TO A PUBLIC CROSSING:

A. A local government or regional transit district may request that a private crossing be changed to a public crossing by submitting a written request to the rail manager. The request shall include the reasons for such redesignation, the supporting documents referenced in Paragraph (2) of Subsection (A) of 18.14.4.9 NMAC, and a resolution from the governing body of the local government or regional transit district committing to maintain the approach roads to the grade crossing. The process referenced in 18.14.4.9 NMAC shall be used by the department in considering the redesignation request.

B. The rail manager shall make a recommendation to the secretary regarding the request to redesignate a private crossing to a public crossing. The secretary shall decide whether such redesignation shall be made. Upon approval by the secretary of the redesignation, an agreement between the department and the second party that will assume responsibility for the redesignated crossing shall be executed regarding the responsibilities of the second party.

C. The rail manager shall submit all changes in crossing designation to the FRA to update the FRA crossing inventory.

[18.14.4.12 NMAC - N, 12/1/2010]

18.14.4.13 CONSIDERATION OF CLOSING AN EXISTING CROSSING: CONSIDERATION OF CLOSING AN EXISTING CROSSING:

A. If the department seeks the closure of an existing crossing or if the rail manager receives a proposal to close an existing crossing that is determined to merit consideration based on the rail manager's review of the proposal, the department shall provide public notice of the proposed closure:

(1) the department shall inform the local government in which the crossing is located of the proposed closure;

(2) the department shall post signs at the crossing notifying the public that the crossing is under consideration for closure and requesting public comment;

(3) the department shall publish a notice in a newspaper of general circulation in the community in which the crossing is located inviting public comment.

B. The rail manager shall evaluate the impacts of closing the crossing and the options to closure. In preparing a recommendation to the secretary regarding a proposed closing of an existing crossing, the rail manager shall utilize the criteria contained in the references cited in 18.14.4.8 NMAC, the results of the diagnostic study and consider any public comments received. The rail manager shall provide a recommendation and a summary of any public comments received to the secretary.

C. The approval of the secretary or their designee is required in order to close an existing crossing.

[18.14.4.13 NMAC - N, 12/1/2010]

18.14.4.14 CONSIDERATION OF OPENING A NEW CROSSING:

A. If the department seeks the opening of a new crossing or if the rail manager receives a proposal to open a new crossing that is determined to have merit based on the rail manager's review of the proposal, the department shall provide public notice of the proposed new crossing.

(1) The department shall inform the local government in which the crossing is located of the proposed new crossing.

(2) The department shall post signs at the site of the proposed crossing notifying the public that a new crossing is under consideration at this site and requesting public comment.

(3) The department shall publish a notice in a newspaper of general circulation in the community in which the crossing is located inviting public comment.

B. The rail manager shall evaluate the impacts of opening the new crossing in preparing a recommendation to the secretary regarding a proposed new crossing, the rail manager shall utilize the criteria contained in the references cited in 18.14.4.8 NMAC, the results of the diagnostic study and consider any public comments received. The rail manager shall provide a recommendation and a summary of any public comments received to the secretary.

C. The approval of the secretary or their designee is required in order to open a new crossing.

[18.14.4.14 NMAC - N, 12/1/2010]

18.14.4.15 CONSIDERATION OF REQUESTS FOR GRADE SEPARATION OF A CROSSING:

A. The rail manager in preparing their recommendation to the secretary regarding a request for grade separation of a crossing shall utilize:

- (1) the criteria contained in the references cited in 18.14.4.8 NMAC;
- (2) the results of the diagnostic study of the grade crossing;
- (3) the cost of the project;
- (4) the availability of funding for the project;
- (5) the impact on the community in which the crossing is located.

B. The approval of the secretary or their designee is required in order to grade separate an existing crossing.

[18.14.4.15 NMAC - N, 12/1/2010]

HISTORY OF 18.14.4 NMAC: [RESERVED]

Dourte, Richard H.

From: Whitcomb, Blake
Sent: Tuesday, June 12, 2012 9:41 AM
To: John MacKenzie (John@goodwinengineers.com)
Cc: Curran, Kevin J.; Dourte, Richard H.
Subject: Sawmill Crossing Railroad Crossing

Greetings,

I have some bad news. I just finished speaking with my contact at NMDOT and he does not foresee his agency being able to allow any crossings of the Sawmill Spur within the next few months.

As I understand it, NMDOT is currently in a significant financial crunch that has prohibited them from filling a vacant general counsel position. This problem is compounded by a recent dispute with BNSF over the transfer of ownership over the Sawmill railroad spur. Because they do not have a lawyer to deal with the BNSF dispute, NMDOT is not going to be in a position to allow any crossings or removal of the Sawmill tracks in the near future.

My contact is hopeful that they can fill the general counsel position in the next month. Once the position is filled, NMDOT's new general counsel can begin to deal with the BNSF situation. Until then, NMDOT will not allow any action that may expose them to additional litigation with BNSF. I will keep you informed as the situation progresses.

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
F: (505) 768-4525
bwhitcomb@cabq.gov

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6/26/2012

*
*
***Dourte, Richard H.**

From: Whitcomb, Blake
Sent: Wednesday, May 09, 2012 8:29 AM
To: 'John MacKenzie'; Dourte, Richard H.
Cc: Keith Cheshire
Subject: RE: Sawmill RR crossing

Greetings,

With the amount of requirements placed on the City by the DOT, I believe we will need a tri-party agreement. Keith won't be able to use his own contractors for the center portion of the track, the DOT requires use of their contractors and reimbursement from the City. Also, DOT flagmen will be required throughout any construction, also billed to the City from the DOT. Because the Keith will be covering these and other costs that are billed directly to the City under the DOT contract, we need a tri-party agreement.

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
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From: John MacKenzie [<mailto:John@goodwinengineers.com>]
Sent: Wednesday, May 09, 2012 8:22 AM
To: Dourte, Richard H.
Cc: Keith Cheshire; Whitcomb, Blake
Subject: RE: Sawmill RR crossing

Richard,

I can't speak for Keith or his attorney, but I would tend to disagree with you. Blake has already received a draft of the public crossing agreement from the DOT and it is a two-party agreement between the City and the DOT. As I indicated before, once the crossing is built and accepted the developer is out of it. In my

6/26/2012

opinion he might be referenced in it for the construction period, like other infrastructure construction under a work order, but that should be it. It would be a tri-party agreement if it was a private crossing, but it's going to be public.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Wednesday, May 09, 2012 8:15 AM
To: John MacKenzie; Whitcomb, Blake
Cc: Keith Cheshire
Subject: RE: Sawmill RR crossing

John, who is the attorney on your side??? This agreement should be initiated by that attorney or at least be part of the first draft.

Richard

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Tuesday, May 08, 2012 4:49 PM
To: Whitcomb, Blake
Cc: Keith Cheshire; Dourte, Richard H.
Subject: RE: Sawmill RR crossing

I did not check in with them but Keith may have done so.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Whitcomb, Blake [mailto:bwhitcomb@cabq.gov]
Sent: Tuesday, May 08, 2012 4:49 PM
To: John MacKenzie; Dourte, Richard H.
Cc: Keith Cheshire
Subject: RE: Sawmill rr crossing

We've been having trouble locating the "Vista del Norte" tri-party agreement as well. Did you have a chance to check in with Gandy Dancer?

Sincereley,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
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6/26/2012

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From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Tuesday, May 08, 2012 4:43 PM
To: Dourte, Richard H.
Cc: Whitcomb, Blake; Keith Cheshire
Subject: RE: Sawmill rr crossing

Richard,

I just spent an hour at our off-site storage files and I didn't find anything on a crossing agreement for Vista del Norte, except what is on the attached "Agreement to Construct Public Improvements," which appears to be customized. On page two it refers to the rail crossing in more detail but it's not a crossing agreement. If you recall, John Myers' office usually dealt with issues connected with Vista del Norte and that maybe that's why I couldn't find anything on it.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Friday, May 04, 2012 9:33 AM
To: John MacKenzie
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: RE: Sawmill rr crossing

John,

Likely the answer is no, but I don't know for sure at this time. I hope we can use the agreement that was used for the Las Lomitas crossing for the Vista Del Norte development as a guide.

Richard

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Friday, May 04, 2012 9:17 AM
To: Dourte, Richard H.
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: RE: Sawmill rr crossing

Richard,

I understand you want a tri-party agreement in connection with this crossing. For the developer's side of the deal, do you expect there to be any agreement obligations that will continue after the crossing has been constructed by the developer and accepted by the city for maintenance (much like all the other site's public infrastructure)?

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Tuesday, April 24, 2012 4:22 PM
To: John MacKenzie
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.

6/26/2012

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✱
✱

Subject: Sawmill rr crossing

John,

All the documentation provided to this date indicates that this crossing will be a public railroad crossing.

Richard

Dourte, Richard H.

From: Whitcomb, Blake
Sent: Tuesday, April 24, 2012 1:04 PM
To: Dourte, Richard H.
Subject: RE: Sawmill development RR crossing

Richard,

That's fine and probably an easy solution. Do you know who I can talk to about costs associated with insurance and maintenance on a crossing of this type?

Thank you,

Blake Whitcomb

From: Dourte, Richard H.
Sent: Tuesday, April 24, 2012 12:09 PM
To: Whitcomb, Blake
Cc: Cloud, Jack W.; Metro, Kristal D.
Subject: Sawmill development RR crossing

Blake,

Looks like EPC approved the location and indicates that it is to be public. John MacKenzie caught me at the front counter to get confirmation that can be sent to NMDOT verifying that it is a public crossing. This needs to be done so the NMDOT will provide John with details on how to design crossing... It does look like the developer is going to pay for this crossing. It also looks like it would be in existing public r/w., likely little chance for us to require these streets/rr crossing to be private.

From what I see, it looks like the City already agreed to a public crossing.

What do you think??

Thanks,

Richard

6/26/2012

Dourte, Richard H.

From: Whitcomb, Blake
Sent: Monday, March 26, 2012 2:42 PM
To: Dourte, Richard H.; Curran, Kevin J.; Terrasas, Amber
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

It works for me.

Sincereley,

Blake Whitcomb
 Assistant City Attorney
 Real Estate & Land Use
 Office of the City Attorney
 1 Civic Plaza NW, 4th Floor
 P.O. Box 2248
 Albuquerque, NM 87103

P: (505) 768-4654
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From: Dourte, Richard H.
Sent: Monday, March 26, 2012 2:09 PM
To: Curran, Kevin J.; Terrasas, Amber; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

How does 2:00 pm on Friday the 30th work for everyone??

Richard

From: Curran, Kevin J.
Sent: Monday, March 26, 2012 12:13 PM
To: Dourte, Richard H.; Terrasas, Amber; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

Richard,

6/26/2012

Anytime Friday is OK, but no time on Thurs. is good. Blake is OK with Friday as well.

Kevin J. Curran
 Managing Assistant City Attorney
 Real Estate and Land Use Division
 Office of the City Attorney
 1 Civic Plaza NW
 P.O. Box 2248
 Albuquerque, NM 87103
 505-768-4657/768-4525 Fax
kcurran@cabq.gov

From: Dourte, Richard H.
Sent: Monday, March 26, 2012 9:41 AM
To: Terrasas, Amber; Curran, Kevin J.; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

When is everyone available??? Say Thursday this week??

From: Montano, Gilbert A.
Sent: Saturday, March 24, 2012 11:04 AM
To: Dourte, Richard H.
Cc: Stover, Debbie L.; Conrad, Matt A.; Curran, Kevin J.; Whitcomb, Blake; Terrasas, Amber
Subject: Re: Railroad easement and at grade crossing issue for development in Sawmill area

Let's try and discuss this issue later this week. I have a few questions before we contact the developer with our position.

Sent from my iPad

On Mar 23, 2012, at 11:58 AM, "Dourte, Richard H." <RDourte@cabq.gov> wrote:

Mr. Montano,

As you may recall Kevin Curran, Blake Whitcomb and myself met with you about two weeks ago regarding a Railroad Easement for a spur that the City entered into with the owner of a parcel within the Sawmill area back in September 19, 2003 (attached). This easement included language indicating the City may be responsible for a grade crossing of that railroad spur in the Sawmill area. The developer's representative (John McKenzie of Mark Goodwin and Assoc.) is requesting that the City install this grade crossing at this time where the proposed development wishes to take access to Aspen road. At this meeting you requested that we look into this issue in greater detail.

After further review, the easement indicates that the grade crossing of the railroad spur be constructed within twenty four months after this easement was executed, September 19, 2005 or within six months of the request by the land owner, whichever is the earlier. It is my understanding that there is a three year statute of limitations for an agreement such as this one, thus the easement with respect to this crossing should have been enforced by September 19, 2008.

This being the case, the City may not be obligated to pay for such a grade crossing of the railroad spur. It may be prudent to have this spur removed, but that would involve the owner of the tracks (NMDOT as I understand it) and other owners of the rights to this spur.

If you wish for me to contact the developer's representative regarding this issue and how the City wishes to participate, if at all, please let me know.

Hope this helps,
 Richard

6/26/2012

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<Sawmill railroad easement.pdf>

Dourte, Richard H.

From: Whitcomb, Blake
Sent: Monday, March 26, 2012 9:43 AM
To: Dourte, Richard H.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

Thursday works best for me. My schedule is pretty full until then. I know Kevin is going to be tied up on Tuesday and Wednesday too.

Thank you,

Blake Whitcomb

From: Dourte, Richard H.
Sent: Monday, March 26, 2012 9:41 AM
To: Terrasas, Amber; Curran, Kevin J.; Whitcomb, Blake
Cc: Stover, Debbie L.; Conrad, Matt A.; Montano, Gilbert A.
Subject: RE: Railroad easement and at grade crossing issue for development in Sawmill area

When is everyone available??? Say Thursday this week??

From: Montano, Gilbert A.
Sent: Saturday, March 24, 2012 11:04 AM
To: Dourte, Richard H.
Cc: Stover, Debbie L.; Conrad, Matt A.; Curran, Kevin J.; Whitcomb, Blake; Terrasas, Amber
Subject: Re: Railroad easement and at grade crossing issue for development in Sawmill area

Let's try and discuss this issue later this week. I have a few questions before we contact the developer with our position.

Sent from my iPad

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Mr. Montano,
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 This being the case, the City may not be obligated to pay for such a grade crossing of the

6/26/2012

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railroad spur.

It may be prudent to have this spur removed, but that would involve the owner of the tracks (NMDOT as I understand it) and other owners of the rights to this spur.

If you wish for me to contact the developer's representative regarding this issue and how the City wishes to participate, if at all, please let me know.

Hope this helps,

Richard

<Sawmill railroad easement.pdf>

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Dourte, Richard H.

From: Whitcomb, Blake
Sent: Thursday, March 22, 2012 4:33 PM
To: Dourte, Richard H.
Subject: Sawmill Railroad Grade Crossing

Richard,

Have you heard anything back on this? John MacKenzie is still emailing me and I haven't responded since Monday.

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
F: (505) 768-4525
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6/26/2012

Dourte, Richard H.

From: Whitcomb, Blake
Sent: Friday, March 16, 2012 1:34 PM
To: 'John MacKenzie'
Cc: Curran, Kevin J.; Dourte, Richard H.
Subject: RE: Grant of RR Easement from City to BNSF

John,

I have received the emails and will look over the documents to confirm that they match the documents I have on file regarding this matter. If the documents do match, I have some reservations regarding the city's current legal obligations under the original 2003 agreement. I'm going to do a little more research and examine the city's options this afternoon. I'll get in touch later today or Monday about setting up a meeting time.

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
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From: John MacKenzie [<mailto:John@goodwinengineers.com>]
Sent: Friday, March 16, 2012 12:59 PM
To: Whitcomb, Blake
Subject: FW: Grant of RR Easement from City to BNSF

Blake,

Can you acknowledge receipt of the four emails I sent?

John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200

6/26/2012

From: John MacKenzie
Sent: Tuesday, November 15, 2011 1:39 PM
To: Kevin Curran (kcurran@cabq.gov)
Subject: Grant of RR Easement from City to BNSF

The city then granted an easement to BNSF, filed 04/14/05, including an assignment of the previous easement. Note in Item 3 that the grade crossing obligation stays with the City.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, November 15, 2011 1:56 PM
To: Dourte, Richard H.
Subject: FW: SAWMILL SITE PLAN - Railroad Issues
Attachments: A11047 sawmill siteplan Layout1 (1).pdf

Richard,

Kevin asked me to also send copies of these messages to you.

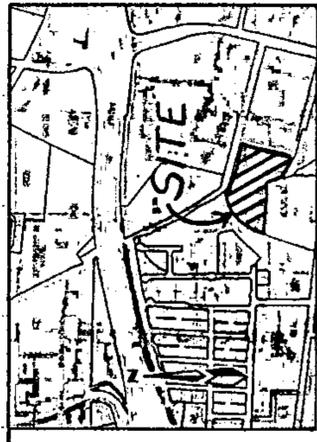
*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: John MacKenzie
Sent: Tuesday, November 15, 2011 1:08 PM
To: Kevin Curran (kcurran@cabq.gov)
Subject: SAWMILL SITE PLAN - Railroad Issues

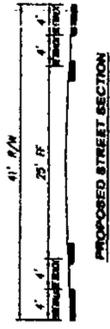
Kevin,

Here is the site plan for a residential project that we have down in the Sawmill Area. On Friday we talked about how the railroad tracks limit access to the property from Aspen. The property is owner by Rio Grande Properties, who purchased it from ABQ Real Estate, LLC in 2005. The easements will be following.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*



VICINITY MAP
SCALE: 1" = 750'



PROPOSED STREET SECTION

LEGAL DESCRIPTION
That a certain parcel of land situated within the Town of Albuquerque Grant in projected Section 7, Township 19 North, Range 3 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, being and comprising Tract labeled "B-1-A-2", DUKE CITY LUMBER COMPANY filed in the office of the county Clerk of Bernalillo County, New Mexico, on December 15, 1995, in Volume 86C, Folio 481, containing 5.9292 acres, more or less.

THE SITE:
The site area is presently zoned S-J2 / S-1, being Tract B1A2, Duke City Lumber.

PROPOSED USE CHANGES:
The property is to be changed to SU-2 / SU-1 for a Planned Residential Development.

FEEDSTOCK AND VEHICULAR ACCESS AND EGRESS:
Vehicle Access: Primary access will be via Alameda Avenue with secondary access via a new connection to an off-site extension of Bellemah Avenue from the adjoining Sawmill Village. Bellemah will eventually be extended 380' to the east where it will connect to the existing Bellemah Ave. upon redevelopment of Tract "B-1-A-3", Duke City Lumber Company. Internal access through the site will be via public streets.

Pedestrian, Bicycle and Trail Access: New sidewalks will meet the current development process manual requirements. A new Trail will connect to the Sawmill Village south of site just off the Bellemah Ave. extension. **Trail Access:** Route 99 runs along 12th street which is 1000 feet east of the site. Route 790 runs in Rd Grade Blvd, which is approximately 2000 ft west of the site.

INTERNAL CIRCULATION REQUIREMENTS:
Internal circulation will be via public on-site streets, which will contain 4' sidewalks on each side of the street and an 8' paved trail through the site.

BUILDING HEIGHTS AND SETBACKS:
Minimum setback building heights shall be 28 feet. See setback provisions under design standards for minimum standards.

MAXIMUM TOTAL DWELLING UNITS:
Maximum total number of residential units shall be 85.

LANDSCAPE STANDARDS:
Landscape standards, see on Sheet 6 of this plan set. All landscaping shall be per the City of Albuquerque Landscaping Ordinance and shall comply with the Street Tree Ordinance.

APPROVALS PROCESS:
Upon approval of this SITE PLAN FOR SUBDIVISION, site development plan for building permit approval shall conform to the design standards presented herein and be delegated to the DRB.

APPLICATION NUMBER: _____ PROJECT NUMBER: _____

CITY APPROVALS:

Traffic Engineering, Transportation Division	Date
Utilities Development	Date
Parks and Recreation Department	Date
City Engineer	Date
DRB Chairperson, Planning Department	Date

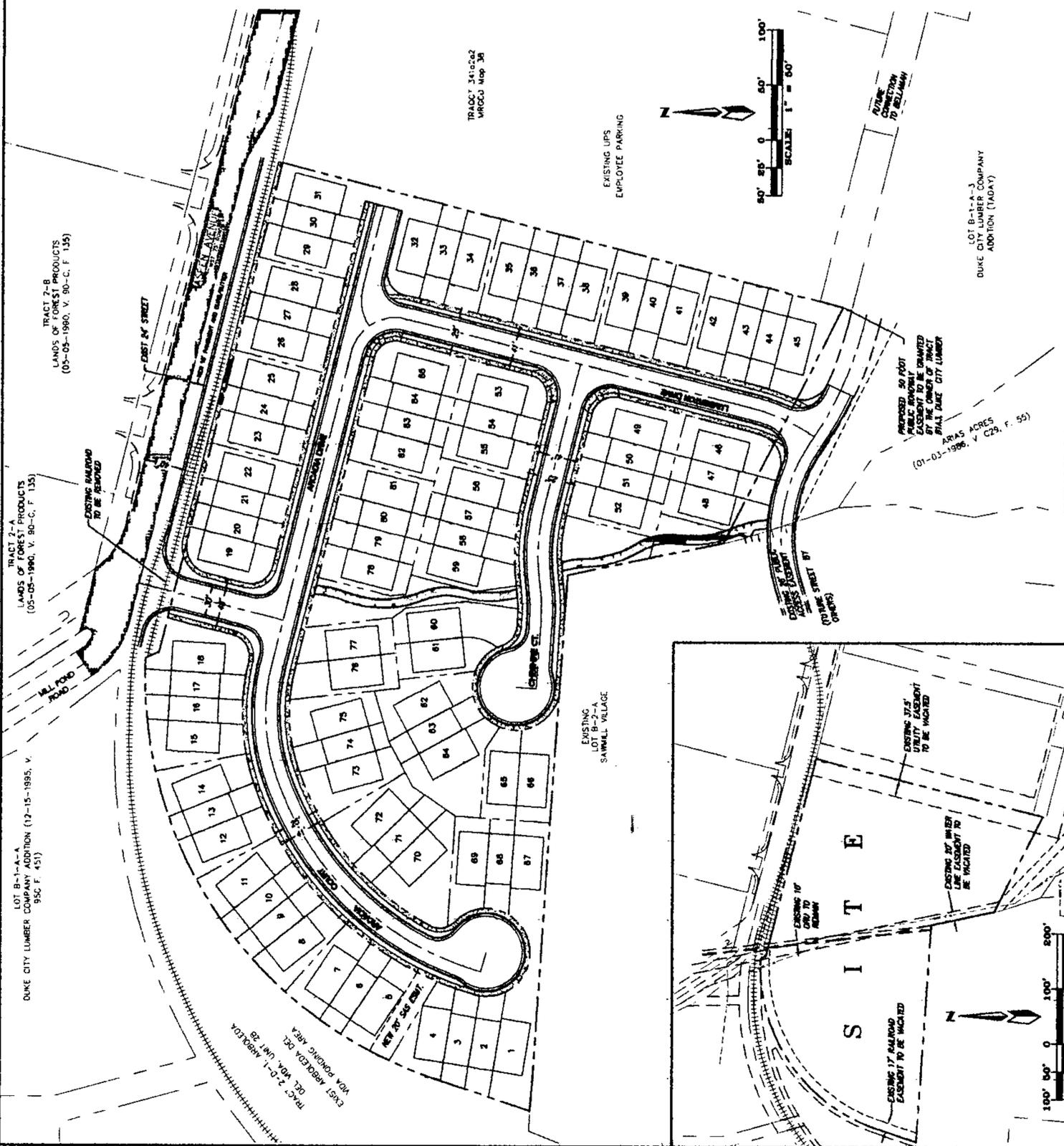
SAWMILL CROSSING
SITE PLAN FOR SUBDIVISION

dmg
MARK GOODWIN & ASSOCIATES, P.A.
CONSULTING ENGINEERS
P.O. BOX 80608
ALBUQUERQUE, NEW MEXICO 87189
(505) 828-2200, FAX (505) 797-9539

Drawn by: JH Date: 3/17/2011
Checked: DMB Date: 3/17/2011
Scale: 1" = 20' Sheet: 1 of 5

PLAN INDEX

PLAN INDEX	SHEETS
SITE PLAN FOR SUBDIVISION	1
DESIGN STANDARDS	2
CONCEPTUAL GRADING & DRAINAGE PLAN	3
CONCEPTUAL UTILITY PLAN	4
LANDSCAPING PLAN	5

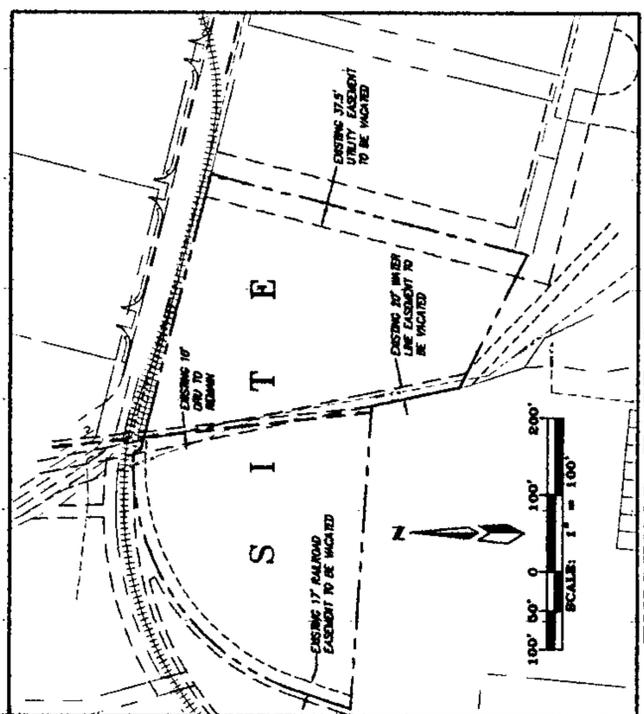


LEGEND

---	EXIST. OVERHEAD UTIL. LINES
---	EXIST. PERMANENT CURB
---	EXIST. ASPHALT CURB
---	PROPERTY LINE
---	NEW EASEMENT LINE
+++++	EXIST. RAILROAD TRACK
---	NEW CURB AND OUTER
---	NEW SIDEWALK
---	EXIST. EASEMENT LINE
---	NEW 8' PAVED TRAIL
---	EXIST. PAVEMENT

PREPARED BY:
D. MARK GOODWIN & ASSOCIATES, P.A.
CONSULTING ENGINEERS
ALBUQUERQUE, NEW MEXICO 87108
(505) 828-2200

PREPARED FOR:
DUKE CITY LUMBER COMPANY
ADDITON (TRACT)
LOT B-1-A-3
(01-03-1996, V. C29, F. 55)



EXISTING EASEMENTS

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, November 15, 2011 1:57 PM
To: Dourte, Richard H.
Subject: FW: Easement Across GE Property (now Sawmill Village but former Tract B-2-A, Duke City Lumber)
Attachments: Rail easement org..pdf

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: John MacKenzie
Sent: Tuesday, November 15, 2011 1:39 PM
To: Kevin Curran (kcurran@cabq.gov)
Subject: Easement Across GE Property (now Sawmill Village but former Tract B-2-A, Duke City Lumber)

An easement was also granted to the Sawmill Community Land Trust in 12/03 by the southerly neighbor of my client's property, which is now the Sawmill Village (a Sawmill Community Land Trust development).

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

Railroad Track Easement

This Easement is made by GE Capital Small Business Finance Corporation, a Delaware corporation ("GE"), as grantor, whose address is 635 Maryville Centre Drive, Suite 120, St. Louis, MO 63141, to the Sawmill Community Land Trust ("SCLT"), a New Mexico non-profit corporation, as grantee, whose address is P.O. Box 25181, Albuquerque, New Mexico 87125.

1. Recitals.

A. Industry Railroad Track 598 is located (i) within the street right of way for Aspen Avenue, NW ("Aspen Ave."), which is owned by the City of Albuquerque; (ii) within Tract B-1-A-2 ("ABQ Property"), as shown and designated on the plat of Lots B-1-A-1, B-1-A-2 and B-1-A-3, Duke City Lumber Company Addition, City of Albuquerque, Bernalillo County, New Mexico, filed on December 15, 1995 in Volume 95C, Folio 451 of the records of Bernalillo County, New Mexico, which is owned by ABQ Real Estate, L.L.C., a New Mexico limited liability Company; and (iii) within Lot B-2-A ("GE Property") as shown and designated on the plat of Lots B-1-A and B-2-A, filed on September 17, 1990 in Volume 90C, Folio 222 of the records of Bernalillo County, New Mexico, which is owned by GE.

B. Track 598 was constructed pursuant to (i) that certain Contract for Industry Track Number 96955, dated December 1, 1949, between the Atchison, Topeka and Santa Fe Railway Company ("ATSF") and Transit Remanufacturing Corporation and (ii) that certain Contract for Industry Track Number 133667, dated June 28, 1969, between ATSF and Mexwood Products, Inc.

C. The segment of Track 598 that was constructed pursuant to Contract Number 96955 ("Aspen Track") is approximately 842.2 feet long and was constructed within Aspen Avenue.

D. The segment of Track 598 that was constructed pursuant to Contract Number 133667 ("GE Track") is approximately 1,106.5 feet long and was constructed within the ABQ Property and the GE Property.

E. Transit Remanufacturing Corporation became Duke City Lumber Company and was succeeded by USI Realty Corp., a Delaware corporation ("USI"). USI is the owner of the Aspen Track.

F. Contract Number 133667 was assigned by Mexwood Products, Inc., with the consent of ATSF, to Ponderosa Products, Inc.

G. GE is the successor, through mortgage foreclosure, of the GE Property and property rights of Ponderosa Products, Inc.. GE is the owner of the GE Track.

Housing/GE Track easement



2003215766
598888
Page: 1 of 3
12/02/2003 02:22P
BL-000 0-5710

H. On September _____, 2003, ABQ Real Estate, LLC granted the City an easement ("Railroad Easement") for a railroad track within that part of the ABQ Property that is described and shown on Exhibit A attached to this Easement. The Railroad Easement was filed on September _____, 2003 in Book _____, Page _____ of the records of Bernalillo County, New Mexico. The GE Track is partially located within the Railroad Easement.

I. The SCLT wishes to acquire an easement to use that part of the GE Track that lies within the Railroad Easement.

2. Grant of Easement. GE, for consideration paid, hereby grants to the SCLT, and to the successors, assigns and transferees of the SCLT, a nonexclusive easement to use that part of the GE Track that lies within the Railroad Easement ("Easement Track Segment") for all lawful uses connected with or incidental to a railroad track. This easement includes, without limitation, the right, privilege and easement to construct, maintain, repair, renew, use, and operate the Easement Track Segment and to run, switch, load, and unload of rail cars over and upon the Easement Track Segment, but expressly does not include the storage of rail cars. The benefits of this easement shall inure to the SCLT and to the successors, assigns and transferees of the SCLT forever.

3. Maintenance. The SCLT, the successors, assigns and transferees of the SCLT, and any other parties who use the Easement Track Segment shall have the responsibility for maintaining and repairing the Easement Track Segment in accordance with such terms and conditions as they may agree among themselves and otherwise in accordance with the terms and conditions of the Contracts for Industry Track and other private agreements for use of the Easement Track Segment and applicable law.

4. Assignment. The SCLT's right, title and interest in and to this easement is freely and fully assignable and transferable by the SCLT without the consent of GE or the successors, assigns or transferees of GE.

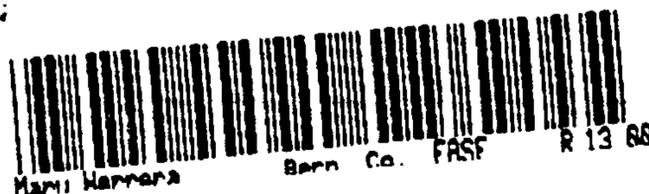
6. Binding Effect. This Agreement shall be binding upon GE, the SCLT, and their respective successors, assigns and transferees.

Witness my hand and seal this 12th day of November, 2003.

GE Capital Small Business Finance Corporation, a Delaware Corporation

By Cheryl Pinson
Cheryl Pinson
Asset Management Specialist

Housing/GE Track easement



2603215766
5988896
Page: 2 of 3
12/02/2003 02:22P
Bk-AGS Pa-5318

EXHIBIT A
LEGAL DESCRIPTION

Lot Numbered "B-1-A-2". Duke City Lumber Company Addition, as the same is shown and designated on the plat entitled "LOTS B-1-A-1, B-1-A-2 AND B-1-A-3 (BEING A REPLAT OF LOT B-1-A) DUKE CITY LUMBER COMPANY ADDITION, CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO", filed in the office of the County Clerk of Bernalillo County, New Mexico on December 15, 1995 in Volume 95C, folio 451.



2002083343
5590487
Page: 3 of 3
06/28/2002 03:22P
Bk-A38 Pg-3111

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, November 15, 2011 2:00 PM
To: Dourte, Richard H.
Subject: FW: Aspen Track No. 598
Attachments: Railroad Easement.pdf

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: John MacKenzie
Sent: Tuesday, November 15, 2011 1:38 PM
To: Kevin Curran (kcurran@cabq.gov)
Subject: Aspen Track No. 598

Kevin,

Here is the railroad granted by the owner of Tract B-1-A-2 (my client) to the City on 10/24/03. Note item 4, which is a grade crossing to be installed by the City for the grantor to get property access. The site plan just sent to you contains a proposed entry on the west end of Aspen that the city appears to be obligated to construct.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

Railroad Easement

This Railroad Easement is made by and between ABQ Real Estate, L.L.C., a New Mexico limited liability company, as Grantor, and the City of Albuquerque, a New Mexico municipal corporation, whose address is P.O. Box 1293, Albuquerque, New Mexico 87103, as Grantee.

1. Recital. Grantor is the owner of Tracts B-1-A-2 ("Property") as shown and designated on the Replat of Lot B-1-A, Duke City Lumber Company Addition in Albuquerque, Bernalillo County, New Mexico.

2. Grant of Easement. Grantor, for consideration paid, hereby grants to Grantee, its successors and assigns, a railroad easement, including, without limitation, the right, privilege and easement to construct, maintain, repair, renew, use, operate over, replace or remove railroad tracks, drainage facilities and appurtenances thereto in, along, over, upon or across that portion of the Property as shown or described on attached Exhibit "A";

To have and to hold the easement for so long as it is used or required for railroad purposes and until the Grantee, its successors or assigns, shall remove all such facilities from the premises with the intent to abandon the easement.

3. Warranty of Title. Grantor covenants and warrants that Grantor is the owner in fee simple of the Property and that Grantor has a good lawful right to grant this easement and that the Grantor will forever warrant and defend that title to the Property against all claims from all persons or entities.

4. Grade Crossing. If the City of Albuquerque or the Burlington Northern Santa Fe Railway requires that a grade crossing ("Grade Crossing") be installed on Industry

Mexico/Sawmill Railroad easement



Mary Herrera

Bern. Co. ERSE

R 17.88

2003195059

5978891

Page: 1 of 5

10/24/2003 10:22A

Bk-867 Pg-4653

Track Number 598 to provide ingress and egress to and from the Property and Aspen Avenue, Grantee shall, upon the written request of Grantor and at Grantee's cost and expense, construct or cause to be constructed the Grade Crossing. The Grade Crossing shall be constructed within six (6) months after the date of Grantor's written request to the Grantee, at a location that is agreed upon by the Grantor and the Grantee, by a contractor that is New Mexico licensed and approved by Burlington Northern Santa Fe Railway, and in accordance with the standards and specifications approved by Burlington Northern Santa Fe Railway. Notwithstanding the above, whether or not Grantor gives Grantee a written request to construct the Grade Crossing, Grantee shall construct the Grande Crossing as provided in this paragraph within twenty-four (24) months after the date of this Easement.

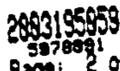
Witness my hand and seal this 19 day of September, 2003.

ABQ Real Estate, L.L.C.

By 
David Zimpleman, President

Accepted:
City of Albuquerque

 By 
Jay Czar, Chief Administrative Officer

Housing/Sawmill Railroad easement  
Nary Herrera Bern. Co. EASE R 17.00
2003195059
3078991
Page: 2 of 3
19/24/2003 10:22A
Bk-467 Pg-4653

LEGAL DESCRIPTION
FOR
A 17' WIDE RAILROAD EASEMENT
WITHIN
A PORTION OF TRACT B-1-A-2
DUKE CITY LUMBER COMPANY ADDITION

Being that certain strip of land situate within the Town of Albuquerque Grant in projected Section 7, Township 10 North, Range 3 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico comprised of a portion of Tract B-1-A-2, Duke City Lumber Company Addition, plat of which was filed in the Office of the County Clerk of Bernalillo County, New Mexico, on December 15, 1995, in Volume 95C, Folia 451, and said strip of land being also 8.5 feet on either side of the following described centerline:

BEGINNING at a point on the northerly boundary line of said Tract B-1-A-2 whence the most northerly corner of said Tract B-1-A-2 bears N. 24°39'11" W., a distance of 11.70 feet; thence,

N. 87°36'27" W., a distance of 5.32 along the centerline of the strip of land herein described to a point of curvature; thence,

Along the arc of a curve to the left a distance of 490.08 feet (said arc having a radius of 373.31 feet, a central angle of 75°13'04", and a chord which bears S.54°47'02" W., 455.64 feet) to a Point of Tangency; thence,

S. 18°25'02" W., a distance of 30.68 feet distance to a point being the end of the centerline of the strip of land herein described, prolonging or shortening to the boundary lines of the grantor, and said strip of land containing 9,050 square feet (0.2078 acre), more or less.

SEE ATTACHED EXHIBIT "A"



Mary Herrera

Bern. Co. EASE

R 17.80

2683195859

5876881

Page 4 of 5

10/24/2003 10:22A

Bk-887 Pg-4653

SURVEYORS CERTIFICATION

I, Christopher S. Croshaw, New Mexico Registered Professional Surveyor No. 14733, do hereby certify that this Legal Description and Exhibit were prepared by me or under my supervision and direction, meets the Minimum Requirements for Land Surveys in the State of New Mexico, and is true and correct to the best of my knowledge and belief.

Christopher S. Croshaw

CHRISTOPHER S. CROSHAW, N.M.R.P.S. No. 14733



15 AUGUST 2003

Exhibit "A"

SHEET 1 OF 2

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

) ss
)

This instrument was acknowledged before me on September 19, 2003,
2003, by David Zimpleman, president of ABQ Real Estate, L.L.C..

Shirley F. Burns

Notary Public

My Commission Expires:

March 28th 2005

Housing/Sawmill Railroad easement



Mary Herrera

Bern. Co. ERSE

R 17.00

2003195059

5970091

Page: 3 of 5

10/24/2003 10:22A

Bk-A67 Pg-4653

LOT B-1-A-1
DUKE CITY LUMBER
COMPANY ADDITION
FILED: 12-15-1995
VOLUME: 95C
FOLIO: 451

(R=383.73')
(L=503.51')
(Δ=75°10'50")
(CH=S.54°51'24"W.)
(468.16')

ASPEN AVENUE, N.W.
(S.75°53'11"E., 457.00')

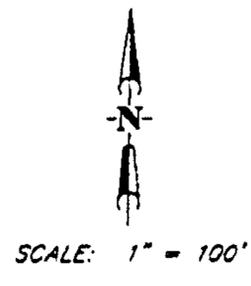
E EXISTING
R/R TRACKS
598 CLIC-0555
N.87°36'27"W.,
5.32'

EXISTING 20' WIDE "NON-EXCLUSIVE
EASEMENT FOR RAILWAY PURPOSES"
BY SPECIAL WARRANTY DEED
FILED: 01-24-1980
BK. D113-A, PG. 278

R=373.31'
L=490.08'
Δ=75°13'04"
T=287.58'
CH=S.54°47'02"W.
455.64'

CENTERLINE OF 17' WIDE
RAILROAD EASEMENT

LOT B-1-A-2
DUKE CITY LUMBER
COMPANY ADDITION
FILED: 12-15-1995
VOLUME: 95C
FOLIO: 451



(87.82')
(S.18°25'02"W.)
S.18°25'02"W.,
85.22'

(488.26')
(S.86°09'28"E., 506.18')

FND. REBAR
W/CAP STAMPED
"LS 9750"
FND. 5/8" REBAR

FND. 1/2"
REBAR

FND. REBAR
W/CAP STAMPED
"LS 11808"

LOT B-2-A
DUKE CITY LUMBER
COMPANY ADDITION
FILED: 09-17-1990
VOLUME: 90C
FOLIO: 222

(N.18°03'00"W.)
(92.29')

(S.04°18'E.)
(52.00')

FND. 5/8"
REBAR

(S.08°29'W.)
(73.00')

FND. 5/8"
REBAR

(S.12°04'E.)
(54.00')

FND. 5/8"
REBAR

FND. 5/8"
REBAR
(LINE ONLY)

(S.12°38'W.)
(98.90')

FND. 5/8"
REBAR (rejected)

LOT B-1-A-3
DUKE CITY LUMBER
COMPANY ADDITION
FILED: 12-15-1995
VOLUME: 95C
FOLIO: 451

(N.63°08'15"W., 239.57')



2693195859
5878881
Page: 5 of 5
18/24/2003 18:22A
Bk-A67 Pg-4653

(N.85°08'16"W., 721.46')

**WILSON
& COMPANY**
4900 LANG AVENUE N.E.
ALBUQUERQUE, NEW MEXICO
87109
(505) 348-4000
SHEET 2 OF 2

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, November 15, 2011 2:38 PM
To: Dourte, Richard H.
Subject: RE: SAWMILL SITE PLAN - Railroad Issues

It's tomorrow.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Tuesday, November 15, 2011 2:03 PM
To: John MacKenzie
Cc: Metro, Kristal D.
Subject: FW: SAWMILL SITE PLAN - Railroad Issues

John, did you do a sketch plat review at DRB?? If not, you should.

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Tuesday, November 15, 2011 1:56 PM
To: Dourte, Richard H.
Subject: FW: SAWMILL SITE PLAN - Railroad Issues

Richard,

Kevin asked me to also send copies of these messages to you.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: John MacKenzie
Sent: Tuesday, November 15, 2011 1:08 PM
To: Kevin Curran (kcurran@cabq.gov)
Subject: SAWMILL SITE PLAN - Railroad Issues

Kevin,

Here is the site plan for a residential project that we have down in the Sawmill Area. On Friday we talked about how the railroad tracks limit access to the property from Aspen. The property is owner by Rio Grande Properties, who purchased it from ABQ Real Estate, LLC in 2005. The easements will be following.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

6/25/2012

Dourte, Richard H.

-
-
-
-

Subject: Updated: City Installation of Aspen Ave Track No. 598 Crossing
Location: Plaza del Sol One Stop Office Groudn Floor

Start: Wed 1/4/2012 2:00 PM
End: Wed 1/4/2012 3:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded



FW: Aspen Track
No. 598



Sawmill vicinity
map.pdf (1 MB...

FW: Aspen Track No. 598 Sawmill vicinity map.pdf
Kevin can't make the 26th, so it's being rescheduled for a week later.

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, January 03, 2012 9:27 AM
To: Dourte, Richard H.
Subject: RE: City Installation of Aspen Ave Track No. 598 Crossing

Richard,

Kevin requested that this meeting be moved from last Wednesday to tomorrow at the same time. Can you still make that?

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

-----Original Appointment-----

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Wednesday, December 14, 2011 4:40 PM
To: John MacKenzie
Subject: Accepted: City Installation of Aspen Ave Track No. 598 Crossing
When: Tuesday, December 27, 2011 2:00 PM-3:00 PM (GMT-07:00) Mountain Time (US & Canada).
Where: Plaza del Sol One Stop Office Groud n Floor

6/25/2012

4
1
1
1**Dourte, Richard H.**

From: John MacKenzie [John@goodwinengineers.com]
Sent: Wednesday, January 04, 2012 10:24 AM
To: Dourte, Richard H.
Cc: Curran, Kevin J.; Cherne, Curtis
Subject: RE: Can we move our 2:00 meeting to 3:30?

I really don't want to move this again. I thought Curtis was covering for you.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Wednesday, January 04, 2012 10:09 AM
To: Curran, Kevin J.; Cherne, Curtis ; John MacKenzie
Subject: RE: Can we move our 2:00 meeting to 3:30?

I have a 3:30 meeting and will be out of the office until then. Tomorrow after 10:00 works.

From: Curran, Kevin J.
Sent: Wednesday, January 04, 2012 9:00 AM
To: Cherne, Curtis ; John MacKenzie (John@goodwinengineers.com)
Cc: Dourte, Richard H.
Subject: Can we move our 2:00 meeting to 3:30?

Kevin J. Curran
Managing Assistant City Attorney
Real Estate and Land Use Division
Office of the City Attorney
1 Civic Plaza NW
P.O. Box 2248
Albuquerque, NM 87103
505-768-4657/768-4525 Fax
kcurran@cabq.gov

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Wednesday, January 04, 2012 10:24 AM
To: Curran, Kevin J.; Cherne, Curtis
Cc: Dourte, Richard H.
Subject: RE: Can we move our 2:00 meeting to 3:30?

My client confirmed we can move it to 3:30.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Curran, Kevin J. [mailto:kcurran@cabq.gov]
Sent: Wednesday, January 04, 2012 9:00 AM
To: Cherne, Curtis ; John MacKenzie
Cc: Dourte, Richard H.
Subject: Can we move our 2:00 meeting to 3:30?

Kevin J. Curran
Managing Assistant City Attorney
Real Estate and Land Use Division
Office of the City Attorney
1 Civic Plaza NW
P.O. Box 2248
Albuquerque, NM 87103
505-768-4657/768-4525 Fax
kcurran@cabq.gov

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Thursday, March 15, 2012 12:10 PM
To: Dourte, Richard H.
Cc: Keith Cheshire
Subject: FW: Aspen Track No. 598
Attachments: Railroad Easement.pdf; SawmillCrossingRR.pdf

Richard,

You recently called me requesting that an exhibit be created to indicate where the railroad easement granted from my client to the City is located, relative to where the proposed street crossing of the RR tracks into the proposed Sawmill Crossing Subdivision is located. Existing Track 598 currently runs along the south side of Aspen Ave., extending west and south, eventually reaching Bellamah Ave. southwest of the site.

Attached is a copy of the filed easement, which includes an exhibit identifying the location of the easement at the back of the document. Also attached is the NW portion of our site development plan indicating where the new street is to cross the existing RR tracks in order to reach the site from Aspen Ave. NW. It also shows the location of the RR easement extending SW just inside the circular boundary of the site, running from proposed lots 1 to 18.

The new street will not be crossing the existing RR easement in order to provide ingress and egress for the site. Correct me if I misunderstood your claim, but you stated that because the new street into the site does not cross the easement the City is not required to construct the crossing, per the easement. Please confirm this is what you said.

In the easement document I did not find where it states the grade crossing of the track would have to be constructed if it crosses the easement.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: John MacKenzie
Sent: Friday, March 02, 2012 2:04 PM
To: Amber Terrasas (aterrasas@cabq.gov)
Cc: Kevin Curran (kcurran@cabq.gov); 'Keith Cheshire'
Subject: FW: Aspen Track No. 598

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: John MacKenzie
Sent: Tuesday, November 15, 2011 1:38 PM
To: Kevin Curran (kcurran@cabq.gov)
Subject: Aspen Track No. 598

Kevin,

Here is the railroad easement granted by the owner of Tract B-1-A-2 (my client) to the City on 10/24/03. Note item 4, which is a grade crossing to be installed by the City for the grantor to get property access. The site plan just sent to you contains a proposed entry on the west end of Aspen that the city appears to be obligated to construct.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

6/25/2012

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Friday, March 16, 2012 1:42 PM
To: Whitcomb, Blake
Cc: Curran, Kevin J.; Dourte, Richard H.; Keith Cheshire
Subject: RE: Grant of RR Easement from City to BNSF

Blake,

One of the solutions discussed with Kevin was to have the tracks removed; since they are no longer in use and they haven't been in use for over 5 years. Explora is the owner of the property to which the tracks extend. Can that alternative be explored as well?

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Whitcomb, Blake [mailto:bwhitcomb@cabq.gov]
Sent: Friday, March 16, 2012 1:34 PM
To: John MacKenzie
Cc: Curran, Kevin J.; Dourte, Richard H.
Subject: RE: Grant of RR Easement from City to BNSF

John,

I have received the emails and will look over the documents to confirm that they match the documents I have on file regarding this matter. If the documents do match, I have some reservations regarding the city's current legal obligations under the original 2003 agreement. I'm going to do a little more research and examine the city's options this afternoon. I'll get in touch later today or Monday about setting up a meeting time.

Sincerely,

Blake Whitcomb
 Assistant City Attorney
 Real Estate & Land Use
 Office of the City Attorney
 1 Civic Plaza NW, 4th Floor
 P.O. Box 2248
 Albuquerque, NM 87103

P: (505) 768-4654
 F: (505) 768-4525
bwhitcomb@cabq.gov

Confidentiality Note

The information contained in this message and all attachments is confidential or legally privileged, to be read, used and relied upon only by the intended recipient. If you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or action taken in reliance on the contents of this transmission is strictly prohibited. If you received this message in error, please notify Blake A. Whitcomb, bwhitcomb@cabq.gov, 505-768-4654, and destroy the message immediately.

6/25/2012

+

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Friday, March 16, 2012 12:59 PM
To: Whitcomb, Blake
Subject: FW: Grant of RR Easement from City to BNSF

Blake,

Can you acknowledge receipt of the four emails I sent?

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: John MacKenzie
Sent: Tuesday, November 15, 2011 1:39 PM
To: Kevin Curran (kcurran@cabq.gov)
Subject: Grant of RR Easement from City to BNSF

The city then granted an easement to BNSF, filed 04/14/05, including an assignment of the previous easement. Note in Item 3 that the grade crossing obligation stays with the City.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]

Sent: Tuesday, April 03, 2012 11:09 AM

To: Dourte, Richard H.

Subject: Preliminary Plats

Richard,

When you have two units in a subdivision is it true you prefer to have them come in as separate applications with each one of them showing the opposing Unit as a single tract so that they can both stand alone, right?

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

6/25/2012

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Wednesday, April 04, 2012 2:57 PM
To: Dourte, Richard H.
Subject: RE: Preliminary Plats
Attachments: kip00500.PDF

Here is the draft PP for Unit I of Sawmill Crossing.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Tuesday, April 03, 2012 2:38 PM
To: John MacKenzie
Subject: Re: Preliminary Plats

John, each unit does need to stand alone. Send me a copy of what you propose.

Connected by DROID on Verizon Wireless

-----Original message-----

From: John MacKenzie <John@goodwinengineers.com>
To: "Dourte, Richard H." <rdourte@cabq.gov>
Sent: Tue, Apr 3, 2012 17:09:09 GMT+00:00
Subject: Preliminary Plats

Richard,

When you have two units in a subdivision is it true you prefer to have them come in as separate applications with each one of them showing the opposing Unit as a single tract so that they can both stand alone, right?

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

6/25/2012

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, April 24, 2012 1:00 PM
To: Dourte, Richard H.
Cc: Whitcomb, Blake
Subject: Sawmill Railroad Tracks
Attachments: kip00658.PDF

Richard,

Here is a copy of the site plan if you need it for anything.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

6/25/2012

✂
✂
✂
✂

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Wednesday, April 25, 2012 8:12 AM
To: Dourte, Richard H.
Subject: RE: Sawmill rr crossing

Thanks for the response.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Tuesday, April 24, 2012 4:22 PM
To: John MacKenzie
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: Sawmill rr crossing

John,
All the documentation provided to this date indicates that this crossing will be a public railroad crossing.

Richard

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Friday, May 04, 2012 9:17 AM
To: Dourte, Richard H.
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: RE: Sawmill rr crossing

Richard,

I understand you want a tri-party agreement in connection with this crossing. For the developer's side of the deal, do you expect there to be any agreement obligations that will continue after the crossing has been constructed by the developer and accepted by the city for maintenance (much like all the other site's public infrastructure)?

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Tuesday, April 24, 2012 4:22 PM
To: John MacKenzie
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: Sawmill rr crossing

John,
All the documentation provided to this date indicates that this crossing will be a public railroad crossing.

Richard

6/25/2012

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From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, May 08, 2012 4:43 PM
To: Dourte, Richard H.
Cc: Whitcomb, Blake; Keith Cheshire
Subject: RE: Sawmill rr crossing
Attachments: sharp_copier@goodwinengineers.com_20120508_160507.pdf;
sharp_copier@goodwinengineers.com_20120508_160526.pdf

Richard,

I just spent an hour at our off-site storage files and I didn't find anything on a crossing agreement for Vista del Norte, except what is on the attached "Agreement to Construct Public Improvements," which appears to be customized. On page two it refers to the rail crossing in more detail but it's not a crossing agreement. If you recall, John Myers' office usually dealt with issues connected with Vista del Norte and that maybe that's why I couldn't find anything on it.

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6/25/2012



City of Albuquerque
Albuquerque, NM 87102
Planning Department

March 25, 2004

Certificate of Work Order Completion

City Engineer
600 Second St.
Plaza Del Sol
Albuquerque, NM 871022
Re: **Las Lomas Drive Railroad Crossing Project No.: 6665.82 Map No. D-16**

Dear Sir:

This is to certify that Project No. 6665.82 has been completed according to approved plans and construction specifications. Please be advised this Certificate of Work-Order Completion does not constitute acceptance of the city infrastructure until all requirements of the subdivision improvements agreement have been satisfied and a Certificate of Completion and Acceptance is issued by the City Engineer.

Paving

38' FF arterial pavement, curb and gutter, striping, (median at railroad crossing) on Las Lomas Drive from approximately 1369' north of Calle Ontono Avenue to railroad crossing.

38'FF to 48FF arterial pavement, curb and gutter, striping (median at railroad crossing) on Las Lomas from railroad crossing to approximately 98 feet north of railroad.

48'FF, curb and gutter, striping on Las Lomas Drive from approximately 98 feet north of railroad to El Pueblo Road.

12' arterial pavement westbound lane, striping and signage on El Pueblo Road for approximately 950 feet at Las Lomas Drive intersection plus transitions.

12' arterial pavement east bound lane, striping and signage on El Pueblo Road for approximately 455 feet west of Las Lomas Drive intersection plus transition.

Storm Drain

18" RCP across Las Lomas north of the railroad from near future west stub (Tract U-3) to temporary pond (Tract U-5) at northeast corner of railroad and Las Lomas intersection.

Temporary Retention Pond

Constructed temporary retention pond at the northeast corner of the railroad crossing and Las Lomas Drive intersection.

The contractor's correction period will begin the March 25, 2004 and is effective for a period of one (1) year.

Sincerely,

Kevin Broderick
Development & Bldg Services
Planning Department

C: Mark Goodwin & Associates
Sundance Mechanical
Master Scheduler
Project Administrator
Ruben Ortega, Const. Coordination
Orvis Bartow, Water Systems
Dave Harmon, Traffic Engineering, PWD
Jack Placencio, Street Maintenance
George King, Maps & Records, PWD
Project No. 6665.82
Warranty:Contract

FIGURE 11
AGREEMENT TO CONSTRUCT
PUBLIC IMPROVEMENTS

(PROCEDURE "A")
PUBLIC IMPROVEMENTS AGREEMENT

Las Lomas Drive
@ Vista del Norte

CPN 666581

THIS AGREEMENT is made this 4th day of November, 20 02, by and between the City of Albuquerque, New Mexico ("City"), whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and Vista del Norte Development LLC ("Developer"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] New Mexico limited liability company whose address is PO Box 3671, Albuquerque, NM 87190 and whose telephone number is (505) 883-1674, in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Developer is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [describe:] a portion of Tract T-2-A-1-A-1, Vista del Norte, and a portion of Tract U, Vista del Norte recorded on May 16, 20 02 in the records of Bernalillo County at Book Misc. 2002C, pages 173 through -- ("Developer's Property"). The Developer certifies that the Developer's Property is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in Developer's Property to the present owner]: Vista del Norte Development LLC. ("Owner"). Developer proposes to install public infrastructure Improvements upon City property which abuts or is near or on Developer's Property, for the benefit of Developer's Property. The City requires, and the Developer is willing to provide certain assurances as a prerequisite to the City's granting permission to the Developer to enter City property to construct the improvements.

2. Deadline and Improvements. The Developer agrees to install and complete the following public infrastructure improvements, identified as Project No 666581, to the satisfaction of the City, on or before the 10th day of October, 20 03 ("Construction Completion Deadline"), at no cost to the City:
Construction of roadway improvements ("Improvements").

3. Work Order Requirements. The City agrees to issue a Work Order after:

A. The Developer submits all documents and meets all requirements listed in Development Process Manual, Volume 1, Chapter 5, Work Order Process, and Figure 1, including submitting a Certificate of Insurance in a form acceptable to the City. The certificate must establish that the Developer has procured or has caused to be procured public liability insurance in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for accidents or occurrences which are related to the activities covered by this Agreement which cause bodily injury, death or property damage to any member of the public as a result of any condition of the Developer's Property; the Improvements; or the Developer's construction activities on Developer's Property or the City's property. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insureds. The Developer must maintain the insurance until the City accepts the Improvements. The cancellation provision must provide that, if the policy is either canceled prior to the expiration date of the policy or is materially changed or not renewed, the issuing company will mail 30 days written notice to the City, attention City Engineer.

Developer is being granted a conditional work-order approval subject to an acceptable license agreement being granted to the City for the waterline crossing under the Burlington Northern Santa Fe ("BNSF") railroad right-of-way. No work pursuant to this work order shall occur within 25 feet of the railroad easement until all necessary approvals acceptable to the City are obtained from the BNSF Railroad or a determination has been made by the City that such approvals are not required. Developer understands and agrees that Developer is proceeding with construction at Developer's own risk and that the City reserves the right to withhold future development approvals, including but not limited to building permits, work orders, preliminary and final plat approval and acceptance of any infrastructure improvements until an acceptable license agreement is obtained from the BNSF Railroad or a determination is made by the City that such approvals are not required. Developer agrees that the City's granting of this conditional work-order does not constitute the City's agreement to grant final plat approval for any development that contains the subject waterline as an infrastructure item on the approved infrastructure list. Developer further acknowledges and agrees to waive any and all claims, actions or suits against the City arising from the failure of the City to obtain an acceptable license agreement from the BNSF Railroad for the underground waterline crossing of the railroads right-of-way. The Developer does not agree that a license is required from the BNSF to construct the waterline and does not waive its right to insist that the City grant a work-order for the portion of the waterline crossing the BNSF easement without having been issued a license.

B. The Developer complies with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pays the following required engineering, staking, testing fees, price adjustment for asphalt and concrete paving, if applicable, and other related City fees and County Clerk recording fees:

<u>Type of Fee</u>	<u>Amount</u>
Engineering Fee	<u>3.25% of actual construction cost</u>
Excavation and Sidewalk Ordinance, Street Restoration Fees.	<u>As required per City-</u> <u>Approved estimate</u> <u>(Figure 7)</u>
Price adjustment	<u>(asphalt/concrete)</u>

(Note: The Developer must pay the City price adjustment for asphalt and concrete paving, if applicable, all City fees which have been incurred during construction before the City will accept the public Improvements.)

4. Surveying, Inspection and Testing. The Improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:

A. Construction Surveying. Construction surveying for the construction of the Improvements shall be performed by ALS, Inc. . If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Developer shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City which the City requires for review. The Developer shall pay the City a reasonable fee for any construction surveying performed by the City. As-built record drawings shall be provided to the City by the entity performing the survey.

B. Construction Inspection Methods. Inspection of the construction of the Improvements shall be performed by Mark Goodwin & Associates, PA a New Mexico Registered Professional Engineer. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Developer shall ensure that the inspecting entity provides all inspection results, reports and related data to the City which the City requires for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the Improvements, if deemed necessary or advisable by the City Engineer. The Developer shall pay the City a reasonable fee for any inspections performed by the City.

C. Field Testing. Field testing of the construction of the Improvements shall be performed by Vinyard & Associates , a certified testing laboratory under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for Public Works Construction. If any field testing is performed by an entity other than the City, the City may monitor the field testing and the Developer shall ensure that the field testing entity provides all field testing results, reports and related data to the City which the City requires for review. The Developer shall pay the City a reasonable fee for any field testing performed by the City.

D. Additional Testing. The City retains the right to perform all additional testing which the City Engineer deems is necessary or advisable, and the Developer shall pay the City a reasonable fee therefor.

5. Acceptance and Termination. After the Developer completes the Improvements to the satisfaction of the City and submits the final acceptance package, the City will review it, and, if acceptable, the City will issue a Certificate of Completion and Acceptance for the Improvements. Thereafter, the Developer's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Developer must provide to assure the materials and workmanship, as required by the Subdivision Ordinance.

6. Indemnification. Until the Improvements are accepted by the City, the Developer shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Developer agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the Developer, its agents, representatives, contractors or subcontractors or arising from the failure of the Developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer herein; provided, however, to the extent, if at all, Section 56-7-1 N.M.S.A. 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

7. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer and the express written concurrence of any surety which has undertaken to guarantee the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

8. Payment for Incomplete Improvements. If the Developer fails to complete construction of the Improvements satisfactorily by the Construction Completion Deadline, the City may make demand upon the excavation bond posted in accordance with City Street Excavation Ordinance 6-5-2-3(A)(3) or any successor ordinance in order to obtain payment for completing the Improvements. If the cost of completing the Improvements exceeds the amount of the excavation bond, the City may proceed against the Developer for the balance of the completion costs and for any costs or damages

incurred by the City as a result of Developer's failure to perform according to the terms of this Agreement.

9. Notice. For purposes of giving formal written notice, including notice of change of address, the Developer's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within three (3) days after the notice is mailed if there is no actual evidence of receipt.

10. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

11. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

12. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

13. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

14. Forms Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

15. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the City may require the Developer to provide the City with satisfactory proof of Developer's authority to execute this Agreement.

Executed on the date stated in the first paragraph of this Agreement.

DEVELOPER Vista del Norte
Development LLC
By: _____
Name: John A. Myers
Title: Assistant Manager Pro-Tem
Dated: October 9, 2002

CITY OF ALBUQUERQUE

[Signature]
City Engineer

Dated: 11-4-02

0
10-4-02

DEVELOPER'S NOTARY

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

This instrument was acknowledged before me on October 9, 2002
by [name(s) of person(s):] John A. Myers [title or capacity, for instance,
"President" or "Owner":] Assistant Manager Pro-Tem of [Subdivider:] Vista del
Norte Development LLC.

Carla Floeck
Notary Public

My Commission Expires:
March 31, 2005

CITY'S NOTARY

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

This instrument was acknowledged before me on November 4, 2002 by
Fred J. Aguirre, City Engineer, of the City of Albuquerque,
a municipal corporation, on behalf of said corporation.

Dloria S. Saavedra
Notary Public

My Commission Expires:
11-15-2003

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, May 08, 2012 4:49 PM
To: Whitcomb, Blake
Cc: Keith Cheshire; Dourte, Richard H.
Subject: RE: Sawmill RR crossing

I did not check in with them but Keith may have done so.

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 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

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Blake Whitcomb
 Assistant City Attorney
 Real Estate & Land Use
 Office of the City Attorney
 1 Civic Plaza NW, 4th Floor
 P.O. Box 2248
 Albuquerque, NM 87103

P: (505) 768-4654
 F: (505) 768-4525
bwhitcomb@cabq.gov

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To: Dourte, Richard H.
Cc: Keith Cheshire; Whitcomb, Blake
Subject: RE: Sawmill RR crossing

Richard,

I can't speak for Keith or his attorney, but I would tend to disagree with you. Blake has already received a draft of the public crossing agreement from the DOT and it is a two-party agreement between the City and the DOT. As I indicated before, once the crossing is built and accepted the developer is out of it. In my opinion he might be referenced in it for the construction period, like other infrastructure construction under a work order, but that should be it. It would be a tri-party agreement if it was a private crossing, but it's going to be public.

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To: Dourte, Richard H.
Cc: Keith Cheshire; Whitcomb, Blake
Subject: RE: Sawmill RR crossing

One more thing: If we want to be consistent with Vista del Norte there shouldn't be a tri-party agreement called out on the IL. I have a RR crossing per DOT standards on this project's IL now and that's it.

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Attachments: scan0473.pdf; sharp_copier@goodwinengineers.com_20120509_164922.pdf
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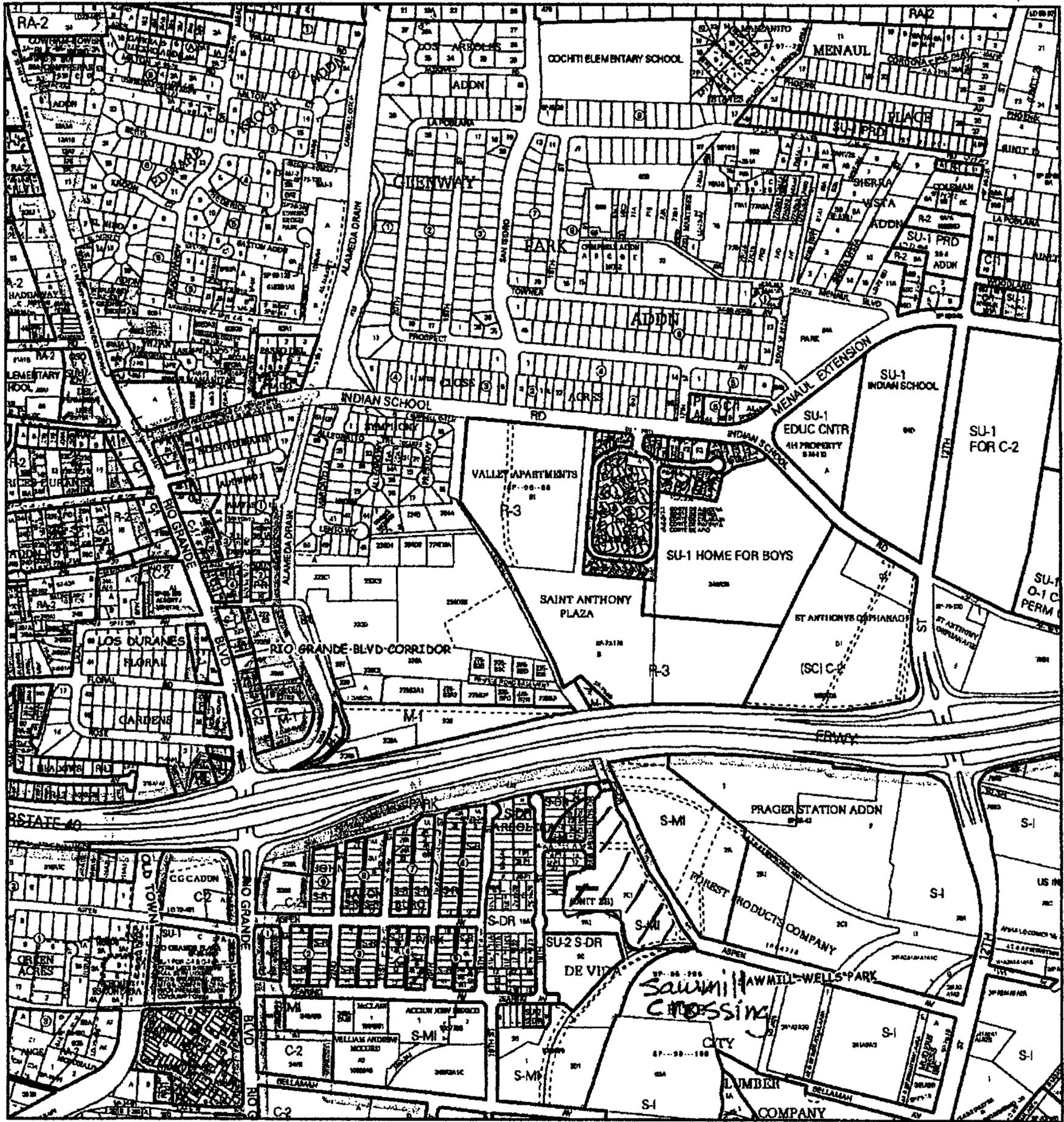
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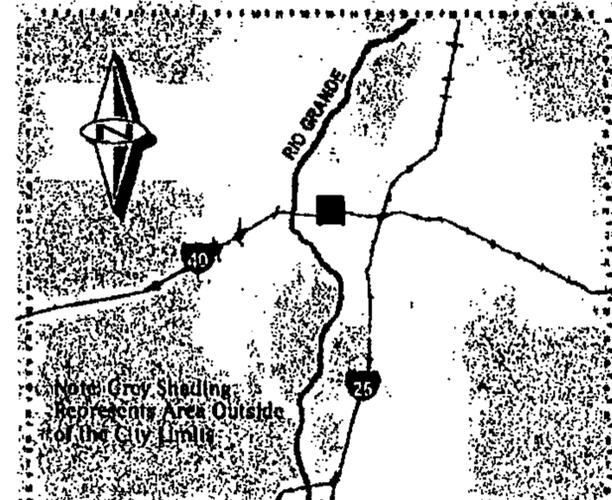
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For more current information and more details visit: <http://www.cabq.gov/gis>



Map amended through: 2/4/2010



Note: Gray Shading Represents Area Outside of the City Limits

Zone Atlas Page:
H-13-Z

Selected Symbols

SECTOR PLANS	Escarpment
Design Overlay Zones	2 Mile Airport Zone
City Historic Zones	Airport Noise Contours
H-1 Buffer Zone	Wall Overlay Zone
Petroglyph Mon.	

0 750 1,500 Feet

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Sent: Thursday, May 10, 2012 9:33 AM
To: Metro, Kristal D.
Cc: Dourte, Richard H.
Subject: RE: Sawmill RR crossing
Attachments: AspenTransition.pdf; Original RR Crossing.pdf; SawmillVicinityMap.pdf

Kristal,

When you were in another meeting before we talked about the Eagle Ranch and Coors project, Richard and I talked about my Sawmill Project and reducing the pavement width on Aspen at its west end from 40 feet wide to 32 feet wide. This would allow the width of the RR crossing at our entry to be narrowed from 90 feet to about 48 feet, thus reducing initial developer cost to build it and potential long term maintenance cost to the city once its handed over. This would also result in a more reasonable transition to Mill Pond Road further to the west, which is currently 28 feet F-F.

Let me know if you would like me to send hard copies down, or meet with you on this.

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Kristal, this looks pretty good to me, what do you think??

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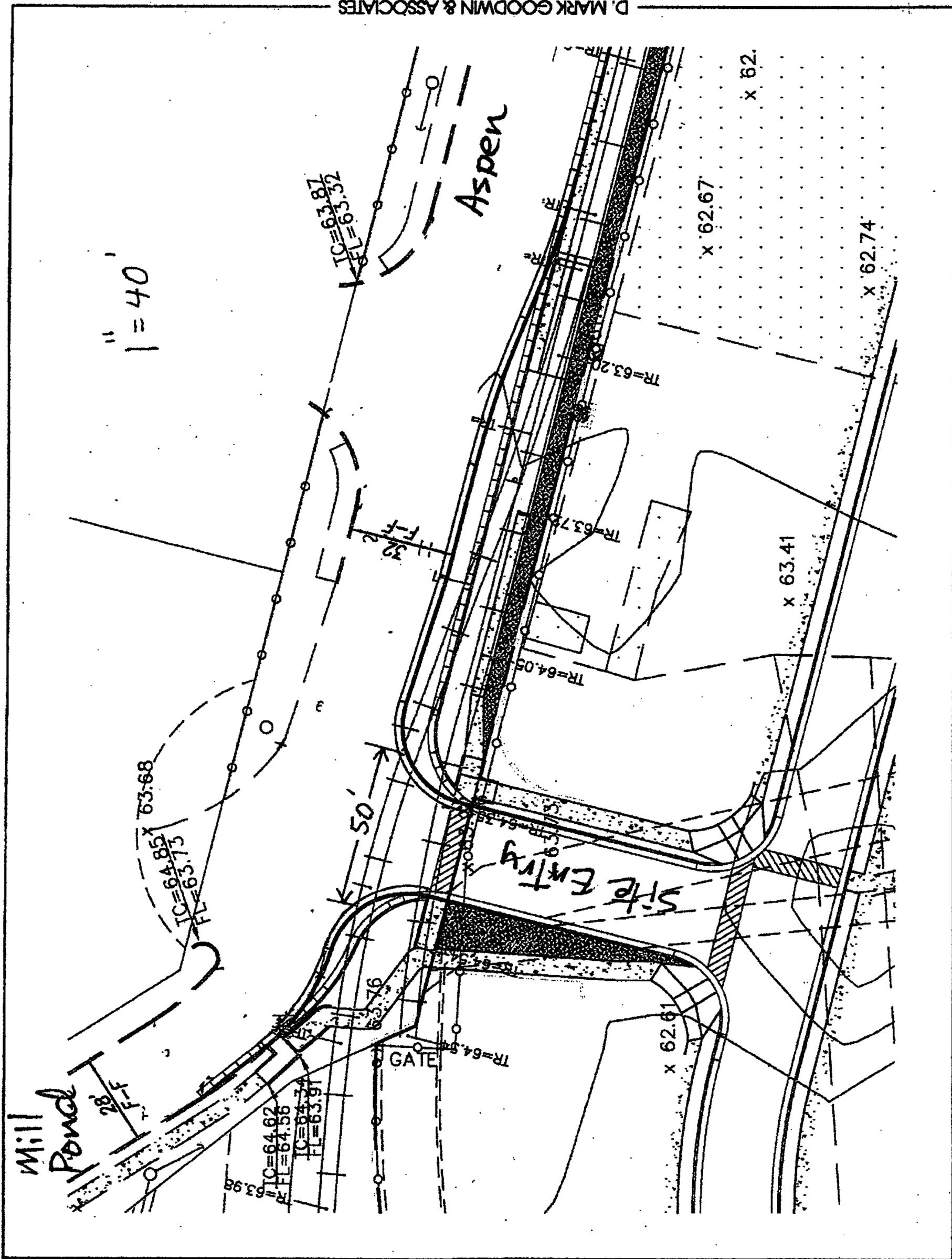
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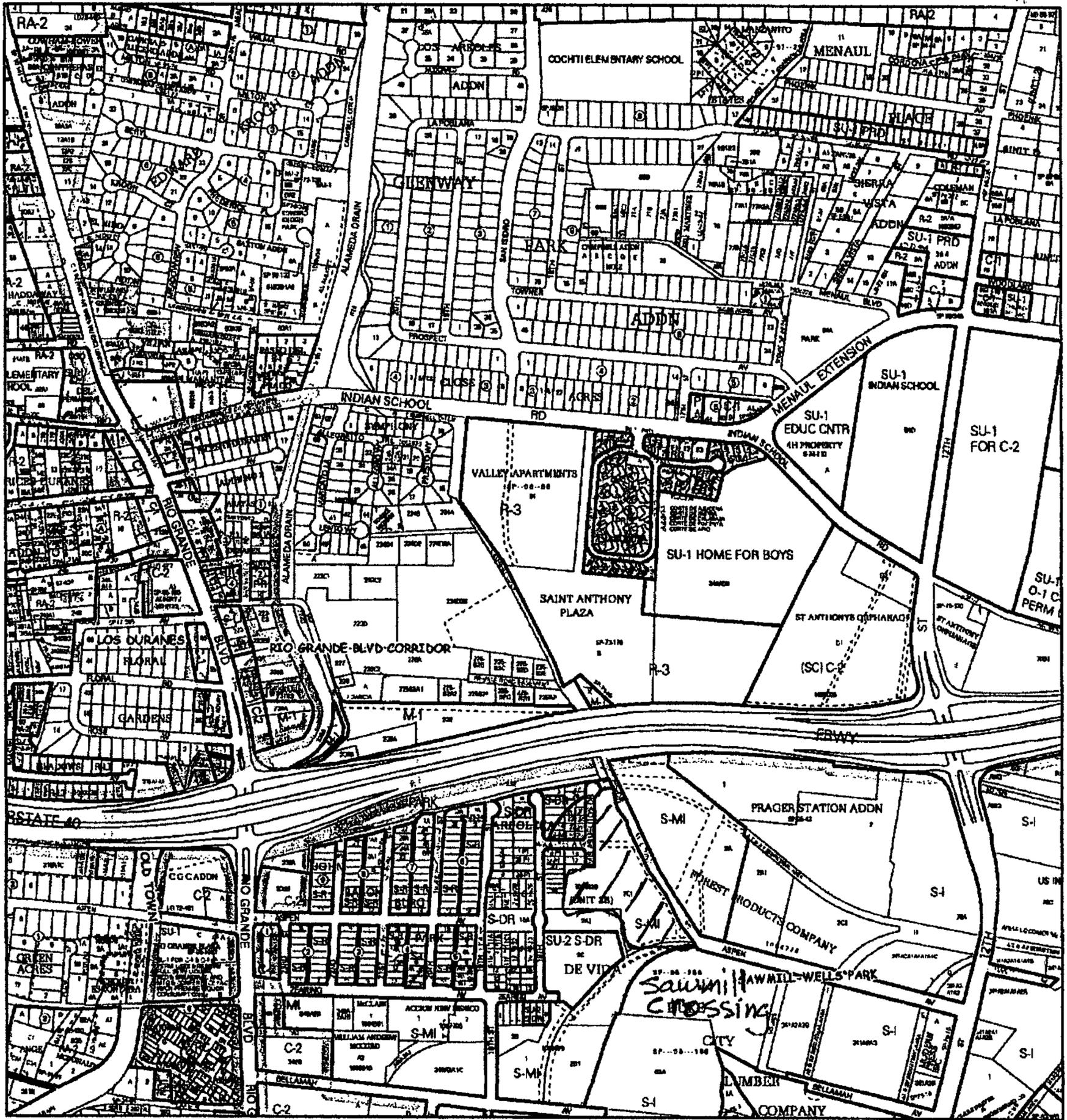
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AGIS
Albuquerque Geographic Information System

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Cc: Dourte, Richard H.
Subject: RE: Sawmill RR crossing

Thanks. I'll do that, and I'll also add the tri-party agreement to the IL.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Metro, Kristal D. [mailto:KMetro@cabq.gov]
Sent: Friday, May 11, 2012 4:19 PM
To: John MacKenzie
Cc: Dourte, Richard H.
Subject: RE: Sawmill RR crossing

Mr. Mackenzie,

I have no objection to the revised layout. Please include the revised layout on the Site Plan for Subdivision and revise the infrastructure list accordingly.

Sincerely,
 Kristal Metro, City of Albuquerque Transportation Development

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Thursday, May 10, 2012 9:33 AM
To: Metro, Kristal D.
Cc: Dourte, Richard H.
Subject: RE: Sawmill RR crossing

Kristal,

When you were in another meeting before we talked about the Eagle Ranch and Coors project, Richard and I talked about my Sawmill Project and reducing the pavement width on Aspen at its west end from 40 feet wide to 32 feet wide. This would allow the width of the RR crossing at our entry to be narrowed from 90 feet to about 48 feet, thus reducing initial developer cost to build it and potential long term maintenance cost to the city once its handed over. This would also result in a more reasonable transition to Mill Pond Road further to the west, which is currently 28 feet F-F.

Let me know if you would like me to send hard copies down, or meet with you on this.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Thursday, May 10, 2012 8:34 AM
To: John MacKenzie
Cc: Metro, Kristal D.
Subject: RE: Sawmill RR crossing

Kristal, this looks pretty good to me, what do you think??

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Richard

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Wednesday, May 09, 2012 4:53 PM
To: Dourte, Richard H.
Subject: RE: Sawmill RR crossing

Richard,

OK, so well put a three-party agreement on the IL and we'll also work on drafting the agreement.

Regarding the actual crossing, can I reduce the pavement width as we discussed (attached) on my site plan? The transition will be with a 300-foot reverse curve, just like on Glendale.

There is one property to the west of this street width reduction off Mill Pond Road, as shown on the attached. This parcel also has a street fronting its west side.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Wednesday, May 09, 2012 9:24 AM
To: John MacKenzie; Whitcomb, Blake
Cc: Keith Cheshire
Subject: RE: Sawmill RR crossing

The infrastructure list should call out items that are significant to this site..such as landscaping agreements, grading certs, etc. I needed we can determine a dollar amount.

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Wednesday, May 09, 2012 8:37 AM
To: Whitcomb, Blake
Cc: Keith Cheshire; Dourte, Richard H.
Subject: RE: Sawmill RR crossing

If a tri-part agreement is required it shouldn't be on the infrastructure list. The list is for constructible items that are to be financially guaranteed. How do you FG an agreement. Do you not get final plat without and agreement? Perhaps it should read that an agreement be provided prior to DRC approval of the plans.

The RR spur has been deactivated for many years and it contains a de-railer that prevent use of it by rail cars, so flagging during construction will not be necessary in its current state.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Whitcomb, Blake [mailto:bwhitcomb@cabq.gov]
Sent: Wednesday, May 09, 2012 8:29 AM
To: John MacKenzie; Dourte, Richard H.
Cc: Keith Cheshire
Subject: RE: Sawmill RR crossing

Greetings,

With the amount of requirements placed on the City by the DOT, I believe we will need a tri-party agreement. Keith won't be able to use his own contractors for the center portion of the track, the DOT requires use of their contractors and

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reimbursement from the City. Also, DOT flagmen will be required throughout any construction, also billed to the City from the DOT. Because the Keith will be covering these and other costs that are billed directly to the City under the DOT contract, we need a tri-party agreement.

Sincereley,

Blake Whitcomb
 Assistant City Attorney
 Real Estate & Land Use
 Office of the City Attorney
 1 Civic Plaza NW, 4th Floor
 P.O. Box 2248
 Albuquerque, NM 87103

P: (505) 768-4654
 F: (505) 768-4525
bwhitcomb@cabq.gov

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From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Wednesday, May 09, 2012 8:22 AM
To: Dourte, Richard H.
Cc: Keith Cheshire; Whitcomb, Blake
Subject: RE: Sawmill RR crossing

Richard,

I can't speak for Keith or his attorney, but I would tend to disagree with you. Blake has already received a draft of the public crossing agreement from the DOT and it is a two-party agreement between the City and the DOT. As I indicated before, once the crossing is built and accepted the developer is out of it. In my opinion he might be referenced in it for the construction period like other infrastructure construction under a work order, but that should be it. It would be a tri-party agreement if it was a private crossing, but it's going to be public.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Wednesday, May 09, 2012 8:15 AM
To: John MacKenzie; Whitcomb, Blake
Cc: Keith Cheshire
Subject: RE: Sawmill RR crossing

John, who is the attorney on your side??? This agreement should be initiated by that attorney or at least be part of the first draft.

6/25/2012

Richard

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Tuesday, May 08, 2012 4:49 PM
To: Whitcomb, Blake
Cc: Keith Cheshire; Dourte, Richard H.
Subject: RE: Sawmill RR crossing

I did not check in with them but Keith may have done so.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Whitcomb, Blake [mailto:bwhitcomb@cabq.gov]
Sent: Tuesday, May 08, 2012 4:49 PM
To: John MacKenzie; Dourte, Richard H.
Cc: Keith Cheshire
Subject: RE: Sawmill rr crossing

We've been having trouble locating the "Vista del Norte" tri-party agreement as well. Did you have a chance to check in with Gandy Dancer?

Sincereley,

Blake Whitcomb
 Assistant City Attorney
 Real Estate & Land Use
 Office of the City Attorney
 1 Civic Plaza NW, 4th Floor
 P.O. Box 2248
 Albuquerque, NM 87103

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From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Tuesday, May 08, 2012 4:43 PM
To: Dourte, Richard H.
Cc: Whitcomb, Blake; Keith Cheshire
Subject: RE: Sawmill rr crossing

Richard,

6/25/2012

I just spent an hour at our off-site storage files and I didn't find anything on a crossing agreement for Vista del Norte, except what is on the attached "Agreement to Construct Public Improvements," which appears to be customized. On page two it refers to the rail crossing in more detail but it's not a crossing agreement. If you recall, John Myers' office usually dealt with issues connected with Vista del Norte and that maybe that's why I couldn't find anything on it.

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Friday, May 04, 2012 9:33 AM
To: John MacKenzie
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: RE: Sawmill rr crossing

John,

Likely the answer is no, but I don't know for sure at this time. I hope we can use the agreement that was used for the Las Lomas crossing for the Vista Del Norte development as a guide.

Richard

From: John MacKenzie [mailto:John@goodwinengineers.com]
Sent: Friday, May 04, 2012 9:17 AM
To: Dourte, Richard H.
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: RE: Sawmill rr crossing

Richard,

I understand you want a tri-party agreement in connection with this crossing. For the developer's side of the deal, do you expect there to be any agreement obligations that will continue after the crossing has been constructed by the developer and accepted by the city for maintenance (much like all the other site's public infrastructure)?

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Tuesday, April 24, 2012 4:22 PM
To: John MacKenzie
Cc: Whitcomb, Blake; Curran, Kevin J.; Cloud, Jack W.; Metro, Kristal D.
Subject: Sawmill rr crossing

John,
All the documentation provided to this date indicates that this crossing will be a public railroad crossing.

Richard

6/25/2012

Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Tuesday, June 12, 2012 2:41 PM
To: Whitcomb, Blake
Cc: Curran, Kevin J.; Dourte, Richard H.
Subject: RE: Sawmill Crossing Railroad Crossing
Blake,

I don't understand why we can't go forward with preliminary plat approval tomorrow. Being one of the PP conditions, executing the three party agreement within the one-year term of the preliminary plat approval should be a reasonable expectation. Do you object to PP approval tomorrow?

*John MacKenzie, PE
Mark Goodwin and Associates, PA
Phone: 505-828-2200*

From: Whitcomb, Blake [mailto:bwhitcomb@cabq.gov]
Sent: Tuesday, June 12, 2012 9:41 AM
To: John MacKenzie
Cc: Curran, Kevin J.; Dourte, Richard H.
Subject: Sawmill Crossing Railroad Crossing

Greetings,

I have some bad news. I just finished speaking with my contact at NMDOT and he does not foresee his agency being able to allow any crossings of the Sawmill Spur within the next few months.

As I understand it, NMDOT is currently in a significant financial crunch that has prohibited them from filling a vacant general counsel position. This problem is compounded by a recent dispute with BNSF over the transfer of ownership over the Sawmill railroad spur. Because they do not have a lawyer to deal with the BNSF dispute, NMDOT is not going to be in a position to allow any crossings or removal of the Sawmill tracks in the near future.

My contact is hopeful that they can fill the general counsel position in the next month. Once the position is filled, NMDOT's new general counsel can begin to deal with the BNSF situation. Until then, NMDOT will not allow any action that may expose them to additional litigation with BNSF. I will keep you informed as the situation progresses.

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

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6/25/2012

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Dourte, Richard H.

From: John MacKenzie [John@goodwinengineers.com]
Sent: Friday, May 11, 2012 3:56 PM
To: Dourte, Richard H.

Subject: RE: BNSF RR - Los Lomitas Business Park (regarding Sawmill agreement).

Thanks. I have gotten a copy from her and we will be using it to combine with the DOT's agreement. I called Blake to let him know about it. I have not heard from Kristal on the street narrowing yet though.

*John MacKenzie, PE
 Mark Goodwin and Associates, PA
 Phone: 505-828-2200*

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Friday, May 11, 2012 2:03 PM
To: John MacKenzie
Subject: FW: BNSF RR - Los Lomitas Business Park (regarding Sawmill agreement).

John, if you contact Karen, she may be able to provide you a copy, unfortunately my achieves did not keep the attachment and this may help.

Richard

From: Karen Arfman [mailto:karfman@moplav.com]
Sent: Monday, July 26, 2010 11:01 AM
To: Dourte, Richard H.; Mason, Laura J.
Cc: 'John Myers'; 'Ronald Brown'; 'Ray Bargull'
Subject: FW: BNSF RR - Los Lomitas Business Park

Richard – attached is an executed copy of the Construction and Maintenance Agreement. Hopefully, this is what you are looking for.

From: Earl E. DeBrine [mailto:edebrine@modrall.com]
Sent: Monday, July 26, 2010 7:51 AM
To: 'karfman@moplav.com'
Subject: FW: BNSF RR - Los Lomitas Business Park

Karen,

Attached is an executed copy of the Construction and Maintenance Agreement.

Earl DeBrine

From: Karen Arfman [mailto:karfman@moplav.com]
Sent: Thursday, July 22, 2010 3:48 PM
To: Earl E. DeBrine
Cc: 'John Myers'
Subject: FW: BNSF RR - Los Lomitas Business Park

Per our telephone conversation, attached is a draft copy of the Construction and Maintenance Agreement which was to have signed by the City, BNSF and Vista del Norte, LLC. We are looking for an executed copy and hope that your file retains one. If so, would you please scan and send a signed copy to me. I appreciate your taking the time to check on this. Thank you.

From: Karen Arfman [mailto:karfman@moplav.com]
Sent: Thursday, July 22, 2010 2:09 PM
To: 'petejohnson@sundt.com'
Subject: FW: BNSF RR

Pete, maybe I got your email correct this time.

From: Karen Arfman [mailto:karfman@moplav.com]
Sent: Thursday, July 22, 2010 2:03 PM
To: 'Ronald Brown'
Cc: Ray Bargull (rcbargull@sundt.com); Pete Johnson (pejohnson@sundt.com)
Subject: BNSF RR

Ron, you may recall in June of this year I contacted you to see if you had a copy of the Construction and Maintenance Agreement between Vista del Norte and BNSF Railroad, a draft copy of which is attached. The City is looking for an executed copy, they apparently can find their signed copy/original. We delivered our files on this matter to Sundt in July of 2008. You were going to see if you had a copy. By copy of this email to Ray and Pete, could you please check your file on this matter and if you have a signed copy, please provide a copy to this office. Thank you.

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Friday, June 04, 2010 12:37 PM
To: John Myers
Cc: Karen Arfman
Subject: RE: What did i say that I would find for you? Sorry.

Especially now that the NMDOT has taken over the responsibilities of this segment.

From: John Myers [mailto:jmyers@moplav.com]
Sent: Friday, June 04, 2010 12:29 PM

6/25/2012

To: Dourte, Richard H.
Cc: 'Karen Arfman'
Subject: RE: What did i say that i would find for you? Sorry.

I'll see what I can find. I know that it was most painful dealing with the Railroad.

John A. Myers
 Myers Oliver & Price, P.C.
 1401 Central Ave NW
 Albuquerque, NM 87104
 Phone 505-247-9080
 Fax 505- 247-9109

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From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Friday, June 04, 2010 12:32 PM
To: John Myers
Cc: Karen Arfman
Subject: RE: What did i say that i would find for you? Sorry.

John,

Can you please find a copy of the agreement between Vista del Norte and the BNSF RR regarding the crossing of the RR spur on Las Lomitas. We have a copy of the agreement for the pipes that go underneath, but not one for the crossing itself.

Thanks,

Richard

From: John Myers [mailto:jmyers@moplav.com]
Sent: Thursday, June 03, 2010 4:57 PM
To: Dourte, Richard H.
Cc: Karen Arfman
Subject: What did i say that i would find for you? Sorry.

John A. Myers
 Myers Oliver & Price, P.C.
 1401 Central Ave NW
 Albuquerque, NM 87104
 Phone 505-247-9080
 Fax 505- 247-9109

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CONSTRUCTION MAINTENANCE AGREEMENT 12-5-02 executed cc (W1289335).PDF (928.3KB)
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