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File VE-1996-172

Name: CUP Overheight Fence - 778 Jasmine Court

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X	X	Planning Commission Minutes – 9/3/96 - **
X	X	Correspondence
X		Warranty Deed – Bk 2090 / Pg 307
X		Notice of Land Use Application – 9/3/96, 10/4/96
X		E-mails
X	X	Settlement Agreement – City not part of agreement - recorded version not in file
X	X	Ordinance No. 2971 – Bk 2298 / Pg 124 - **
X	X	Alpine Meadows Subdivision Final Plat
X	X	Location Map of Fence / Wall Combination
X	X	Improvement Location Certificate
X		Footer / Fence Section A
X		PC Notice of Public Hearing - sent 8/28/96, 10/4/96

VE-96-172

2701-351-47-017
JOAN W MANHART
30 BRENTWOOD ST
LAKEWOOD, CO 80226-1348

~~2701-351-47-027
ALPINE MEADOWS DEVELOPMENT
CORP
1111 S 12TH ST
GRAND JUNCTION, CO 81501-3820~~

2701-351-47-029
ALPINE MEADOWS DEVELOPMENT
CORP
1111 S 12TH ST
GRAND JUNCTION, CO 81501-3820

2701-351-45-030
OPPORTUNITY HOMES INC

2485 H RD
GRAND JUNCTION, CO 81505-9672

~~2701-351-45-031
OPPORTUNITY HOMES INC

2485 H RD
GRAND JUNCTION, CO 81505-9672~~

2701-351-44-025
NIGEL J KEYS
CAROLE A KEYS
778 JADE LN
GRAND JUNCTION, CO 81506

2701-351-46-011
JAY E GONYEAU
LEAH L
2685 DOVE LN
GRAND JUNCTION, CO 81506

2701-351-47-023
DANIEL R CUMMINGS
KAREN A CUMMINGS
782 JORDANNA
GRAND JUNCTION, CO 81506

2701-351-44-026
DELBERT A SPALLER
PATRICIA M
776 JADE LN
GRAND JUNCTION, CO 81506-1896

2701-351-45-021
JANET L RIDGWAY
HUGH M
775 JADE LN
GRAND JUNCTION, CO 81506-1897

2701-351-45-022
DAVID G DUFF
777 JADE LN
GRAND JUNCTION, CO 81506-1897

2701-351-44-021
JAMES P GARMAN
786 JADE LN
GRAND JUNCTION, CO 81506-1898

2701-351-44-022
LORINE J ALLDAFFER
784 JADE LN
GRAND JUNCTION, CO 81506-1898

2701-351-44-023
ANDREW GUS ELIOPULOS

LOIS F ELIOPULOS
782 JADE LN
GRAND JUNCTION, CO 81506-1898

2701-351-44-024
LAWRENCE T KAPUSTKA

LESLIE D KAPUSTKA
780 JADE LN
GRAND JUNCTION, CO 81506-1898

2701-351-45-023
VERLAN L BEAUCHAMP
MARTHA S BEAUCHAMP
779 JADE LN
GRAND JUNCTION, CO 81506-1899

2701-351-45-024
PAMELA J BENSON
781 JADE LN
GRAND JUNCTION, CO 81506-1899

2701-351-47-030
ROGER G MORE
FLORENCE MORE
787 JADE LN
GRAND JUNCTION, CO 81506-3800

2701-351-47-025
DWAIN PARTEE
PAMELA B
2690 AMBER WAY
GRAND JUNCTION, CO 81506-3801

2701-351-47-026
WILLIAM K JONES
BONNIE N
2692 AMBER WAY
GRAND JUNCTION, CO 81506-3801

2701-351-47-028
ROBERT L GRIFFIN
MARTHA S
2696 AMBER WAY
GRAND JUNCTION, CO 81506-3801

2701-351-45-032
BARBARA S HINES
LARRY G HINES
2686 DANE LN
GRAND JUNCTION, CO 81506-3802

2701-351-46-012
TROY H RITTER
KELLI L
2687 DANE LN
GRAND JUNCTION, CO 81506-3804

2701-351-46-013
CHRISTY GREEN WHITNEY

2689 DANE LN
GRAND JUNCTION, CO 81506-3804

2701-351-46-014
RICKY M RYAN
WENDEE K
2691 DANE LN
GRAND JUNCTION, CO 81506-3805

2701-351-46-015
DON G HILBERT
ILENE
2693 DANE LN
GRAND JUNCTION, CO 81506-3805

2701-351-46-016
SAMUEL A GRAZIANI
JOAN I GRAZIANI - TRUSTEES
2695 DANE LN
GRAND JUNCTION, CO 81506-3805

2701-351-46-017
ORVILLE A POWDERS
MARY GRACE
2697 DANE LN
GRAND JUNCTION, CO 81506-3805

2701-351-46-018
DAVID F MARKHAM
NANCY ANN LEE
2699 DANE LN
GRAND JUNCTION, CO 81506-3805

2701-351-45-020
DAVID A JENKEL
KELLI K
774 JASMINE CT
GRAND JUNCTION, CO 81506-3809

2701-351-45-025
THOMAS G MCCLEARY
FRANCES L
776 JASMINE CT
GRAND JUNCTION, CO 81506-3809

2701-351-45-028
GREGORY A CROWE
TAMI R CROWE
777 JASMINE CT
GRAND JUNCTION, CO 81506-3809

2701-351-47-018
LEO J WHITE
VIOLA B
2688 JENTRY CT
GRAND JUNCTION, CO 81506-3810

2701-351-47-021
BRYCE E ADKINS
FAMILY TRUST
2687 JENTRY CT
GRAND JUNCTION, CO 81506-3810

2701-351-45-034
T SCOTT SULLIVAN
DEENA R SULLIVAN
780 JORDANNA RD
GRAND JUNCTION, CO 81506-3811

2701-351-45-026
P RICHARD ENGELDER
KAREN A ENGELDER
778 JASMINE CT
GRAND JUNCTION, CO 81506-3809

2701-351-45-029
G MITCHELL STEARNS
B LA-VONNE STEARNS
775 JASMINE CT
GRAND JUNCTION, CO 81506-3809

2701-351-47-019
TEDDY L ALBRIGHT
SHARON E
2690 JENTRY CT
GRAND JUNCTION, CO 81506-3810

2701-351-47-022
DAVID H SCHOENING
JO ANN
2685 JENTRY CT
GRAND JUNCTION, CO 81506-3810

2701-351-47-024
RICK DODSON
915 20 RD
FRUITA, CO 81521

2701-351-45-027
NANCY A MCCARROLL
GENE M KINSEY
779 JASMINE CT
GRAND JUNCTION, CO 81506-3809

2701-351-47-016
DAVID L WELDON
CATHERINE L
2684 JENTRY CT
GRAND JUNCTION, CO 81506-3810

2701-351-47-020
STEPHEN J TYLER
SANDRA W TYLER
2692 JENTRY CT
GRAND JUNCTION, CO 81506-3810

2701-351-45-033
MARY A GRANDE
JOSEPH T
778 JORDANNA RD
GRAND JUNCTION, CO 81506-3811

~~Richard Engelder
778 Jasmine Ct.
Grand Junction, CO 81506~~

City of Grand Junction
Community Development Dept.
250 N 5th St.
Grand Junction, CO 81501

General Project Report

Application for Conditional Use Permit for over-height fence/footer wall (up to 9') and Vacation of Drainage and Utility Easement

A. Project Description

1. *Location* — Block 2 Lot 7 of Alpine Meadows Subdivision (778 Jasmine Court, Grand Junction, Colorado 81506).
2. *Acreage* — This lot is 0.34 Acres.
3. *Proposed use* — There is 120 linear feet of fence in the side yard at 778 Jasmine Court that originally followed the contour of the land, including a small swale. Approximately 20 linear feet of this fence line is in an easement near its eastern most extent. We propose to construct a concrete footer wall along the western and northern fence line so that back fill can be added to produce a level lot and place the original 6 foot cedar fence on top of the concrete footer wall. After a long planning process and a number of contractor delays, we were able to hire a contractor to remove the original fence, pour the concrete footer wall, and begin to reinstall the original cedar fence on top of the footer wall, following our specifications. Unfortunately, he failed to obtain a permit to do this activity. Therefore, we presently have a concrete footer wall topped with a partially installed cedar fence.
4. *Proposal Summary* — At present, a portion of our back fence is elevated to accommodate a footer wall (maximum of nearly four feet high) that was constructed to make the lot at 781 Jade Lane level to accommodate an in-ground swimming pool. This footer wall consists of railroad ties that exude an unpleasant creosote odor, particularly on warm days. The new footer wall was designed for the side yard of 778 Jasmine Court in order to eliminate or at least minimize the odor from the railroad ties with gravel and dirt fill, to promote erosion control, provide added support to the railroad tie footer wall, and eliminate the swale also in the side yard of 778 Jasmine Court. Concrete was selected as the material of choice to prevent the possibility of a "blowout", which will happen in the near future to a portion of the railroad tie footer wall at 781 Jade Lane facing the street, Amber Way. (This was indicated to us by a contractor while we were obtaining bids for the footer wall). Within the 15 foot utility and drainage easement at 781 Jade Lane there are two patios, and a driveway built upon the dirt fill. Three feet to the east of the easement is an in-ground swimming pool. All of this will provide problems if any construction must occur within the easement. If the easement is merely for drainage, the presence of nearly four feet of fill and concrete at 781 Jade lane most certainly destroys any drainage originally offered by the easement. The top of the concrete footer wall is level with the sidewalk on the East Side of Amber Way. Chain-link fence posts have been placed in the concrete so that the original cedar fence could be mounted on top. The footer wall varies in height between 0 inches and 37 inches, as necessary to level the six foot cedar fence between the house at 778 Jasmine Court, and the lot line at 781 Jade Lane. The final height of the combination fence/footer wall at 778 Jasmine Court, when finished, will be at least one foot lower than the combination fence/footer wall at 781 Jade Lane. The combination footer wall/fence will vary in height between 71 inches and 108 inches.

B. Public Benefit

In addition to enhancing the aesthetic value of the lot at 778 Jasmine Court, construction of a combination concrete footer wall/cedar fence will enhance the overall value and appearance of the local neighborhood. This proposed footer wall/cedar fence will provide a pleasing view towards the south of a level fence from the street (Amber Way). When completed this combination footer wall/fence will also provide a more gradual fall in the fence line from the approximately 10 foot combination footer wall/fence at 781 Jade Lane down to the approximately 8 1/2 foot combination footer wall/fence. Previously, there was a sudden 45" drop in fence level from 781 Jade Lane down to a six foot cedar fence that followed an uneven gradient with a swale.

C. Project Compliance, Compatibility, and Impact

1. *Adopted Plans and/or Policies* — No Impact.
2. *Land Use in The Surrounding Area* — The surrounding area consists of all residential lots. At least two of the lots within the Alpine Meadows Subdivision have combination footer wall/fences that exceed six feet. The fence immediately to the east of 778 Jasmine court has a railroad tie footer wall that reaches a height of four feet topped with a six foot tall fence. There are two patios and a driveway on top of the dirt fill within the fifteen foot easement, and an in-ground swimming pool only three feet south of the easement.
3. *Site Access and Traffic Patterns* — No Impact.
4. *Availability of Utilities* — No known utilities in this easement.
5. *Special or Unusual Demands on Utilities* — No Impact.
6. *Effects on Public Facilities* — No Impact.
7. *Site Soils and Geology* — No additional Impact beyond that already posed by the retaining wall and fence constructed on the lot immediately to the east — 781 Jade Lane.
8. *Impact of Project on Site Geology and Geological Hazards* — At least nine 3/4 inch drainage holes are present at the base of the concrete footer wall, a one foot wide band of gravel for the entire height of the footer wall will be placed immediately behind the footer wall, inside the back yard, to enhance drainage. In addition, a french drain will be constructed at the bottom of the gravel. This will prevent any geological hazard.
9. *Hours of Operation* — Not Applicable.
10. *Number of Employees* — Not Applicable.
11. *Signage Plans* — Not Applicable.

D. Development Schedule and Phasing

Within three months of approval of the proposed vacation of the easement and conditional use permit the fence and footer wall will be completed. Within one month of the completion of the fence and footer wall, the yard will be back filled, and construction of an irrigation system will commence.

June 19, 1996



Richard Engelder
778 Jasmine Ct.
Grand Junction, CO 81506

Grand Junction Community Development Department
Planning • Zoning • Code Enforcement
250 North Fifth Street
Grand Junction, Colorado 81501-2668
(970) 244-1430 FAX (970) 244-1599

RE: Over-height Fence at 778 Jasmine Court

Dear Richard:

The fence you are constructing on your property at the address shown above is in violation of Section 5-1-5A3. I've enclosed this section for your information. The fence is also encroaching in a utility and drainage easement. I have discussed this situation with Tim Woodmansee, the City's Property Agent and Jody Kliska, the City's Development Engineer. We are in agreement that the following steps must be taken to resolve the over-height fence and encroachment.

1. Resolve the concerns from the Alpine Meadows Homeowner's Association concerning the fence.
2. Apply for a fence permit from the City of Grand Junction based on the following options.
3. Reduce the height of the fence, including the retaining wall to 6' **OR** apply for a conditional use permit to allow the fence to be higher than 6'.
4. Remove the fence/retaining wall out of the utility and drainage easement; **OR**

Apply for a Revocable Permit to allow the fence to remain in the easements; **OR**

Apply for vacation of the utility and drainage easements.

A nonrefundable fee of about \$350, depending on the option you chose, will apply. Public hearings before the Planning Commission and City Council are required. The cut-off date for the next available Planning Commission hearing (August 6, 1996) is July 1, 1996.

Please call me at **244-1447** to discuss these options or if you have any other questions. If I am unavailable you may call Kathy Portner at 244-1446.

Sincerely,

Bill Nebeker
Senior Planner

c: Kathy Portner
Nina McNally
David Weldon
2684 Gentry Ct.
Grand Junction, CO 81506
(Homeowner's Association President)



Grand Junction Community Development Department
Planning • Zoning • Code Enforcement
250 North Fifth Street
Grand Junction, Colorado 81501-2668
(970) 244-1430 FAX (970) 244-1599

July 11, 1996

Richard Engelder
778 Jasmine Ct.
Grand Junction, CO 81506

RE: Over-height Fence at 778 Jasmine Court

Dear Richard:

I understand that due to illness you were unable to file for a conditional use permit and vacation of the easement where your fence is located at 778 Jasmine Court. Due to the limited time frame you had to file the application, you will be allowed until August 1, 1996 to submit these applications for the September 3, 1996 Planning Commission hearing. Failure to do so will be grounds for enforcement action being taken against you.

If you have any questions please call me at 244-1447.

Sincerely,

A handwritten signature in cursive script that reads "Bill Nebeker".

Bill Nebeker
Senior Planner

c: Nina McNally
David Weldon (Alpine Meadows Homeowner's Association President)



REVIEW COMMENTS

Page 1 of 2

FILE #VE-96-172

TITLE HEADING: Vacation of Easement & Conditional Use Permit for Overheight Fence

LOCATION: 778 Jasmine Court

PETITIONER: Richard Engelder

PETITIONER'S ADDRESS/TELEPHONE: 778 Jasmine Court
Grand Junction, CO 81506
245-3740

STAFF REPRESENTATIVE: Bill Nebeker

NOTE: THE PETITIONER IS REQUIRED TO SUBMIT FOUR (4) COPIES OF WRITTEN RESPONSE AND REVISED DRAWINGS ADDRESSING ALL REVIEW COMMENTS ON OR BEFORE 5:00 P.M., AUGUST 22, 1996.

CITY COMMUNITY DEVELOPMENT 8/13/96
Bill Nebeker 244-1447

Applicant should respond to conditional use permit criteria (Sec 4-8-1A-G) in writing to show why this application should be granted. See attached.

CITY DEVELOPMENT ENGINEER 8/9/96
Jody Kliska 244-1591

The fence does not impede drainage in the easement.

CITY UTILITY ENGINEER 8/9/96
Trent Prall 244-1590

No objections.

CITY POLICE DEPARTMENT 8/12/96
Dave Stassen 244-3587

No opposition to this project.

TCI CABLEVISION 8/8/96
Glen Vancil 245-8777

OIC TO VACATE EASEMENT ON APPLICANT'S PROPERTY 8-22-96

We are in receipt of your request to vacate utility easement at Alpine Meadows, Block 2, Lot 7.

Unfortunately, TCI Cablevision needs this easement as it is currently being used to provide service to many of your neighbors and an alternate route is presently not available without considerable expense.

Should you have any other questions or concerns please feel free to contact me at any time. If I am out of the office when you call please leave your name and phone number with our office and I will get back in contact with you as soon as possible.

GRAND VALLEY WATER USERS

8/13/96

Richard Proctor

242-5065

Grand Valley Water Users Association does not have any project facilities effected by this project.

UTE WATER

8/8/96

Gary Mathews

242-7491

No objections.

TO DATE, NO COMMENTS RECEIVED FROM:

City Property Agent

City Attorney

Mesa County Planning

U S West

Public Service Company - NOT THEIR SERVICE AREA

STAFF REVIEW - PLANNING COMMISSION - SEPTEMBER 3, 1996 HEARING

FILE: VE-96-172
DATE: August 28, 1996
STAFF: Bill Nebeker
REQUEST: Vacation of utility and drainage easement and conditional use permit for an overheight fence.
LOCATION: 778 Jasmine Court; Alpine Meadows
APPLICANT: Richard Engelder

EXECUTIVE SUMMARY: Staff recommends approval of this request to construct an over-height fence in a utility and drainage easement. The easements may be vacated because no utilities have found to be present in the easements. The fence does not impede drainage in the easement. The applicant has satisfied the criteria for the conditional use permit, showing that the combination fence/wall has no adverse impact in the neighborhood per the stated criteria.

EXISTING LAND USE: Single Family home

PROPOSED LAND USE: no change

SURROUNDING LAND USE: Single Family Residential

EXISTING ZONING: PR 4.2

SURROUNDING ZONING: PR 4.2

STAFF ANALYSIS: The applicant requests a conditional use permit to maintain a fence up to 9 feet high (5'11" fence on top of a maximum 37" retaining wall) along his west and north property lines; and to vacate a drainage and utility easement in the northernmost location of the fence. The applicant's lot at 778 Jasmine Court had an existing 6 foot high wood fence following the contours of the land along the west and north property line. A portion of the fence, particularly adjacent to Tract C in the Alpine Meadows subdivision was within a swale. The applicant desired to replace the fence with a concrete retaining wall up to 37 inches high so backfill could be brought in and his back yard leveled. For privacy the 6 foot high wood fence would then be erected on top of the retaining wall.

The existing fence was removed, the retaining wall poured and a portion of the old fence reinstalled on top of the retaining wall when it was discovered that a permit had never been issued for either the wall or the fence. Upon further investigation it was found that about 20 feet of the fence at the northeast corner of the lot was located in a utility and drainage easement. Planning Commission

and City Council action will determine if the fence and wall can remain at the desired height in their present location.

In planning the fence and retaining wall, the applicant somewhat followed the design of a retaining wall and fence on the lot immediately east of his on the parcel at the southwest corner of Amber Way and Jade Lane (lot 5, block 2; 781 Jade Lane). This wall/fence consists of a 4 foot high retaining wall constructed of railroad ties, back filled to an elevation of about 4 feet and topped with a 6 foot high wood fence. The applicant connected his wall and fence to this railroad tie wall. This wall and fence combination is located within the same utility and drainage easement that is proposed to be vacated with this application. No record of a fence permit, conditional use permit, or vacation of the easement have been found. City Code Enforcement was never made aware of this illegal fence, possibly because it is made of wood rather than concrete. The homeowners association has indicated to staff that the Alpine Meadows Covenant, Conditions and Restrictions (CC&Rs) prohibit concrete fences, although staff could find no evidence of this in the subdivision's CC&Rs on file.

Vacation of Utility & Drainage Easement

The fence has no known conflict with utilities or drainage. Although TCI Cable stated by letter that their facilities are in this easement and cannot be relocated without great expense, a telephone call by Glen Vancil of TCI Cable to staff on August 22, 1996 confirmed that their facilities are in Tract C adjacent to Amber Way, rather than on the applicant's property. Max Ward from US WEST also confirmed by telephone to staff on August 22, 1996 and Perry Rupp from Grand Valley Rural Power on August 20, 1996 that they have no facilities in the utility easement to be vacated. Other utility providers sent comments in writing that the vacation does not conflict with their facilities.

The City Development Engineer, Jody Kliska, has stated that the fence does not impede drainage in the easement. Due largely in part to the illegal fence on the adjacent property which has encroached into the continuation of this same drainage easement, drainage flows within the confines of Tract C, rather than the drainage easement. Tract C is designed to handle storm water runoff for this subdivision. The applicant has installed at least 9, 3/4 inch drainage holes at the base of the concrete footer wall and proposes to backfill with a one foot wide band of gravel the entire height of the wall to enhance drainage from the back yard to the drainage easement in Tract C. A french drain at the bottom of the gravel is also proposed.

The proposal to vacate the utility and drainage easements meet the following criteria in the Grand Junction Zoning and Development Code regarding vacation of rights-of-way and easements.

- 8-3-1 LANDLOCKING - The proposal does not landlock any parcel of land.
- 8-3-2 RESTRICTIVE ACCESS - The proposal does not so restrict access to any parcel that such access is unreasonable, economically prohibitive and/or reduces or devalues any property affected by the proposed vacation.

- 8-3-3 QUALITY OF SERVICES - The proposal will not have an adverse impact on the health, safety and/or welfare of the general community, and will not reduce the quality of public services provided to any parcel of land. The vacations do not conflict with any utilities in the area. The fence does not restrict the flow of water within the drainage easement in Tract C or from the applicant's property to Tract C.
- 8-3-4 ADOPTED PLANS & POLICIES - The proposal does not conflict with adopted plans or policies affecting this area.
- 8-3-5 BENEFITS TO CITY OR COUNTY - The proposal has a negligible benefit to the city.

Conditional Use Permit

Section 5-1-5A.3 of the Grand Junction Zoning and Development Code allows fences over 6 feet in height in required setbacks with a conditional use permit. Chapter 12 of the Code defines a retaining wall as, "a manmade barrier constructed for the purpose of stabilizing soil, retarding erosion, or terracing a parcel or site. A retaining wall, with or without a fence, which exceeds six feet (6') on any part of the property, is prohibited without an approved conditional use permit."

The applicant has stated that the public benefits of the overheight fence are that it enhances the overall view of the fence line from the street. Prior to construction, the fence line dropped 4 feet from 781 Jade Lane to the applicant's fence which followed an uneven gradient within a swale. If approved to remain, there will now be a gradual drop of about 1.5 feet to a level fence the length of the rear property line. Staff agrees with the applicant that the gradual fall in the fence line is more aesthetically pleasing than what it looked like previously.

The proposal conditional use permit meets the following criteria in Section 4-8-1 of the Grand Junction Zoning and Development Code:

- A. The proposed use must be compatible with adjacent uses. Such compatibility shall be expressed in terms of appearance, site design and scope, as well as control of adverse impacts including noise, dust, odor, lighting, traffic, etc.

The overheight fence in appearance is compatible with the overheight fence on the parcel to the east. The concrete footer wall is more structurally sound and more aesthetically pleasing than the adjacent used railroad ties footer wall. Overall, when completed, the combination wall/fence makes an appropriate transition between a 6' high fence to the west and the approximately 10' fence/wall to the east. The biggest adverse impact to the site now is that the fence has not been entirely constructed and the applicant's backyard is full of weeds and some dead trees. When the remainder of the fence is constructed it will screen the unsightly backyard from the rest of the neighborhood.

- B. The use shall be approved only if the design features of the site, such as service areas, pedestrian and vehicular circulation, safety provisions, accessory uses, accessways to and from the site, buffering, etc., are sufficient to protect adjacent uses.

The fence/wall has not effect on design features of the subdivision other than those mentioned in A above.

- C. Proposed accessory uses must demonstrate that they are necessary and desirable. Such proposed uses shall also comply with the requirements of A and B above. Undesirable impacts on these uses shall be controlled or eliminated.

Not applicable.

- D. Adequate public services (e.g. sewage and waste disposal, domestic and irrigation water, gas, electricity, police and fire protection) must be available without the reduction of services to other existing uses.

The only foreseeable impact on public services is the inability for police to patrol the back yard of the applicant's home due to the overheight fence. On the other hand the overheight fence will assist in deterring criminals from accessing the applicant's rear yard from this location. As shown in the vacation portion of this application, there is no conflict with utilities.

- E. Other uses complementary to, and supportive of, the proposed project shall be available including schools, parks, hospitals, business and commercial facilities, transportation facilities, etc.

Not applicable.

- F. Provisions for proper maintenance shall be provided.

The fence will be privately maintained by the applicant. The footer wall in its present condition, or stuccoed, as proposed by the applicant, will be virtually maintenance free for several years. The Alpine Meadows CC&Rs dictate the appearance standards for all improvements in the subdivision.

- G. The use shall conform to adopted plans, policies, and requirements for parking and loading, signs and all other applicable regulations of this Code (see General Regulations, Chapter Five).

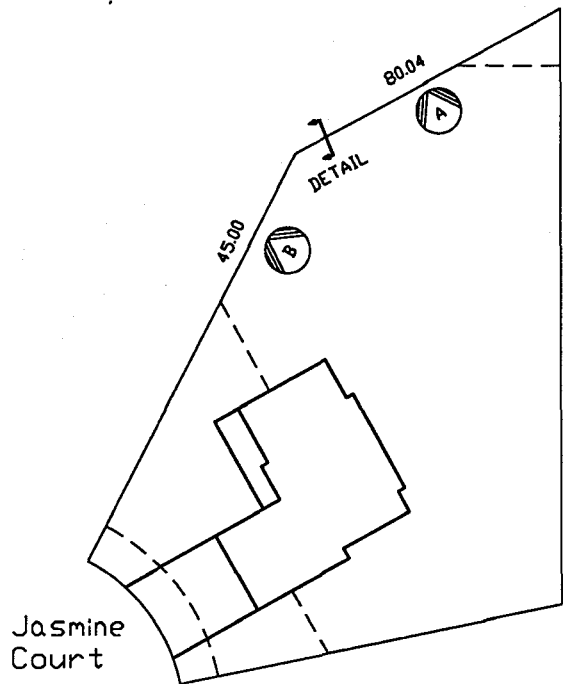
There are no known adopted plans or policies that affect this request.

STAFF RECOMMENDATION: Approval of the vacation and conditional use permit with no conditions.

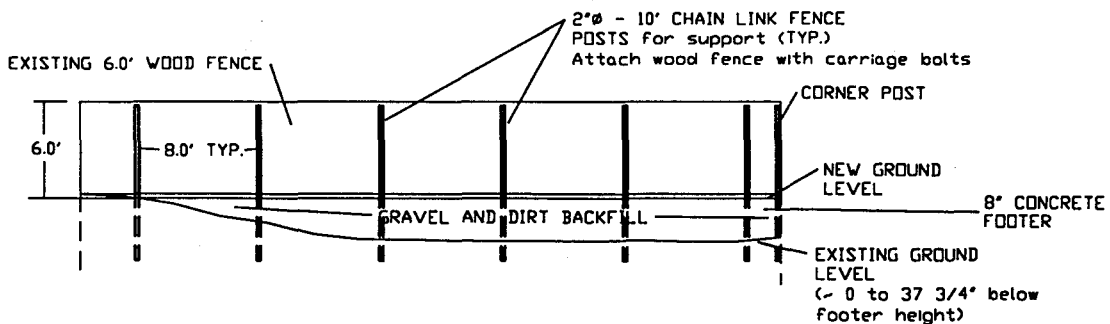
RECOMMENDED PLANNING COMMISSION MOTION:

Mr. Chairman, on item 96-172, I move that we:

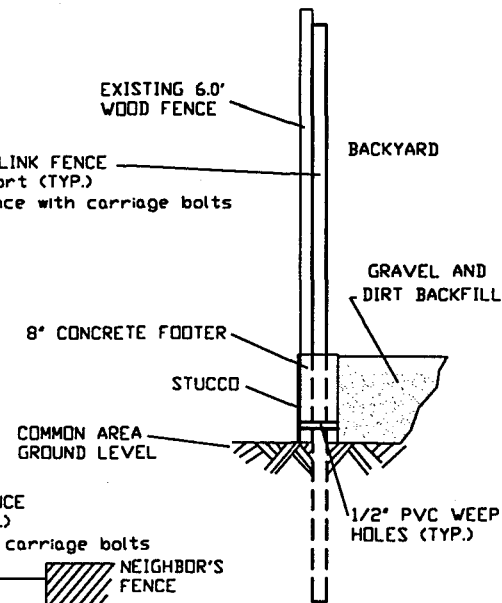
1. Approve the conditional use permit for an overheight fence not to exceed 9', and
2. Forward a recommendation of approval to the City Council for the utility and drainage easement vacations.



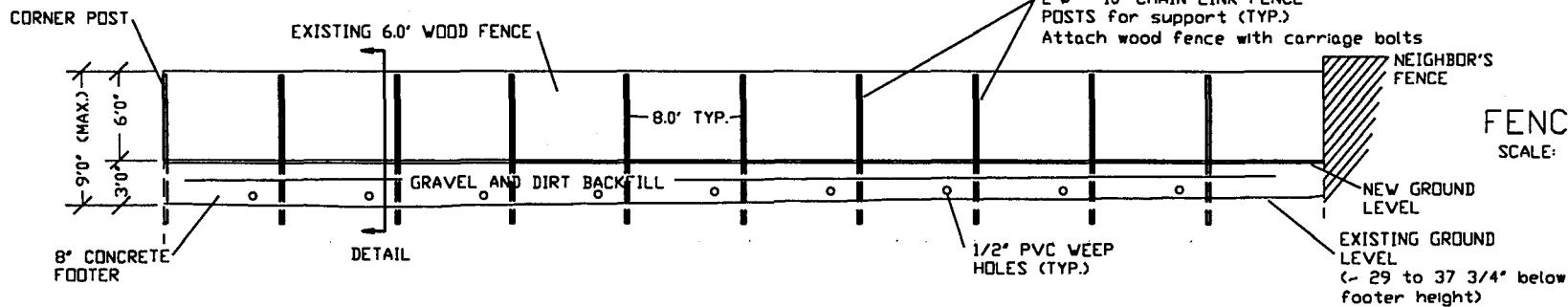
PROPERTY PLAT
SCALE 1"=50'



FENCE SECTION B
SCALE: NOT TO SCALE



FENCE DETAIL
SCALE: NOT TO SCALE

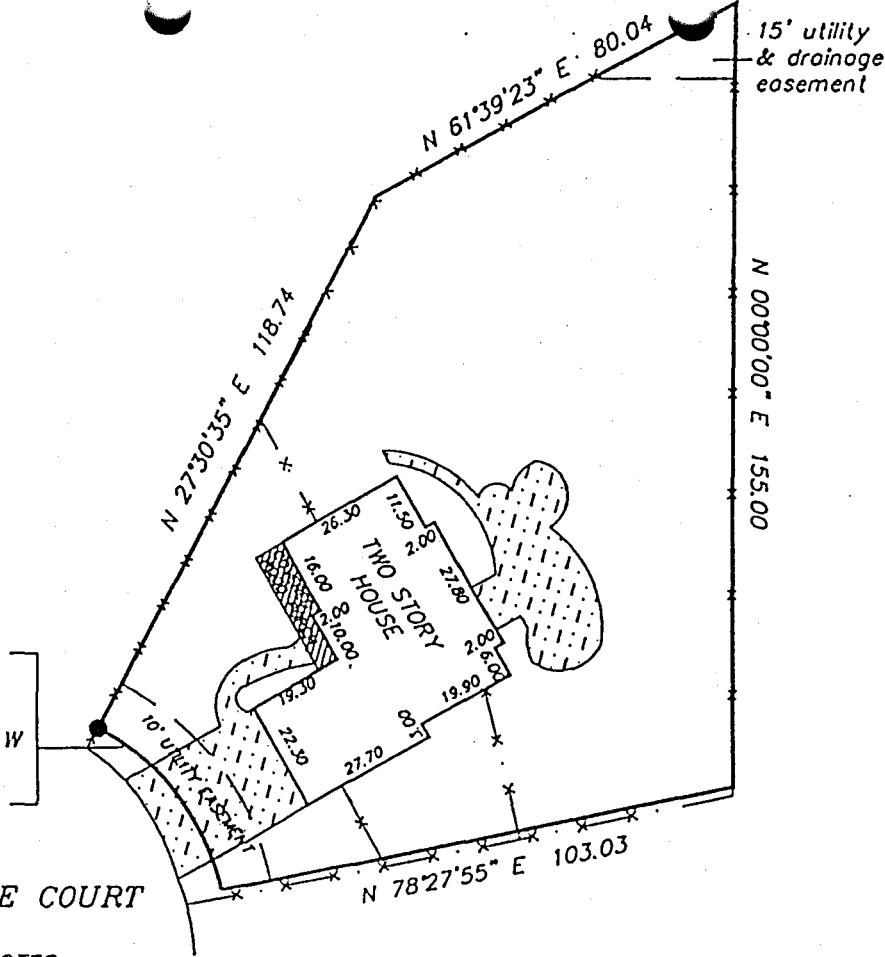


FENCE SECTION A
SCALE: NOT TO SCALE

778 Jasmine Court
Grand Junction, CO
JULY 1996, Rev. 1



A=41.80
 R=47.00
 D=50°57'21"
 B=N 37°00'43" W
 C=40.44
 T=22.40



JASMINE COURT

LEGEND & NOTES

- FOUND SURVEY MONUMENTS SET BY OTHERS

THIS PROPERTY DOES NOT FALL WITHIN THE 100 YEAR FLOOD PLAIN

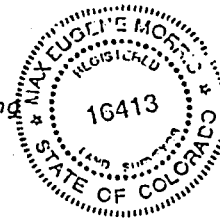
DESCRIPTION

Lot 7 in Block 2 of ALPINE MEADOWS A REPLAT OF LA CASA DE DOMINGUEZ, FILING 1 MESA COUNTY, COLORADO

WESTERN COLORADO TITLE 94-6-10M
 TAX ID. NO. 2701-351-45-026

IMPROVEMENT LOCATION CERTIFICATE

I hereby certify that this improvement location certificate was prepared for NORWEST MORTGAGE; the improvement location being based on monuments as shown hereon, and is not to be relied upon for the establishment of fence, building or other future improvement lines. I further certify that the improvements on the above described parcel on this date, 6/23/94, except utility connections, are entirely within the boundaries of the parcel, except as shown, and that there are no encroachments upon the described premises by improvements or any adjoining premises except as indicated, and that there is no evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.



Mox E. Morris
 Mox/E. Morris, Registered Colorado Land Surveyor #16413

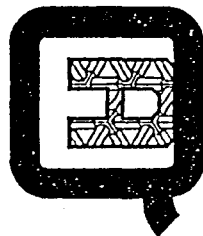
IMPROVEMENT LOCATION CERTIFICATE

778 JASMINE COURT

FOR: ENGELDER

SCALE:
 FEET: 0, 15, 30
 METERS: 0, 3, 10

DATE: 6/23/94



Q.E.D.
 SURVEYING
 SYSTEMS Inc.
 1018 COLO. AVE.
 GRAND JUNCTION
 COLORADO 81501
 464-7568
 241-2370

SURVEYED BY: SB MF

DRAWN BY: VM

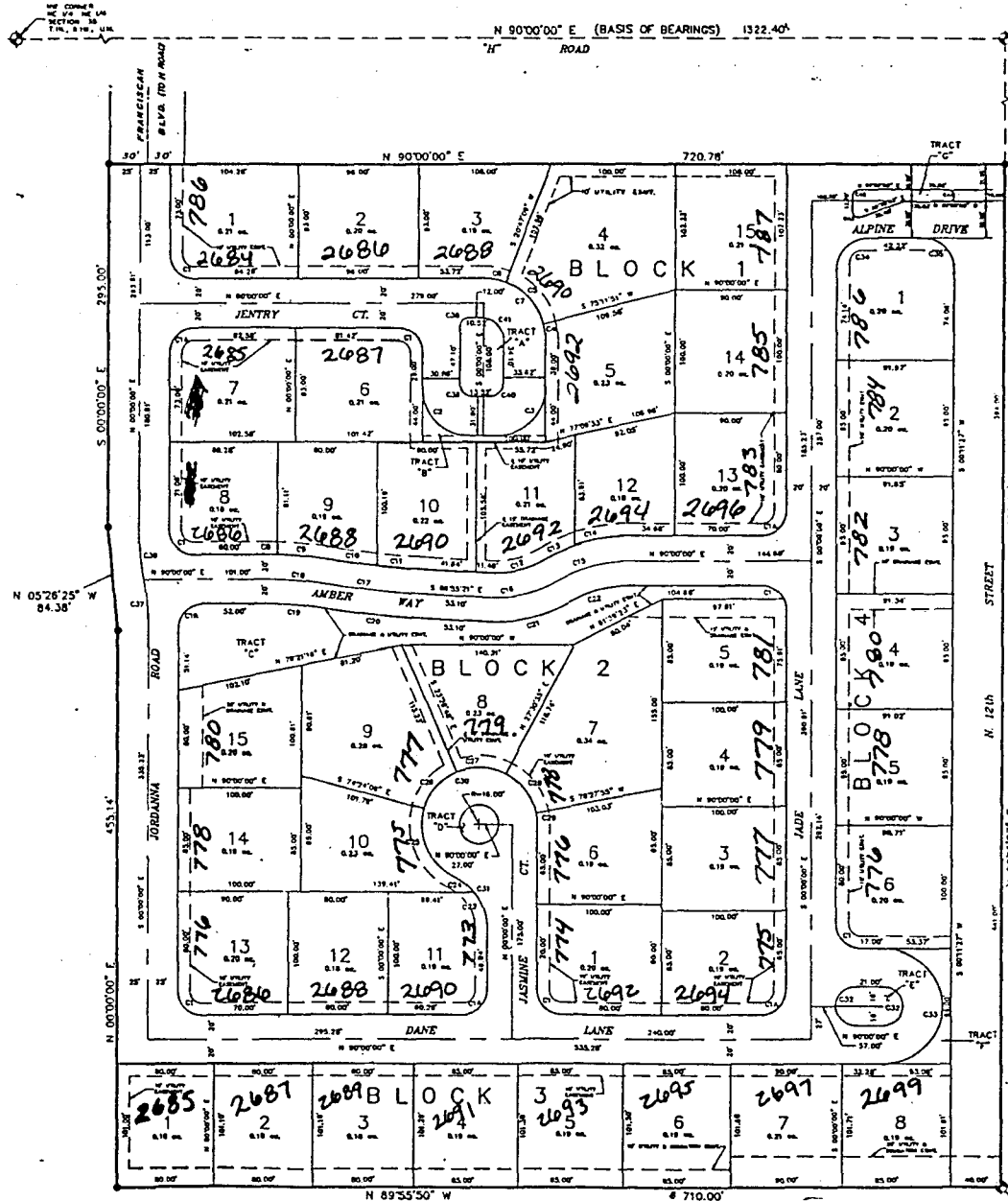
ACAD ID: ENGELDER

SHEET NO.

FILE: 94166.1

ALPINE MEADOWS SUBDIVISION

A REPLAT OF LA CASA DE DOMINGUEZ, FILING ONE



That Alpine Meadows Subdivision is released from the development improvements agreement and the cash deposit guarantee for installation of landscaping improvements.

TRACT	AREA	LENGTH	WIDTH	DEPTH	BEARING	AREA
1	2685	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
2	2686	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
3	2687	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
4	2688	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
5	2689	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
6	2690	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
7	2691	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
8	2692	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
9	2693	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
10	2694	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
11	2695	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
12	2696	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00

That Alpine Meadows Subdivision is partially released from the building permit guarantee as recorded above, and a cash deposit guarantee is accepted for the installation of landscaping improvements to be completed by November 30, 1992.

PASSED and ADOPTED this 3rd day of September, 1991.
18th

TRACT	AREA	LENGTH	WIDTH	DEPTH	BEARING	AREA
1	2685	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
2	2686	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
3	2687	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
4	2688	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
5	2689	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
6	2690	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
7	2691	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
8	2692	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
9	2693	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
10	2694	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
11	2695	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00
12	2696	70.00'	31.14'	35.00'	N 43°00'00\"	2,190.00

PRIVATE OPEN SPACE SUMMARY

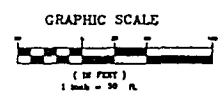
TRACT	Acres
A	0.04
B	0.02
C	0.02
D	0.03
E	0.11
F	0.02

AREA SUMMARY

LOTS	9.03 Acres
OPEN SPACE	0.36 Acres
STREETS	4.10 Acres
TOTAL	13.69 Acres/100%
TOTAL LOTS	44

BUILDING SETBACK REQUIREMENT

PRINCIPAL STRUCTURE	FRONT	MIN. 20 FT.
	REAR	MIN. 20 FT.
12th STREET ROW LINE	SIDE	10 FT.
	REAR	20 FT.
ACCESSORY BUILDINGS	FRONT	REAR 1/2 OF LOT
	SIDE	MIN. 5 FT.
	REAR	MIN. 5 FT.



LEGEND

- STREET CENTERLINE & LOT LINE CURVE NUMBERS (SEE CURVE DATA)
- MESA COUNTY BRASS CAP
- 5/8\"
- 5/8\"

SITUATED IN SECTION 35, T1N, R1W, U1M

FINAL PLAT		
ALPINE MEADOWS SUBDIVISION		
A REPLAT OF LA CASA DE DOMINGUEZ, FILING ONE		
MESA COUNTY, COLORADO		
ARMSTRONG CONSULTANTS, INC.		
GRAND AVENUE, COLORADO		
DATE DEC. 1990	DRAWN BY P.M.O./T.A.L.	SCALE P2 OF 2

STAFF REVIEW - CITY COUNCIL - SEPTEMBER 18, 1996 HEARING

FILE: VE-96-172
DATE: September 12, 1996
STAFF: Bill Nebeker
REQUEST: Vacation of utility and drainage easement for placement of a combination retaining wall/fence.
LOCATION: 778 Jasmine Court; Alpine Meadows Subdivision
APPLICANT: Richard Engelder

EXECUTIVE SUMMARY: Staff recommends approval of this request to vacate a utility and drainage easement where a retaining wall/fence is located. The utility easement vacation does not conflict with utilities in this subdivision. The fence does not impede drainage in the easement. The applicant has satisfied the criteria for the vacations. A conditional use permit for an over-height fence in these easements was denied by the Planning Commission, requiring that the applicant reduce the height of the fence to 6 feet. A 9 foot fence was requested.

EXISTING LAND USE: Single Family home

PROPOSED LAND USE: no change

SURROUNDING LAND USE: Single Family Residential

EXISTING ZONING: PR 4.2

SURROUNDING ZONING: PR 4.2

STAFF ANALYSIS: The applicant requests to vacate a 15' wide utility and drainage easement wherein a 9 foot high combination fence/wall is located. A conditional use permit to maintain the fence up to 9 feet high (5'11" fence on top of a maximum 37" retaining wall) along the west and north property lines was also sought by the applicant at the Planning Commission hearing. The conditional use permit was denied and a timely appeal was not filed.

The applicant's lot at 778 Jasmine Court had an existing 6 foot high wood fence following the contours of the land along the west and north property line. A portion of the fence, particularly adjacent to Tract C in the Alpine Meadows subdivision was within a swale. The applicant desired to replace the fence with a concrete retaining wall up to 37 inches high so backfill could be brought in and his back yard leveled. For privacy the 6 foot high wood fence would then be erected on top of the retaining wall.

The existing fence was removed, the retaining wall poured and a portion of the old fence reinstalled on top of the retaining wall when it was discovered that a permit had never been issued for either the wall or the fence. Upon further investigation it was found that about 20 feet of the fence at the northeast corner of the lot was located in a utility and drainage easement. Planning Commission approved the easement vacation but denied the conditional use permit.

Vacation of Utility & Drainage Easement

The fence has no known conflict with utilities or drainage. Although TCI Cable stated by letter that their facilities are in this easement and cannot be relocated without great expense, a telephone call by Glen Vancil of TCI Cable to staff on August 22, 1996 confirmed that their facilities are in Tract C adjacent to Amber Way, rather than on the applicant's property. Max Ward from US WEST also confirmed by telephone to staff on August 22, 1996 and Perry Rupp from Grand Valley Rural Power on August 20, 1996 that they have no facilities in the utility easement to be vacated. Other utility providers sent comments in writing that the vacation does not conflict with their facilities. On September 11, 1996 the Utility Coordinating Council (UCC) approved the vacation of the easements.

The City Development Engineer, Jody Kliska, has stated that the fence does not impede drainage in the easement. Due largely in part to a similar fence/retaining wall on the adjacent property which has encroached into the continuation of this same drainage easement, drainage flows within the confines of Tract C, rather than the drainage easement. Tract C is designed to handle storm water runoff for this subdivision. The applicant has installed at least 9, 3/4 inch drainage holes at the base of the concrete footer wall and proposes to backfill with a one foot wide band of gravel the entire height of the wall to enhance drainage from the back yard to the drainage easement in Tract C. A french drain at the bottom of the gravel is also proposed.

The Planning Commission found that the proposal to vacate the utility and drainage easements meet the following criteria in the Grand Junction Zoning and Development Code regarding vacation of rights-of-way and easements.

- 8-3-1 **LANDLOCKING** - The proposal does not landlock any parcel of land.

- 8-3-2 **RESTRICTIVE ACCESS** - The proposal does not so restrict access to any parcel that such access is unreasonable, economically prohibitive and/or reduces or devalues any property affected by the proposed vacation.

- 8-3-3 **QUALITY OF SERVICES** - The proposal will not have an adverse impact on the health, safety and/or welfare of the general community, and will not reduce the quality of public services provided to any parcel of land. The vacations do not conflict with any utilities in the area. The fence does not restrict the flow of water within the drainage easement in Tract C or from the applicant's property to Tract C.

- 8-3-4 **ADOPTED PLANS & POLICIES** - The proposal does not conflict with adopted plans or policies affecting this area.

8-3-5

BENEFITS TO CITY OR COUNTY - The proposal has a negligible benefit to the city.

STAFF RECOMMENDATION: Approval of the utility and drainage easement vacation with no conditions.

PLANNING COMMISSION RECOMMENDATION: Approval per staff's recommendation.



Easements
to be vacated

15' utility
& drainage
easement

A=41.80
R=47.00
D=50°57'21"
B=N 37°00'43" W
C=40.44
T=22.40

JASMINE COURT

LEGEND & NOTES

- FOUND SURVEY MONUMENTS SET BY OTHERS

THIS PROPERTY DOES NOT FALL WITHIN THE 100 YEAR FLOOD PLAIN

DESCRIPTION

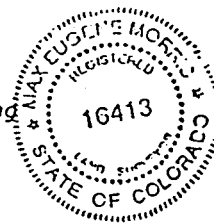
Lot 7 in Block 2 of ALPINE MEADOWS A REPLAT OF LA CASA DE DOMINGUEZ, FILING 1 MESA COUNTY, COLORADO

WESTERN COLORADO TITLE 94-6-10M
TAX ID. NO. 2701-351-45-026

IMPROVEMENT LOCATION CERTIFICATE

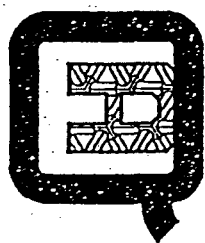
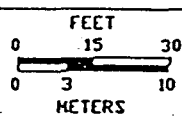
I hereby certify that this improvement location certificate was prepared for NORWEST MORTGAGE; the improvement location being based on monuments as shown hereon, and is not to be relied upon for the establishment of fence, building or other future improvement lines. I further certify that the improvements on the above described parcel on this date, 6/23/94, except utility connections, are entirely within the boundaries of the parcel, except as shown, and that there are no encroachments upon the described premises by improvements or any adjoining premises except as indicated, and that there is no evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.

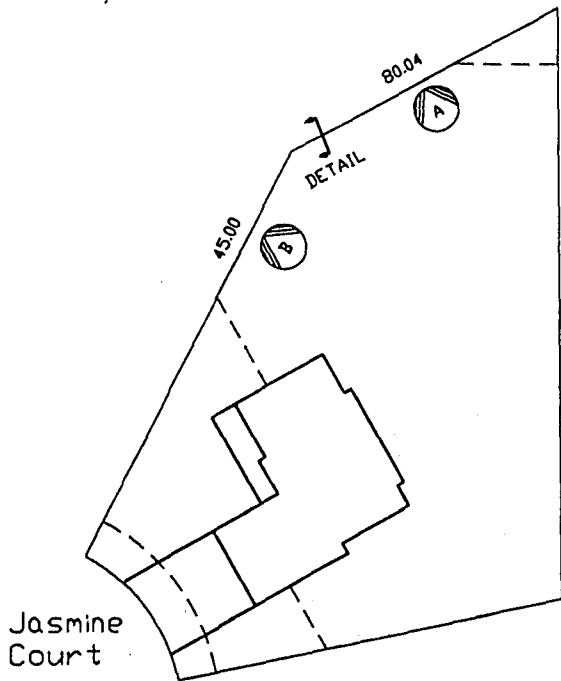

Max E. Morris, Registered Colorado Land Surveyor #16413



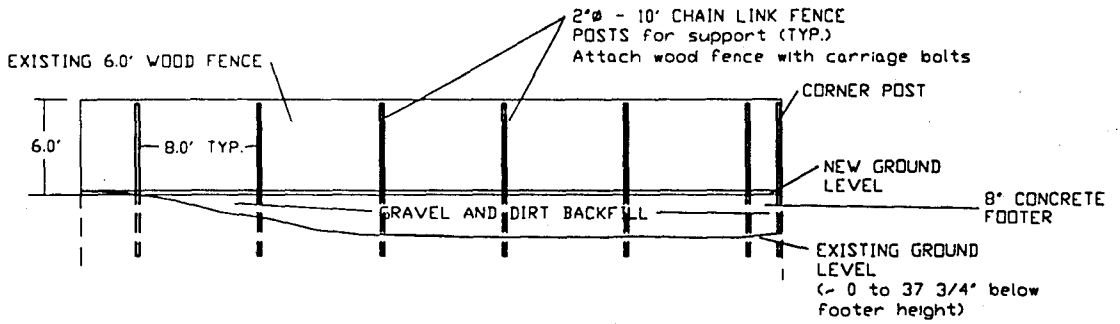
IMPROVEMENT LOCATION CERTIFICATE

778 JASMINE COURT

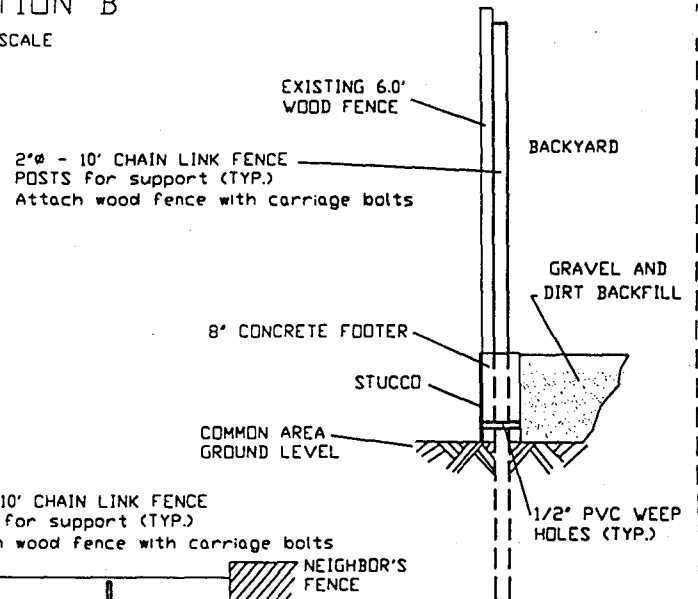
FOR: ENGELDER	 <p>Q.E.D. SURVEYING SYSTEMS Inc. 1018 COLO. AVE. GRAND JUNCTION COLORADO 81501 464-7568 241-2370</p>	SURVEYED BY: SB MF
SCALE: 		DRAWN BY: VM
DATE: 6/23/94		ACAD ID: ENGELDER
		SHEET NO.
		FILE: 94166.1



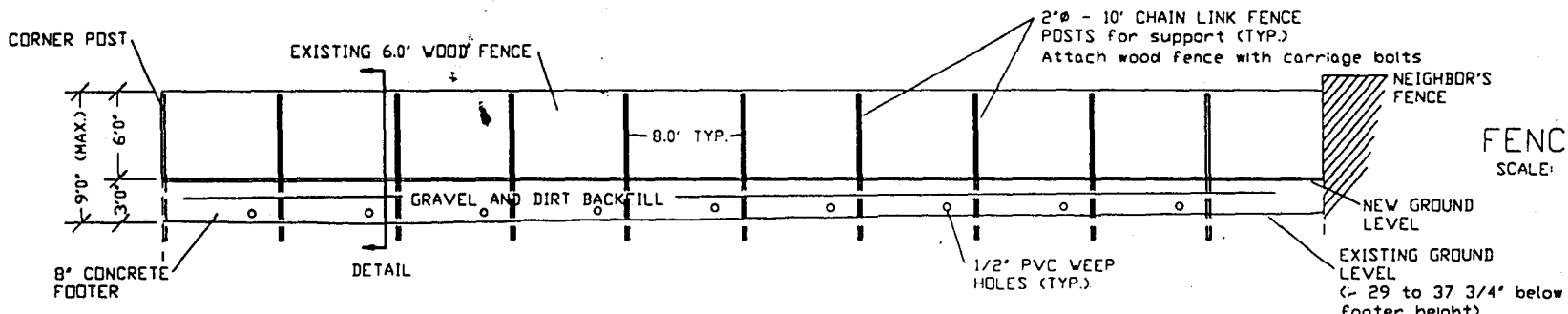
PROPERTY PLAT
SCALE 1"=50'



FENCE SECTION B
SCALE: NOT TO SCALE



FENCE DETAIL
SCALE: NOT TO SCALE



FENCE SECTION A
SCALE: NOT TO SCALE

778 Jasmine Court
Grand Junction, CO
JULY 1996, Rev. 1

CITY OF GRAND JUNCTION

Ordinance No. _____

VACATING A 15 FOOT UTILITY AND IRRIGATION EASEMENT
LOCATED ON LOT 7, BLOCK 2, ALPINE MEADOWS SUBDIVISION,
AT 778 JASMINE COURT
FOR THE CONSTRUCTION OF A FENCE/RETAINING WALL

Recitals.

To accommodate the construction of a combination fence/retaining wall on the northernmost portion of the lot at 778 Jasmine Court, the applicant has requested to vacate a 15' utility and drainage easement. There are no utilities identified in the utility easement to be vacated. The fence does not impede drainage; an adjacent tract is sufficient for needed drainage at this location.

At its September 3, 1996 hearing, the Grand Junction Planning Commission recommended approval of vacation of both easements.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

City Council finds that the vacation meets the criteria set forth in Section 8-3 of the Grand Junction Zoning and Development Code and in accordance therewith the following described 15 foot utility and irrigation easement is hereby vacated:

That certain fifteen (15.0) foot wide Utility & Drainage Easement located on, along, over, under and across Lot 7, Block 2 of Alpine Meadows Subdivision, A Replat of La Casa De Dominguez Filing No. One, situated in the NE 1/4 of the NE 1/4 of Section 35, Township 1 North, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, said easement being more particularly described as follows:

Beginning at the Northeast Corner of said Lot 7; thence S 00°00'00" E along the East boundary line of said Lot 7 a distance of 15.00 feet to a point which is the intersection of the East boundary line of said Lot 7 with the South line of said easement; thence N 90°00'00" W along the South line of said easement a distance of 27.81 feet to point which is the intersection of the South line of said easement with the Northerly boundary line of said Lot 7; thence N 61°39'23" E along the Northerly boundary line of said Lot 7 a distance of 31.60 feet to the Point of Beginning.

INTRODUCED for FIRST READING and PUBLICATION this day of 1996

PASSED on SECOND READING this day of , 1996.

ATTEST:

City Clerk

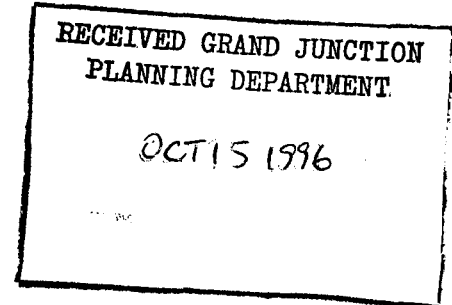
President of City Council

GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP
ATTORNEYS AT LAW
NORWEST BANK BUILDING, SUITE 400
2808 NORTH AVENUE
P.O. BOX 398
GRAND JUNCTION, COLORADO 81502

JAMES GOLDEN
KEITH G. MUMBY
K.K. SUMMERS
J. RICHARD LIVINGSTON
WILLIAM M. KANE

AREA CODE 970
TELEPHONE 242-7322
FAX 242-0698

October 15, 1996



VIA HAND DELIVERY

Mr. Bill Nedeker
City Planning
250 North 5th
Grand Junction, CO 81501

Re: Richard Engelder
Appeal - CUP Denial VE-96-172

Dear Bill:


Mr. and Mrs. Engelder have an agreement in principle settling the fence/retaining wall dispute with the Alpine Meadows Homeowners Association. Mr. Palo, attorney for the Homeowners Association, and I are in the process of drafting the documentation finalizing the settlement.

Mr. and Mrs. Engelder request that the appeal be continued for 30 days in anticipation that the dispute will be resolved and the appeal dismissed. Please confirm that the City will continue this matter.

Thank you for your time and assistance.

Sincerely,

GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP


J. Richard Livingston

JRL:jlc

cc: Mr. Richard Engelder
John P. Shaver, Assistant City Attorney (VIA FACSIMILE)
Bryce Palo, Esq. (VIA FACSIMILE)

STAFF REVIEW - CITY COUNCIL - OCTOBER 16, 1996 HEARING

FILE: VE-96-172
DATE: October 4, 1996
STAFF: Bill Nebeker
REQUEST: Vacation of utility and drainage easement and appeal of Planning Commission decision to deny a Conditional Use Permit for an over-height fence/wall.
LOCATION: 778 Jasmine Court; Alpine Meadows Subdivision
APPLICANT: Richard Engelder

EXECUTIVE SUMMARY: The applicant requests approval to vacate a utility and drainage easement where a retaining wall/fence has been partially constructed without a permit. The Planning Commission found that the wall/fence does not impede drainage and there are no utilities in the easement. The applicant is appealing the Planning Commission's decision to deny a conditional use permit for the same fence, up to 9 feet high in the rear and side yard setbacks.

EXISTING LAND USE: Single Family home
PROPOSED LAND USE: no change
SURROUNDING LAND USE: Single Family Residential
EXISTING ZONING: PR 4.2
SURROUNDING ZONING: PR 4.2

STAFF ANALYSIS:

Background

The applicant requests to vacate a 15' wide utility and drainage easement wherein a uncompleted 9 foot high combination fence/wall is located. The applicant's lot at 778 Jasmine Court had an existing 6 foot high wood fence following the contours of the land along the west and north property line. A portion of the fence, particularly adjacent to Tract C in the Alpine Meadows subdivision was within a swale. The applicant desired to replace the fence with a concrete retaining wall up to 37 inches high so backfill could be brought in and his back yard leveled. For privacy the 6 foot high wood fence would then be erected on top of the retaining wall. The design is similar to a fence/wall constructed on an adjacent property that is over 9 feet in height, with a retaining wall constructed with railroad ties.

The existing fence was removed, the retaining wall poured and a portion of the old fence reinstalled on top of the retaining wall when it was discovered that a permit had never been issued for either the wall or the fence. Upon further investigation it was found that about 20 feet of the fence at the northeast corner of the lot was located in a utility and drainage easement. The applicant requested a conditional use permit to allow an overheight fence in the setback and to vacate the easements. The Planning Commission approved the vacation but denied the conditional use permit.

Vacation of Utility & Drainage Easement

The fence has no known conflict with utilities or drainage. Although TCI Cable stated by letter that their facilities are in this easement and cannot be relocated without great expense, a telephone call by Glen Vancil of TCI Cable to staff on August 22, 1996 confirmed that their facilities are in Tract C adjacent to Amber Way, rather than on the applicant's property. Other utility providers sent comments in writing or by telephone that the vacation does not conflict with their facilities. On September 11, 1996 the Utility Coordinating Council (UCC) approved the vacation of the easements.

The City Development Engineer, Jody Kliska, has stated that the fence does not impede drainage in the easement. Due largely in part to a similar fence/retaining wall on the adjacent property which has encroached into the continuation of this same drainage easement to be vacated, drainage water flows within the confines of Tract C, rather than in the easement. Tract C is designed to handle storm water runoff for this subdivision. The applicant has installed at least 9, 3/4 inch drainage holes at the base of the concrete footer wall and proposes to backfill with a one foot wide band of gravel the entire height of the wall to enhance drainage from the back yard to the drainage easement in Tract C. A French drain at the bottom of the gravel is also proposed.

The Planning Commission found that the proposal to vacate the utility and drainage easements meet the following criteria in the Grand Junction Zoning and Development Code regarding vacation of rights-of-way and easements.

- 8-3-1 **LANDLOCKING** - The proposal does not landlock any parcel of land.
- 8-3-2 **RESTRICTIVE ACCESS** - The proposal does not so restrict access to any parcel that such access is unreasonable, economically prohibitive and/or reduces or devalues any property affected by the proposed vacation.
- 8-3-3 **QUALITY OF SERVICES** - The proposal will not have an adverse impact on the health, safety and/or welfare of the general community, and will not reduce the quality of public services provided to any parcel of land. The vacations do not conflict with any utilities in the area. The fence does not restrict the flow of water within the drainage easement in Tract C or from the applicant's property to Tract C.
- 8-3-4 **ADOPTED PLANS & POLICIES** - The proposal does not conflict with adopted plans or policies affecting this area.

8-3-5 **BENEFITS TO CITY OR COUNTY** - The proposal has a negligible benefit to the city.

Conditional Use Permit

The applicant is appealing the Planning Commission's decision to deny a conditional use permit for an over-height fence in a rear and side yard setback. Section 5-1-5A.3 of the Grand Junction Zoning and Development Code allows fences over 6 feet in height in required setbacks with a conditional use permit. Chapter 12 of the Code defines a retaining wall as, "a manmade barrier constructed for the purpose of stabilizing soil, retarding erosion, or terracing a parcel or site. A retaining wall, with or without a fence, which exceeds six feet (6') on any part of the property, is prohibited without an approved conditional use permit."

The applicant has stated that the public benefits of the overheight fence are that it enhances the overall view of the fence line from the street. Prior to construction, the fence line dropped 4 feet from 781 Jade Lane to the applicant's fence which followed an uneven gradient within a swale. If approved to remain, there will now be a gradual drop of about 1.5 feet to a level fence the length of the rear property line. The combination fence/wall also allows the applicant to level his backyard. After leveling he intends to landscape it. To date it has not been landscaped, which has become a point of contention with the Homeowner's Association.

There was opposition to the granting of the conditional use permit. Most of the comments centered on the applicant's unwillingness to cooperate with the Homeowner's Association rather than on the aesthetics of the fence. A petition signed by 21 homeowners in the subdivision opposed to the completion of the wall/fence was submitted at the hearing. Staff had recommended approval of the conditional use permit, with the findings that granting the permit satisfies the following criteria from Section 4-8-1 of the Zoning and Development Code.

- A. The proposed use must be compatible with adjacent uses. Such compatibility shall be expressed in terms of appearance, site design and scope, as well as control of adverse impacts including noise, dust, odor, lighting, traffic, etc.

The overheight fence in appearance is compatible with the overheight fence on the parcel to the east. The concrete footer wall is more structurally sound and more aesthetically pleasing than the adjacent used railroad ties footer wall. Overall, when completed, the combination wall/fence makes an appropriate transition between a 6' high fence to the west and the approximately 10' fence/wall to the east. The biggest adverse impact to the site now is that the fence has not been entirely constructed and the applicant's backyard is full of weeds and some dead trees. When the remainder of the fence is constructed it will screen the unsightly backyard from the rest of the neighborhood.

- B. The use shall be approved only if the design features of the site, such as service areas, pedestrian and vehicular circulation, safety provisions, accessory uses, accessways to and from the site, buffering, etc., are sufficient to protect adjacent uses.

The fence/wall has not effect on design features of the subdivision other than those mentioned in A above.

- C. Proposed accessory uses must demonstrate that they are necessary and desirable. Such proposed uses shall also comply with the requirements of A and B above. Undesirable impacts on these uses shall be controlled or eliminated.

Not applicable.

- D. Adequate public services (e.g. sewage and waste disposal, domestic and irrigation water, gas, electricity, police and fire protection) must be available without the reduction of services to other existing uses.

The only foreseeable impact on public services is the inability for police to patrol the back yard of the applicant's home due to the overheight fence. On the other hand the overheight fence will assist in deterring criminals from accessing the applicant's rear yard from this location. As shown in the vacation portion of this application, there is no conflict with utilities.

- E. Other uses complementary to, and supportive of, the proposed project shall be available including schools, parks, hospitals, business and commercial facilities, transportation facilities, etc.

Not applicable.

- F. Provisions for proper maintenance shall be provided.

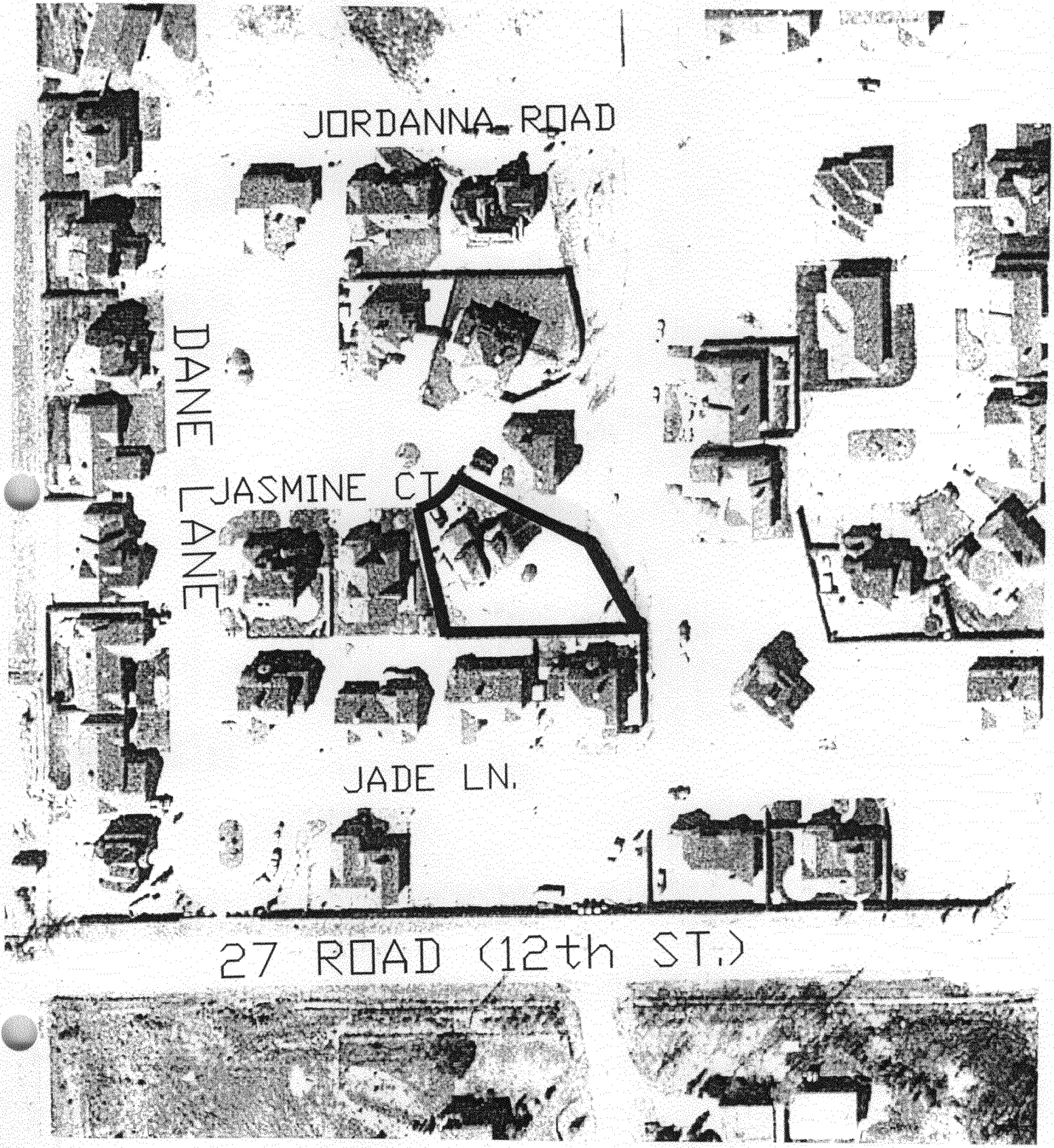
The fence will be privately maintained by the applicant. The footer wall in its present condition, or stocked, as proposed by the applicant, will be virtually maintenance free for several years. The Alpine Meadows CC&Rs dictate the appearance standards for all improvements in the subdivision.

- G. The use shall conform to adopted plans, policies, and requirements for parking and loading, signs and all other applicable regulations of this Code (see General Regulations, Chapter Five).

There are no known adopted plans or policies that affect this request.

PLANNING COMMISSION RECOMMENDATION: Approval of the easement vacations, denial of the conditional use permit.

LOCATION OF FENCE/WALL COMBINATION



JORDANNA ROAD

DANE LANE

JASMINE CT

JADE LN.

27 ROAD (12th ST.)

VE-96-172 VACATION OF EASEMENT AND CONDITIONAL USE PERMIT--FENCE

Request for: 1) vacation of easement in order to locate a fence; and 2) a Conditional Use Permit to construct a 9-foot fence.

Petitioner: Richard Engelder

Location: 778 Jasmine Court

STAFF PRESENTATION

Bill Nebeker briefly outlined the proposal. No utilities exist in the easement requested for vacation. Based on staff review and review agency comments received, the proposed fence would not conflict with utilities or drainage, would not have any adverse impacts, would not conflict with adopted plans or policies and would enhance the overall view of the fence line from the street. Staff recommended approval with no conditions.

PETITIONER'S PRESENTATION

Richard Livingston, representing the petitioner, added that regardless of the Commission's final decision, the petitioner would still have to go before the Alpine Meadows Architectural Control Committee (ACC) to petition for its approval.

PUBLIC COMMENTS

FOR: There were no comments for the proposal.

AGAINST:

Gene Kinsey (779 Desmond Court, Grand Junction), adjacent property owner, argued that the request did go against the established covenants of Alpine Meadows. Mr. Kinsey felt that the fence, originally removed by Mr. Engelder, was owned partially by him and that he'd tried to stop work crews from removing it. The work crews had been informed that the removal of the fence was prohibited by covenants and construction of other than a 6-foot-high fence was prohibited by the City, but crews ignored his warnings and tore the fence down anyway. Mr. Kinsey felt that Mr. Engelder should be bound by the same rules that governed other residents in the subdivision.

David Weldon (2684 Kintree Court, Grand Junction), president of the Alpine Meadows HOA, said that he'd spoken to the work crews referenced by Mr. Kinsey and had eventually located Mr. Engelder. Mr. Engelder was told to cease and desist any demolition or construction of a fence until approval was first received by the ACC. Mr. Engelder apparently ignored this warning and not only tore the existing fence down but proceeded to construct a concrete retaining wall. He said that the covenants were in place for all of the residents and should be followed.

Linda Schooley (791 Jordana Road, Grand Junction), a member of the ACC, said that both in her conversations with the petitioner and those engaged in by Mr. Weldon and Mr. Kinsey, it became clear to them that Mr. Engelder had every intention of disregarding the rules and building whatever he chose to build. She emphasized that there was no misunderstanding involved. To allow a variance of this measure would, she felt, be an affront to all other residents who have agreed to follow established covenants and restrictions.

Ted Albright (2690 Gentry, Grand Junction), past president of the Alpine Meadows HOA and currently vice-president, said that the 9 foot fence is actually a retaining wall to allow for additional backyard area. He felt the fence to be offensive and that it would create an undesirable precedent for the neighborhood.

Nancy lee (2699 Dane Lane, Grand Junction), member of the ACC, submitted a petition containing approximately 22 signatures of neighborhood residents opposing the construction of the fence. She felt that if HOA rules could be flaunted at will by residents, what would be the point of having an HOA.

PETITIONER'S REBUTTAL

Mr. Livingston said that he'd spoken that afternoon with Mr. Bryce Palo, the attorney representing the Alpine Meadows HOA and requested that they all meet at a mutually convenient time and location to discuss the issue. The petitioner was attempting to acquire the necessary permits and meet with the HOA and ACC to try and reach

an agreement on the fence. Mr. Livingston reminded the Commission that it did not have the authority to enforce covenants; that this resolution should be left up to the parties involved and ultimately, if necessary, the court system.

DISCUSSION

Commissioner Halsey concurred with Mr. Livingston's comments that the Commission did not have the authority to enforce covenants. He suggested they proceed with the permitting request and leave any mitigation of unresolved issues to the parties involved.

MOTION: (Commissioner Coleman) "Mr. Chairman, on item VE-96-172, I move that we deny the conditional use permit."

The motion died for lack of a second.

MOTION: (Commissioner Halsey) "Mr. Chairman, on item VE-96-172, I move that we approve the conditional use permit for an overheight fence not to exceed 9 feet and that we forward a recommendation of approval to the City Council for a utility and drainage easement vacations."

Commissioner Vogel seconded the motion. A vote was called and the motion failed as a result of a 2-2 tie vote, with Commissioner Coleman and Acting Chairman Vogel opposing.

Mr. Nebeker asked whether the vote would have been any different had the motion on the easement been separate from the Conditional Use Permit. Commissioners agreed that there would have been no difference in the resultant outcome.

Commissioner Halsey asked if the vacation was needed to allow a standard 6-foot fence, to which Mr. Nebeker replied that it was necessary where the fence encroached upon existing easements.

MOTION: (Commissioner Halsey) "Mr. Chairman, on item VE-96-172, I move that we forward a recommendation of approval to the City Council for the utility and drainage easement vacations."

Commissioner Driscoll seconded the motion. A vote was called and the motion passed unanimously by a vote of 4-0.

VI. GENERAL DISCUSSION

Ms. Portner reminded Commissioners that next week's hearing would begin at 6 p.m. and would be a joint hearing with the Mesa County Planning Commission to reconsider one portion of the Growth Plan. Afterwards, Michael Lauer will be present to discuss proposals for the *Code* rewrite.

The hearing was adjourned at 12:35 a.m.

Response to
review comments concerning
the vacation of easement and conditional use permit for over-height fence
at 778 Jasmine Court
File (#VE-96-172)

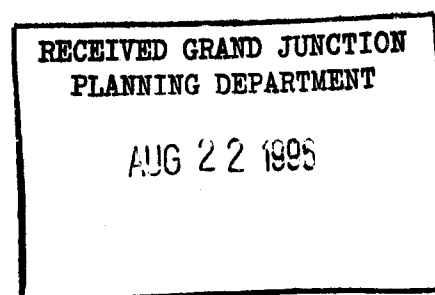
Response to City Community Development —
Conditional and special use criteria

4-8-1 General Criteria

- A. The completion of the footer/fence on this property will allow the yard to be level. This is consistent with the lot to the east of 778 Jasmine Court which has a footer wall constructed of railroad ties that is 45" at its highest, topped by a 6' fence. This eastern lot is completely level because of the addition of the footer wall. Therefore, the proposed final combination footer wall (varying height to a maximum of 39") and 5' 11" wood fence is compatible with adjacent uses. In addition, there are two other fence/footer wall combinations that are over 6 feet high within the Alpine Meadows Subdivision, including one that was just completed in August 1996.
- B. The proposed final combination fence/footer wall does not create an increased need for service areas, pedestrian and vehicular circulation, safety provisions, accessory uses, accessways to and from the site, buffering, etc., beyond what is already present.
- C. Accessory uses of the final over-height combination fence/footer wall for 778 Jasmine Court are not being proposed.
- D. Public services will not be affected by the proposed over-height combination fence/footer wall.
- E. Other uses complementary and supportive of the proposed over-height combination fence/footer wall will not be affected.
- F. The footer wall will consist of either stucco which will be maintenance free for a number of years. Alternatively, the front of the footer wall will be hidden by shrubs, which will be watered at the same frequency as the common area. The original cedar fence will be maintained as it was being maintained prior to its placement on top of the concrete footer wall.
- G. The proposed final over-height combination fence/footer wall does not have a need for parking and loading requirements or signs.

Response to TCI Cablevision —

After TCI Cablevision stated that they are currently using the easement at the back corner of the lot at 778 Jasmine Court, I requested a total locate to ascertain what utilities are presently located within the property lines of Block 2 Lot 7 of the Alpine Meadows Subdivision. The total locate indicated that there are no utilities in the portion of the easement at the rear of the lot at 778 Jasmine Court.



REVIEW COMMENTS

Page 1 of 2

FILE #VE-96-172

TITLE HEADING: Vacation of Easement & Conditional
Use Permit for Overheight Fence

LOCATION: 778 Jasmine Court

PETITIONER: Richard Engelder

PETITIONER'S ADDRESS/TELEPHONE: 778 Jasmine Court
Grand Junction, CO 81506
245-3740

STAFF REPRESENTATIVE: Bill Nebeker

NOTE: THE PETITIONER IS REQUIRED TO SUBMIT FOUR (4) COPIES OF WRITTEN RESPONSE AND REVISED DRAWINGS ADDRESSING ALL REVIEW COMMENTS ON OR BEFORE 5:00 P.M., AUGUST 22, 1996.

CITY COMMUNITY DEVELOPMENT 8/13/96
Bill Nebeker 244-1447

Applicant should respond to conditional use permit criteria (Sec 4-8-1A-G) in writing to show why this application should be granted. See attached.

CITY DEVELOPMENT ENGINEER 8/9/96
Jody Kliska 244-1591

The fence does not impede drainage in the easement.

CITY UTILITY ENGINEER 8/9/96
Trent Prall 244-1590

No objections.

CITY POLICE DEPARTMENT 8/12/96
Dave Stassen 244-3587

No opposition to this project.

TCI CABLEVISION 8/8/96
Glen Vancil 245-8777

We are in receipt of your request to vacate utility easement at Alpine Meadows, Block 2, Lot 7.

Unfortunately, TCI Cablevision needs this easement as it is currently being used to provide service to many of your neighbors and an alternate route is presently not available without considerable expense.

Should you have any other questions or concerns please feel free to contact me at any time. If I am out of the office when you call please leave your name and phone number with our office and I will get back in contact with you as soon as possible.

GRAND VALLEY WATER USERS

8/13/96

Richard Proctor

242-5065

Grand Valley Water Users Association does not have any project facilities effected by this project.

UTE WATER

8/8/96

Gary Mathews

242-7491

No objections.

LATE COMMENTS

U S WEST

8/23/96

Max Ward

244-4721

Utilities along Amber Way not in Lot 7. Looks OK.

TO DATE, NO COMMENTS RECEIVED FROM:

City Property Agent
City Attorney
Mesa County Planning
Public Service Company

GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP

ATTORNEYS AT LAW
NORWEST BANK BUILDING, SUITE 400
2808 NORTH AVENUE
P.O. BOX 398
GRAND JUNCTION, COLORADO 81502

JAMES GOLDEN
KEITH G. MUMBY
K.K. SUMMERS
J. RICHARD LIVINGSTON
WILLIAM M. KANE

AREA CODE 970
TELEPHONE 242-7322
FAX 242-0698

RECEIVED GRAND JUNCTION
PLANNING DEPARTMENT

SEP 26 1996

September 26, 1996

VIA HAND DELIVER

Mr. Bill Nedeker
City Planning
250 North 5th
Grand Junction, CO 81501

Re: Richard Engelder
Appeal - CUP Denial VE-96-172

Dear Bill:

Please be advised that Mr. Engelder desires to appeal the denial of the conditional use permit referenced above. I would appreciate it if you would advise me of the City Council hearing date at your earliest convenience.

Please call if you have any questions.

Sincerely,

GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP


J. Richard Livingston

JRL:jlc

cc: Mr. Richard Engelder

General Project Report

Application for Conditional Use Permit for over-height fence/footer wall (up to 9') and Vacation of Drainage and Utility Easement

A. Project Description

1. *Location* — Block 2 Lot 7 of Alpine Meadows Subdivision (778 Jasmine Court, Grand Junction, Colorado 81506).
2. *Acreage* — This lot is 0.34 Acres.
3. *Proposed use* — There is 120 linear feet of fence in the side yard at 778 Jasmine Court that originally followed the contour of the land, including a small swale. Approximately 20 linear feet of this fence line is in an easement near its eastern most extent. We propose to construct a concrete footer wall along the western and northern fence line so that back fill can be added to produce a level lot and place the original 6 foot cedar fence on top of the concrete footer wall. After a long planning process and a number of contractor delays, we were able to hire a contractor to remove the original fence, pour the concrete footer wall, and begin to reinstall the original cedar fence on top of the footer wall, following our specifications. Unfortunately, he failed to obtain a permit to do this activity. Therefore, we presently have a concrete footer wall topped with a partially installed cedar fence.
4. *Proposal Summary* — At present, a portion of our back fence is elevated to accommodate a footer wall (maximum of nearly four feet high) that was constructed to make the lot at 781 Jade Lane level to accommodate an in-ground swimming pool. This footer wall consists of railroad ties that exude an unpleasant creosote odor, particularly on warm days. The new footer wall was designed for the side yard of 778 Jasmine Court in order to eliminate or at least minimize the odor from the railroad ties with gravel and dirt fill, to promote erosion control, provide added support to the railroad tie footer wall, and eliminate the swale also in the side yard of 778 Jasmine Court. Concrete was selected as the material of choice to prevent the possibility of a "blowout", which will happen in the near future to a portion of the railroad tie footer wall at 781 Jade Lane facing the street, Amber Way. (This was indicated to us by a contractor while we were obtaining bids for the footer wall). Within the 15 foot utility and drainage easement at 781 Jade Lane there are two patios, and a driveway built upon the dirt fill. Three feet to the east of the easement is an in-ground swimming pool. All of this will provide problems if any construction must occur within the easement. If the easement is merely for drainage, the presence of nearly four feet of fill and concrete at 781 Jade lane most certainly destroys any drainage originally offered by the easement. The top of the concrete footer wall is level with the sidewalk on the East Side of Amber Way. Chain-link fence posts have been placed in the concrete so that the original cedar fence could be mounted on top. The footer wall varies in height between 0 inches and 37 inches, as necessary to level the six foot cedar fence between the house at 778 Jasmine Court, and the lot line at 781 Jade Lane. The final height of the combination fence/footer wall at 778 Jasmine Court, when finished, will be at least one foot lower than the combination fence/footer wall at 781 Jade Lane. The combination footer wall/fence will vary in height between 71 inches and 108 inches.

B. Public Benefit

In addition to enhancing the aesthetic value of the lot at 778 Jasmine Court, construction of a combination concrete footer wall/cedar fence will enhance the overall value and appearance of the local neighborhood. This proposed footer wall/cedar fence will provide a pleasing view towards the south of a level fence from the street (Amber Way). When completed this combination footer wall/fence will also provide a more gradual fall in the fence line from the approximately 10 foot combination footer wall/fence at 781 Jade Lane down to the approximately 8 1/2 foot combination footer wall/fence. Previously, there was a sudden 45" drop in fence level from 781 Jade Lane down to a six foot cedar fence that followed an uneven gradient with a swale.

C. Project Compliance, Compatibility, and Impact

1. *Adopted Plans and/or Policies* — No Impact.
2. *Land Use in The Surrounding Area* — The surrounding area consists of all residential lots. At least two of the lots within the Alpine Meadows Subdivision have combination footer wall/fences that exceed six feet. The fence immediately to the east of 778 Jasmine court has a railroad tie footer wall that reaches a height of four feet topped with a six foot tall fence. There are two patios and a driveway on top of the dirt fill within the fifteen foot easement, and an in-ground swimming pool only three feet south of the easement.
3. *Site Access and Traffic Patterns* — No Impact.
4. *Availability of Utilities* — No known utilities in this easement.
5. *Special or Unusual Demands on Utilities* — No Impact.
6. *Effects on Public Facilities* — No Impact.
7. *Site Soils and Geology* — No additional Impact beyond that already posed by the retaining wall and fence constructed on the lot immediately to the east — 781 Jade Lane.
8. *Impact of Project on Site Geology and Geological Hazards* — At least nine 3/4 inch drainage holes are present at the base of the concrete footer wall, a one foot wide band of gravel for the entire height of the footer wall will be placed immediately behind the footer wall, inside the back yard, to enhance drainage. In addition, a french drain will be constructed at the bottom of the gravel. This will prevent any geological hazard.
9. *Hours of Operation* — Not Applicable.
10. *Number of Employees* — Not Applicable.
11. *Signage Plans* — Not Applicable.

D. Development Schedule and Phasing

Within three months of approval of the proposed vacation of the easement and conditional use permit the fence and footer wall will be completed. Within one month of the completion of the fence and footer wall, the yard will be back filled, and construction of an irrigation system will commence.

STAFF RECOMMENDATION: Approval of the vacation and conditional use permit with no conditions.

RECOMMENDED PLANNING COMMISSION MOTION:

Mr. Chairman, on item 96-172, I move that we:

- ① ~~Approve~~ Approve the conditional use permit for an overheight fence not to exceed 9', and
- ② Forward a recommendation of approval to the City Council for the utility and drainage easement vacations.

DENIED 2-2
E

4-0 APPROVED 2-2 DENIED

IN-6 ELDOR

RICH LIVINGSTON - ALSO REQUIRES HO ASSOC / ARCHITECTURAL REVIEW & APPROVAL

GENE KINSEY - 779 JASMINE CT

DAVID WELDON - PRES HO ASSOC

LINDA -
791 JORDANNA RD

TED ALBRIGHT - JENNY

RETAINING WALL - TO EAST

NANCY LEE -

4/ OCCUPIED HOMES

1/2 SIGNS OPPOSITE FENCE

GOLDEN MUMBY, SUMMERS, LIVINGSTON & KANE, LLP
ATTORNEYS AT LAW
NORWEST BANK BUILDING, SUITE 400
2808 NORTH AVENUE
P.O. BOX 398
GRAND JUNCTION, COLORADO 81502

JAMES GOLDEN
KEITH G. MUMBY
K.K. SUMMERS
J. RICHARD LIVINGSTON
WILLIAM M. KANE

AREA CODE 970
TELEPHONE 242-7322
FAX 242-0695

November 14 1996

VIA FACSIMILE

Mr. Bill Nedeker
Grand Junction Planning Department
250 North 5th
Grand Junction, CO 81501

Re: Richard Engelder

Dear Bill:

As discussed by telephone November 13, 1996, Mr. Engelder is obligated to be out of town on November 20, 1996. He requests that the hearing presently scheduled on November 20, 1996 be continued to January 15, 1997.

Enclosed is a copy of the correspondence from the attorney for Alpine Meadows HOA. As you can see, we are making progress toward a negotiated resolution of all matters in dispute and I believe the chances are good we will have a final agreement prior to January 15, 1997.

Please confirm the continuance at your earliest convenience.

Sincerely,

GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP


J. Richard Livingston

JRL:jlc

Enclosure

cc: Mr. Richard Engelder, w/enc.
Bryce Palo, Esq.

BECKNER, ACHZIGER, McINNIS,
PALO & JUNGE, LLC

Attorneys at Law

Larry B. Beckner
John A. Achziger
Care' McInnis Raaum
Bryce Palo
Brad H. Junge

Suite 850, Alpine Bank Building
225 North Fifth Street
P.O. Box 220
Grand Junction, Colorado 81502
Telephone (970) 245-4300
Telefax (970) 243-4358

November 8, 1996

David B. Palo
(special counsel)
Miles Kara
(special counsel)

HAND DELIVERED

J. Richard Livingston, Esq.
GOLDEN, MUMBY, SUMMERS
LIVINGSTON & KANE, LLP
P.O. Box 398
Grand Junction, CO 81502

NOV 8 1996

RE: Engelder/Alpine Meadows HOA

Dear Rich:

Enclosed please find an original and one copy of a revised Settlement Agreement regarding the above matter, as we have discussed.

While I realize the deadlines in paragraph 1 are rather short, the Homeowners Association is adamant that the fence be constructed prior to the City Council Meeting on November 20, 1996, if their opposition to the partial vacation of the utility easement is to be withdrawn. Also, for the Settlement Agreement to be finalized, an Exhibit "A" rough sketch showing how the fence will be installed upon and cover the retaining wall will need to be prepared.

Please review the revised Settlement Agreement with your clients and advise as to whether it is acceptable. I have been advised that the Association will sign it in its present form.

Sincerely,

BECKNER, ACHZIGER, McINNIS
PALO & JUNGE

By


Bryce Palo

BP:ts

cc: David Weldon, President
Alpine Meadows Homeowners Association

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into effective the _____ day of November, 1996, by and between P. RICHARD ENGELDER and KAREN A. ENGELDER, 778 Jasmine Court, Grand Junction, CO 81506 ("Engelder") and ALPINE MEADOWS HOMEOWNER'S ASSOCIATION, INC., P.O. Box 4142, Grand Junction, CO 81502 ("HOA").

RECITALS

A. The HOA has contested Engelder's right to construct a fence and retaining wall on the property at 778 Jasmine Court, Grand Junction, Colorado in non-conformance with the covenants of the Alpine Meadows Subdivision and without the prior written consent of the HOA.

B. Engelder denies the proposed construction is in violation of the subdivision covenants.

C. The parties desire to avoid expensive and time-consuming litigation and have agreed to settle their dispute pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises contained herein the parties mutually covenant and agree as follows:

1. Engelder shall construct and install a wooden fence along the northwesterly boundary of their property adjacent to Amber Way. The fence shall be substantially similar to the fence previously in existence on the boundary and shall be level with the existing fence at the NW corner of the Engelder property. The fence shall be tapered at the NE corner of the Engelder property for no more than eight feet to tie into the existing fence at that corner. The fence shall be installed on top of the existing retaining wall with the vertical fence panels or boards extending below the top of the retaining wall to cover the surface of the wall facing Amber Way. A rough sketch cross section of the fence showing how it will be installed upon and cover the retaining wall is attached hereto as Exhibit "A". The fence shall be stained the same color as the previous fence or a color pre-approved by the HOA Architectural Committee. Any requests by Engelder to stain or paint the fence a different color from the previous fence shall be approved or disapproved by the committee within two days after submission. Construction of the fence shall be completed by November 20, 1996, except that staining shall be completed no later than March 30, 1997, if weather won't permit its completion prior to November 30, 1996.

2. Engelder shall withdraw the appeal to the Grand Junction City Council of the denial of the application of a conditional use permit for a six (6) foot fence to be installed on top of the Engelder retaining wall.

3. Upon timely and proper completion of construction and staining of the fence described in paragraph 1 above, the HOA will withdraw any and all objection to the Engelder retaining wall, the construction of the fence as provided for in paragraph 1 being hereby approved by the HOA. Further, upon timely and proper completion of construction and staining of the fence as provided for in paragraph 1, the HOA approves the plans for changes in grade for the Engelder property as set forth in the engineer's report attached hereto as Exhibit "B". If any actual changes in grade are made, Engelder shall furnish to the HOA a certificate from a licensed professional engineer certifying that the grade changes have been completed in accordance with the engineer's report attached as Exhibit "B". Upon receipt by the HOA of such a certificate, any such grade changes shall be deemed approved. Any changes in grade for the Engelder property shall not be approved or deemed approved by the HOA until such a certification has been furnished to the HOA. In any event, Engelder shall be liable to the HOA and other subdivision homeowners for any damages resulting to the HOA or said property owners as a result of any changes in grade to the Engelder property.

4. Upon timely and proper completion of construction and staining of the fence as described in paragraph 1 above, the parties mutually waive and release any and all claims they may have against one another, known or unknown, arising from or related to the construction of the Engelder retaining wall. If the fence is not constructed and stained as provided for in paragraph 1 above, the HOA shall be free to proceed with any claims or remedies it may have at law or in equity arising as a result of the construction of the retaining wall on the Engelder property or any other conditions on the Engelder property which may violate the subdivision covenants, and Engelder shall be free to assert any defenses they may have to any such claims.

5. This Agreement incorporates all prior discussions and negotiations between the parties and may not be amended except in writing signed by all parties.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, assigns and successor at law.

7. In the event of litigation hereunder the prevailing party shall be entitled to recover its reasonable attorneys fees and costs in addition to all other damages authorized at law.

IN WITNESS WHERE, the parties have executed this Agreement as of the date above.

"ENGELDER"

P. Richard Engelder

Karen A. Engelder

"HOA"

ALPINE MEADOWS HOMEOWNER'S ASSOCIATION,
INC.

By: _____
President

ATTEST:

Secretary

**GOLDEN, MUMBY, SUMMERS
LIVINGSTON & KANE, LLP**

2808 North Avenue, Suite 400
P.O. Box 398
Grand Junction, CO 81502
(970) 242-7322
Fax: (970) 242-0698

FAX TRANSMISSION COVER SHEET

Date: November 14, 1996 **Time Sent:** _____ a.m./p.m.
To: Bill Nedeker/Grand Junction Planning Department
City: Grand Junction
Fax: 244-1599
Phone:
Re: Richard Engelder
Sender: J. Richard Livingston

YOU SHOULD RECEIVE 6 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT
RECEIVE ALL THE PAGES OR IF THIS DOCUMENT IS NOT ADDRESSED
TO YOU, PLEASE CALL JOAN CARRICO AT (970) 242-7322.

Original to Follow: No Yes **Via:** Mail FedEx Hand Delivery

These are sent: For your information Per your request Please telephone me Please review & advise

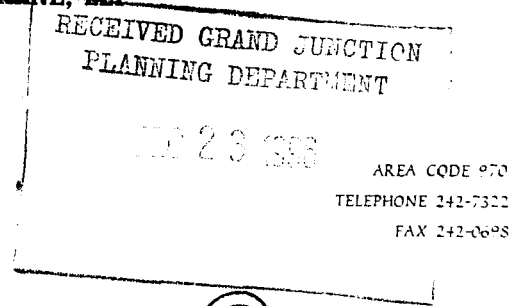
DOCUMENTS TO BE TRANSMITTED: Letter regarding continuance and enclosure

MESSAGE: N/A

NOTE: The information contained in or attached to this FAX message is intended only for the confidential use of the individual(s) named above. If you are not the named recipient, you are hereby notified that you have received this document in error and that review, dissemination or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original documents to us by mail. Thank you.
KALVINGRICHNEDEKER.FAX

GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP

ATTORNEYS AT LAW
NORWEST BANK BUILDING, SUITE 400
2808 NORTH AVENUE
P.O. BOX 398
GRAND JUNCTION, COLORADO 81502



JAMES GOLDEN
KEITH G. MUMBY
K.K. SUMMERS
J. RICHARD LIVINGSTON
WILLIAM M. KANE

December 20, 1996

COPY

VIA HAND DELIVERY

Bryce Palo, Esq.
Beckner, Achziger, McInnis, Palo & Junge
Alpine Bank Building, Suite 850
P. O. Box 220
Grand Junction, CO 81502

Re: Alpine Meadows HOA

Dear Bryce:

Enclosed please find a revised settlement agreement executed by Mr. and Mrs. Engelder. The revisions address the fact that my clients desire to withdraw the grade issue from these proceedings. They feel the grade is a separate issue that cannot be dealt with until next summer when weather conditions allow.

The fence will be installed as soon as the HOA consents and the City issues a fence permit. To get everything done by January 20, I need the response of the HOA prior to the end of the year.

Thank you for your time and cooperation during the busy holiday season.

Sincerely,

GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP

J. Richard Livingston

JRL:jlc

Enclosure

cc: Richard Engelder, w/enc.
Bill Nedeker, w/enc.

K:\LIVENGRI\CPALO.ILT

SETTLEMENT AGREEMENT

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RECITALS

A. The HOA has contested Engelder's right to construct a fence and retaining wall on the property at 778 Jasmine Court, Grand Junction, CO alleging it is not in conformance with the covenants of the Alpine Meadows Subdivision and prior written consent of the HOA was not given.

B. Engelder denies the proposed construction is in violation of the subdivision covenants.

C. The parties desire to avoid expensive and time-consuming litigation and have agreed to settle their dispute pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises contained herein the parties mutually covenant and agree as follows:

1. Engelder shall construct and install a wooden fence along the northwesterly boundary of their property adjacent to Amber Way. The fence shall be substantially similar to the fence previously in existence on the boundary and shall be level with the existing fence at the NW corner of the Engelder property. The fence shall be tapered at the NE corner of the Engelder property for no more than eight feet to tie into the existing fence at that corner. The fence shall be installed on top of the existing retaining wall with the vertical fence panels or boards extending below the top of the retaining wall to cover the surface of the wall facing Amber Way. A rough sketch cross section of the fence showing how it will be installed upon and cover the retaining wall is attached hereto as Exhibit "A." The fence shall be the same fence as was located on the boundary prior to the construction of the retaining wall. Any requests by Engelder to stain or paint the fence a different color from the previous fence shall be approved or disapproved by the committee within two days after submission. Construction of the fence shall be completed by January 20, 1997.

2. Engelder shall withdraw the appeal to the Grand Junction City Counsel of the denial of the application of a conditional use permit for a six (6) foot fence to be installed on top of the Engelder retaining wall.

3. Upon timely and proper completion of construction of the fence described in paragraph 1 above, the HOA will withdraw any and all objection to the Engelder retaining wall. the construction of the fence as provided for in paragraph 1 being hereby approved by the HOA.

4. Upon timely and proper completion of construction and staining of the fence as described in paragraph 1 above, the parties mutually waive and release any and all claims they may have against one another, known or unknown, arising from or related to the construction of the Engelder retaining wall. If the fence is not constructed and stained as provided for in paragraph 1 above, the HOA shall be free to proceed with any claims or remedies it may have at law or in equity arising as a result of the construction of the retaining wall on the Engelder property or any other conditions on the Engelder property which may violate the subdivision covenants, and Engelder shall be free to assert any defenses they may have to any such claims.

5. This Agreement incorporates all prior discussions and negotiations between the parties and may not be amended except in writing signed by all parties.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, assigns and successors at law.

7. In the event of litigation hereunder the prevailing party shall be entitled to recover its reasonable attorneys fees and costs in addition to all other damages authorized at law.

IN WITNESS WHERE, the parties have executed this Agreement as of the date above.

"ENGELDER"

P. Richard Engelder, PWD
P. Richard Engelder

Karen A. Engelder
Karen A. Engelder

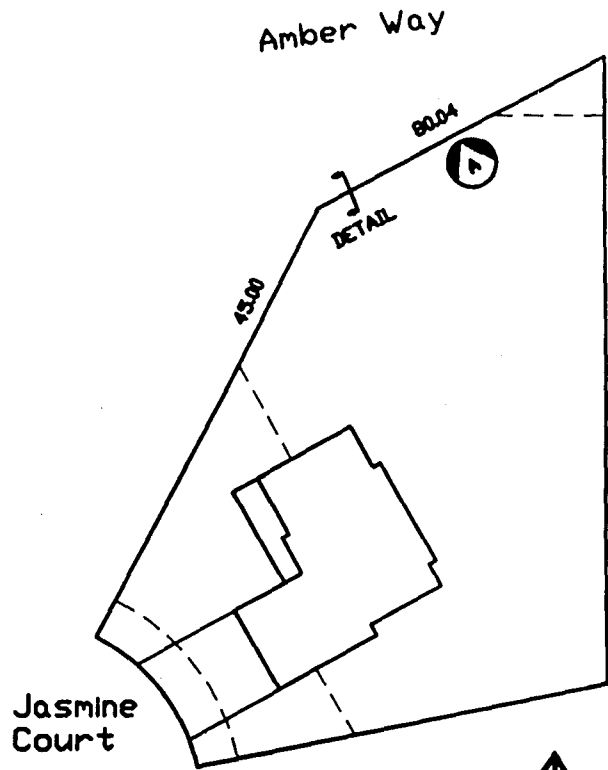
"HOA"

ALPINE MEADOWS HOMEOWNER'S ASSOCIATION.
INC.

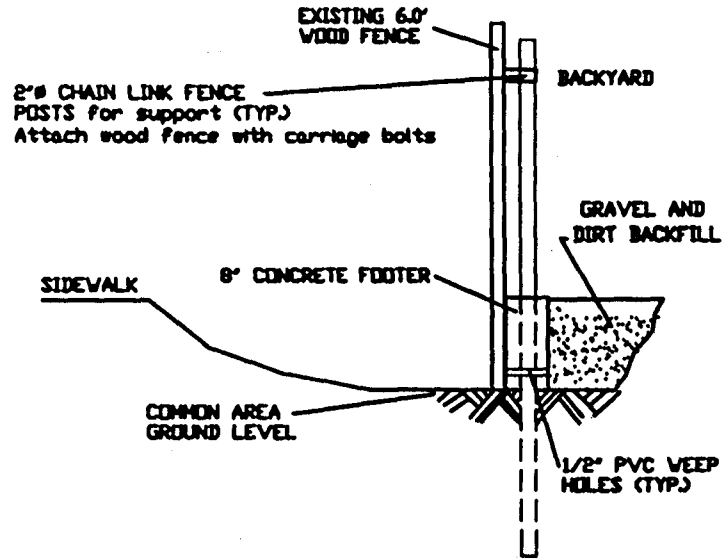
By: _____
President

ATTEST:

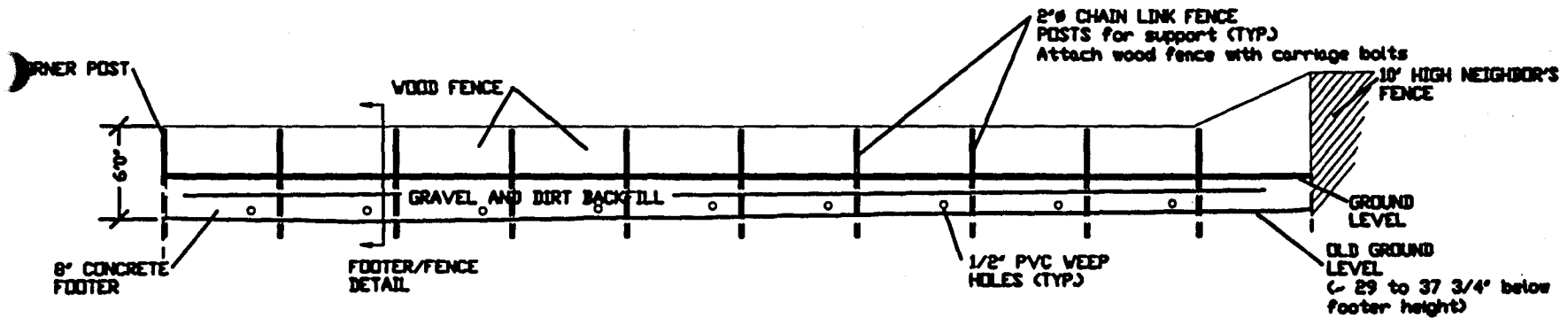
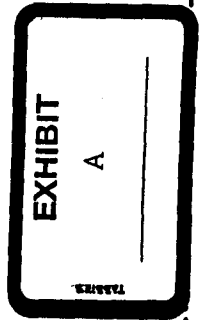
Secretary



PROPERTY PLAT
SCALE 1"=50'



FOOTER/FENCE DETAIL
SCALE: NOT TO SCALE



FOOTER/FENCE SECTION A
SCALE: NOT TO SCALE

778 Jasmine Court
Grand Junction, CO
OCTOBER 1996, Rev. 2

BECKNER, ACHZIGER, McINNIS
PALO & JUNGE, LLC
Attorneys at Law

Larry B. Beckner
John A. Achziger
Care' McInnis Raaum
Bryce Palo
Brad H. Junge

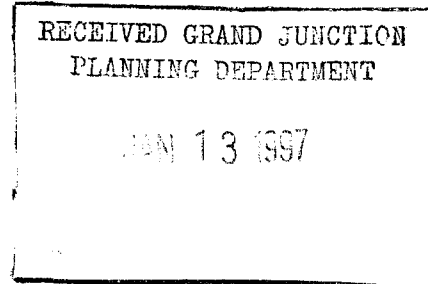
Suite 850, Alpine Bank Building
225 North Fifth Street
P.O. Box 220
Grand Junction, Colorado 81502
Telephone (970) 245-4300
Telefax (970) 243-4358

January 13, 1997

David B. Palo
(special counsel)
Miles Kara
(special counsel)

HAND DELIVERED

J. Richard Livingston, Esq.
GOLDEN, MUMBY, SUMMERS, LIVINGSTON
& KANE, LLP
2808 North Avenue, Suite 400
Grand Junction, CO 81502



RE: Alpine Meadows HOA/Engelder

Dear Rich:

Enclosed find the fully executed Settlement Agreement regarding the above matter which you tendered to me by your December 20, 1996, letter.

In accordance with our recent telephone conversations, the Agreement is being delivered to you with the following understandings:

1. The term "submission" as used in the next to last sentence of paragraph 1 of the Agreement means the date received by the committee. The Association does not pick up mail every day at the Post Office Box stated at the beginning of the Agreement so, if a request were sent to the committee via the Post Office Box, it will not be deemed received until picked up from the box. Therefore, if time were of the essence to your clients with regard to any request to change the color of the fence, it would probably be better if the request was hand delivered to a committee member.

2. The Agreement does not address the condition of the landscaping on your client's property and by signing the Agreement, the Association is not waiving or giving up any rights it may have regarding enforcement of the subdivision covenants regarding the condition of the landscaping.

3. It is the Association's desire that the fence be re-erected with the tapering at either end, as was originally present. The matter will remain on the agenda of the City Council Meeting on January 15, 1997, for the sole purpose of asking the council to modify the conditional use permit for the wall to allow the tapering in the fence.

J. Richard Livingston
January 13, 1997
Page Two

Please call if you have any questions or are aware of any further issues which need to be addressed; otherwise, thank you for your assistance in helping reach this settlement.

Sincerely,

BECKNER, ACHZIGER, McINNIS
PALO & JUNGE



By

Bryce Palo

BP:ts

Enclosure

cc: Alpine Meadows Homeowners Association
Bill Nedeker (Hand Delivered)

CITY OF GRAND JUNCTION

DATE: January 15, 1997

CITY COUNCIL

STAFF PRESENTATION: Bill Nebeker

AGENDA TOPIC: Vacation of utility and drainage easement for an existing fence/retaining wall and appeal of Planning Commission's decision to deny a Conditional Use Permit for an over-height fence at 778 Jasmine Court.

SUMMARY: The applicant requests to vacate a utility and drainage easement where a fence/retaining wall has been constructed. The applicant is negotiating with the Alpine Meadows Homeowner's Association on the placement and aesthetics of a fence to be located on top of the retaining wall. The applicant is requesting to modify the appeal of the denial of the Conditional Use Permit (CUP). The CUP is only needed for an 8' portion of the fence where it joins a neighboring fence. The remaining fence height will not exceed 6'. The Planning Commission recommended approval of the vacation and denial of the Conditional Use Permit.

ACTION REQUESTED: Adopt proposed ordinance on second reading for vacation of easements and consider appeal of Conditional Use Permit denial.

BACKGROUND INFORMATION: See attached letter and settlement agreement from the applicant and staff report dated September 18, 1996 for more information.

RECOMMENDATION: Staff recommends that the easements be vacated and the Conditional Use Permit modified to include only the 8' section of fence that adjoins with the property owner to the east.


**GRAND JUNCTION CITY COUNCIL
GRAND JUNCTION, COLORADO**

_____)	FINAL
FOR)	DECISION
)	
Richard Engelder)	VE-96-172
778 Jasmine Court)	
Grand Junction, CO 81506)	

An application by Richard Engelder, requesting a conditional use permit for an over-height fence and to vacate a utility and drainage easement for placement of a retaining wall, located at 778 Jasmine Court (lot 7, block 2, Alpine Meadows Subdivision), was considered by the Grand Junction City Council on January 15, 1997.

After considering all the pertinent testimony and reviewing various data, the City Council adopted ordinance no. 2971, vacating the utility and drainage easement and approved a conditional use permit for a fence between 6 and 10 feet in height for an approximately 8 foot linear section along the property line in the northeastern corner of the lot. The decisions were made upon a finding that the vacation conformed with Sections 8-3-1 through 8-3-5, and the conditional use permit conformed with Section 4-8-1, of the Grand Junction Zoning and Development Code.

The undersigned does hereby declare that the said City Council reached its decision as heretofore noted.



Bill Nebeker
Senior Planner

1-20-97
date

c: Alpine Meadows Homeowner's Association

File Close-out Summary

File #: VE-1996-172

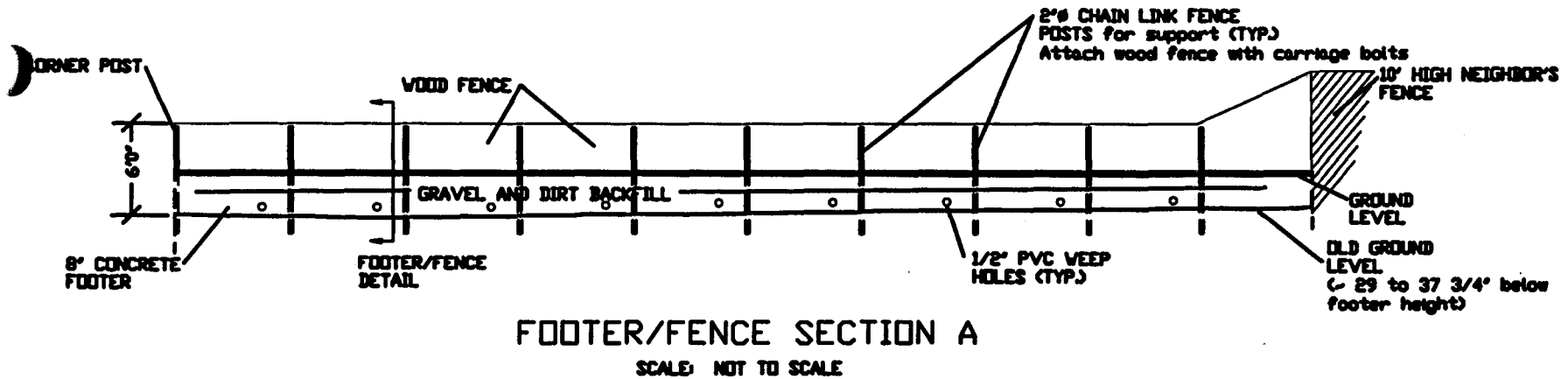
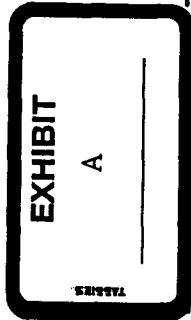
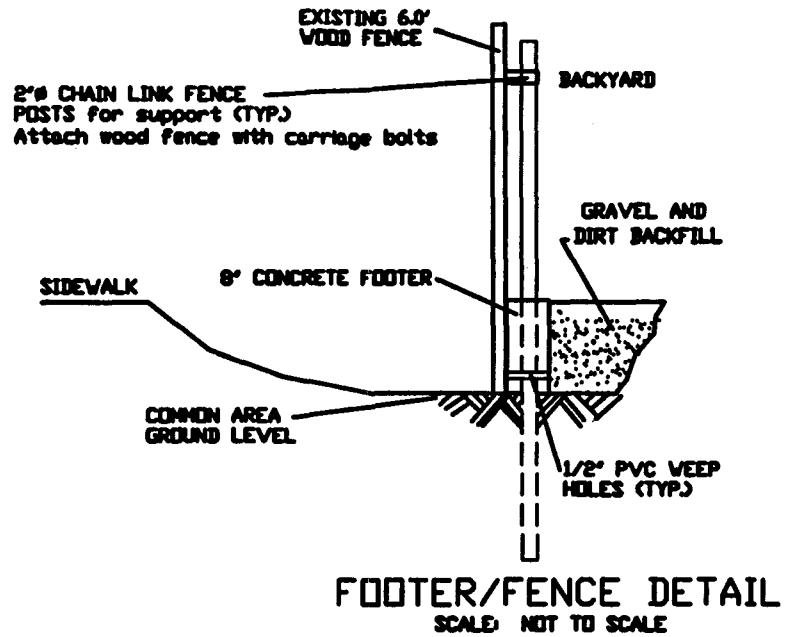
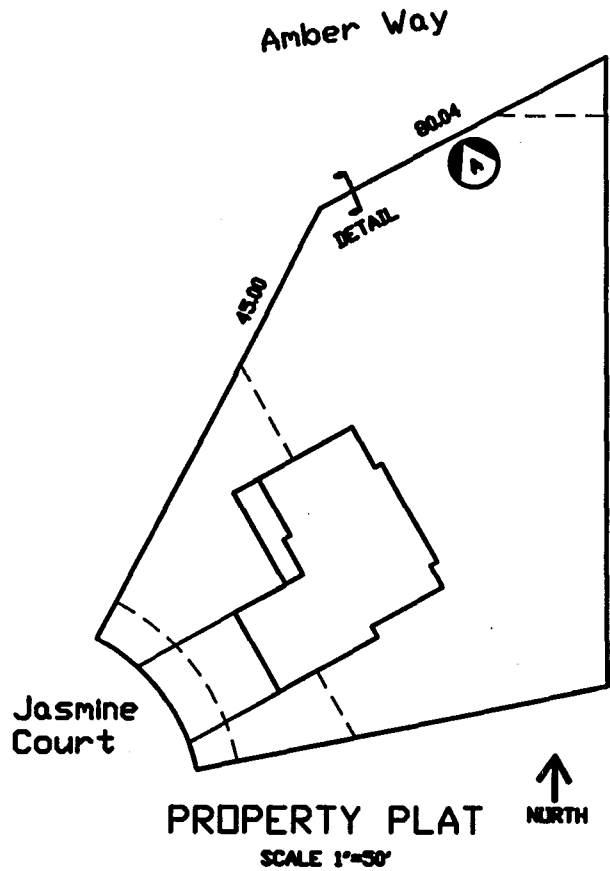
Name: Rich Engelder - CUP for overheight fence and vacation of easement

Staff: Bill Nebeker

Action: CUP denied except for fence transition from higher adjacent fence to 6' height, and approved vacation of easements

Comments: none

File Turned In: 04-08-97



778 Jasmine Court
Grand Junction, CO
OCTOBER 1996, Rev. 2

778 Jamine Court
Legal Description:

Lot 7, Block 2, Alpine Meadows Subdivision

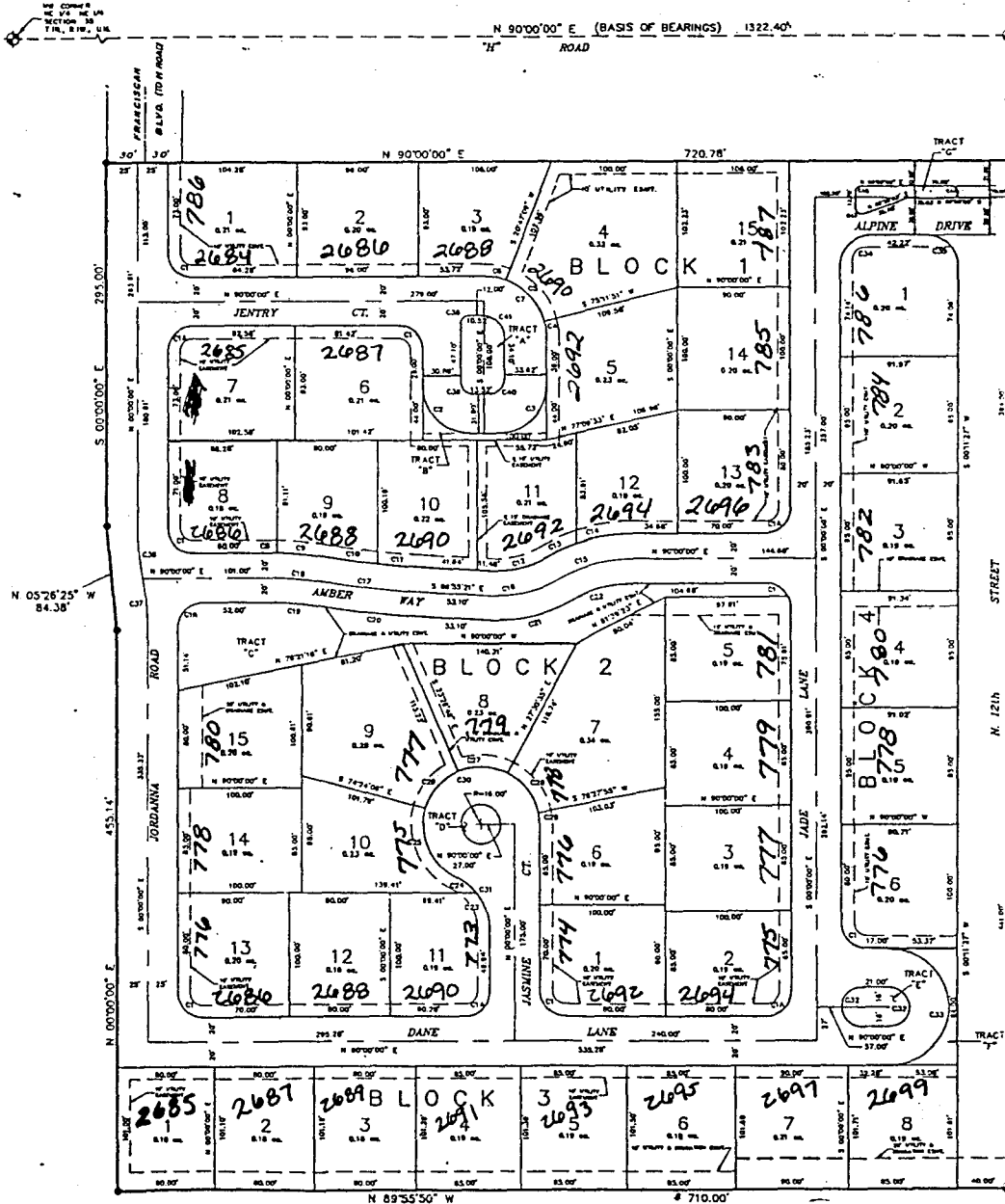
Vacation Description:

That certain Fifteen (15.0) foot wide Utility & Drainage Easement located on, along, over, under, through and across Lot 7, Block 2 of Alpine Meadows Subdivision, A Replat of La Casa De Dominguez Filing No. One, situated in the NE 1/4 of the NE 1/4 of Section 35, Township 1 North, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, said easement being more particularly described as follows:

Beginning at the Northeast Corner of said Lot 7; thence S 00°00'00" E along the East boundary line of said Lot 7 a distance of 15.00 feet to a point which is the intersection of the East boundary line of said Lot 7 with the South line of said easement; thence N 90°00'00" W along the South line of said easement a distance of 27.81 feet to a point which is the intersection of the South line of said easement with the Northerly boundary line of said Lot 7; thence N 61°39'23" E along the Northerly boundary line of said Lot 7 a distance of 31.60 feet to the Point of Beginning.

ALPINE MEADOWS SUBDIVISION

A REPLAT OF LA CASA DE DOMINGUEZ, FILING ONE



That Alpine Meadows Subdivision is released from the development improvements agreement and the cash deposit guarantee for installation of landscaping improvements.

TRACT	ACRES	LENGTH	WIDTH	DEPTH	BEARING	AREA
1	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
2	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
3	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00

That Alpine Meadows Subdivision is partially released from the development improvements agreement and fully released from the building permit guarantee as recorded above, and a cash deposit guarantee is accepted for the installation of landscaping improvements to be completed by November 30, 1992.

PASSED and ADOPTED this 3rd day of September, 1991.

TRACT	ACRES	LENGTH	WIDTH	DEPTH	BEARING	AREA
1	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
2	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
3	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
4	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
5	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
6	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
7	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
8	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
9	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
10	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
11	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
12	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
13	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
14	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
15	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
16	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
17	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
18	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
19	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
20	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
21	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
22	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
23	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
24	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
25	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
26	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
27	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
28	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
29	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
30	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
31	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
32	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
33	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
34	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
35	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
36	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
37	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
38	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
39	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
40	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
41	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
42	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
43	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00
44	28.00	31.7	25.00	25.00	N 25°00'00" E	8000.00

PRIVATE OPEN SPACE SUMMARY

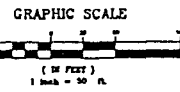
TRACT	Acres
A	0.04
B	0.02
C	0.02
D	0.03
E	0.11
F	0.02

AREA SUMMARY

LOTS	9.03 Acres
OPEN SPACE	0.56 Acres
STREETS	4.10 Acres
TOTAL	13.69 Acres/100%
TOTAL LOTS	44

BUILDING SETBACK REQUIREMENT

PRINCIPAL STRUCTURE	FRONT	MIN. 20 FT.
	REAR	MIN. 20 FT.
12th STREET ROW LINE	SIDE	10 FT.
	REAR	20 FT.
ACCESSORY BUILDINGS	FRONT	REAR 1/2 OF LOT
	SIDE	MIN. 5 FT.
REAR	MIN. 5 FT.	



LEGEND

- STREET CENTERLINE & LOT LINE CURVE NUMBERS (SEE CURVE DATA)
- MESA COUNTY BRASS CAP
- 5/8" REBAR AND CAP SET IN CONC. BY L.S. 18413
- 3/8" REBAR AND CAP TO BE SET AT ALL LOT CORNERS L.S. 18413

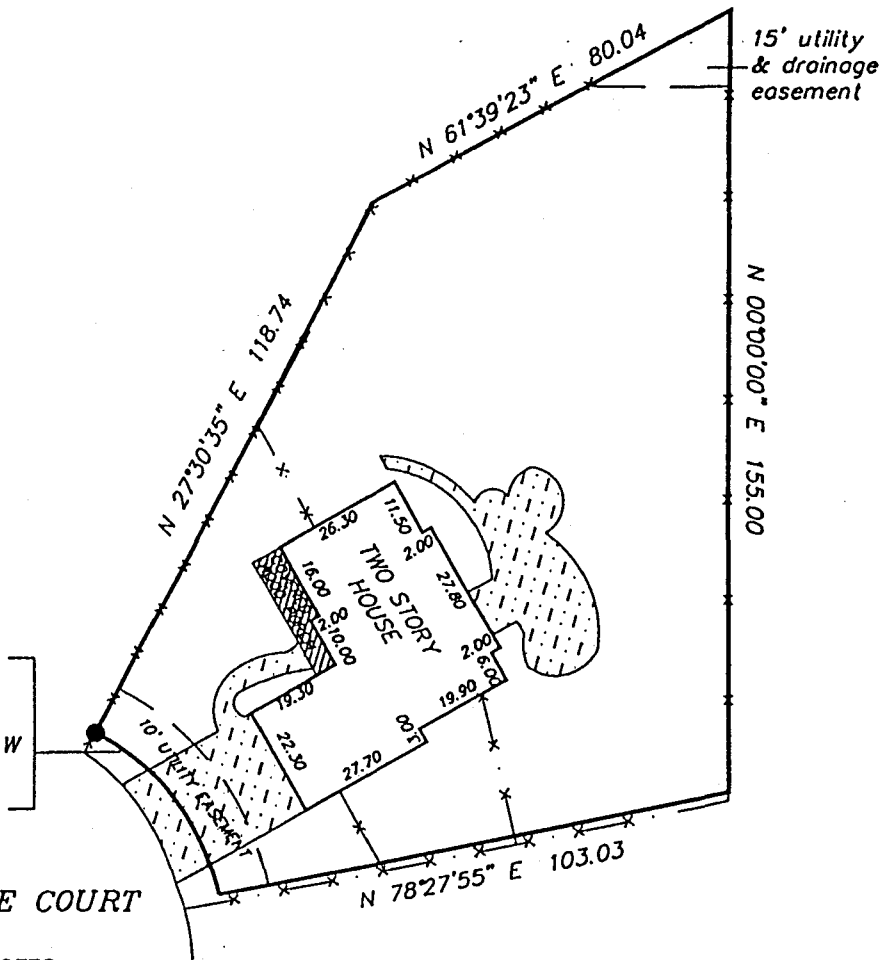
SITUATED IN SECTION 35, T1N, R1W, U4M

FINAL PLAT	
ALPINE MEADOWS SUBDIVISION	
A REPLAT OF LA CASA DE DOMINGUEZ, PLAT 1, MESA COUNTY, COLORADO	
ARMSTRONG CONSULTANTS, INC. GRAND JUNCTION, COLORADO	
DATE DEC. 1990	BY D. DIXIE
PROJECT NO. 903350	SCALE P2 = 2

N



A=41.80
R=47.00
D=50°57'21"
B=N 37°00'43" W
C=40.44
T=22.40



JASMINE COURT

LEGEND & NOTES

- FOUND SURVEY MONUMENTS SET BY OTHERS

THIS PROPERTY DOES NOT FALL WITHIN THE 100 YEAR FLOOD PLAIN

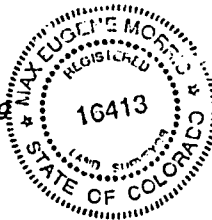
DESCRIPTION

Lot 7 in Block 2 of ALPINE MEADOWS A REPLAT OF LA CASA DE DOMINGUEZ, FILING 1 MESA COUNTY, COLORADO

WESTERN COLORADO TITLE 94-6-10M
TAX ID. NO. 2701-351-45-026

IMPROVEMENT LOCATION CERTIFICATE

I hereby certify that this improvement location certificate was prepared for NORWEST MORTGAGE; the improvement location being based on monuments as shown hereon, and is not to be relied upon for the establishment of fence, building or other future improvement lines. I further certify that the improvements on the above described parcel on this date, 6/23/94, except utility connections, are entirely within the boundaries of the parcel, except as shown, and that there are no encroachments upon the described premises by improvements or any adjoining premises except as indicated, and that there is no evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.



Max E. Morris 6/23/94
Max E. Morris, Registered Colorado Land Surveyor #16413

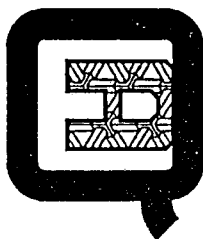
IMPROVEMENT LOCATION CERTIFICATE

778 JASMINE COURT

FOR: ENGELDER

SCALE: 0 15 30 FEET
0 3 10 METERS

DATE: 6/23/94



Q.E.D.
SURVEYING
SYSTEMS Inc.
1018 COLO. AVE.
GRAND JUNCTION
COLORADO 81501
464-7568
241-2370

SURVEYED BY: SB MF

DRAWN BY: VM

ACAD ID: ENGELDER

SHEET NO.

FILE: 94166.1

RICH ENGELOR
245-3740

5' side/rear setback

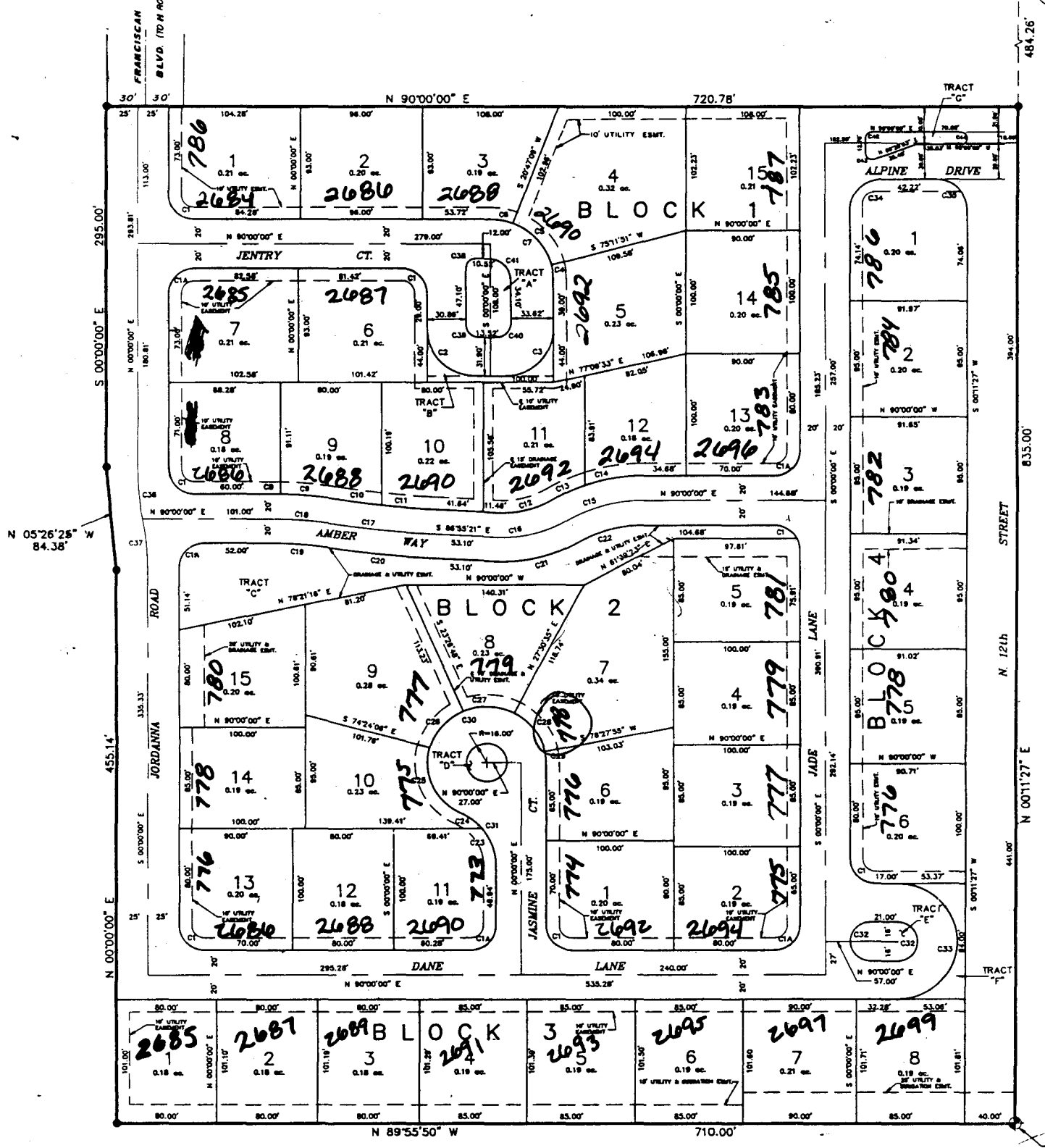
ALPINE MEADOWS SUB

A REPLAT OF LA CASA DE DOMINGUI

NE CORNER
1/4 1/4 1/4
SECTION 35
T1N., R1W., U.M.

N 90°00'00" E (BASIS OF BEARINGS) 1322.40'
"H" ROAD

NE CORNER
SECTION 35
T1N., R1W., U.M.



NE CORNER
SECTION 35
T1N., R1W., U.M.



778 JASMINE CT.
6/5/96 10:30 AM



778 JASMINE CT.
6/5/96 10:30 AM



778 JASMINE CT.
6/5/96 10:30 AM



778 JASMINE CT.
6/5/96 10:30 AM