

ENDORSED
First Judicial District Court

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

OCT 4 2005

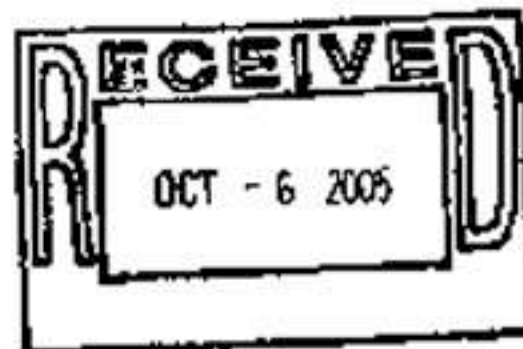
Santa Fe, Rio Arriba &
Los Alamos Counties
FD 804 888
Santa Fe, NM 87504-8288

NO. D-0101-CV 2004-00348

CONCERNED RESIDENTS OF
SANTA FE NORTH, INC.,
Plaintiff,

v.

THE CITY OF SANTA FE,
SANTA FE ESTATES, INC.,
and THORNBURG COMPANIES,
Defendants.



COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER came before the Court on July 18, 19 and 20, 2005, for a bench trial upon the merits. The Plaintiff appearing through counsel, Ronald J. VanAmberg, Esq., and the Defendant Santa Fe Estates, Inc., appearing through counsel, Mark F. Sheridan, Esq. Prior to trial, Defendants City of Santa Fe and Thornburg Companies (a/k/a Garrett Thornburg d/b/a Thornburg companies) were dismissed by summary judgment as defendants in this action pursuant to Orders filed herein on June 13, 2005. At trial, the Court received evidence and argument on behalf of all the remaining parties. Based upon the evidence and arguments presented by the remaining parties, the Court enters its findings and conclusions as follows:

FINDINGS OF FACT

1. The parties have sufficiently alleged that the Court has jurisdiction over the parties and the subject matter of the dispute herein, being certain real property owned by Defendant Santa Fe Estates, Inc. (Tracts 9A -9E), and located in the City of Santa Fe, Santa Fe County, New Mexico (hereinafter the "Commercial Property").

2. The Commercial Property is zoned for Planned Residential Community (hereinafter "PRC"). See Defendant's Exhibit X.

3. The actual development of the Commercial Property with said PRC zoning requires a master plan approval from the City of Santa Fe. See Defendant's Exhibit AC.

4. As a part of Defendant Santa Fe Estate's master plan approval process for the Commercial Property in 1995 and 1996, Plaintiff filed a timely civil action against Santa Fe Estates, Inc., and against the City of Santa Fe in First Judicial District Court, Case No. SF 96-1666(C) (hereinafter the "1996 Litigation"). See Defendant's Exhibits AF & AG.

5. The parties ultimately settled the 1996 Litigation through a series of letters and agreements exchanged between counsel for the parties in September 1996 (hereinafter the "1996 Settlement"). See Defendant's Exhibits A & B.

6. The City of Santa Fe approved the 1996 Settlement on September 25, 1996, and at the same meeting adopted the modified master plan for the Commercial Property. See Plaintiff's Exhibits and Defendant's Exhibits G & H.

7. After the September 25, 1996, Santa Fe City Council meeting, the parties to the 1996 Litigation entered into a Stipulation of the Parties filed in the 1996 Litigation. See Defendant's Exhibit V-1.

8. The First Judicial District Court entered an Order of Dismissal With Prejudice regarding the 1996 Litigation on October 15, 1996. See Defendant's Exhibit W.

9. Numerous proposals, counter-proposals, meetings, discussions, letters and drafts were involved in the ultimate resolution and settlement of the 1996 Litigation. See Defendant's Exhibits D, E, F, G, H, I, J, JI-3, K, L, M, N, O, P, R, S, T & U.

10. The amendment and modification of the Defendant's master plan for the Commercial Property was a material and necessary condition precedent for Plaintiff prior to its entering into the 1996 Settlement and dismissal of the 1996 Litigation. See Testimony of Lew Pollock.

11. The actual documented masterplan for the planned residential community of Defendant Santa Fe Estates, Inc., was dated December 13, 1996 (including the Commercial Property and 1996 Settlement), and was approved and filed with the Santa Fe County Clerk's office on December 20, 1996 (hereinafter the "1996 Masterplan"). See Defendants' Exhibit X.

12. In 2003, Defendant Santa Fe Estates, Inc. (through a designated agent being the Thornburg Defendant named herein) applied for preliminary and final development approval of a portion of the Commercial Property (hereinafter the "Thornburg Development"). *See Plaintiff's Complaint ¶¶ 13 & 14*

13. Plaintiff asserts that the proposed Thornburg Development violates the 1996 Settlement and the 1996 Masterplan. *See Plaintiff's Complaints herein.*

14. The City of Santa Fe approved the Thornburg Development in 2004 (hereinafter the "2004 Development Approval").

15. Plaintiff appealed the 2004 Development Approval pursuant to several separate Rule 1-074 NMRA (2002) appeals in First Judicial District Court Case Nos. D-0101-CV-2004-0387, D-0101-CV-2004-0388, D-0101-CV-2004-0578 and D-0101-CV-2004-0580.

16. The factual and legal issues to be addressed by the Court in this case are

A. Whether the 1996 Settlement created any enforceable contract rights in favor of the Plaintiff; and

B. What enforceable contract rights created by the 1996 Settlement (if any) survived the approval and recording of the 1996 Masterplan?

17. The interpretation of the Vision Statement included in the 1996 Settlement is the primary document being disputed in this case (hereinafter the "Vision Statement"). *See Defendant's Exhibit A-3.*

18. Plaintiff has asserted that the Vision Statement creates contractual rights and restrictions against the Commercial Property which survive the recording of the 1996 Masterplan and that such restrictions are covenants running with the land in perpetuity, binding upon the heirs, successors and assigns of Defendant Santa Fe Estates, Inc. *See Plaintiff's Complaints herein.*

19. Defendant Santa Fe Estates, Inc., asserts that the Vision Statement only created the conceptual guidelines to be included in the 1996 Masterplan and did not create any enforceable rights or restrictions in favor of the Plaintiff which survived the recording of the 1996 Masterplan. *See Defendant's pleadings herein.*

20. The Court finds that the 1996 Settlement is ambiguous regarding whether contractual rights or restrictions were created in favor of the Plaintiff which survived the approval and recording of the 1996 Masterplan.

21. The Court finds that the language included in the 1996 Settlement and the parole evidence presented herein establish that the 1996 Settlement created enforceable contract rights in favor of the Plaintiff and restrict the Commercial Property.

22. The Court further finds that the majority of the enforceable contract rights in favor of the Plaintiff and restricting the Commercial Property have been satisfied by the incorporation of the Vision Statement in the 1996 Masterplan.

23. The Court further finds that certain design and development restrictions within the Vision Statement create enforceable contract rights in favor of the Plaintiff and place binding and continuing restrictions upon the future development of the Commercial Property which survived the approval and recording of the 1996 Masterplan.

24. The Court further finds that the binding and continuing restrictions upon the future development of the Commercial Property which survived the approval and recording of the 1996 Masterplan are as follows:

- A. Buildings within the Commercial Property are limited to two (2) stories in height,
- B. Large scale retail users such as Wal-Mart, Price Club and Smith's Superstores are not allowed on the Commercial Property;
- C. Commercial buildings and signage within the Commercial Property are limited to the New-Old Santa Fe Pueblo or Spanish style of architecture; and
- D. All lighting within the Commercial Property shall be shielded and spill controlled.

25. The binding and continuing restrictions upon the future development of the Commercial Property which survived the approval and recording of the 1996 Masterplan must be placed as permanent restrictions on the Commercial Property by Defendant Santa Fe Estates, Inc., (or its assigns and successors in interest) as soon as legal lots or parcels of record are established for the Commercial Property.

CONCLUSIONS OF LAW

A. The jurisdiction of the Court over the parties and the subject matter of this action is determined to be present.

B. Consistent with the findings of fact by this Court, the terms or expressions in the 1996 Settlement are ambiguous and the Court finds as a matter of law that the 1996 Settlement created enforceable contractual rights or restrictions in favor of the Plaintiff against the commercial Property of Defendant, Santa Fe Estates, Inc., which survived the approval and recording of the 1996 Masterplan.

C. The enforceable contract rights created in favor of the Plaintiff were set forth in the Vision Statement included in the 1996 Settlement.

D. The contractual rights and restrictions against the Commercial Property which survived the recording of the 1996 Masterplan and which constitute restrictions and covenants running with the land in perpetuity, binding upon the heirs, successors and assigns of Defendant, Santa Fe Estates, Inc., are as follows:

1. Buildings within the Commercial Property are limited to two (2) stories in height;
2. Large scale retail users such as Wal-Mart, Price Club and Smith's Superstores are not allowed on the Commercial Property;
3. Commercial buildings and signage within the Commercial Property are limited to the New-Old Santa Fe Pueblo or Spanish style of architecture; and
4. All lighting within the Commercial Property shall be shielded and spill controlled.

E. The 1996 Master Plan did not create legal lots of record for the Commercial Property portion of the entire tract of property identified in the 1996 Master Plan.

F. The Commercial Property is a smaller tract or portion of the entire parcel of property identified in the 1996 Master Plan.

G. The binding and continuing restrictions upon the future development of the Commercial Property as set forth in Paragraph D above must be placed as permanent restrictions on the Commercial Property by Defendant Santa Fe Estates, Inc., its successors or assigns, as soon as legal

lots or parcels of record are established for the Commercial Property and prior to any transfer of the Commercial Property to any purchaser or owner of the Commercial Property as it may be severed from the remaining larger parcel of property identified in the 1996 Master Plan.

H. The 2004 Development Approval of the Thornburg Development has not created legal lots or parcels of record for the Commercial Property due to the continuation of separate pending litigation between the parties regarding the 2004 Development Approval.

I. Defendant Santa Fe Estates, Inc. continuing contractual obligation to create and record the restrictions against the Commercial Property as set forth in Paragraph D above are enforceable obligations under the 1996 Settlement.

J. The time for the performance of Defendant, Santa Fe Estates, Inc.'s, obligation to create and record the restrictions against the Commercial Property as set forth in Paragraph D has not yet matured or run due to the continuation of separate pending litigation between the parties regarding the 2004 Development Approval.

K. Defendant, Santa Fe Estates, Inc., has not breached and is not presently in breach of its obligation to create and record the restrictions against the Commercial Property as set forth in Paragraph D due to the continuation of separate pending litigation between the parties regarding the 2004 Development Approval.

L. Plaintiff is entitled to a declaratory judgment recognizing its continuing right to enforce the 1996 Settlement obligation against Defendant Santa Fe Estates, Inc., to create and record the binding restrictions against the Commercial Property as set forth in Paragraph D once legal lots or parcels of record for the Commercial Property have been established.

M. Each party shall bear its own costs and fees incurred herein.

N. All other claims for damages or relief, including injunctive relief asserted by either party herein are denied.

O. All other affirmative defenses asserted by either party herein are denied.

P The Notice of Lis Pendens filed by Plaintiff herein is hereby quashed and released.

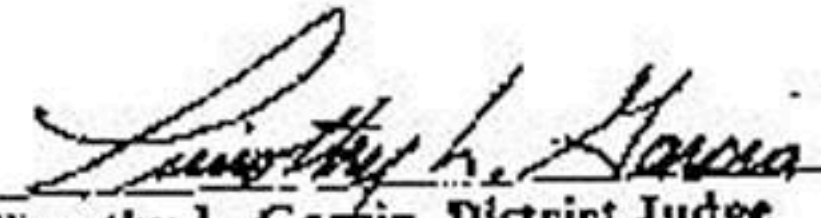
P Judgment shall be entered in favor of the Plaintiff and against the Defendant, Santa Fe Estates, Inc., consistent with the findings and conclusions entered herein.

Q. All proposed Findings of Fact and Conclusions of Law by either party which are contrary to or otherwise inconsistent with the foregoing are herewith rejected.

Directions to Counsel

Mr. VanAmberg, please prepare a form of Final Judgment in accordance with the Court's decision and circulate the same to opposing counsel for approval as to form. Submit the approved form of Final Judgment to the Court no later than 5:00 p.m. on November 4, 2005.

In the event there is any delay in securing approval as to form or in the event there are objections to Plaintiff's form of final judgment, please formally present each parties' proposed form of Final Judgment to the Court on December 12, 2005, at 8:15 a.m., at the Steve Herrera Judicial Complex, Catron and Griffin Street, Santa Fe, New Mexico, 87501. Objections, if any, shall be in writing and filed with the Clerk of the Court, with a copy submitted to the Judge, no later than twenty-one (21) calendar days before the date set for the presentment hearing.


Timothy L. Garcia, District Judge

copies to counsel of record

Ronald J. VanAmberg, Esq.
Mark F. Sheridan, Esq.