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Brookmoor Estates

WIA found out from residents that Brookmoor Estates, the gated community on Lake Woodmoor Drive across from the Woodmoor Center, has requested that residents be allowed to use the back gate via a remote to enter and exit where Symphony Heights turns into South Park Drive. The gate is currently used only by emergency vehicles. Residents on South Park Drive have always wanted the gate closed. Brookmoor Estates, which is not part of Woodmoor, has filed a Type B application for a Planned Use Development amendment to allow residents to use the gate.

For more information on community concerns about previous efforts to allow gate use, see www.ocn.me/v12n10.htm#brookmoor. The original justification for allowing the gate to be used was due to safety issues at the front gate caused by the construction of a wall without amending the PUD site plan, which affected the sight lines of traffic exiting Brookmoor Estates. Despite the developer and homeowner, Mike Brennan, agreeing to rectify the front gate issue and two lengthy discussions at the El Paso Board of County Commissioners meetings in December 2012 (see www.ocn.me/v13n1.htm#bocc) and February 2013 (www.ocn.me/v13n3.htm#bocc), nothing was done until September 2015 when the county shouldered over 75 percent of the \$200,000 construction cost. See "Controversial intersection reworked" at www.ocn.me/v15n9%2025.pdf. This realignment was supposed to correct the sight distance issue and allow for safer access to and from the subdivision. Thus, the safety issue has been corrected and no longer contributes to their desire to use the emergency gate.

A hearing will be held in September or October, with notices going out to adjacent property owners. Bille reached out to the El Paso County project manager, Kari Parsons (kparsons@elpasoco.com), to ask that WIA be notified as well. WIA has expressed that it sees no value to Woodmoor residents in having the gate open. More information about the request can be found at <https://epcdevplanreview.com/Public/ProjectDetails/101515>.



El Paso County Board of County Commissioners, Dec. 20: County delays decision on hazardous intersection

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By Bernard L. Minetti and Jim Kendrick

The problem of a wall causing dangerous sight visibility problems for drivers at the entrance of Brookmoor Estates landed before the El Paso County Board of County Commissioners (BOCC) at its Dec. 20 meeting. The purpose was to authorize the county attorney's office to pursue litigation against Brookmoor's homeowner's association in order to bring the property where the wall is located into compliance with countywide planned urban development (PUD) zoning restrictions. After a lengthy discussion, a motion was made to address the issue again on Feb. 19.

The hazardous intersection, Moveen Heights at Lake Woodmoor Drive, came to the forefront in the summer after an investigation into the opening of the subdivision's back gate—originally reserved for emergency vehicle use—to general residential use. Residents told the BOCC in August that the back gate needed to be open because of the unsafe sight visibility problems at that intersection. *An illegal HOA decision.*

The wall was built in 2005 by developer Michael Brennan, who sits on Brookmoor's homeowners association (HOA) board and who owns several lots in Brookmoor through Mountain Desert Investments LLC. The wall belongs to the Brookmoor HOA but sits on land owned by individual property owners. County Commissioner Darryl Glenn was the first to discover that the wall, built on the north side of the community, was constructed without amendment of the Brookmoor final PUD site plan. At that point, El Paso County Code Enforcement Officer Gayle Jackson issued the notice of violation against the HOA. At the Dec. 20 meeting, Mark Gebhart, deputy director of the Development Services Department, was seeking to pursue litigation by the County Attorney's Office to bring the property into compliance.

The wall extends east and west of the main entry/exit gate that accesses the Woodmoor-based community. Because of its position and construction, it blocks a large part of the sight visibility of vehicles exiting from Moveen Heights onto Lake Woodmoor Drive. It also limits vehicles on Lake Woodmoor Drive from having a clear view of those vehicles exiting Brookmoor.

Gebhart said the original approval of the property—which occurred in 1995—contained "an iron wall, not really a wall, one that you could see through." In 1998, that was changed by an administratively approved minor site plan amendment to be a split-rail fence with some berms. But in 2005, Brennan constructed a more substantial stucco and masonry wall without informing the county or seeking county approval.

Gebhart stated that Brennan hired an engineering firm after the previous BOCC hearing on Aug. 9. Consultant traffic engineer Jeff Hodsdon of LSC Transportation Consultants prepared a separate sight distance analysis at the request of the county, and the county Department of Transportation and the county engineer reviewed it.

Gebhart said, "Comments were provided to Hodsdon by the county engineering staff, but they have not yet been responded to by the applicant or the firm's engineer." He advised the BOCC that this violation was viewed as a safety item and suggested there might be other methods of correcting the problem, including the moving of Lake Woodmoor Drive, to solve the sight distance problem.

Commissioner Sallie Clark asked Gebhart whether the company that constructed the wall was aware of the issues concerning the wall setback. Gebhart responded that to his knowledge, the wall received no county approval. So the issue was not a setback issue or a zoning issue but was still not in compliance with the Brookmoor PUD site plan requirement for a split-rail fence.

Gebhart said one solution might be a "modification of the road to eliminate the sight distance problem," but he asked who would pay for that.

Commissioner Amy Latham asked if Gebhart had any accident data for that intersection; he said he did not. But he said that people drive too fast, which adds to the hazards, and that many residents of the Brookmoor Estates community are seniors, and "their reaction time isn't as quick." Latham asked if anybody had heard of the term "roundabout." Laughter ensued in the chambers, and she dropped the issue.



Developer Brennan said he had hired a transportation consultant company to do an analysis at the intersection. The resulting document was delivered to the county Engineering Department 30 days later, he said, noting that he had received no communication from the department. He said he had first learned about the county's problem with the analysis he submitted by reading about it in articles in the October and November issues of Our Community News. He stated that he had talked with Max Rothschild, director of Development for the county, and told Rothschild, "I was pretty disappointed with the communications process because I was never even clued in that the analysis did not meet the requirement."

Brennan said that his company's analysis indicated about 15 feet of wall to the east and 30 to 40 feet to the west would be affected, while the documents Gebhart provided indicated that 150 feet of wall would be affected. The focus of the discussion was directed at justifying the movement of the roadbed to solve the visibility problem. Brennan was opposed to moving the wall to a different location on the private property of the affected landowners due to the impact of lost existing private landscaping.

Brennan said, "I'll be first to man-up that I built the wall and I'll take responsibility for it ... (A)t the same time when the development plan was approved and Lake Woodmoor Drive was approved to be realigned with the south pavement edge against that property, that was a complete mistake, in my opinion."

Clark asked Brennan what it would cost to move the wall. He estimated it would cost about \$75,000 to meet county criteria. He added that if the road was moved to the north, "kinda the way the road wants to go ... it helps us with our sight visibility."

Glenn then asked Brennan what his recommendation would be to correct the problem. Brennan said, "We are working on some kind of remedy to this." He added that the movement of the roadbed, putting cost aside, is the right thing to do. Glenn asked Brennan if he expected the county to pick up that cost or cost share. Brennan responded that that hadn't been figured out yet.

Latham then discussed the issue of property rights and suggested that a three-way stop might be "appropriate." She also suggested that the movement of the roadbed to the north seems "very, very logical." She concluded that she would like to hear from the county attorney because this gives her a "great deal of discomfort in terms of private property."

Latham added that, in her opinion, the wall could easily be removed by the HOA because it is an HOA asset. She described a scenario that would allow the "homeowner" to rebuild the wall without county approval since it is less than 6 feet tall. The rebuilt wall would still have to be in compliance with the sight distance criteria.

Commissioner Dennis Hisey reminded others that the wall was not constructed in accordance with what had been approved and that if the previously approved split-rail wall had been built, the sight distance issues would not be a problem. He said, "We have a wall that was constructed contrary to (planned development) approval." He acknowledged the effect that taking down the wall would have on private property and said that in his experience, commissioners have never required someone to take down landscaping even though it created some safety issues.

County Engineer André Brackin said he had not heard of any accidents at this intersection, but he felt that it was the cause of a lot of anxiety for residents. He said that even though the analysis utilized different criteria, it came up with the same conclusion, which was to remove the obstruction (the wall). He said that for corrective action, there are only two things that can be done: Move the road or remove the wall. "I'd very much like to see Lake Woodmoor Drive moved," he said, "but the costs would be an order of magnitude higher."

Brackin said he first got involved in this issue after neighbors in the adjacent subdivision complained that construction traffic was using the emergency gate on the east side of Brookmoor Estates. He said he received calls from Brookmoor residents complaining that the sight problems were forcing them to use the emergency access gate rather than the controversial intersection. Brackin said that some corrective action should be taken because the county did not get the right-of-way needed for Lake Woodmoor Drive. He would like to see the road realigned but said the cost would be a "magnitude higher" than the cost of removing this wall.

Latham suggested adding speed bumps to Lake Woodmoor Drive, but Brackin did not see that as a solution because he didn't think speed bumps slow drivers. Commissioner Peggy Littleton suggested that the wall be lowered to 2 or 3 feet to improve the sight visibility. Brackin responded by saying that anything other than the originally approved split-rail fence would be in violation.



Responding to Glenn's question about who would pay for a remedy, Brackin said he expected the developer to pay for most of it and that it's something that needs to be discussed. He said that he could see some minor cost participation by the county but that he certainly did not see "Road and Bridge" shouldering the cost. Glenn said he would like to see the cost comparison between moving the wall or moving the road. He also wanted a timeline for this issue. Latham ordered a break to obtain the timeline information.

After the break, Brackin indicated that the timeline issue had not been resolved and that he had explained to Brennan the criteria that needed to be met. He said that Brennan would need 30 days to acquire that information. Brackin then indicated that with the extra time, he would have a set of numbers to compare the road solution to the wall solution. Brennan said that he would pay for the analysis but did not state that he would pay for the corrective action. Jeff Zeikus, president of the Brookmoor HOA, said at a special meeting in September that Brennan had agreed to pay for all expenses for this corrective action. (www.ocn.me/x/12n10.htm#brookmoor)

During the process of setting a date for the continuance, Commissioner Hisey stated, "I am real reluctant to spend taxpayer dollars to support a private property issue." Glenn requested that Developmental Services and Brennan put together some sort of news release so that the people interested in this situation are informed of the progress.

Brackin then brought up the emergency access gate violation. Glenn said that he would not support the use of an emergency access gate as a "free-flowing intersection." Gebhart said that a demand letter had been sent to the HOA that the emergency lock-only access be implemented by Dec. 10, but that had not been done by Dec. 11. He said the county attorney has been advised and that they are prepared to go forward with legal action after the first of the year.

Brackin also noted that Brennan stated that he would resolve that issue before the first of the year. He asked the developer to notify him in writing when it is completed, at which time the Fire Department and Brackin's department would inspect and verify that it was done.

It should be noted that in October, Our Community News asked Glenn about who would be liable if an automobile accident occurred due to the sight visibility problem. He referred OCN to Amy Folsom of the County Attorney's Office. To date, no answer to this question has been received. This reporter is a resident of Brookmoor Estates.

To hear the complete audio and read written minutes of the BOCC's meeting, visit <http://bec2.elpasoco.com/bocc/agenda.asp>.

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Brookmoor Estates special homeowners meeting, Sept. 9: Gate, wall issues draw concern in Brookmoor

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By Bernard L. Minetti

Residents of Brookmoor Estates were notified of two code violations filed by El Paso County Code Enforcement, first through an email from a resident who asked to remain unnamed and then officially at a special meeting Sept. 9 of the development's homeowners association (HOA). The meeting was called by the homeowners as a result of the email.

The first violation concerned the HOA board's arbitrary change of use of the rear emergency community access gate at the east end of the development to normal entry and departure through the use of an automated gate feature. The county objected to this change of use because it did not conform to the use specified in the approved planned unit development (PUD) site plan.

The county's objection occurred after adjacent homeowners on the east side of the gateway filed complaints. West of the rear automated gate, within Brookmoor Estates, the roadway is called Symphony Heights. East of the gate, the roadway is known as South Park Drive.

The east end of Symphony Heights had been a dead end at the original emergency-access-only gate. With the installation of the automatic gate between the adjacent dead-end cul-de-sacs, the connection of Symphony Heights to South Park Drive changed these two dead-end roads into a through road. Neither the east end of Symphony Heights nor the west end of South Park Drive was ever intended by the county to become a thoroughfare—nor does either roadway conform to county requirements for a local residential through road. This is still true today.

Commissioner Darryl Glenn directed the code enforcement officers to examine the situation as a result of a discussion with the HOA. The HOA had said a safety issue at the front gate was one reason to open the emergency gate to general use.

The second violation concerned the construction of a wall on the north side of the community without amendment of the PUD site plan. The wall extends



east and west of the main entry/exit gate that accesses the community. The county said that the wall, by its position and construction, blocks a large part of the "sight visibility" of exiting vehicles. It also limits vehicles on Lake Woodmoor Drive from having a clear view of vehicles exiting from Brookmoor Estates. According to the Notice of Violation, the wall was built in 2005.

Code Enforcement Officer Gayle Jackson stated that Michael Brennan was the Brookmoor developer who built the wall. Brennan currently sits on the Brookmoor HOA board, and he owns several lots in Brookmoor Estates through Mountain Desert Investments.

In a letter addressed to the board, and copied to all residents with email access, a resident estimated that correction of the wall violation could cost an estimated \$20,000 to \$30,000, apparently to be paid for by the HOA.

HOA Board President Jeff Zeikus told homeowners at the meeting, "Mike (Brennan) has agreed, just for the record, that the front gate issue is his issue as a developer and Mike has every intention of taking care of that issue, financially, whatever it needs to rectify that situation."

Yet, it cost the County ~\$150,000

During the discussion that followed, Zeikus examined some of the alternate solutions to be considered to mitigate the extreme danger caused by the wall in restricting sight visibility. He also suggested reviewing all other development items concerning Brookmoor Estates for compliance, to forestall any future violations.

One solution offered was to move the wall. Other possible corrections were discussed that would not involve moving the wall. One suggestion was to place a traffic signal at the intersection. However, it was noted that the traffic count was not high enough to warrant the installation of a signal. Another suggestion was to install three-way stop signs at the intersection. The residents agreed on that option, and one resident volunteered to collect names on a petition requesting the stop signs, which would be presented to the county.

However, the number of vehicles exiting Brookmoor Estates at that intersection is minimal in comparison to the higher traffic volume on Lake Woodmoor Drive. In addition, no consideration was given to winter driving: Since Lake Woodmoor Drive is on an incline, coming to a sudden stop on ice and snow could be extremely hazardous.

Brennan mentioned that a traffic engineer had done some studies that were to be presented to the county. No official release of those documents had



been made at this time. Zeikus stated that he believed that approximately 28 feet of the wall would have to be removed or moved to restore adequate sight lines to meet code requirements. Most of that modification, he stated, would be on the property of Ricardo Gomez.

Prior to the wall installation, a wood rail fence had served as the original property boundary. Zeikus stated that the wall was within the allowable 6-foot height and did not require county permission for construction.

Around two years ago, a convex mirror was installed to assist drivers on the far edge of Lake Woodmoor Drive at the intersection with Moveen Heights, in order to view oncoming traffic from the west. This would indicate that there was some knowledge by the HOA that a dangerous condition existed. As a resident, I can state from daily use that the mirror is confusing and probably more of a danger than if it were not there.

The situation is not resolved yet. The HOA is waiting for direction from the county after a traffic survey is submitted.