

YNTEMA LAW FIRM P.A.

March 6, 2019

ATTORNEY AT LAW

HAND DELIVERED

Maggie Hart Stebbins
Chair, Bernalillo County Commission
One Civic Plaza, NW, 10th Floor
Albuquerque, NM 87102

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Bernalillo County Manager
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Bernalillo County Planning & Development Services
111 Union Square SE, Suite 100
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Nicholas Hamm
Zoning Administrator
Bernalillo County Zoning Administration
111 Union Square SE, Suite 100
Albuquerque, NM 87102

Claim of Violations of Open Meetings Act
in CSU2019-0001

Dear Ms. Hart Stebbins, Ms. Morgas Baca, Mr. Gradi and Mr. Hamm:

This office represents Matthew Cone, Albert Sanchez, Amanda Webb Knox, Justin Knox, Gloria Baca and Carlos Baca ("Appellants") in connection with this letter. Appellants are appellants in COA2019-0001, which is an appeal of a County Planning Commission ("CPC") decision, for a special use permit for 1300 Gonzales Rd. SW (CSU2019-001). Please place this letter in the record for COA2019-0001.

It appears a material zoning policy interpretation and other zoning decisions under the County Zoning Ordinance ("CZO") for the referenced special use permit application were made in closed meetings contrary to the New Mexico Open Meetings Act ("OMA"). This letter is to provide notice of the alleged OMA violations pursuant to Section 10-15-3, NMSA 1978.

The Bernalillo County Commission ("BCC") is a policymaking body under the OMA and is subject to the OMA. The BCC has delegated authority to the Zoning Administrator and to County staff under the CZO. For example, as to the delegation of authority to the Zoning Administrator, Section 3(A) of the CZO states:

Section 3. – Interpretation and conflict.

*Received 3/6/19
Berna George
Berna George*

RECEIVED
2019 MAR -6 AM 11:18
BERNALILLO COUNTY
COMMISSION/MANAGER

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Suite 201
Albuquerque, NM 87102
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A. Interpretation. The Zoning Administrator shall interpret the regulations and restrictions of this ordinance in accordance with the purposes and intent of this ordinance. Disagreement with the Zoning Administrator's interpretation may be appealed to the County Planning Commission and then to the Bernalillo County Commission pursuant to the Administration Section of this ordinance.

The Zoning Administrator is subject to the OMA for decisions made under his delegated authority to interpret the regulations of the CZO. It would appear that other County staff-related bodies with delegated policymaking authority such as the "Case Review Committee" ("CRC") also are subject to the OMA.

For the referenced special use permit application, the Zoning Administrator apparently met in closed meetings with County staff and the applicant's agents and interpreted the CZO that the applicant's development application should proceed as an application for a special use permit under Section 18(B)(23) ("Planned Development Area") rather than under Section 18(B)(32) ("Specific use") or a straight zone change. Closed meetings for the project apparently were held on June 15, 2018, September 6, 2018, October 26, 2018, and November 15, 2018. There may have been other closed meetings. The meeting held on October 26, 2018 apparently was a CRC meeting. Copies of notes taken by staff members Catherine VerEecke and Stephanie Shumsky, respectively, for the meetings are attached as Exhibit A and Exhibit B. The closed meetings formed public policy and determined the basic elements and conditions for the special permit use, and prepped the applicant for the CPC hearing.

The Zoning Administrator's interpretation that the applicant's requested use should be treated as an application for a special use permit for a "Planned Development Area" rather than for a special use permit for a "Specific use" or a zone change resulted in staff's recommendation of approval for a "Planned Development Area" and in a substantially different standard of proof for the CPC hearing.

As best Appellants can tell, Appellants and the public were not given appropriate notice of the meetings or of the Zoning Administrator's interpretation of the CZO.

Appellants request that if the Zoning Administrator is to interpret the CZO as to the applicant's requested use, that interpretation be done at an open public hearing pursuant to the OMA and the CZO; that any meeting of staff including the CRC with the applicant for substantive decisions relating to the application

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be an open public meeting compliant with the OMA; and that the County respond to this letter within the statutory fifteen (15) days.

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel E. Yntema
Hessel E. Yntema III

Enclosures
cc w/encl:

Michael Garcia, Esq.
Blake Whitcomb, Esq.

Meetings # 2

6/15
6/15/2024
Marianne Dickenson - assisting / con CO-HOUSING
Matt Fyson, Marlese - developing concept - 17 families
has an LLC, lined up.

Pamela Heeter -

Lucas, Stephanie, Blaine, Nick, Julie.

Sunset, Vineyard

2 sites -

homes w/ shared walls - 20-25 /
parcel

common house - guest rooms, meeting kitchen, - clubhouse
farm, orchard, greenhouse, fish tank -
multigenerational, play area -

3.4 / 3.97

estimate - 30% open space

- variety of housing - ~~we~~ will need to identify -
subdivided lots vs. condos / common lot -

would require PDA

Parking - 2 to 1 du + can build some flexibility
but

Lucas - aquatic facility (?) - natural pond = (?)

new concept - wetland? mosquito control -

clubhouse - jointly owned - may have guest house

Kitchen - commercial requires permit -

EXHIBIT

A

storage(?) -

need to address sale / preparation SUEDC

may need to talk directly to

Blaine -

Sunset - drainage / water quality.

drains planned for sunset -

site plan for SUP - show drainage / ponding

/ Vineyard -

/ sewer / water

access - driveway /

~~surface~~

Nick - asphalt or durable - may be porous -

Sunset - being improved

Vineyard - may require improvements -

Megan - Conservation = / drilling - landscape 4 measures

Stormwater - manage on site -

support green infrastructure

- irrigation

- water & sewer available -

Julie - Scoping requirements

could require TIA - depend on # trips -

24 or less commercial use -

9/6 - Cohousing Project - Gonzales Rd # 1

- 9 apartments	30 units -	currently 2 lots
- townhomes	—	—
- casitas	submit in	October

3.7 acres - one tract - 21

- R-2 uses - apartments
- usable open space
- parking
- Water Conservant

separate plans -

- grading & drainage - / conceptual - final later
- landscaping - follow Conservant Ordinance
- site plan -
- plat to ~~be~~ change to one lot

- setbacks, front -

- parking - apartments / dwelling

- Specific Use

- utility plan availability statement / water rights:
ditches

- parcels -
- daycare (private)

11/15 Coho Project

Marianne, Peter, Marlese, Faith -

- they are preparing applicants
- Jonathan Gray - architect
spoke to Enrico
- is having community meeting
- meeting again w/ SUCNA on 29th Vecinos /
- has website
- opposite
- need to change to Special Use Permit for PDA
- 30 units -
- will provide a detailed site plan
- driven by R-2 requirements
- has community support
- has provided required information
- working on site plan - will have ready
- have addressed party

11/15

- solid wall or fence ?

- landscape buffer / request various
front buffer

Policy 8 + 66 SWAP

Home occupation

P.O. Housing Mtg.

9/6/18

- Blaine
- Legan
- Mari
- ME
- Elvira
- Catherine
- Waryann Dickson
- Muriel Marbale
- Johnathan Pring
- Nick

intros.
 project / concept overview
 Catherine comments

- * get w/ ABCWA re: H₂O / wastewater
- * Fire Suppression requirements

Acres: 3.7 ac.
 30 units
Total 8.1 DU/AC
 SWAP @ 9 DU/AC Area 5, SWAP
 Est. Urban Area
 SUP for R-2 USFS per Nick

Usable Open Space Requirements:

- 200 SF (efficiency / 1 bdrm)
- 250 SF (2 bdrm)
- 300 SF (3+ bdrms)

Setbacks

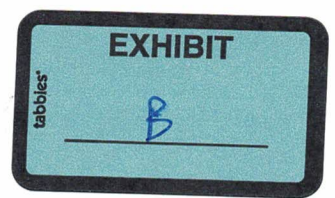
- F = 15' along street
- S = 6' btwn res. uses
- 15% of paved area
- R = 15'

+ landscaping / buffering (per SEC 19)
 + parking 2 Sp / DU min (2 sp / bathroom) (per SEC. 21)

Plan: Submit by end of October for December

Separate landscape plan w/ SUP
 63 D preliminary w/ SUP

SUP for specific uses: D/A 200' Support
 at night conditions



Case Review Committee (CRC) Meeting ^{Faith Okuma, LA.}
^{Peter Rohn}

Date: 10/26/18 Time: 9am Applicant/Requestor: Peter - Architect
Marlise -
 Site Address/Location: E. End of Gonzales

1. Agency Representatives Present at Meeting

Planning: <u>EL</u>	Natural Resources Services: <u>Megan</u>
Planning: _____	Building: <u>-</u>
Public Works: <u>BVing</u>	Zoning: <u>R1000</u>
Transportation: <u>JVing</u>	Others: _____
Drainage: <u>Blaine</u>	

2. Type of Application or Procedure Anticipated

- | | |
|--|--|
| <input type="checkbox"/> Zone Map Amendment | <input type="checkbox"/> Subdivision (Major) |
| <input checked="" type="checkbox"/> Special Use Permit | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Subdivision (Minor) | <input type="checkbox"/> Conditional Use Permit |
| <input type="checkbox"/> Zoning Verification | <input type="checkbox"/> Zoning Interpretation |
| <input type="checkbox"/> Non-Conforming Use App | <input type="checkbox"/> Building/Placement Permit |

3. Summary of Discussion / List of Requirements

1. Fire marshal turn-arounds, fire flow 80' to 100' out-de-sac/hammer head
2. Co-housing - # of units (potentially up to 33.) Traffic Scoping Report due.
 (Southwest Area Plan allows up to 90U/ac.)
3. Reduction in parking - justify request per Comprehensive Plan and Southwest Area Plan, demographics of residents
4. Support from property owners w/in 200' required (additional support is good to have but not required) - Substantial $\geq 50\%$
5. Access from Gonzales Rd. - tight connection, tree removal may be needed, coordination w/ neighborhood to north / Fire Dept. access $\geq 20'$ wide /

EL 10/26/18
 CRC Member Initial / Date

MM 10/26/18
 Applicant or Agent Initial / Date

Pool = Sec. 22
 Sec 42 =
 pool
 const.

This form is intended to provide guidance and general information and does not convey any approvals or binding agreements on behalf of the Bernalillo Planning and Development Services Department.

6. Landscaping (Sec 19), Supplemental Uses (Sec. 22), Setbacks and Usable Open Space (Sec 10), Fire Dept Access, Wall... , Floodzone _____

Stephanie Shumsky

Subject: CRC - East end of Gonzales Road Co-Housing SUP
Location: zn conf rm

Start: Fri 10/26/2018 9:00 AM
End: Fri 10/26/2018 9:30 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Stephanie Shumsky
Required Attendees: Elvira Lopez; Robert Pierson; Catherine VerEecke; Blaine Carter; Julie A. Luna; Megan Marsee; Giovanna Jaramillo (ZN); Zoning Conference Room; Timothy Trujillo; Mari B. Simbana; Nick Hamm; Gabriel W. Maestas; Tom Kay; Karl Redmon

Name of Customer: Peter Rehn (architect)

Phone number of Customer: 505-681-6836

Email of Customer: n/a

Address/Legal description of proposed site: East End of Gonzales Road

Parcel size: 3.7+/-

Zoning: A-1

Existing Special Use Permit or Conditional Use description: n/a

Zone Atlas Page: K-12

Proposed Use/ question: Co-Housing pre-app/SUP site plan prep (we've met with them several times) – the architect is preparing the site plan and may have specific questions for public works, natural resources, transportation and planning

CO-Housing Mtg.

11 Am

11/15/18

Attendees:

Maryann Dickenson

Peter Chen - Architect

Marilyn Marshall

Fatih Aruna - Landscape Architect

CV

SS

EL

Upcoming
NA mtg.

Anticipated Submittal Date:
NOV 26th.

Open House This Sunday at
Park and on 29th
w/ SUN Coalition

Purchase agreement deadline coming up for them

Most recent Site Plan / 11/15/18
~~XXXXXXXXXXXX~~ / 30 units

CV-loop / cutting off discussion / delaying / discouraging / ^{bringing} up
taking over entire conversation

Confusion w/ South Valley "Community" Alliance -
haven't been responsive

internal floor plan not required
ID Spacing between bldgs.
Square footages and dimensions need to be on site
plan.

(Cont.)

Table: Density

"Open Space" area SF

Agricultural area SF

"maintained for LIA of use"

SUP for POA for Cluster Housing (SWAP Policy 9
9 DU/Ac)

Legal

Question: Can Commission go to their (Co-housing) website? is this ex parte communication if everyone has access to it?

* They will work w/ Neighborhood Associations after Submittal deadline.

* Separate Landscape Plan -

* Separate GSD Plan - Preliminary

* Requirement to re plat after SUP

SWAP policies 8 and 6c \Rightarrow Agricultural Area
changed by Agricultural Preservation Area
policy 6c updated policy 8 and

Co-Housing Mtg. CRC

10/26

EL

BC

MM

JL

Renee

Max

Peter

See CRC Notes

11/15/18

ISSUES

Jonathan Craig - concerned
moving too fast
creating issues w/
neighborhoods

- not organized / too
scattered

SV Neighborhood Coalition
concerns.

(Bob Mahoney)

PS DIPA 5 (up to 9 DW/
per net AC)
3.7 ac acre

3.7 ac (gross acreage)

- usable open space

- parking area

- landscape area

- landscape buffer
area

= net acreage

Sup for PDA Cluster Housing
Why did NH not want
this?

11-22-18

BERNALILLO COUNTY POLICIES AND CONDITIONS SUPPORTING THE APPLICATION FOR A SPECIAL USE PERMIT FOR A PLANNED DEVELOPMENT AREA (PDA) FOR CLUSTER HOUSING BY RIO GRANDE HUERTA LLC

SITE LOCATION: MRGCD Map #40 Tract 88 A1A1 (at east end of Gonzales Rd. SW) + Tract 87B1 + Tract 88A1A2 Total 3.72 acres Zone map: K-13-A

CASE NO:

CPC HEARING DATE: January 2, 2019

CONDITIONS:

The site is comprised of three vacant parcels, one large and two smaller parcels, that are currently zoned A-1. There are single-family R-1 lots to the northwest, west and south, and a residentially occupied A-1 parcel to the north of the site. The east side abuts the MRGCD Atrisco Drain and a public trail. The only access to the larger parcel is via Gonzales Road at the NW corner; the two small triangles are landlocked and accessed through a private home lot at the SE side. Re-platting will combine the three parcels into a single 3.72-acre Planned Development site. Gonzales Road will be the only access to the site.

There is no irrigation ditch access on these parcels. The sellers of the larger tract are part of the original farm family, but have been unable to farm the land, so it has been listed for sale for several years. The site has a non-operational well that may be restored for agricultural irrigation and site landscape use.

The site is between Central Avenue and Bridge Boulevard in a Developing Urban Area and Residential Area 5, where a dwelling density of up to 9 units per acre is permitted, as adopted in the Southwest Area Plan. SWAP Policy 66, which updates the South Valley Agricultural District boundaries, prioritizes agricultural land preservation south of Lakeview Road, several miles south of this site.

PROPOSED USES:

SUP for PDA for

is a "

It

This proposed cluster housing/co-housing project of 30 units is being created and driven by its future residents (Rio Grande Huerta LLC) using an eco-village model of Net-Zero energy use, Zero Waste strategies and maximizing water conservation. The building footprints shown on the site plan allow for all porches, terraces, breezeways, etc. that may extend from the buildings.

more H?

The site plan shows the 30 housing units in compact clusters, which will leave 35% of the site for agricultural uses and shared open space. Site agricultural uses include, but are not limited to, orchards, community gardens, a vineyard and berry patch, fishpond, greenhouse, chicken coop, and garden composting.

The site landscape will be primarily native and drought-tolerant species suited to the sandy alluvial soils of the property, preservation of existing large cottonwoods and maintenance of healthy existing trees along the site perimeter.

and elms?

A community house, children's play areas, a pool, and landscape commons will be shared by the site residents.

The project will meet the Bernalillo County Water Conservation Ordinance (Section 30-241-30-251) Subject to further analysis and design opportunities that arise, water conservation strategies currently anticipated are:

- Passive water harvesting on 45% of the landscape area,

- Smart irrigation controller,
- Soil-amendment program during installation of landscaping, and an
- Exterior management plan to reduce water use, chemical use, and water runoff.

The County motor vehicle parking requirement of 60 spaces --2 spaces per unit—and bicycle parking of 1 space per 2 units will be met. Traffic impacts will be mitigated with ridesharing, shared car ownership, biking, and public transit use, part of the environmental low-impact philosophy of this cohousing community. (The Central Avenue bus stop is a seven-minute bike ride along the Bosque trail from the site.) There will be controlled access points to the trail at the NE and SE corners.

add; height will be within R-2

The proposed uses require no major or un-programmed capital expenditures by the County. Gonzales Road dead-ends at the site. Internal circulation is the developer's responsibility and meets fire department access requirements. The drivable surfaces, other than the entrance apron and handicap parking spaces, are permeable or semi-permeable to allow for aquifer re-charge.

POLICIES:

The **Southwest Area Plan (SWAP)** policies recommend Cluster Housing Development to preserve open space, scenic views and some agricultural uses (See pages 26 & 47 of the SWAP). The changes and uses are not in conflict with the **Albuquerque Bernalillo County Comprehensive Plan (2013)**, or the SWAP, or of any nearby uses.

The **A/BC Comprehensive Plan's** concerns and strategies regarding issues related to growth are more easily met with this zoning to address alternative & renewable energy, bicycling and pedestrianism, public safety, reinvestment in older areas, agricultural land use and scenic vistas.

The relevant policies adopted for **Developing and Established Urban Areas:**

Policy d.6) (cluster development)

Policy e (infill incentives)

Policy f (clustering of homes, shared open spaces, oriented towards pedestrian and bike ways)

Developed Landscape:

Policy a, (the natural and visual environment respected, a determinant in development decisions),

Policy e, (design and materials shall be in harmony with the landscape, scenic vistas).

Energy Management:

Policy a, b, c 3) (encouraging use of alternative, renewable energy and cluster housing for community energy systems)

The special use permit being requested is appropriate and advantageous to the community for several reasons, per **Resolution 118-86 Section 1. C. & E (3)**.

PDA Cluster housing allows for much more open space and more efficient land use than suburban R-1 lots that have been developed in the South Valley, and:

- Allows renewed agricultural uses as part of the open space. - Site has not been proposed use
- Preserves views to the mountains and the bosque for nearby neighbors. - How
- Helps buffer the bosque from neighborhood homes and activities. - why is this necessary?

Focus on sites underlying zoning A-1.

move to Res. 118-86 Section C.

How are park policies enhanced by request in a way that they will be enhanced by zoning

Water Management

Development in Area

Approved PDA's

How do these
impact
your
policies?

- Promotes neighborhood cohesion and safety, with residents able to watch out for each other and for potential crime or vandalism. Some current neighbors of this property mentioned that the current uncontrolled access from the Bosque trail has been a serious nuisance for them. - how - transients, etc.
- Assures high and consistent maintenance standards, as the cohousing association will manage the entire site. → through ?
- Allows for efficiencies of utility use and lowers living expenses for residents. - how Affordable housing?
- Allows and facilitates sharing of labor, resources and community activities.
- Allows for consolidated strategies for solid waste reduction, recycling and composting.
- Allows for a range of home size, price and accessibility for a diverse population ranging from singles, families with children, to retirees. The developers have been in discussion with Homewise on possibly providing a subsidized down payment for a qualified buyer not able to pay the full down payment amount.
- Allows this to be a diverse community in all ways—and to fit in to the South Valley's agricultural, natural, ecological, ethnic and cultural heritage..

Neighborhood notification and communication:

Outreach to neighbors and South Valley neighborhood associations has been extensive and varied:

- South Valley Coalition & Vecinos del Bosque NA meetings
- Door to door petition to the neighbors within 200 feet of the project site
- Public Neighborhood Lunch in Valle del Bosque Park on September 9
- Public Open House in Vecinos del Bosque Park on November 18
- Ongoing conversations with neighbors and interested parties
- Neighbors' input has been heard and, when possible, adjustments made.

There also have been several Open House events in the past year to discuss what cohousing is and generate interest in joining this cohousing project (only the second one in the Albuquerque area.) Publicity has been through the news media, the www.cohousingABQ.org web site, social media, flyers, personal contacts and referrals.

Before filing this application, the applicants' agents mailed the official notifications to the applicable Neighborhood Associations per **County Ordinance 94-4**. (See attached notification confirmation.)

The project's professional architectural design team consists of Peter Rehn of RMKM Architecture, P.C., Jonah Stanford, AIA, of Needbased Inc., and Faith Okuma, AICP, RLA, of Surroundings. Cohousing development consultant is Marianne Dickinson of Acequia Jardin.

Respectfully submitted,
Marlies Metodi, Project Manager
Rio Grande Huerta LLC
(Applicants' designated agent)

CSU 2019-0001

Robert
Elvira
Mari
Nick

12/11/18

1. Provide comments to applicants
2. Discussion of opposition; recommend work with neighbors; work to address concerns
3. Site Plan Feedback
access from homes to parking lot.
4. Address concerns from neighbors in justification
5. a du/aure → refers to residential ^{single family housing} dwellings, not necessarily apartment
ideally 27 dwelling versus 30 dwellings

single family dwelling - plus accessory living quarter
↙ accessory to primary use
~~apartment~~
would accessory living quarter classification work with apartment?

[Looking appliance next to water source = kitchen
microwave + sink = kitchen]

6. Condo versus Intentional Community
~~It~~ looks like apartment
7. Centers for spiritual living (w/ common kitchen)
demand for innovative housing
8. Resubmit justification on Monday
Pushy why 30 units needed v. (27) houses
If subdivide to one house per lot, would lose acreage → density would go down.

9. If strong opposition -
 - CPC may 60 day denial
 - ↑
recommend
 - possibility of appeal
 - possibility of 6 month timeline
 - addressing concerns with neighbors is key.

10. applicant may request emails of opposition; applicant can reach out to reach out to opponents.

11. Consider a facilitated meeting.

12. 4 Groups -
 - Concerns From residents
 - a) view loss
 - b) "commercial developer"
 - c) deterioration of ag areas / water rights

→ renderings / photoshops
from paper by line → to see
show views are impacted

13. Call it "Planned Development Area" for ~~Cluster Housing~~
for Residential Use & Agricultural uses
58% agricultural & open uses
 - area is not rural area
close to urban area

14. Sunset Improvements -
 - Are there improvements planned?
 - contact City & County Public Works,
 - ... - Public Safety.

15. Benefits per R-116-86

16. Add a P or 2 about property lines / lot lines