



County of Bernalillo
State of New Mexico
County Attorney's Office
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March 21, 2019

Hessell E. Yntema, III
215 Gold Ave. SW Suite 201
Albuquerque, NM 87102

Re: Your letter of March 6, 2019

Dear Mr. Yntema:

We have received your letter of March 6, which alleges that the Zoning Administrator violated the Open Meetings Act by talking with applicants in CSU2019-0001. It appears your client misapprehends the process this case took, since at no time did it proceed through the Zoning Administrator. As a result, these allegations are wide of the mark for several reasons.

First, Mr. Nicholas Hamm, who happens to be the County's Zoning Administrator, was not acting as the ZA in this instance, but merely as a member of the Planning and Development Services staff, informing the applicants of the different approaches they could take in applying for their special use permit before the County Planning Commission. This is true because Mr. Hamm did not decide any aspect of this case as the ZA; rather, the matter proceeded from the Planning Department to the County Planning Commission, which made the recommendation of approval. Accordingly, Mr. Hamm was not a "public body" under the OMA when he offered options to an applicant.

Moreover, his meeting with the applicant was no more "closed" than were your client's meetings and discussions with PDS staff closed, when your client met with staff to discuss IPRA requests and the appeals process.

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Julie Morgas Bucu

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Especially to the point, however, is the fact that PDS staff made no determination whatsoever to approve or deny the applicant's request at any of the meetings you mention, nor did they have authority to make any such decision—this was a matter for the CPC, which clearly held an open meeting. This decision-making or policy-making authority is an essential element of an OMA claim, and is notably absent here.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael I. Garcia".

Michael I. Garcia
Assistant County Attorney, Adv.

cc: Maggie Hart-Stebbins, Chair, Bernalillo County Commissioner
Julie Morgas Baca, Bernalillo County Manager
Enrico Gradi, Bernalillo County Planning & Development Services Director
Nicholas Hamm, Bernalillo County Zoning Administration
Blake Whitcomb, Esq.