



Bernalillo County Compliance Office

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BY: Compliance Office

Code of Conduct Complaint 2019-001

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(Information detailed in this Report will be shared with the Respondent and is a Public Record)

DATE: 2/18/19 NAME OF COMPLAINANT: Matthew Cone

MAILING ADDRESS: 1413 Dennison Rd SW CITY: Albuquerque STATE: NM ZIP: 87105

EMAIL: me@mattcone.com DAYTIME PHONE: 795-9817 ALTERNATE PHONE: _____

FULL NAME OF RESPONDENT Stephanic Shumsky DATE OF INCIDENT: Dec 2018 - Jan 2019

SECTIONS OF CODE OF CONDUCT POTENTIALLY VIOLATED:
See Exhibit A

DESCRIPTION OF MISCONDUCT OR WRONG DOING WITNESSED: See Exhibit B

CHECK HERE IF CONTINUED ON SEPARATE SHEET

I, Matthew Cone, do depose on oath or affirmation and say that the information disclosed herein is true and accurate to the best of my knowledge on this 18 day of February, 2018: 2019

[Signature]
Signature of Complainant

SUBSCRIBED AND SWORN TO, before me this day of 18, 2019 by Matthew Cone

Rachel Horgan
NOTARY PUBLIC

My Commission Expires August 10, 2022

EXHIBIT A

SECTIONS OF CODE OF CONDUCT POTENTIALLY VIOLATED

- Section 2-130(A)(1): Public servants shall treat their position as a public trust, with a fiduciary duty to use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
- Section 2-130(A)(2): Public servants shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
- Section 2-130(F): Use or disclosure of privileged or confidential information. No public servant shall use or disclose privileged or confidential information gained in the course of or by reason of his or her position or employment, other than: (i) in the performance of his or her official duties; (ii) as may be required by law; or (iii) as permitted by this code of conduct.

EXHIBIT B

DESCRIPTION OF MISCONDUCT

Stephanie Shumsky is a Program Planner with the Bernalillo County Planning and Development Services Department who was assigned to work on special use permit application CSU2019-0001 in November, 2018.

I. Advising, Coaching, and Advocating for the Applicant's Special Use Permit Application

Ms. Shumsky actively advised, coached, and advocated for the applicant's special use permit application (CSU2019-0001) even though she had an obligation to the public to be fair and impartial. Here are a few examples of the preferential treatment Ms. Shumsky provided to the applicant and the applicant's agent, Marlies Metodi:

- December 3, 2018: Ms. Shumsky emailed Ms. Metodi "hints" (Ms. Shumsky's term) about how to justify her application for a special use permit. See Exhibit C.
- December 3, 2018: Ms. Shumsky forwarded Ms. Metodi a comment that was submitted in opposition. See Exhibit D.
- December 4, 2018: Ms. Shumsky notified Ms. Metodi that more comments had been submitted, saying, "So far today, I've received about 100 letters in opposition. It's the same form letter that I emailed you yesterday but with different people sending it. Do you know how/where it was generated from?" See Exhibit E.
- December 5, 2018: Ms. Shumsky emailed Ms. Metodi an article on cohousing, saying, "Attached is an article about co-housing from a magazine that I get. I thought it was interesting and timely so I scanned it." See Exhibit F.
- December 20, 2018: Ms. Shumsky emailed Ms. Metodi and told her she would let her know if anyone retracts their signature from the petition that was circulated by the applicant. See Exhibit G.
- January 7, 2019: Ms. Shumsky emailed Ms. Metodi with recommendations about what to say and emphasize at the CPC hearing on February 6, 2019. See Exhibit H.
- January 8, 2019: Ms. Shumsky emailed Ms. Metodi to notify her that a new form letter of opposition had been created, attaching the letter to the email message. See Exhibit I.
- January 16, 2019: Ms. Shumsky emailed Ms. Metodi and told her how many comments had been submitted in opposition. See Exhibit J.

- January 22, 2019: Ms. Shumsky emailed Ms. Metodi the letter of opposition submitted by the Vecinos del Bosque Neighborhood Association. See Exhibit K.
- January 25, 2019: Ms. Shumsky provided Ms. Metodi with a link to the County Planning Commission (CPC) agenda packet for CSU2019-0001 five days before the information became publicly available on the county's website on January 29, 2019. See Exhibit L.

By advising, coaching, and advocating for the applicant's special use permit application, Ms. Shumsky prioritized private interests above public service.

II. Unauthorized Information Disclosure

While researching CSU2019-0001 and writing the staff report for the Bernalillo County Planning Commission (CPC), Ms. Shumsky inexplicably provided the following records to Ms. Metodi:

- December 3, 2018: Ms. Shumsky forwarded Ms. Metodi an email message containing the personally identifiable information of an individual opposed to CSU2019-0001. Some of the information contained in this record (the individual's email address, IP address, web browser, and operating system) was not provided in the case record for CSU2019-0001. See Exhibit D.
- January 8, 2019: Ms. Shumsky forwarded Ms. Metodi an email message containing the personally identifiable information of an individual opposed to CSU2019-0001. Some of the information contained in this record (the individual's phone number, email address, IP address, web browser, and operating system) was not provided in the case record for CSU2019-0001. See Exhibit I.
- January 16, 2019: Ms. Shumsky forwarded Ms. Metodi an email message containing the personally identifiable information of an individual opposed to CSU2019-0001. Some of the information contained in this record (the individual's phone number, email address, IP address, web browser, and operating system) was not provided in the case record for CSU2019-0001. See Exhibit M.
- January 22, 2019: Ms. Shumsky emailed Ms. Metodi the letter of opposition submitted by the Vecinos del Bosque Neighborhood Association. See Exhibit K.
- January 25, 2019: Ms. Shumsky provided Ms. Metodi with a link to the County Planning Commission (CPC) agenda packet for CSU2019-0001 five days before the information became publicly available on the county's website on January 29, 2019. See Exhibit L.

Upon information and belief, Ms. Metodi did not request any of the records listed above. Ms. Metodi did not file any New Mexico Inspection of Public Records Act (IPRA) requests between the dates of December 21, 2018 and January 25, 2019 (see Exhibit N).

Also upon information and belief, Ms. Shumsky did not have a legal obligation to provide any of these records to Ms. Metodi. On her own initiative and of her own volition, Ms. Shumsky decided to provide these records to Ms. Metodi even though she was likely not even aware of their existence.

The rules and regulations set forth in the IPRA do not apply in this case because the records were not requested or provided pursuant to the Act. If the records had been requested pursuant to the Act, the records custodian could likely have redacted information in the records Ms. Shumsky provided, as outlined in the IPRA Compliance Guide¹:

In some situations, personal contact information held by a public body may not constitute a “public record” for purposes of the Act. In a recent case, the New Mexico Court of Appeals determined that personal information included in a citizen’s complaint filed with a public body, such as the citizen’s home address and telephone number and social security number, might be redacted before making the complaint available for public inspection. See Cox, 148 N.M. at 941. The court observed that the personal information was not directly related to the complaint submitted to the public body, was not necessary to the public’s inspection of the substance of the complaints, and that release might lead to substantial harm to the citizen complainant such as identity theft.

For reasons similar to those the court used to justify protecting personal contact information in complaints filed by private citizens, the home address and telephone numbers of public employees may also be protected from disclosure. In the past, a public employee’s personal contact information was considered a public record and subject to public inspection. Because home addresses and telephone numbers were already available to the public through publication in telephone directories and similar sources, there appeared to be little justification for denying public to the same information contained in the records of public bodies. This view has changed in recent years, due to the wide availability of and access to information on the Internet, concerns about identity theft, and public pressure to limit unwanted telephone, mail, and email solicitations.

Bernalillo County Administrative Instruction No. LD 01² outlines the requirements for records requested pursuant to the IPRA:

¹ <https://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Inspection%20of%20Public%20Records%20Compliance%20Guide%202015.pdf>

² https://www.bernco.gov/uploads/files/Compliance/Administrative%20Instruction%20No_%20LD%2001.pdf

- "All requests must be directed to the Compliance Office for proper Record Custodian assignment."
- "For the purpose of records requests, the Compliance Office is deemed the immediate point of contact of any employee tasked with responding to a request under the Act."

Ms. Shumsky was under no obligation to provide Ms. Metodi with these records and she violated county policy and the code of conduct by doing so.

III. Harassment and Intimidation of Residents

Ms. Shumsky knew or should have known that there was widespread community opposition to CSU2019-0001. She received hundreds of comments in opposition via email, and she was aware that the project had received negative press from a local television station. By providing Ms. Metodi with early access to the CPC agenda packet for CSU2019-0001 on January 25, 2019 — five days before it was released to the general public on January 29, 2019 — Ms. Shumsky likely knew that she would give Ms. Metodi a significant and unfair competitive advantage over project opponents.

Indeed, upon information and belief, Ms. Metodi and other individuals affiliated with the application for CSU2019-0001 used the information provided by Ms. Shumsky on January 25, 2019 to start contacting individuals who had submitted comments in opposition to the project. One individual who was contacted on January 28, 2019 — the day before the agenda packet was published on the county's website — received the following email message³:

Hi there, I hope this email finds you well. I am writing because I know that you have signed a petition against the CoHousing project that I am involved in (the county makes this record publicly available). I was saddened when I saw your name, but I respect your decision. However, I was wondering if you'd like to have a conversation about it. I am reaching out to see if I could shine a light on a few issues that the petition you signed has twisted. The petition has some serious misinformation in it, and some of the points there are not true at all. Would you be open to discussing some of these, or could I answer any questions? I don't know how extensively you looked into the petition you signed, or if you saw our website, to learn about both sides. I am reaching out as a friend. Please let me know if you'd be open to having a chat.

We found that a lot of people have been signing this petition not knowing all the facts. For example, there is no wildlife in that area. This is a residential area, with homes all around this land, and no wildlife would ever settle there. We've asked adjacent neighbors

³ These messages have been reprinted with the permission of the recipient. The names, dates, and email addresses have been removed to protect the identities of the individuals who sent and received the messages.

about wildlife, and we've been told that no birds or other animals can be seen there, only coyotes pass through occasionally. Our Cohousing group also plans on using 2/3 (over 60%) of this land for agriculture- gardens, orchards, greenhouses, and herb gardens, chickens. Sustainability is one of our biggest values as a group- from producing some of our food, to having net-zero energy use homes, water catchment, grey water reuse, and more. Unfortunately this petition has generated a lot of response because of taglines like your friend's, and because of twisted facts, like I said before. And because of all those signatures, our project is suffering.

Here is our website specifically addressing the misconceptions that the other group is spreading about us: <https://www.cohousingabq.org/neighborhood>

If you read it, and feel like explaining what you said in the first email to me (about signing without knowing more about this project), in another email to the County, then you can first of all undo your voice opposing the project, and second of all you can shed light on the fact that likely a lot more people signed the petition because they care about wildlife and small scale agriculture without knowing any more details about this special use permit. The email is sshumsky@berncogov. This is such an important thing to me. My future home, my community. I have never wanted anything this badly in my life. I love that we intend to produce food, be environmentally responsible, be involved in the neighborhood, the larger South Valley community... I want other children from the neighborhood to come play with ours, I want to see other neighbors use a piece of our land for a community garden, and much more.

Would you be willing to reconsider your decision, after learning more about our project?

After the individual who received the email message said that they were not willing to retract their comment in opposition, the project proponent became hostile. Eventually, the individual had to tell the project proponent, in no uncertain terms, that they no longer wanted to be contacted:

I'm not misled. I actually looked into it and spoke to trusted friends. I thought I was kind and firm that I don't want to discuss this further and now you're guiltig me about it. Not cool! This is very stressful for me!! Do you not realize all the shit I'm going through right now?!

The appropriate response to what I said would have been, "I respect your thoughts on this and hope that if you want to talk about the Cohousing project more at some point that you know I am always willing to have a conversation."

It is unsettling how intent you are on pressuring me to change my mind... Please leave me alone on this issue.

By and through her actions on January 25, 2019, Ms. Shumsky indirectly participated in the harassment and intimidation of Bernalillo County residents who submitted comments in opposition to CSU2019-0001. In addition, because of Ms. Shumsky's actions, some residents retracted their comments and/or petition signatures prior to the January 29, 2019 deadline for comments to be included in the pre-hearing record. This had a significant and measurable impact on the CPC hearing for CSU2019-0001 on February 6, 2019.