

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
7/3/2019 11:50 AM
James A. Noel
CLERK OF THE COURT
Gena Lopez

MATTHEW CONE, et al.,

Appellants,

vs.

No. D-202-CV-2019-03654

BERNALILLO COUNTY BOARD
OF COUNTY COMMISSIONERS,

Appellee,

And

VALENTINE P. SAIS, et al.,

Interested Parties.

**BERNALILLO COUNTY'S RESPONSE IN OPPOSITION
TO MOTION TO SUPPLEMENT THE RECORD UNDER SCRA 1-074(I)**

Appellee Bernalillo County Board of County Commissioners (the County), through its undersigned attorney, respectfully submits this Response in Opposition to Appellants' Motion to Supplement the Record. The County opposes the Motion on the grounds that the motion seeks to attack the Board of Commissioners' decision collaterally by insinuating that Planning Department staff's meeting with the applicants to assist in the application process was inappropriate, and somehow in violation of the Open Meetings Act.

Appellants' central argument presents a false and unworkable interpretation of the Open Meetings Act; and it assumes that staff must remain sphynx-like when dealing with citizens rather than assist those who desire to make a lawful use of their own property. Specifically, Planning Staff did nothing wrong or improper by meeting with the applicants in this case to help them move their application through the process in the way that would most likely result in

approval under the County's governing ordinance. On the contrary, most people might think Staff were actually doing their jobs by working with the same citizens whose taxes pay their salaries.

Appellants instead tried to frame Staff's work with the applicants as unethical, as "rigging the [County Planning Commission] process in favor of the applicant." March 6, 2019 Letter to Commissioner Hart Stebbins. Notably, Appellants say nothing of their own meetings with Staff as attempts to "rig" the process, or as unethical or subject to the OMA. To be clear, Appellants were also allowed to meet with Staff, and those meetings were no more subject to the OMA than the ones with the applicants, and of course were perfectly ethical as well.

One problem with framing this issue as an ethical one was that it could not be addressed by the County Planning Commission or the Board of Commissioners, but by the County's Code of Conduct Board. The Board of Commissioners had no jurisdiction to address it.

But more to the point of the OMA, Staff's meeting with members of the public is simply not policy-making under the OMA because staff had no authority whatsoever to make a final decision on the application. Contrary to Appellants' position that because Nick Hamm, who also happens to be the zoning administrator (ZA), by offering suggestions to the applicants caused the OMA came into play, the OMA had nothing to do with it. Mr. Hamm offered suggestions not as the ZA rendering a decision, but as a member of Planning Staff guiding an applicant. Moreover, no decision in this matter came before him as the ZA. If Appellants really believe Staff were in a position of authority to render a decision or make policy, then Appellants should produce Staff's resulting decision or policy and with a list of the votes. And the decisions of the CPC and the BCC are emphatically not Staff's decision or policy. See NMSA 1978, § 10-15-1(A) ("The

formation of public policy or the conduct of business by vote shall not be conducted in closed meeting.”)

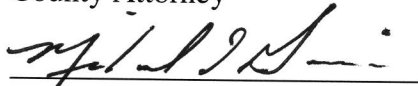
Appellants would employ a rule they themselves did not abide by, since one or more of them met with staff on this matter, and no open meeting was noticed and heard for their meetings, nor did they need to be. Appellants’ meetings were no more closed meetings determining policy by vote than those of the applicants.

In sum, if Appellants oppose the County’s decision granting applicants a lawful use of their own property, let the Appellants challenge that decision on the merits rather than with accusations that staff “rigged the process” and unethically treated the application with favoritism by merely doing their jobs as public employees.

The County respectfully asks the Court to deny the Motion.

BOARD OF COUNTY COMMISSIONERS
OF BERNALILLO COUNTY

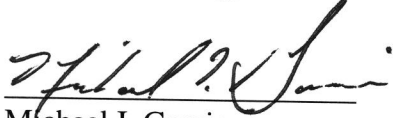
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CERTIFICATION

I hereby certify that the foregoing
pleading was provided electronically
to all counsel of record
this date of July 3, 2019



Michael I. Garcia