

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

MATTHEW CONE, ALBERT SANCHEZ,
JUSTIN KNOX, and GLORIA BACA,

Appellants,

vs.

No: D-202-CV-2019-03654

BERNALILLO COUNTY BOARD OF
COUNTY COMMISSIONERS,

Appellee,

and

VALENTINE P. SAIS, RON A. PEREA,
and RIO GRANDE HUERTA, LLC,

Interested Parties.

**RIO GRANDE HUERTA'S RESPONSE IN OPPOSITION TO
APPELLANTS' MOTION TO SUPPLEMENT THE RECORD UNDER SCRA 1-074(I)**

Rio Grande Huerta, LLC, ("RGH") by and through its counsel of record, Hunt & Davis P.C., states as follows for its Response in Opposition to Appellants' Motion to Supplement the Record:

ARGUMENT

In their Motion, Appellants generally seek to supplement the record with a combination of internal staff notes and documents (the "Staff Documents") and correspondence between Appellants' counsel and counsel for the Bernalillo County (the "Attorney Letters"). *See Motion* pp. 1-2. Appellants also seek to supplement the record to include "Appellants' application to invoke the "20%" rule"—which request RGH does not oppose. *Id.* Rule 1-074 states that the record on appeal shall include "a copy of all papers, pleadings, and exhibits filed in the proceedings of the agency, entered into or made a part of the proceedings of the agency, or

actually presented to the agency in conjunction with the hearing.” NMRA Rule 1-074 (H)(2). As further below discussed, the Staff Documents and Attorney Letters were properly excluded by the Bernalillo County Commission (the “Commission”) at the hearing underlying this appeal and, accordingly, should not be included in the record for the Court’s review.

At the Parties’ hearing before the Commission, Appellants tendered the Staff Documents as part of an effort to introduce new evidence into the Commission’s hearing. (R 791-93).


However, the Commission denied Appellants’ offer of new evidence and that evidence ultimately had no bearing on the Commission’s decision. *Id.* In their Motion, Appellants allege that “applicants through counsel were fairly neutral to [the] admission of new evidence.” Motion p. 4 (internal punctuation omitted). However, this is an inaccurate summary of undersigned counsel’s comments to the Commission regarding Appellants’ proposed new evidence, which were:

I’ve read through these documents . . . they’re not particularly relevant to any of the legal arguments that are made here. Generally, they’re attacks on County staff . . . I’m not [here] defending County staff or any actions of the Planning Commission, I think that’s the County Attorney’s position. So, we’re fairly neutral, although I think [the Planning Documents are] really immaterial to the issue of whether this [request] was appropriately decided by the Planning Commission.

(R. 791-92). Under the Comprehensive Zoning Ordinance of Bernalillo County, there is no provision for the Commission to consider an alleged Open Meetings Act violation as part of a zoning appeal. *See generally* Comprehensive Zoning Ordinance. Furthermore, after a diligent search, undersigned counsel has been unable to locate any provision of law that would permit the Commission to consider Open Meetings Act complaints as part of a zoning appeal. Thus, rather than being simply “fairly neutral”, undersigned counsel accurately pointed out to the Commission that Appellants’ new evidence was immaterial and irrelevant to the Commission’s

decision, and counsel reasserts that argument here. Appellants' Open Meetings Act claims are baseless and flawed but—even assuming those claims had some merit—a County zoning appeal is not the proper venue to address such claims. Accordingly, the Planning Documents and Attorney Letters are immaterial to this appeal and rest firmly outside the scope of the Court's review of the Commissions' decision under Rule 1-074—and RGH respectfully requests that the Court deny Appellant's Motion.

HUNT & DAVIS, P.C.



Blake Whitcomb
2632 Mesilla NE
Albuquerque, NM 87110
(505) 881-3191
Attorney for Rio Grande Huerta, LLC
blake@huntedavislaw.com

I hereby certify that on July 5, 2019, I caused a true and correct copy of the foregoing pleading to be served electronically via this Court's Odyssey File and Serve system upon opposing counsel and further served opposing counsel by email.



Blake Whitcomb