

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

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 TO STATEMENT OF APPELLATE ISSUES

Appellee Bernalillo County Board of County Commissioners (the County), through its undersigned attorney, respectfully submits this Response to Statement of Appellate Issues. For the reasons that follow, the County respectfully asks the Court to affirm the decision of the County Commission.

I. Facts/Background.

This case is about landowners, Rio Grande Huerta, LLC (Applicants), who sought to put their property to a lawful use, and sought the guidance of County Planning and Development staff, on how to do that. That lawful use is a special use permit for a Planned Development Area (PDA) for 3.83 acres zoned A-1, which use is governed by the Bernalillo County Zoning Code, § 18(B)(23):

Planned Development Area, including residential uses or mixed residential and commercial uses provided the minimum development lot area is two acres and the

applicant demonstrates the need to vary height, lot area, or setback requirements due to unusual topography, lot configurations, or site features in order to create *cluster housing development*, preserve visual or physical access to open space or unique site features, or to facilitate development as allowed by an approved Master Plan.

Id. (italics added). RP 97 Staff met and communicated with the applicants on a number of occasions and ultimately advised them that the best approach to obtain approval for their proposed co-housing development was to seek a special use permit for a PDA. See March 26, 2019 Letter from undersigned counsel, attached to Appellant's Motion to Supplement the Record. Staff customarily gives its recommendation to the County Planning Commission and the Board of Commissioners as to whether a given development should be approved; in this case Staff recommended approval. RP 33 Indeed, there is even a specific space on the form placed for Staff's recommendation. RP 33

Staff also met with Appellants in this case who opposed the applicants' proposed use of their own property. At the hearings, most of the objections had to do with keeping the area agricultural and opposition to "apartments." RP 579-80 Notwithstanding the objections, approval of the PDA would result in actual agricultural use of the property for the first time in nearly 90 years. RP 673-74 And while co-housing is not defined in the Zoning Code, cluster housing is certainly recognized and allowed in §18(B)(23) as shown above in italics.

Between Appellant and Rio Grande Huerta, LLC, the Court has a large picture of the facts. Accordingly, the County will not repeat those facts here except to the extent they need clarification below.