

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
6/17/2019 8:33 AM
James A. Noel
CLERK OF THE COURT
Brittany Tso

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

vs.

No: D-202-CV-2019-03654
Judge: Denise Barela Shepherd

BERNALILLO COUNTY BOARD OF
COUNTY COMMISSIONERS,
Appellee,

and

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

**MOTION TO SUPPLEMENT THE
RECORD UNDER SCRA 1-074(I)**

Appellants through counsel move the Court under SCRA 1-074 (I) for an order that the record in this case (“Record”) be supplemented as set out below. Appellee (herein the “BCC”) and Interested Parties object to this Motion.

The Record as filed is 3,195 pages. However, the Record after page 843 is mainly duplication. For example, the transcript of the County Planning Commission (“CPC”) hearing on February 6, 2019 appears 4 times in the Record (R 000567-000698; 001410-001541; 002246-002377; 003019-003150). Likewise, hundreds of pages of form petitions are duplicated various times in the Record.

The Record should be supplemented to include papers presented to the BCC (or the BCC’s agents) for the BCC’s April 9, 2019, hearing of Appellants’ appeal to include:

1. Letter dated March 6, 2019 on behalf of Appellants concerning alleged violations of the Open Meetings Act (“OMA”) (the “March 6 OMA Letter”).

2. Response from the BCC's counsel dated March 21, 2019, to the March 6, 2019 OMA letter (the "March 21 OMA Response").
3. Letter dated March 22, 2019 on behalf of Appellants requesting admission of "new evidence", the "Planning Records" (the "March 22 New Evidence Letter").
4. The "Planning Records" (146 pages) submitted with the March 22 New Evidence Letter.
5. E-mails between counsel concerning receipt of the March 22 New Evidence Letter and the "Planning Records".
6. Appellants' application to invoke the "20%" rule.

Copies of the papers in Items 1-3 referenced above, and the first page of Item 6 above, are attached (to comply with the 25 page exhibit rule).

SCRA 1-074 (H) (2) states that the record on appeal shall include:

(2) 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, which shall be organized by date submitted to the agency beginning with the earliest paper or pleading;

As noted on the first page of each of the March 6 OMA Letter and the March 22 New Evidence Letter (from Appellants' by counsel to the BCC), these letters were actually presented to and received by the BCC's agents in conjunction with the hearing by the BCC. Copies of the "Planning Records" were included with the March 22 New Evidence Letter. The March 21 OMA Response was sent by the BCC's attorney to Appellants' counsel with copies to the BCC Chair and other BCC staff and the applicant's counsel. Item 5 (e-mails between counsel concerning receipt of the March 22 New Evidence Letter and the Planning Records) indicates that the March 6 OMA Letter and the March 22 New Evidence Letter were received on behalf of

the BCC. The first page of Item 6 (Appellants' application to invoke the 20% rule) shows that Item 6 was received by BCC staff.

The March 6 OMA Letter, the March 21 OMA Response, the March 22 New Evidence Letter, the Planning Records, and the 20% rule were referenced in the Record filed by the BCC in this SCRA 1-074 appeal.

Concerning the OMA issue, Appellants raised the OMA violations in their appeal to the BCC (R 718, 719) and their March 22, 2019 argument letter which referenced the March 6 OMA Letter (R 729). The BCC did not appear to discuss or consider Appellants' OMA issue at the April 9, 2019 hearing. Apparently, the OMA issue was decided (without a hearing) for the BCC by the BCC's counsel in the March 21 OMA Response.

Concerning the "new evidence" issue, Appellants through counsel referenced the March 22 New Evidence Letter in their separate argument letter dated March 22, 2019 (R 724-730). As set out in the March 22 New Evidence Letter, the "Planning Records" are relevant to Appellants' issues raised in their appeal to the BBC concerning OMA violations, the true "apartments" nature of the application, how the application should have been processed, and lack of due process. Appellant Justin Knox requested the admission of the "new evidence submitted on March 22, 2019" (R 774). Staff did not object to accepting the "new evidence" into the Record (R 791). The BCC Chair and BCC staff said the following concerning the "new evidence" (R 792):

CHAIR HART STEBBINS: Can you be a little more specific about what's in the envelope? I'm just curious. I mean, obviously we're not going to have time to read it within the hour we have left in the hearing.

MS. VEREECKE: Madam Chair, this is doc – and I haven't looked at it really carefully, but it is documents about communication among staff and communication between staff and the applicant that the appellant feels are relevant in their case. Although, they did not bring this up in their case. But, it's emails and notes from meetings that took place between the applicant and staff.

The applicants through counsel were “fairly neutral” to admission of the “new evidence” (R 792). The BCC Chair and the BCC’s attorney said the following, concluding in the BCC Chair denying consideration of the “new evidence” (without a vote) (R 793):

CHAIR HART STEBBINS: Thank you. And I just want to ask staff, so the intent of entering them into the record would be to inform the Commission, which given the time is unlikely.

MR. GARCIA: Madam Chair, yes, that’s the purpose of new evidence, if you find that it would help you decide this case. And this is just as a way of suggestion, just to take a quick look at and see if it’s something you might consider, and decide at that point whether you would want to accept it as evidence.

CHAIR HART STEBBINS: This is up to the Commissioners. Is there any Commissioner who would like to accept this new evidence at this point in time? I think the Board’s decision is that we do not consider it at this point in time.

The March 6 OMA Letter and the March 21 Response should be included in the Record because they were actually presented to the BCC’s agents, and indicate how one of Appellants’ appeal issues was handled. The March 22 New Evidence Letter (including the “Planning Records”) should be included in the Record because the March 22 New Evidence Letter and the “Planning Records” were presented to the BCC, even if the BCC chose not to review them and denied any consideration of the arguments and materials.

Concerning the “20%” rule, BCC staff noted (R 764) that “the 20% rule does apply to the vote of the BCC if they wish to uphold the CPC decision” (R 000764). Appellants’ application for the “20%” rule should be included in the Record because it was actually submitted to BCC staff.

YNTEMA LAW FIRM P.A.

(Electronically filed)

By /s/ Hessel E. Yntema III
Hessel E. Yntema III
Attorney for Appellants
215 Gold Avenue SW, Suite 201
Albuquerque, NM 87102
(505) 843-9565
e-mail: hess@yntema-law.com

I hereby certify that a true and correct copy of this Motion to Supplement the Record Under SCRA 1-074(I), was mailed to Michael Garcia, Esq., Bernalillo County Legal Dept., 520 Lomas Blvd., NW, 4th Floor, Albuquerque, NM 87102-2118 and Blake Whitcomb, Esq., Hunt and Davis PC, 2632 Mesilla St., NE, Albuquerque, NM 87110, this 17th day of June, 2019, and was electronically filed through the electronic filing system for the Second Judicial District Court, which caused counsel of record to be served via electronic means, as more fully reflected on the Notice of Electronic Filing.

(Electronically filed)

By /s/ Hessel E. Yntema III
Hessel E. Yntema III

YNTEMA LAW FIRM P.A.
ATTORNEY AT LAW

March 6, 2019

HESSEL E. YNTEMA, III

HAND DELIVERED

Maggie Hart Stebbins
Chair, Bernalillo County Commission
One Civic Plaza, NW, 10th Floor
Albuquerque, NM 87102

Julie Morgas Baca
Bernalillo County Manager
One Civic Plaza NW
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Enrico Gradi
Director
Bernalillo County Planning & Development Services
111 Union Square SE, Suite 100
Albuquerque, NM 87102

Nicholas Hamm
Zoning Administrator
Bernalillo County Zoning Administration
111 Union Square SE, Suite 100
Albuquerque, NM 87102

Claim of Violations of Open Meetings Act
in CSU2019-0001

Dear Ms. Hart Stebbins, Ms. Morgas Baca, Mr. Gradi and Mr. Hamm:

This office represents Matthew Cone, Albert Sanchez, Amanda Webb Knox, Justin Knox, Gloria Baca and Carlos Baca ("Appellants") in connection with this letter. Appellants are appellants in COA2019-0001, which is an appeal of a County Planning Commission ("CPC") decision, for a special use permit for 1300 Gonzales Rd. SW (CSU2019-001). Please place this letter in the record for COA2019-0001.

It appears a material zoning policy interpretation and other zoning decisions under the County Zoning Ordinance ("CZO") for the referenced special use permit application were made in closed meetings contrary to the New Mexico Open Meetings Act ("OMA"). This letter is to provide notice of the alleged OMA violations pursuant to Section 10-15-3, NMSA 1978.

The Bernalillo County Commission ("BCC") is a policymaking body under the OMA and is subject to the OMA. The BCC has delegated authority to the Zoning Administrator and to County staff under the CZO. For example, as to the delegation of authority to the Zoning Administrator, Section 3(A) of the CZO states:

Section 3. - Interpretation and conflict.

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Phone (505) 843-9565
Fax (505) 242-2879
firm@yntema-law.com
hess@yntema-law.com

Received 3/6/19
Berna George
Berna George

RECEIVED
2019 MAR -6 AM 11:18
BERNALILLO COUNTY
COMMISSION/HAMM

Maggie Hart Stebbins
Julie Morgas Baca
Enrico Gradi
Nicholas Hamm
March 6, 2019
Page 2

A. Interpretation. The Zoning Administrator shall interpret the regulations and restrictions of this ordinance in accordance with the purposes and intent of this ordinance. Disagreement with the Zoning Administrator's interpretation may be appealed to the County Planning Commission and then to the Bernalillo County Commission pursuant to the Administration Section of this ordinance.

The Zoning Administrator is subject to the OMA for decisions made under his delegated authority to interpret the regulations of the CZO. It would appear that other County staff-related bodies with delegated policymaking authority such as the "Case Review Committee" ("CRC") also are subject to the OMA.

For the referenced special use permit application, the Zoning Administrator apparently met in closed meetings with County staff and the applicant's agents and interpreted the CZO that the applicant's development application should proceed as an application for a special use permit under Section 18(B)(23) ("Planned Development Area") rather than under Section 18(B)(32) ("Specific use") or a straight zone change. Closed meetings for the project apparently were held on June 15, 2018, September 6, 2018, October 26, 2018, and November 15, 2018. There may have been other closed meetings. The meeting held on October 26, 2018 apparently was a CRC meeting. Copies of notes taken by staff members Catherine VerEecke and Stephanie Shumsky, respectively, for the meetings are attached as Exhibit A and Exhibit B. The closed meetings formed public policy and determined the basic elements and conditions for the special permit use, and prepped the applicant for the CPC hearing.

The Zoning Administrator's interpretation that the applicant's requested use should be treated as an application for a special use permit for a "Planned Development Area" rather than for a special use permit for a "Specific use" or a zone change resulted in staff's recommendation of approval for a "Planned Development Area" and in a substantially different standard of proof for the CPC hearing.

As best Appellants can tell, Appellants and the public were not given appropriate notice of the meetings or of the Zoning Administrator's interpretation of the CZO.

Appellants request that if the Zoning Administrator is to interpret the CZO as to the applicant's requested use, that interpretation be done at an open public hearing pursuant to the OMA and the CZO; that any meeting of staff including the CRC with the applicant for substantive decisions relating to the application

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Maggie Hart Stebbins
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Nicholas Hamm
March 6, 2019
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be an open public meeting compliant with the OMA; and that the County respond to this letter within the statutory fifteen (15) days.

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel E. Yntema
Hessel E. Yntema III

Enclosures
cc w/encl: Michael Garcia, Esq.
Blake Whitcomb, Esq.

Meetings # 2

6/15
2015
Marianne Dickinson - assisting / ~~con~~ CO-HOUSING
Matt Fyson, Marlese - develop concept - 17 families
has an LLC, lined up.

Pamela Heeter -

Lucas, Stephanie, Blaine, Nick, Julie.

Sunset, Vineyard

2 sites -

homes w/ shared walls - 20-25 /

parcel

common house - great rooms, living, kitchen, - clubhouse

farm, orchard, greenhouse, fish tank -

multigenerational, play area -

3.4 / 3.77

estimate - 30% open space

- variety of housing - ~~we~~ will need to identify -

subdivided lots vs. condos / common lot -

would require PDA

Parking - 2 to 1 du + can build some flexibility
but.

Lucas - aquatic facility (?) - natural pond = (?)

new concept - wetland? mosquito control -

clubhouse - jointly owned - may have guest house.

Kitchen - commercial requires permit -

EXHIBIT

A

Storage(?) -

need to address sale / preparation SUEDC

may need to talk directly to

Blaine -

Sunset - drainage / water quality.

drains planned for sunset -

site plan for SAP - show drainage / ponding

/ Vineyard -

/ sewer / water

access driveway /

~~surface~~

Nick - asphalt or durable - may be porous -

Sunset - being improved

Vineyard - may require improvements -

Megan - Conservation = / drilling - 4 measures

Stormwater - manage on site -

support green infrastructure

- irrigation

- water & sewer available -

Julie - Scoping requirements

and require TIA - depend on # trips -

24 or less commercial use -

9/6 - Cohousing Project - Gonzales Rd # 1

- # apartments	30 units -	currently 2 lots
- townhomes	—	1
- casitas	submit in	October

3.7 acres - one tract - 21

- R-2 uses - apartments
- usable open space
- parking
- Water Conservancy

separate plans -

- grading & drainage - / concept plan - final later

- landscaping - follow Conservancy Guidelines

- site plan -

- plan to ~~be~~ change to one lot

- setbacks, front -

- parking - apartments / dwelling

- Specific Use

- utility plan availability statement / water rights:
ditches

- parcels -

- daycare (private)

11/15 Cohoos Project

Marianne, Peter, Marlese, Faith -

- they are preparing applicants
- Jonathan Crane - architect
spoke to Enrico
- is having community meeting
- meeting again w/ SUCMA on 29th Vecinos /
- has website
- opposite
- need to change to Special Use Permit for PDA
- 30 units -
- will provide a detailed site plan
- driven by R-2 requirements
- has community support
- has provided required information
- working on site plan - will have ready
- have addressed party

11/15

- solid wall or fence ?

- landscape buffer / request waves
front buffer

Policy 8 + 66 SWAP

Home occupation

P0-Housing Mtg.

9/6/18

- Blaine
- Iegan
- Mari
- ME
- Elvira
- Catherine
- Nancyann Dickson
- Marilyn Markowitz
- Johnathan Limig
- Nick

INTROS.
 project / concept overview
 Catherine comments

* get w/ ABCWVA re:
 H₂O / wastewater

* Fire Suppression Requirements

Acres: 3.7 ac.
 30 units
Total 8.1 DU/AC
 SWAP $\frac{1}{2}$ 9 DU/AC Area 5, SWAP
 EST. Urban Area
 SUP for R-2 USES per NICK

Usable Open Space Requirements:

- 200 SF (efficiency / 1 bdrm)
- 250 SF (2 bdrm)
- 300 SF (3+ bdrms)

Setbacks

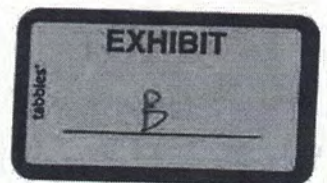
- F = 15' along street
- S = 6' btwn r/s. uses
- 15% of paved area
- R = 15'

+ landscaping / buffering (per SEC 19)
 + parking 2 Sp / DU min (2 sp / bathroom) (per SEC. 21)

Plan: Submit by end of October for December

Separate landscape plan w/ SUP
 3D preliminary w/ SUP

SUP for Specific Uses: D/A 200' Support
 of night conditions



Case Review Committee (CRC) Meeting *Faith Okuma, LA.
Peter Rahn*

Date: 10/26/18 Time: 9AM Applicant/Requestor: Peter - Architect
Mariel -
 Site Address/Location: E. End of Gonzales

1. Agency Representatives Present at Meeting

Planning: <u>EL</u>	Natural Resources Services: <u>Megan</u>
Planning: _____	Building: <u>-</u>
Public Works: <u>Blair</u>	Zoning: <u>RHPZ</u>
Transportation: <u>Julie</u>	Others: _____
Drainage: <u>Blair</u>	

2. Type of Application or Procedure Anticipated

- | | |
|--------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> Zone Map Amendment | <input type="checkbox"/> Subdivision (Major) |
| <input checked="" type="checkbox"/> Special Use Permit | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Subdivision (Minor) | <input type="checkbox"/> Conditional Use Permit |
| <input type="checkbox"/> Zoning Verification | <input type="checkbox"/> Zoning Interpretation |
| <input type="checkbox"/> Non-Conforming Use App | <input type="checkbox"/> Building/Placement Permit |

3. Summary of Discussion / List of Requirements

1. Fire marshal turn-arounds, Fire flow 80' to 100' cul-de-sac/hammer head
 2. Co-housing - # of units (potentially up to 33.) Traffic Scoping Report due.
(Southwest Area Plan allows up to 9 DU/ac.)
 3. Reduction in parking - justify request per Comprehensive Plan and Southwest Area Plan, demographics of residents.
 4. Support from property owners w/in 200' required (additional support is good to have but not required) - Substantial $\geq 50\%$
 5. Access from Gonzales Rd. - tight connection, tree removal may be needed, coordination w/ neighborhood to north / Fire Dept. access $\geq 20'$ wide /
4. Sign and Date to Verify Attendance & Receipt of this Summary

JU 10/26/18
 CRC Member Initial / Date

JMM 10/26/18
 Applicant or Agent Initial / Date

Pool = Sec. 22
 Sec 42 =
 Pool
 Const.

This form is intended to provide guidance and general information and does not convey any approvals or binding agreements on behalf of the Bernalillo Planning and Development Services Department.

6. Landscaping (SBC 19), Supplemental Uses (Sec. 22), Setbacks and Useable Open Space (Sec 10), Fire Dept Access, Wall... , Floodzone _____

Stephanie Shumsky

Subject: CRC - East end of Gonzales Road Co-Housing SUP
Location: zn conf rm

Start: Fri 10/26/2018 9:00 AM
End: Fri 10/26/2018 9:30 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Stephanie Shumsky
Required Attendees: Elvira Lopez; Robert Pierson; Catherine VerEecke; Blaine Carter; Julie A. Luna; Megan Marsee; Giovanna Jaramillo (ZN); Zoning Conference Room; Timothy Trujillo; Mari B. Simbana; Nick Hamm; Gabriel W. Maestas; Tom Kay; Karl Redmon

Name of Customer: Peter Rehn (architect)

Phone number of Customer: 505-681-6836

Email of Customer: n/a

Address/Legal description of proposed site: East End of Gonzales Road

Parcel size: 3.7+/-

Zoning: A-1

Existing Special Use Permit or Conditional Use description: n/a

Zone Atlas Page: K-12

Proposed Use/ question: Co-Housing pre-app/SUP site plan prep (we've met with them several times) – the architect is preparing the site plan and may have specific questions for public works, natural resources, transportation and planning

CO-Housing Mtg.

11 Am

11/15/18

Attendees:

Maryann Dickenson

Peter Chen - Architect

Melissa Martini

Erin Auma - Landscape Architect

CV

SS

EL

Upcoming
NA mtg.

Anticipated Submittal Date:
NOV 26th.

Open House This Sunday at
Park and on 29th
w/ SUN look

Purchase agreement deadline coming up for them

Most recent Site Plan / 11/15/18
~~XXXXXXXXXXXX~~ / 30 units

CV - loop / cutting off discussion / delaying / discouraging / stirring up
taking over entire conversation

Confusion w/ South valley "Community" Alliance -
haven't been responsive

Internal floor plan not required
ID Spacing between bldgs.
Square footages and dimensions need to be on site
plan.

(Cont.)

Table: Density

"Open Space" area SF

Agricultural area SF

"maintained for LIA of use"

SUP for POA for Cluster Housing (SWAP Policy 9 DU/Ac)

legal

Question: Can Commission go to their (co-housing) website? is this ex parte communication if everyone has access to it?

* They will work w/ Neighborhood Associations after submittal deadline.

* Separate Landscape Plan -
* Separate GIS Plan - Preliminary

* Requirement to re plat after SUP

SWAP policies 8 and 6c \rightarrow Agricultural Area
changed by policy 6c updated policy 8 and
Agricultural Preservation Area

Co-Housing Mtg CRC

10/26

EL

BC

See CRC Notes

MM

JL

Renee Kelly

Maxine

Peter

11/15/18

ISSUES

Jonathan Craig - concerned
moving too fast
creating issues w/
neighborhoods

- not organized / too
scattered

SV Neighborhood Coalition
concerns.

(Del Mahoney)

PS AIPA 5 (up to 9 DU/
per net AC)
3.7 ac acre

3.7 ac (gross acreage)

- Usable Open Space

- parking Area

- landscape area

- landscape buffer
Area

= net acreage

Sup for PDA Cluster Housing
Why did NH not want
this?

11/22/18

BERNALILLO COUNTY POLICIES AND CONDITIONS SUPPORTING THE APPLICATION FOR A SPECIAL USE PERMIT FOR A PLANNED DEVELOPMENT AREA (PDA) FOR CLUSTER HOUSING BY RIO GRANDE HUERTA LLC

SITE LOCATION: MRGCD Map #40 Tract 88 A1A1 (at east end of Gonzales Rd. SW) + Tract 87B1 + Tract 88A1A2 Total 3.72 acres Zone map: K-13-A

CASE NO:

CPC HEARING DATE: January 2, 2019

CONDITIONS:

The site is comprised of three vacant parcels, one large and two smaller parcels, that are currently zoned A-1. There are single-family R-1 lots to the northwest, west and south, and a residentially occupied A-1 parcel to the north of the site. The east side abuts the MRGCD Atrisco Drain and a public trail. The only access to the larger parcel is via Gonzales Road at the NW corner; the two small triangles are landlocked and accessed through a private home lot at the SE side. Re-platting will combine the three parcels into a single 3.72-acre Planned Development site. Gonzales Road will be the only access to the site.

There is no irrigation ditch access on these parcels. The sellers of the larger tract are part of the original farm family, but have been unable to farm the land, so it has been listed for sale for several years. The site has a non-operational well that may be restored for agricultural irrigation and site landscape use.

The site is between Central Avenue and Bridge Boulevard in a Developing Urban Area and Residential Area 5, where a dwelling density of up to 9 units per acre is permitted, as adopted in the **Southwest Area Plan. SWAP Policy 66**, which updates the South Valley Agricultural District boundaries, prioritizes agricultural land preservation south of Lakeview Road, several miles south of this site.

PROPOSED USES:

SUP for PDA for "is a" IT

This proposed cluster housing/co-housing project of 30 units is being created and driven by its future residents (Rio Grande Huerta LLC) using an eco-village model of Net-Zero energy use, Zero Waste strategies and maximizing water conservation. The building footprints shown on the site plan allow for all porches, terraces, breezeways, etc. that may extend from the buildings.

more - 2?

The site plan shows the 30 housing units in compact clusters, which will leave 35% of the site for agricultural uses and shared open space. Site agricultural uses include, but are not limited to, orchards, community gardens, a vineyard and berry patch, fishpond, greenhouse, chicken coop, and garden composting.

The site landscape will be primarily native and drought-tolerant species suited to the sandy alluvial soils of the property, preservation of existing large cottonwoods and maintenance of healthy existing trees along the site perimeter.

and elms?

A community house, children's play areas, a pool, and landscape commons will be shared by the site residents.

The project will meet the **Bernalillo County Water Conservation Ordinance (Section 30-241-30-251)** Subject to further analysis and design opportunities that arise, water conservation strategies currently anticipated are:

- Passive water harvesting on 45% of the landscape area,

- Smart irrigation controller,
- Soil-amendment program during installation of landscaping, and an
- Exterior management plan to reduce water use, chemical use, and water runoff.

The County motor vehicle parking requirement of 60 spaces --2 spaces per unit—and bicycle parking of 1 space per 2 units will be met. Traffic impacts will be mitigated with ridesharing, shared car ownership, biking, and public transit use, part of the environmental low-impact philosophy of this cohousing community. (The Central Avenue bus stop is a seven-minute bike ride along the Bosque trail from the site.) There will be controlled access points to the trail at the NE and SE corners.

add: Height will be within R-2

The proposed uses require no major or un-programmed capital expenditures by the County. Gonzales Road dead-ends at the site. Internal circulation is the developer's responsibility and meets fire department access requirements. The drivable surfaces, other than the entrance apron and handicap parking spaces, are permeable or semi-permeable to allow for aquifer re-charge.

→ permeable or paved

MOVE to R.S. 118-86 Section C.

POLICIES:

The **Southwest Area Plan (SWAP)** policies recommend Cluster Housing Development to preserve open space, scenic views and some agricultural uses (See pages 26 & 47 of the SWAP). The changes and uses are not in conflict with the **Albuquerque Bernalillo County Comprehensive Plan (2013)**, or the SWAP, or of any nearby uses.

The **A/BC Comprehensive Plan's** concerns and strategies regarding issues related to growth are more easily met with this zoning to address alternative & renewable energy, bicycling and pedestrianism, public safety, reinvestment in older areas, agricultural land use and scenic vistas.

The relevant policies adopted for **Developing and Established Urban Areas:**

Policy d.6) (cluster development)

Policy e (infill incentives)

Policy f (clustering of homes, shared open spaces, oriented towards pedestrian and bike ways)

Developed Landscape:

Policy a, (the natural and visual environment respected, a determinant in development decisions),

Policy e, (design and materials shall be in harmony with the landscape, scenic vistas).

Energy Management:

Policy a, b, c 3) (encouraging use of alternative, renewable energy and cluster housing for community energy systems)

The special use permit being requested is appropriate and advantageous to the community for several reasons, per **Resolution 118-86 Section 1. C. & E (3)**.

PDA Cluster housing allows for much more open space and more efficient land use than suburban R-1 lots that have been developed in the South Valley, and:

- Allows renewed agricultural uses as part of the open space. - Site has not been proposed for use
- Preserves views to the mountains and the bosque for nearby neighbors. - How
- Helps buffer the bosque from neighborhood homes and activities. - Why is this necessary?

Focus on sites underlying zoning A-1.

How are each of these policies being requested in a way that they are not being requested by existing zoning.

Water Management

Dead-end Avenue

Amount puts it

How do these
either
MP
goals/
policies?

- Promotes neighborhood cohesion and safety, with residents able to watch out for each other and for potential crime or vandalism. Some current neighbors of this property mentioned that the current uncontrolled access from the Bosque trail has been a serious nuisance for them. - how - transients, etc.
- Assures high and consistent maintenance standards, as the cohousing association will manage the entire site. → through ?
- Allows for efficiencies of utility use and lowers living expenses for residents. - how Affordable housing
- Allows and facilitates sharing of labor, resources and community activities.
- Allows for consolidated strategies for solid waste reduction, recycling and composting.
- Allows for a range of home size, price and accessibility for a diverse population ranging from singles, families with children, to retirees. The developers have been in discussion with Homewise on possibly providing a subsidized down payment for a qualified buyer not able to pay the full down payment amount.
- Allows this to be a diverse community in all ways—and to fit in to the South Valley's agricultural, natural, ecological, ethnic and cultural heritage..

Neighborhood notification and communication:

Outreach to neighbors and South Valley neighborhood associations has been extensive and varied:

- South Valley Coalition & Vecinos del Bosque NA meetings
- Door to door petition to the neighbors within 200 feet of the project site
- Public Neighborhood Lunch in Valle del Bosque Park on September 9
- Public Open House in Vecinos del Bosque Park on November 18
- Ongoing conversations with neighbors and interested parties
- Neighbors' input has been heard and, when possible, adjustments made.

There also have been several Open House events in the past year to discuss what cohousing is and generate interest in joining this cohousing project (only the second one in the Albuquerque area.) Publicity has been through the news media, the www.cohousingABQ.org web site, social media, flyers, personal contacts and referrals.

Before filing this application, the applicants' agents mailed the official notifications to the applicable Neighborhood Associations per **County Ordinance 94-4**. (See attached notification confirmation.)

The project's professional architectural design team consists of Peter Rehn of RMKM Architecture, P.C., Jonah Stanford, AIA, of Needbased Inc., and Faith Okuma, AICP, RLA, of Surroundings. Cohousing development consultant is Marianne Dickinson of Acequia Jardin.

Respectfully submitted,
Marlies Metodi, Project Manager
Rio Grande Huerta LLC
(Applicants' designated agent)

CSU 2019-0001

Robert
Elvira
Mari
Nick

12/11/18

1. Provide comments to applicants
2. Discussion of opposition; recommend work with neighbors; work to address concerns
3. Site Plan Feedback
access from homes to parking lot.

4. Address concerns from neighbors in justification

5. a du/aure → refers to residential ^{single family housing} dwellings, not necessarily apartment
ideally 27 dwelling versus 30 dwellings

single family dwelling - plus accessory living quarter
↳ accessory to primary use

~~apartment~~
would accessory living quarter classification work with apartment?

[Cooking appliance next to water source = kitchen
microwave + sink = kitchen]

6. Condo versus Intentional Community
It looks like apartment

7. Centers for spiritual living (w/ common kitchen)
demand for innovative housing

8. Resubmit justification on Monday
Pushy why 30 units needed v. (27) houses
If subdivide to one house per lot, would lose acreage → density would go down.

9. If strong opposition -
- CPC may go day deferral
recommend

- possibility of appeal
- possibility of 6 month timeline
- addressing concerns with neighbors is key.

10. applicant may request emails of opposition;
applicant can reach out to reach out to opponents.

11. Consider a facilitated meeting.

12. 4 Groups -

Concerns From residents

- a) view loss
- b) "commercial developer"
- c) deterioration of ag areas / water rights

→ renderings / photoshops
from perspective → to see
show views are impacted

13. Call it "Planned Development Area" for Cluster Housing
for Residential Use & Agricultural uses
58% agricultural & open uses

- area is not rural area
close to urban area

14. Sunset Improvements -

Are there improvements planned?

- contact City & County Public Works,
- ... - Public Streets.

15. Benefits per R-116-86

16. Add a P or 2 about property lines / lot lines



County of Bernalillo

State of New Mexico

County Attorney's Office

Steve Schiff District Attorney Building

520 Lomas, NW, 4th Floor

Albuquerque, New Mexico 87102

Office: (505) 314-0180 Fax: (505) 242-0828

www.bernco.gov

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.

COMMISSIONERS

Maggie Hart Stebbins, Chair, District 3 Debbie O'Malley, Vice Chair, District 1
Steven Michael Quezada, Member, District 2 Lonnie C. Talbert, Member, District 4 Charlene E. Pyskoty, Member, District 5

ELECTED OFFICIALS

Tanya R. Giddings, Assessor Linda Stover, Clerk Cristy J. Carbón-Gaul, Probate Judge Manuel Gonzales III, Sheriff Nancy M. Bearce, Treasurer

COUNTY MANAGER

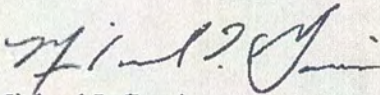
Julie Morgas Baca

Hessell E. Yntema, III
March 21, 2019
Page Two

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,



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.

YNTEMA LAW FIRM P.A.
ATTORNEY AT LAW

HESSEL E. YNTEMA, III

March 22, 2019

RECEIVED

2019 MAR 22 AM 9:36

BERNALILLO COUNTY
COMMISSION

HAND-DELIVERED

Maggie Hart Stebbins
Chair, Bernalillo County Commission
One Civic Plaza, 10th Floor
Albuquerque, NM 87102

Request for Admission of Planning Records
COA2019-0001/ CSU2019-0001
(1300 Gonzales SW)

Dear Chairperson Hart Stebbins and Commissioners:

This office represents Matthew Cone, Albert Sanchez, Amanda Webb Knox, Justin Knox, Gloria Baca and Carlos Baca ("Appellants") in COA2019-0001, which is an appeal of a County Planning Commission ("CPC") decision, for a special use permit under the County Zoning Ordinance ("CZO") for 1300 Gonzales Rd. SW (CSU2019-001). Please place this letter in the record for COA2019-0001.

This letter is to request admission of "new evidence" relating to the County's decision-making for the applicant's application (herein the "Planning Records"). The Planning Records consists of 146 pages (enclosed and page numbered; references below are to pages of the Planning Records). The Planning Records were not presented to the CPC. Appellants obtained the Planning Records after the CPC hearing (held on February 6, 2019), from the County in response to requests under the Inspection of Public Records Act.

Appellants submit that the Planning Records are relevant to the appeal and the decision for the special use permit application. The Planning Records show, among other points, that:

1. The County's Zoning Administrator (Nicholas Hamm) apparently ruled that the application should proceed as an application for a special use permit for "Specific uses", which would be under CZO Section 18(B)(32). The Planning Records show the following: p. 34: "specific use"; p. 35: "SUP for R-2 uses per Nick", "SUP for Specific uses: 1) N/A 200' Support, 2) unique conditions"; p. 45: "Support from property owners w/in 200' required". However, the determination that a "Specific use" special use permit was required was later changed apparently by staff to that a "Planned Development Area" special use permit under CZO Section 18(B)(23) (with a different standard of proof more favorable to the applicant) would be required. The Planning Records show: p. 51: "need to change to Special Use Permit for PDA"; p. 55: "SUP for PDA Cluster Housing Why did NH not want this?"; p. 96: "Call it Planned Development Area";

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hess@yntema-law.com

Maggie Hart Stebbins, Chair
March 22, 2019
Page 2 of 2

2. The application really is for R-2 uses in an A-1 zone (p. 34: "R-2 uses – apartments"; p. 51: "driven by R-2 requirements"; p. 47: "with the special use permit we are seeking the (sic) add the multi-family categories of the R2 zone to the A1 zone");

3. County staff and the Zoning Administrator met with the applicant's representatives in numerous closed meetings, to discuss and effectively decide policy, with delegated authority from the County Commission under the CZO, in violation of the Open Meetings Act; and

4. County staff improperly assisted, encouraged and coached the applicant (for example, pp. 104, 107, 127, assisting the applicant in contacting objecting neighbors and monitoring and responding to opponents; pp. 64-66 and 72-73, editing and revising the applicant's proposed submissions; and p. 145, releasing the staff report early and preferentially to the applicant).

The Planning Records generally show that staff rigged the CPC process in favor of the applicant. Appellants should be allowed cross-examination of Planning staff in connection with the Planning Records.

Appellants request that the County Commission accept the Planning Records into the case record for the hearing on their appeal scheduled for April 9, 2019.

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel E. Yntema
Hessel E. Yntema III

cc: w/encl: (by electronic mail):

Michael Garcia, Esq.
Blake Whitcomb, Esq.

cc: (by regular mail):

Dory Wegrzyn (1404 Gonzales Rd. SW, Alb. NM 87105)
Vecinos del Bosque N.A. (P.O. Box 12841, Alb. NM 87105)

20% Rule Form

CERTIFICATION OF OPPOSITION TO PROPOSED ZONING CHANGE
(to be completed, when the 20% rule is invoked only)

Contact person for protest:

Name Matthew Cone

Address 1413 Dennison Rd SW
Albuquerque, NM 87105

Phone Number: Work: _____ Home: 505-795-9817

Submittal requirements:

- A copy of the notice of decision for the case under appeal.
- Petition forms with name, address, and signature for each owner asking to be included in the protest. (provided in this packet)
- A copy of the zone atlas page for the area indicating the property under consideration for a change in zoning regulation and highlighting each of the properties included in the form submitted as part of this protest. The properties should be numbered to match the listings of property owners in the attached forms.

Note: The 20% rule applies to appeals filed before the Board of County Commissioners only, not the County Planning Commission. Certification of protest under the 20% rule must be submitted to the Bernalillo County Planning & Development Services Department no later than one week prior to the scheduled BCC appeal hearing. The department will verify the information presented for the protest and make a determination prior to the hearing date as to whether the 20% rule applies to the appeal. If the 20% rule does apply to the case, the proposed change in zoning regulation must be approved by a vote of four members of the Board of County Commissioners.

For Planning & Development Services Department Use:

Hearing Date: 4/9/19 20% Rule applies: Yes _____ No _____

Received By: C. VerEche Verified by: _____

Date Submitted: 4/11/19