

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 MOTION FOR REHEARING

The Board of County Commissioners of Bernalillo County (the County), through its undersigned attorney, respectfully responds to Appellants' Motion for Rehearing. For the following reasons the County respectfully asks the Court to deny the Motion.

Appellants' Motion takes issue with essentially one aspect of the Court's decision: the conclusion that the Open Meetings Act did not prevent County Staff from discussing the application with Applicants and even with Appellants. Nothing in Appellants' Motion for Rehearing addresses an actual error by the Court. Nevertheless, Appellants persist in trying to create the false impression that Mr. Nicholas Hamm, who happens to be the Zoning Administrator, somehow adjudicated this case by having discussions with the Applicants on how to proceed. Mr. Hamm took no action, made no decision, issued no findings, made no rulings, and granted no rights within his authority as the ZA to Applicants—facts which Appellants are at

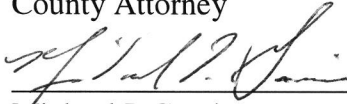
pains to refute because they have never presented any such evidence to support the allegation. No aspect of this case was before him in his capacity as the ZA. Rather, Mr. Hamm was acting simply as a member of Planning Staff advising an applicant on how to proceed to the County's Planning Commission, a process in which the ZA was irrefutably not involved in any decision-making capacity.

As the Court correctly noted, the OMA applies to actions taken "within the authority of any board, commission, or policy-making body." *Memorandum Opinion*, p. 6, citing NMSA 1978, § 10-15-1(B)(2013). No such actions occurred here with any member of Staff including Mr. Hamm, and Appellants have failed to show otherwise.

Every other argument in the Motion for Rehearing hinges on the OMA issue, which the Court has correctly decided. And Appellants have attempted to collaterally attack the BCC's decision by mischaracterizing Staff's appropriate—indeed professional—conduct in meeting with Applicants and opponents alike. Again, if Appellants' argument were the rule, and Staff had to notice and publish every meeting with members of the public, we have crossed into the absurd. Moreover, if Staff could not meet with the very people who are applying through the County's process, and with opponents of a project as well, that rule would frustrate the very openness the OMA was intended to achieve.

For the foregoing reasons the County respectfully asks the Court to deny the Motion.

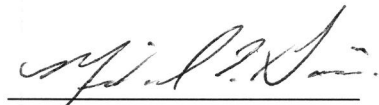
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CERTIFICATION

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



Michael I. Garcia