

48-HOUR MATERIALS

Public Comments

Somerfeldt, Cheryl

From: gulleyt@aol.com
Sent: Monday, December 10, 2018 5:18 PM
To: Somerfeldt, Cheryl
Subject: RE: Public comment for PR-2018-001402

Thank you Ms. Somerfeldt for the information you provided. Given that information, I will revise my paper and re-submit it later tonight for inclusion in the 48 hour material.

Tom G.

On Monday, December 10, 2018 Somerfeldt, Cheryl <csomerfeldt@cabq.gov> wrote:

Mr. Gulley,

In most cases, comments that are received up until 8am tomorrow morning will be included as part of a packet called “48-hour material” that will be forwarded to the EPC as well as posted on the EPC webpage tomorrow. However, since you mentioned that you will be presenting this at the hearing, do you want to include your email in the “48-hour material”?

In answer to your questions:

Due to the ZEO’s determination that each cluster development may be considered separately, each one must meet all cluster development regulations (this is stated in one of emails at the end of the report). This is the reason why the entire 22.75 acres does not meet 30% open space, because there are 4 separate clusters and one standard R-A area (which does not require open space). This is also the reason why there are more than 50 lots, because each cluster is considered separately.

You are correct that Cluster B is deficient in open space. There were many iterations of this plan, so I apologize this was missed. I will update the Conditions of Approval to make sure that all clusters meet the required open space including Cluster B, and this will be part of the “48-hour material” distributed tomorrow.

You are correct regarding 5-2(H)(2)(a)2. Any of the clusters crossing a lot line of a lot that is adjacent to MPOS, should have its common open space contiguous with MPOS. This is a Condition of Approval.

You are correct regarding the structures. This is a Condition of Approval.

The EPC has the right to impose Conditions of Approval per the IDO. The applicant has a right to dispute these at the hearing. Ultimately, it is an EPC decision whether to impose the Conditions we recommend and/or vote for approval, deferral, or denial.

Thank you,



CHERYL SOMERFELDT

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cabq.gov/planning

From: gulleyt@aol.com [<mailto:gulleyt@aol.com>]
Sent: Monday, December 10, 2018 3:38 PM
To: Somerfeldt, Cheryl
Subject: Public comment for PR-2018-001402

Dear Ms. Somerfeldt,

Attached is a paper I have written and plan to present at Thursday's hearing stating legal reasons why the Poole property site plan should not be approved. I read Consensus Planning's 12/3/18 memo to you. For the life of me, I cannot figure out why Planning's concerns addressed in the memo did not include a Planning concern about the 4-3(B)(2)(d)1 requirement of 30% common open space (30% of the property's 22.75 acres is 6.825 acres, not the 5 and 1/2 acres of open space CP's memo says the property has) and also did not include a concern about the 4-3(B)(2)(c) limitation to 50 lots since the site plan has 70 cluster lots. I do not want to take the committee's time at the hearing if CP has been granted relief from these provisions or if my analysis of the cluster development section is off the mark. Thanks you for reading my paper.

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This message has been analyzed by Deep Discovery Email Inspector.

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This message has been analyzed by Deep Discovery Email Inspector.

Legal Reasons the Poole Property Site Plan Should Be Denied.

The ZEO had determined that the site plan for the Poole property, one tract of land with one owner, may be treated as four separate cluster projects. That determination is an abuse of discretion because it allows the applicant to manipulate and evade the IDO requirements for a cluster development. The EPC must reverse that determination.

There is no question that the applicant's attempt to create four separate cluster projects is for no other purpose than to manipulate and evade the cluster development requirements. A cursory look at the site plan shows that is true. The applicant merely artificially labels different parts of the site plan as separate clusters. Identical lots side by side are artificially placed in different clusters. There is no significant difference in the separate clusters. This artificial labeling makes it crystal clear that the only purpose of creating artificial clusters is to manipulate and evade the cluster development requirements. Indeed, the applicant should be asked under oath whether there is any legitimate purpose for creating the artificial clusters.

If allowed, this artificial labeling enables the applicant to manipulate and evade specific requirements in the IDO. For example, instead of being limited to 50 lots for a cluster development as clearly stated in 4-3(B)(2)(c), the applicant by contending there are four separate cluster projects on this one tract of land under one ownership is able to increase the number of cluster lots to 70, substantially beyond what is otherwise allowed. And it should be noted that the applicant relies on the definition of " Dwelling, Cluster Development in 6-7, allowing for smaller lots than R-A zoning otherwise allows, to pack the property with high density, but doesn't want to be limited to 50 lots. This is more evidence the applicant is manipulating and evading the IDO, using the provisions it likes and evading others.

Also, instead of the site plan having one "common open space", defined in 6-7, of 30% of the entire project contiguous to the wetlands as contemplated by 4-3(B)(2)(d) and 5-2(H)(2)(a), the applicant claims that each of the four clusters has its own "open space". Note that the applicant uses the term "open space", not "common open space". That is because the applicant incorrectly wants to count small interior pocket parks of "open space" to satisfy the "common open space" requirement. Again, this is more evidence that the applicant wants to manipulate and evade the ordinance.

Moreover, the ZEO's determination sets a dangerous precedent in that future applicants can request the same determination. What is to stop future applicants from artificially creating 8 or 10 or more artificial separate clusters on one large tract to accomplish the same manipulation and evasion?

When properly treated as one project with one cluster development, the site plan does not meet the cluster development requirement of 4-3(B)(2)(d)1 that the one common open space must be 30% of the property's 22.75 acres, or 6.825 acres, not the 5 and ½ acres the applicant states the site plan has. Just as importantly, the site plan does not meet the requirement of 4-3(B)(2)(c) that the number of lots in a cluster development shall not exceed 50.

The ZEO has properly determined that common open space means a single common space not separated into small pieces. So all of the required 30% common open space of 6.825 acres must be on a separate lot, and all of it must be contiguous with the wetlands on the east.

Even if the EPC allows the site plan to be treated as four separate cluster developments, the site plan does not meet the 30% common open space requirement for each of the four. And, the applicant should be required to submit four separate site plans so that the EPC can effectively determine that the common open space requirement is met for each of the four.

Also, 4-3(B)(2)(d)4 states that no structures are allowed in the common open space. So if the property is properly treated as one cluster development project, there may be no structures on the 6.825 acres of common open space. If the EPC treats the site plan as four separate cluster projects and correctly treats the interior pocket parks as common open space, not generic open space, not only must the pocket parks meet the 30% common open space requirement for each of the clusters, but also those parks may not have structures. So if houses are ever built on the lots, the pocket parks cannot be parks at all, but must be forever common open space, essentially vacant land without structures.

To summarize, surely the EPC does not want applicants to manipulate and evade the IDO to achieve a goal not otherwise obtainable. It is obvious that this applicant's goal is to obtain approval of a cluster development by manipulating and evading clear IDO requirements. The EPC must not allow the manipulation and evasion and reject the site plan.

December 10, 2018

Derek Bohannon, Chair
Environmental Planning Commission
(sent by email)

Dear Mr. Bohannon and EPC Commissioners:

RE: Overlook at Oxbow (Poole Property) 5001 Namaste Rd. NW
Response to Late Application Materials and Staff Report

The applicant has provided required submittals very late in the process. I know that these multiple letters are much for the EPC to review, but the materials are being submitted at the same time public comments are due.

I. The site plan application is rushed and cause the EPC to miss important requirements.

This case is important and complicated and should be reviewed when the EPC and other stakeholders have been given ample time to review the applicants submission--submitted less than one week ago. Most applications allow neighborhoods and staff at least six weeks to review.

Planning Director Campbell advised the EPC in an October 24th letter to take great care in reviewing this case:

‘This EPC review of development adjacent to MPOS is especially significant because it is the very first to apply the updated Comprehensive Plan’s Goals and policies and the IDO’s new requirements and protections. Your review and action will reflect the City’s policy and regulatory intents to protect these special places that are a result of years of planning and millions of dollars of taxpayer investments. Your attention to this matter is appreciated.’

The Director asks the EPC to:

‘...make special note of the unique aspects of this property and the importance of its adjacency to MPOS....I ask that you consider the proposed design and intensity of the development and its appropriateness when principles of proper land use planning and the City’s IDO call for buffering of land uses adjacent to major public open space.’ (See Campbell letter to Derek Bohannon dated 10/24/18 and included in EPC staff report.)

The staff reported to the applicant on 10/23/18 that the application was deficient. Four weeks later, the staff reported on 11/13/18 that the application remained deficient. The applicant only responded to those deficiency letters by December 4th for a December 13th hearing. Staff states in the EPC report that the EPC may conclude a deferral is appropriate:

‘The applicant’s most updated application was submitted to planning staff after close of business on December 3, 2018, 10 days prior to the December 13, 2018 hearing. Pursuant to EPC Rules of Conduct #12, “All written materials including petitions, legal analyses, and other documents should be submitted to the Planning Department at least 10 days prior to the EPC hearing, in time for full consideration by staff and presentation to the EPC prior to its regular scheduled meeting.” It is within the EPC’s purview to defer if the EPC determines that additional information is necessary or `beneficial to render a decision (pursuant to EPC Rules of Conduct #7 e).

I have supplied in an earlier letter on December 4th documentation that the IDO requires the application to be complete before a hearing is even scheduled. The correct process steps are important because the adjacent landowners and neighborhoods have established rights to participate in this hearing. If the applicant submits a deficient application and/or changes the submission substantially, the neighborhood (and staff) should have several weeks to review it. Neighborhoods review the cases with their executive board and interested members. This requires weeks of lead time to match established neighborhood board monthly meetings. A public hearing on an application that has substantial submittals coming in seven working days before the public hearing is an unfair practice and a clear violation of the rules and intent of the Comp Plan and IDO.

Also in the Project Memo to the applicant from Planner Somerfeldt is an earnest request that application materials be submitted by November 14th. Applicant missed that request by almost three weeks.

(Memo in Staff Report materials)

Subject: FW: Poole / Oxbow meeting follow-up

From: Somerfeldt, Cheryl

Sent: Tuesday, November 13, 2018 12:53 PM

To: 'Jim Strozier'; Jaime Jaramillo

Cc: Brito, Russell D.; Mackenzie Bishop; Abrazo Homes; Christopher Scott; Michael Balaskovits; Chris Green; Bill Chappell

Subject: Poole / Oxbow meeting follow-up

Hello,

Thank you for meeting with us yesterday. It was helpful to see the new Site Plan and discuss some of the issues. The record is currently up to date with notification; however, the following will be discussed in the staff report and it is strongly suggested to submit justification to support the case as soon as possible. (Ideally digital copies would be sent **via email tomorrow**. If not, please give me a date). (This email constitutes Project Memo 2.)

GENERAL QUESTIONS:

1. Can we use the diagrams presented yesterday as official documents part of the record or are they still being revised? Can you send digital copies of the diagrams and of the full plan set including the conceptual grading and drainage plan? Tomorrow would be ideal, but If not, please let me know when. Hard copies should follow but we can use digital copies for now.
2. Are the DRB issues still valid with the new Site Plan? Can you please update us on which IDO sections are relevant for the project's projected DRB Variance request?
3. Please send something in writing **showing progress with the USACE**.

JUSTIFICATION LETTER:

a. Regulation:

a. *Section 4-3(B)(2)(d)3. The common open space may be walled or fenced but shall be partially visible from a public right-of-way through openings in, and/or with trees visible above, the wall or fence.*

Please explain how this is met.

b. *5-2(H)(2)(a) Development on properties of any size adjacent to Major Public Open Space shall: 2. Locate onsite open space to be **contiguous with the Major Public Open Space**, with access generally not allowed unless approved by the Open Space Division of the City Parks and Recreation Department.*

Please explain how this is met.

c. *Section 5-2(C)(1) –*

Please list each subsection and explain how it was analyzed and the result in the justification letter.

d. *Section 5-2(H)(2)(b)*

Please explain how this is met.

e. *Section 5-3(E)(1)(d)*

Please explain how this is met.

II. The application remains deficient in complying with IDO 5-2(C)(1) Avoidance of Sensitive Lands even as of December 4th.

The applicant has begun a map of sensitive lands, but has not analyzed the sensitive lands using technical/professional criteria. It remains extremely important that the EPC hold the applicant to a complete and thorough technical submission as this is the first case to use these requirements.

a. Floodplains and flood hazard areas.

The staff report shows this concern about the accuracy of the mapping of the flood plain:

‘The applicant indicates a Flood Zone area on the Sensitive Areas exhibit. It is assumed this is the 100-year floodplain line. If so, the Site Plan does not meet this regulation. Any area within the floodplain should be part of the open space created by the cluster development. The Grading and Drainage Plan shows an “Approximate Location of Existing FEMA Flood Zone”. After staff discussions with the City Hydrologist, staff requested that the applicant show evidence of contact with the US Army Corps of Engineers (USACE) regarding placement of the flood zone. As of this date, staff has not received evidence of communication with the USACE.’

b. Steep Slopes/Unstable Soils

The applicant should be required to show details on steep slopes (what are the heights of the cliffs and the soil type?) The applicant should analyze the stability of the soil and how they are addressing unstable soils and erosion effects.

The Open Space Division comments in the staff report:

‘The OSD recommends that the developer ensure adequate setback from the steep slope area in order to prevent potential erosion caused by proximity to the sandy bluff. ‘ Page 13

Hydrology has also noted substantial need for consideration of unstable soils:

‘Conditions of approval:
Section A. Hydrology: A prudent setback from the Rio Grande is recommended because the slope on City Open Space is not stable and subject to lateral migration of the river. The City has no plans to stabilize the slope and does not want to be burdened with the cost of such improvements. Bank Protection may be constructed to prevent lateral migration of the river, and erosion of the slope.’ Page 21.

c. Wetlands

The applicant does not answer basic questions about the onsite wetlands and how they will be protected. Describe the wetlands onsite? What is its function/habitat value of the wetland?

How much buffer is required to have no negative material effect on the habitat and visual value of the wetland?

d. The applicant has not documented large stands of mature trees on the site.

The applicant is very dismissive of the mature trees on the site and said:

‘5-2(C)(1)(i) Large stands of mature trees

“... most of the trees in this area are on MPOS land, are located right along the edge of the Oxbow Major Public Open Space (MPOS), and are incorporated into the open space and will be maintained. The existing mature trees that are located right along the edge of the MPOS are incorporated into the on-site open space and will be maintained. The trees that are associated with the two existing residences have not been irrigated or maintained over the past 12 years and are proposed to be removed. New trees are proposed as part of the project development.” Page 13

Staff expresses concern about this oversight in the staff report:

Staff is not aware of an expert such as an arborist surveying the trees, therefore it is unclear as to whether the trees associated with the two existing residences (see aerial photo above) are in a deteriorating condition and/or if they are non-native or invasive species. Given that the Cottonwood stand, which requires a large amount of ground-water exists to the east of the site, it is possible that drought tolerant species such as Juniper would be healthy farther to the west. An evaluation of the health of these trees by the City Forester would provide the applicant guidance on how to treat them.’ Page 13

e. Archaeological sites were researched, but no condition has been emphasized to make sure the developer would stop construction if archaeological evidence is found so that archaeologists could clear the area before work resumed.

The Parametrix letter in the EPC staff report states:

‘Based on SWCA’s 2013 survey and my recent reassessment, it is unlikely that archaeological resources are present on the Poole property. However, it is recommended that the City adhere to SWCA’s recommendation, which states that “if any subsurface deposits are encountered during construction, all construction activities are to cease until archaeological professionals clear the area for resumed work.’

III. The application should consider all parcels together as one whole.

The applicant is attempting to divide up its parcels for one consideration under the certain IDO regulations. Then it attempts to have the land as one whole for other IDO regulations. For

example, the applicant presented the land as a whole when justifying its request for a variance before the DRB.

Long Range Planning Staff the lead authors of the IDO said in their staff comments that the entire development was required to meet all requirements. The EPC needs to ask the site plan case reviewers to follow this direction from Long Range Planning as stated in the staff report:

‘Third, the IDO establishes considerations for avoiding sensitive lands in site design in Subsection 5-2(c) and design requirements for development adjacent to and within 300 feet of Major Public Open Space in Subsection 5-2(H). The entire development will need to meet all requirements of these Subsections.’ Page 26

It only makes sense that a subdivision of 5 parcels should be reviewed together and follow all IDO provisions together. Therefore, all common open space must be placed adjacent to the MPOS.¹ If also follows that the very minimum lot size can be no less than 8200 s.f.,² yet the EPC could require larger lots to meet the goals of development to have no negative impact on adjacent open space.

IV. The EPC is required to review design criteria, but the applicant has failed to provide the required subdivision design guidelines.

The following IDO sections are specifically mentioned special requirements for Sensitive Lands and Adjacency to MPOS and have particular application when the EPC is the reviewer of the site plan. This review should not be delegated to DRB because the IDO specifically charges the EPC to do the site plan review on these sections. The Planning Director letter even implies that the EPC review will go down to a deeper level: ‘the development standard specific to ‘Access and Connectivity’ and Subdivision of Land ‘5-4’ which are usually done by the DRB will factor into your review of this Site Plan application.’ (see Campbell Letter to Bohannon, 10/24/18)

The following sections of the IDO should be addressed by the EPC and are not addressed in the application:

A. IDO, p. 204 Major Public Open Space Edges

1. Colors: Limit colors on exterior surfaces.
2. Colors blend with natural environment
3. Screen mechanical equipment (as applicable to homes/utilities)
4. Outdoor lighting
5. Signage (does not apply)
6. Ped and bicycle access to open space

B. IDO, p. 205 Properties Adjacent to Major Public Open Space Adjacent, any size:

¹ If the EPC allows separate clusters, any parcel that is both adjacent to MPOS and is part of a cluster must follow the most restrictive IDO provision, i.e, put the common open space adjacent to the MPOS.

² Per the IDO Sensitive Land requirement that lot area be reduced a maximum of only 25%.

1. **Single loaded street**-part of the staff report discussion.

That discussion should also be informed by the Police Department asking for a clear distinction between public and private open space for crime prevention. Many of the homes with backyards directly adjacent to the Bosque open space have been targets for breakins.

2. **Locate onsite open space contiguous to MPOS.**

The staff report states:

‘Three of the six City lots has adjacency to the City’s MPOS and are therefore subject to this regulation. Staff recommends a condition that the on-site opens space of each cluster development be contiguous with the MPOS.’ Page 14

Has staff included this condition?

3. **Limit height of sight lighting to 20 feet.** This requirement remains unaddressed. It would typically be addressed in subdivision design guidelines.

4. **Incorporate Crime Prevention through environmental design.** This is not addressed by the applicant in the site plan. This could also be addressed in subdivision design guidelines. The Police Department did provide important comments in the staff report:

‘POLICE DEPARTMENT/PLANNING

Regarding the above referenced EPC case, I respectfully submit the following comments:

--Ensure adequate lighting throughout the project – exterior lighting on the house and any future building(s).

--Ensure natural surveillance and clear lines of sight throughout the project. Natural surveillance requires a space free from natural and physical barrier. Establish a clear line of sight from the house to the street and the street to the house. Also maintain natural surveillance between the house and any future building(s)...

--Create a clear transition from public to semi-public to semi-private to private space throughout the project.’ Page 27.

5. **Manage stormwater.** The applicant has not given a clear technical analysis of how stormwater will be managed.

The application lacks specificity on stormwater and it is reflected in the staff report:

‘ Both surface and groundwater on the Poole property contribute to the water quantity and water quality entering the San Antonio Oxbow MPOS. Percolating groundwater through the property that enters the river aquifer is released slowly and is cleaned during

its migration. Any development on the property should emphasize protection of groundwater infiltration by mandated use of permeable surfaces.’ Page 16

The application does not sufficiently address AMACA requirements because of its lack of specificity:

‘F. Albuquerque Metropolitan Arroyo Flood Control (AMAFCA)
--Identify the AMAFCA Easement, filed for public record in Bernalillo County, NM on October 17, 1996 as Document No. 96114620, on the Site Plan for subdivision and Grading & Drainage Plan including the Storm Water Holding and Sediment Trapping Pond, Riprap bank stabilization, and grade control structure.’ Page 22

6. **Locate and design vehicle access per IDO subsections.** This is not addressed by the applicant in the site plan. This should be addressed in subdivision design guidelines.
7. **Walls and retaining walls** per (Walls adjacent to major arroyos and MPOS section). This is not addressed by the applicant in the site plan. This should be addressed in subdivision design guidelines.
8. **Mitigate construction impact.** This had not been addressed at all by the applicant or in the staff report. This is an extremely important requirement for the EPC to make to ensure that MPOS and private open space to be left in a native state are protected.

C. Properties 5 acres or greater adjacent to MPOS

1. Comply with 1-10
2. **Not create material negative impact.** The applicant gives no analysis of justification for this no negative impact statement. The applicant merely state that this site has not been a priority for acquisition, which is not necessarily true.³

³ Staff Report p. 14,15 Applicant response

“The subject property is adjacent to the MPOS but has not ever been identified as a priority for acquisition by the City. The City Parks and Recreation Department’s Open Space division currently manages the MPOS and we have met several times with them to discuss the project and the relationship to the MPOS. As stated above in response to the sensitive lands, we have utilized a portion of the on-site open space to create buffers to and maintain the integrity of the visual, recreational, and habitat values the adjacent MPOS. The Open Space division has requested a note on the site plan prohibiting private access into the adjacent on-site open space from rear yards. Access to the MPOS is currently limited; it is not anticipated that additional public access will be allowed; and we are in agreement with that and have included that restriction on the site plan.”

This statement by the applicant has no bearing on this criteria for no negative impact.

The Open Space Division expresses the most information about the habitat and recreational values in their comments:

‘The eastern portion of the Poole property, in particular, sits on the bluff adjacent to valuable and sensitive bosque habitat. Development in this area will negatively affect wildlife habitat, especially for birds, small mammals and reptiles. Any public or private common open space should be consolidated into a single large area, with the priority being the eastern end of the Poole property adjacent to the MPOS, and should remain in a natural state with only native species to prevent any incursion of invasive and non-native species into the MPOS. Development, in the form of structures and buildings, should be located as far away as possible from the MPOS and any adjacent slopes to provide buffer to the wildlife habitat below the bluff and to prevent erosion and subsidence of the land above the MPOS.’ Page 15

3. **Design vehicle access to minimize impact on MPOS.** This is not addressed by the applicant in the site plan. This should be addressed in subdivision design guidelines.
4. **Design grading and manage stormwater to minimize impact on MPOS.** This is not addressed by the applicant in the site plan. This should be addressed in subdivision design guidelines.
5. **Site lighting to minimize impact on MPOS.** This is not addressed by the applicant in the site plan. Much of the wildlife is nocturnal and night lighting of development is extremely important on having no negative effect on habitat. This should be addressed in subdivision design guidelines.
6. **Walls: blend with natural environment, safety, screening.** Walls are not addressed by the applicant in the site plan, except for an entry wall. This should be addressed in subdivision design guidelines.
7. **Site plan EPC.** The EPC is authorized to deem necessary actions and conditions to further compliance with the above standards and to minimize impact on the MPOS and maximize compatibility of the proposed development. Therefore, the EPC has discretion and should use it during this site planning process. The DRB is not afforded the discretion of the EPC.

V. There are some agency conditions that reflect on the appropriate site.

The EPC should be shown if the proposed site layout can meet these conditions as part of the EPC role in reviewing this case.

a. Solid Waste

Staff report, p. 21

Condition from staff report:

D. SOLID WASTE MANAGEMENT DEPARTMENT

□□Need site plan to (1:40) scale, with dimensions, to verify safe refuse truck he circumference of the cul-de-sac next to RA 16/17, will need to be redesigned to allow complete/continuous turnaround for refuse truck. Clarify “Public Lift Station” noted inside cul-de-sac, noted on Pg. #4.’ Page 21

b. ABCWUA

Condition from staff report:

‘E. ABC WATER UTILITY AUTHORITY (ABCWUA)

--From the information provided it is understood that a section of the site intends to utilize a public force main to provide sanitary sewer service to the east portion of the development.

--Every opportunity should be utilized to minimize the use of public force main.

Request shall include a zone map showing the site location, as well as a site plan indicating finish floor elevations.

--It should be noted that there is an existing ten inch collector line transecting the development.

--This line is not to be abandoned.

--If relocation of this line is required for the development to take place the capacity shall be maintained or improved.’ Page 22

VI. There is an IDO requirement to locate and design vehicle access, circulation, and parking to minimize impact to MPOS.

Is the subdivision using appropriate locations for ingress and egress? Are there any conditions of this subdivision that would require a Traffic Impact Study?

Homes have a trip generation of 10 (rounded up from 9.57 per ITE trip generation rates) vehicles per home. This site plan is increasing traffic from 20 vehicle trips per day (2 homes) to 740 vehicles trips per day (74 homes). Does this trigger a Traffic Impact Study?

All the 740 vehicle trips are being funneled to Namaste which is only 300 feet from the highest cliff of the Oxbow. The La Bienvenida entrance is more distant from the most sensitive lands (Oxbow and Bosque) and 200 feet from the San Antonio arroyo which is a cement structure. The existing entrance on La Bienvenida to the second house sitting now on the site would be the best location for a second entrance to the site. Please note also that no homes are fronting on La Bienvenida or Tres Gracias.

The EPC should review the site layout and determine if an additional entrance is needed. The applicant obtained a variance from the DRB which could allow no vehicles entrance on La Bienvenida, however the EPC can—and should—determine that that site layout does not meet all the goals and regulations. In fact, that site layout violates the block length and the DRB variance exacerbates that problem. It is also true that the DRB variance is still subject to appeal which will not be resolved by the 12/13/18 EPC hearing.

VII. The site plan requires a variance to the IDO block standard for local streets.

At least one block, backing La Bienvenida, is over 600 feet in length. See definition of a block in the IDO. A block variance has not been requested or advertised to the public. Staff itemized this requirement in 10/24/18 deficiency memo.

Thank you for consideration of these numerous details. It is the protection of the public investment of millions of dollars in the public open space that makes all of us want to make sure the EPC is thorough in its review of the proposed site plan.

Sincerely,

Jolene Wolfley
Taylor Ranch

Norman Gaume, P.E. (ret.)

44 Canoncito Dr NE • Albuquerque, New Mexico • 87122 • 505 690-7768 • normgaume@gmail.com

Submitted to csomerfeldt@cabq.gov for the Planning Department/EPC record

December 10, 2018

Chair Bohannon and Members
Environmental Planning Commission
City of Albuquerque

Re: Project #: 2018-001402 SI #: 2018-00171; Hearing Date: December 13, 2018

Dear Chair Bohannon and EPC members:

The developer has not complied with IDO minimum standards in its development of the site plan before you for approval. The site plan is not legally approvable.

The development layout and site plan for which the developer and his agents seek EPC approval on December 13, 2018, is fatally flawed. The development process to date has not followed the requirements of the Integrated Development Ordinance. IDO Section 5-2(B) says the following are **minimum** standards.

5-2(C) AVOIDANCE OF SENSITIVE LANDS

5-2(C)(1) Both the subdivision and site design processes shall begin with an analysis of site constraints related to sensitive lands. To the maximum extent practicable, new subdivisions of land and site design shall avoid locating development, except for open spaces and areas that will not be disturbed during the development process, in the following types of sensitive lands:

5-2(C)(1)(a) Floodplains and flood hazard areas

5-2(C)(1)(b) Steep slopes

5-2(C)(1)(c) Unstable soils

5-2(C)(1)(d) Wetlands

5-2(C)(1)(e) Arroyos

5-2(C)(1)(f) Irrigation facilities (acequias)

5-2(C)(1)(g) Escarpments

5-2(C)(1)(h) Rock outcroppings

5-2(C)(1)(i) Large stands of mature trees

5-2(C)(1)(j) Archaeological sites

5-2(H)(2)(b) Development on properties 5 acres or greater adjacent to Major Public Open Space shall:

1. Comply with the requirements of Subsection (a) above.
2. **Not create any material negative environmental impacts on the visual, recreational, or habitat values of the Major Public Open Space.**
3. Locate and design vehicle access, circulation, and parking to minimize impact to Major Public Open Space.
4. **Design grading and manage stormwater to minimize impact to Major Public Open Space.**

The subdivision and site designs were prepared in violation of the IDO Section 5-2 (C)(1). Neither the subdivision nor the site design “beg[a]n with an analysis of site constraints related to sensitive lands.” This IDO language is mandatory. The sensitive lands exhibit submitted December 3 is late, cursory and omits sensitive site attributes.

Multiple planning staff requests to the developer identify the IDO requirement for such an analysis. They are in the record, along with the developer’s unresponsive submittals. The EPC must determine that the developer’s analysis is not credible and complete, as shown by facts and arguments presented in this public comment, and deny approval.

The site plan before you for approval is premature due to the absence and subsequent use in design of a credible sensitive lands analysis and constraints on sewage collection and relocation of an existing interceptor sewer. The site plan you have before you for approval is the latest produced by the developer for multiple stages of public review: facilitated public meeting, two versions for the open space advisory board, and multiple versions for the DRB and the EPC. Most recently, Planning Department staff would not let the site plan and subdivision design proceed to a Development Review Board variance hearing until the site plan was revised to address IDO requirements set forth by the Planning Department in their October 23 project memo.¹ With minor subsequent changes, the site plan received the DRB’s pro forma variance approval. **The remainder of publicly expressed site plan and sensitive lands concerns were deferred to the jurisdiction of the Environmental Planning Commission.**

The site plan for which your approval is requested encroaches on sensitive lands including an escarpment that meets the IDO definition, a length of highly erodible river bank, cottonwood bosque, open space, and Rio Grande occupied riparian habitat. It is immediately adjacent to wetlands habitat containing open surface water at low river flows. The site blocks continuity of existing public trails that extend both north and south adjacent to the Rio Grande from the property, which now prevents their connection. The site plan ignores requirements and needs for trail connectivity.

The site plan is deceptively drawn. It fails to show existing retaining walls and paving located where the river bluff once existed. It obscures the topography of features the IDO defines as sensitive. The rear lot lines of several cluster lots are coincident with the tall upper retaining wall. Rear lot setbacks would place houses on the edge of what was once river bank with bosque and wetlands immediately below. Lots that are too close to the sensitive lands also may require sewage pumping, which the developer has proposed be a public expense.

The urban Rio Grande and its wetlands and riparian cottonwood forest are valued public environmental assets that make Albuquerque special and unique and are protected by the IDO. Local, state, and federal governments have expended millions to protect and enhance the habitat that it provides and the species that depend on that

¹ Current Planning Project Memo, 10-23-2018, City of Albuquerque, Planning Department, Current Planning Section, Environmental Planning Commission Project #: 2018-00135, SI-2018-00123 Hearing Date: November 08, 2018

habitat. The Oxbow is a featured habitat restoration site and include a prime example of rare Rio Grande wetlands. It is off limits to public entry.

City Council members want to protect our cherished open spaces. City Council President Trudy Jones and council member Ike Benton recently published a guest column in the Albuquerque Journal that summaries the Council’s intentions for the newly-adopted Integrated Development Ordinance that governs your consideration of this proposed site plan.² They said, “For the first time in decades, the city can say with confidence what’s required on a particular property given the surrounding context.” They also said, “Our cherished open spaces receive better protections.” Our cherished open space includes the open space of the Rio Grande and its riparian forest that are not City owned but which the IDO recognizes as publicly environmentally valued.

Figures 1 and 2 below illustrate an existing perimeter wall in the southeast corner of the Poole property that climbs out of the bosque, up the unstable river bank and broken-down escarpment, and then extends along most of the property perimeter.



Figure 1: Existing southeast corner CMU wall down the bluff and into the bosque immediately adjacent to wetlands, immediately adjacent to Major Public Open Space

² Issac Benton and Trudy Jones, *IDO Offers Positive Transparency*, Albuquerque Journal Guest Column, November 18, 2018, <https://www.abqjournal.com/1247909/ido-offers-positive-transparency.html>



Figure 2: Southeast corner tall CMU wall down the bluff and into the bosque that violates the IDO minimum standards for walls adjacent to Major Public Open Space and blocks connectivity of the river trail through the property

Immediately behind (north of) the portion of the southeast corner perimeter wall shown in Figures 1 and 2, a section of the river bluff and escarpment have severely eroded and been replaced by three retaining walls. The upper two are partially shown in Figure 3. The upper retaining wall is very tall and is located where the river bluff once was. The lower retaining wall is at the bottom edge of the bluff, out of sight in Figure 3. The area between the upper and middle retaining walls is a paved road, gated on the north through another CMU wall that is visible in Figure 3. This solid wall also climbs the bluff out of the bosque.

The site plan fails to show the retaining walls and obscures the sensitive topography of the former bluff that has been replaced by retaining walls and bisected by two tall stuccoed CMU walls. The staff report has many photos of the property but fails to show or discuss these major topographic features and their encroachment on sensitive lands.



Figures 3 (at top) and 4: Upper retaining wall along on the bluff alignment, and two CMU walls ascending the bluff. Rear lot lines of cluster lots are coincident with the top of the grey, mostly visible upper retaining wall. Middle retaining wall and pavement visible.

Uncontrolled urban stormwater runoff has severely eroded the river bluff. The three and retaining walls replace a high, steep river bluff that was seriously eroded by uncontrolled urban runoff down Namaste due a previous failure of subdivision design. The Namaste pavement with curb and gutters descends a pronounced slope and then ends abruptly. Storm water runoff flows east, which is downhill and toward the river, from the pronounced slope of paved Namaste, through the unpaved cul de sac and parking area, across fenced property that is now Major Public Open Space, and then over the highly erodible bluff at the southeast corner of the now-walled development site. Construction of the south perimeter site wall diverted runoff from the previously eroded area that is now occupied by the retaining walls shown in Figures 3 and 4. The diverted runoff now flows over the edge of the bluff on Major Public Open Space, where it has created a major gully.

EPC site plan approval must be contingent up a storm water drainage solution for the developer's new cul de sac at the downhill end of Namaste that will prevent storm water flow from continuing through the open space and over the edge of the highly erodible river bluff to the bosque and wetlands as shown in Figure 5.



Figure 5: Severe erosion of the bluff caused by urban runoff down Namaste, through the area of the proposed development cul de sac at the east end of Namaste, across Major Open Public Space, and over the edge of the highly erodible river bluff. This gully is a few tens of feet south of the Poole property south perimeter wall. Before the wall was built, drainage was through the Poole property southeast corner.

The rear lot lines of several small cluster lots in the southeast corner of the plat are coincident with the upper retaining wall. The rear lot setback is very close to sensitive lands and habitat. The site plan needs to be drawn to show the retaining walls, which do not conform to IDO requirements, or show how they will be replaced and integrated with other site plan features to protect these environmentally sensitive lands.

All the omissions cite above are evidence that sensitive lands have not been analyzed nor has such an analysis guided the subdivision and site plan design as required by law.

Sewage pumping proposed but the developer has failed to analyze that, too. Lots proposed on the eastern part of the development may be located at too low an elevation for gravity sewer service. A recent site plan submitted to the Planning Department included the words “public lift station” at the edge of the eastern cul de sac, but with no illustration of the facility size and features. More recently, developer’s agents have mentioned an unknown number of affected lots will have individual sewage grinder pumps.

The site plan should be re-designed with the constraint that only gravity sewage service is acceptable. Lots on the eastern edge that are undesirably close to habitat and open space may require sewage pumping. The EPC should require greater setbacks and should allow only those lots where sewage collection will not require sewage pumping, either by a public lift station or by individual grinder sewage pumps. Nobody should have a sewage grinder pump in their garage.

The EPC should require the developer to apply to the Albuquerque/Bernalillo County Water Utility Authority for a water and sewer availability statement. The requirements of sewage service to all the lots, the acceptability of a public lift station or individual grinder pumps located in homeowner garages, and the requirements and preliminary design to relocate the existing interceptor sewer all constrain the site plan layout. The DRB letter of advice resulting from the DRB sketch plat review in August 2018 specifically told the developer to apply for a water and sewer availability statement, which should be a prerequisite for site plan layout, but the developer has not done so to date. As a result, the site plan before you for approval is speculative and may require the significant public subsidy of a public lift station owned and operated in perpetuity by the Albuquerque/Bernalillo County Water Utility Authority or redesign to accommodate relocation of the existing gravity interceptor sewer.

The perimeter wall must meet IDO requirements. The perimeter walls must meet the requirements of the IDO sections that are explicitly applicable to walls adjacent to Major Public Open Space. The existing wall must be removed and replaced where it is immediately adjacent to Major Public Open Space as it precludes the requirement for a single loaded street or a minimum width landscaped setback buffer. The wall is too tall and doesn’t meet the explicit appearance requirements of the IDO 14-6-5-7(E)(4)

River trail connectivity is required. The perimeter wall blocks access along the edge of the bluff from the trails to the south. Figure 6 shows the bare and eroded bluff edge is damaged by people descending down the face of the bluff, despite the Open Space sign forbidding that. This damage and trespass into sensitive habitat areas would be remedied

by trail connectivity to the north through the open space at the perimeter of the property and connecting to the riverside trails on the north side of the property.



Figure 6: Major Public Open Space bluff edge immediately south of development site.

The extensive riverside trails to the north are closed on the south end of the trail, at the north end of the site, where the trails reach the Oxbow and the river bluff begins its rise to far above the river. Trail users heading south along the west bank of the Rio Grande are blocked from ascending the rising bluff to reach the trails across the top of the bluff on the south by the high intervening block walls and steel fences on the north and south ends of the development site. The EPC should require that the site plan be revised to link the trail through the open space on the north to the trails through the open space to the south.

The EPC should require that the site plan be revised so that the perimeter walls that now block through trail continuity and descend down the face of the bluff into the bosque are at least partially removed. The EPC should require that the perimeter walls of the new development comply with all requirements of the IDO for walls adjacent to Major Open Public Space, including landscaped setback at the perimeter, maximum height, and appearance features.

The development site plan is not based on an analysis of sensitive lands and is insensitive to appropriate and normal setback from the bluff edge, the setback from occupied habitat, and the view from the river.

The EPC should review the great setback of structures along the bluff within City developments to south. All housing is built with substantial physical separation between structures and the sensitive lands, slopes, habitat and wildland fire potential. If the EPC were to approve the site plan before it, the lack of setback would be a remarkable and objectionable feature compared to the lands to the south. The houses built right on the edge of the bluff would indeed be unique. They would be on the bluff, above the bosque, in sight from the river. They would stick out like a sore thumb to the public disbenefit of the Albuquerque environment. That is a would be a material visual environmental impact as prohibited by IDO 14-16-5-2(H)(2)(b)(2).

The site plan before you for approval would place houses very close to occupied riparian and wetland habitat that has unusually high values as expressed by major public expenditures to improve it. Without the analysis of sensitive lands required by the IDO as previously discussed, which must be competent and credible, you have no guidance regarding the development footprint setback from the bosque and wetlands so as to not have a material negative impact on habitat values per IDO 14-16-5-2(H)(2)(b)(2).

Please do your job to protect Albuquerque's treasured environmental attribute from insensitive and unanalyzed adjacent subdivision development. Protect our treasured open spaces. Protect visual, recreational, and habitat environmental values. Prevent uncontrolled urban runoff over the edge of escarpment above the river. Require gravity sewer service from all developed lots.

The developer's disregard of the IDO requirements that development avoid sensitive lands "to the maximum extent practicable" and "not create any material negative environmental impacts on the visual, recreational, or habitat values of major public open space" requires a strong EPC response.

- 1. The EPC should require a setback of lots and houses that meets or exceeds criteria set forth in the IDO on page 57 to protect the Rio Grande's sensitive bosque, wetlands, west bank, environmental attributes, and habitat.**
- 2. The EPC should then require the developer to redesign the subdivision layout and the redesign the site plan environmental features accordingly prior to EPC's next consideration for site plan approval.**
- 3. The EPC should strictly enforce the explicit requirements of the IDO that are applicable as minimum conditions for EPC site plan approval.**

Sincerely,

/s/

Norm Gaume