SUPPLEMENTAL PUBLIC COMMENT

Somerfeldt, Cheryl

Subject: FW: comment for PR-2018-001402 EPC hearing

From: **Jacob Candelaria** <jacob.candelaria@gmail.com>
Date: Wed, Dec 12, 2018 at 8:08 PM
Subject: Re: EPC HEARING Thursday Dec 13: Arrive early -- 8AM -- and a few other Tips
To: Dr. Susan Chaudoir <edu.chaudoir@gmail.com>, Victor Lopez <victor.fs.lopez@gmail.com>

To the members of the EPC:

I have represented senate district 26 which encompasses large swaths of the westside for six years.

During that time, my constituents have been consistent and vocal about their views regarding westside development. As westsiders we need economic and commercial development. We want to preserve open space. My constituents have also been clear that they do not believe that there is a need for more single housing developments like the one proposed at the Poole property at oxbow.

I am concerned that the environmental impacts of this project have not been properly vetted. For example, I believe this project will threaten the adjoining wetlands.

I also oppose this project because it is yet another example of sacrificing a public good for corporate profits. All of our community enjoys and benefits from the wetlands and open space that abut this project. I believe it is in the best interest of our community to preserve this proposed development property as open space for the enjoyment of the public.

I urge this committee not to sacrifice the public good and the heritage of our open space lands in the name of a luxury property development.

At the very least I ask this committee to defer any action on this proposal until after the upcoming legislative session to afford the legislature the opportunity to partner with local government to purchase this land and preserve it.

Put our public good and our environment over profits.

Sincerely
Senator Jacob Candelaria

Sent from my iPhone

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This message has been analyzed by Deep Discovery Email Inspector.

YNTEMA LAW FIRM P.A.
ATTORNEY AT LAW

HESSEL E. YNTEMA, III

January 9, 2019

HAND DELIVERED
Mr. Derek Bohannan, Chair
Environmental Planning Commission
City of Albuquerque Planning Department
600 Second Street NW
Albuquerque, NM 87102

RECEIVED
09 JAN 2019
2:14pm

Request for Stay in PR-2018-001402; SI-2018-00171 Site Plan; AC-18-20; PR-2018-001402; VA-2018-00226

Dear Chairman Bohannan:

Yntema Law Firm P.A. represents Kevin Dullea, Scot Moye, Barbara Tegtmeier, Lynley Moye, Susan Chaudoir, Kathy Adams, Jonathan Abdalla and Becky Davis (the "DBR Appellants") in AC-18-20, an appeal to the City Council of the DRB decision of December 5, 2018, to grant a variance for the referenced project. The DRB Appellants object to the EPC hearing the referenced site plan while their appeal to the City Council is pending, and request that the EPC not proceed until their appeal is resolved. The appeal of the DRB variance decision is under NMSA 1978, Section 3-21-8(B), which states (key language in bold):

> Any aggrieved person or any officer, department, board or bureau of the zoning authority affected by a decision of an administrative officer, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule of regulation adopted pursuant to these sections may appeal to the zoning authority. **An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property.** Upon certification the proceedings shall not be stayed except by order of district court after notice to the official, commission or committee from whom the appeal is taken and on due cause shown.

The DRB Appellants advise that the site plan at issue appears to rely upon and require approval of the subject variance. There does not appear to be any certification of the DRB that a stay would cause imminent peril of life or property. Under these circumstances, action by the EPC on this matter should be stayed under Section 3-21-8(B).

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel Yntema
Hessel E. Yntema III

215 Gold Ave. SW
Suite 201
Albuquerque, NM 87102
Phone (505) 843-9565
Fax (505) 242-2879
firm@yntema-law.com
hess@yntema-law.com

TAYLOR RANCH NEIGHBORHOOD ASSOCIATION INC.

January 10, 2019

Mr. Derek Bohannan, Chair
Environmental Planning Commission
City of Albuquerque Planning Department
600 Second Street NW
Albuquerque, NM 87120

Re: Request to Stay EPC Proceedings for PR-2018-001402; SI-2018-00171
Cf: DRB Appeal AC-18-20: **Poole Property 5001 Namaste Rd.**

Chairman Bohannan:

The Taylor Ranch Neighborhood Association (TRNA) voted unanimously at its January 2019 meeting to request that the EPC not proceed in review of the Poole Property Site Plan until the DRB appeal ruling is resolved fully. The Pool Property at 5001 Namaste lies within the boundaries of TRNA. An appeal of the DRB variance for street connectivity was filed and accepted by the Planning Department on December 20, 2018. The EPC should not proceed to hear the site plan case under pending DRB appeal. There is precedent in other cases that when the applicant chose to proceed with the first hearing body, that an appeal of the decision of the first hearing body was resolved before a second hearing body began its review.

Please consider the following:

1) The EPC should not proceed unless it can be certified that it would cause imminent peril of life or property. Consider:
    a) NMSA 1978, Section 3-21-8(B): [bold text for emphasis]
        i) Any aggrieved person or any officer, department, board or bureau of the zoning authority affected by a decision of an administrative officer, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. **An appeal shall stay all proceedings in furtherance of the action appealed** unless the officer, commission or committee from whom the appeal is taken certifies

that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the official, commission or committee from whom the appeal is taken and on due cause shown.

2) The EPC hearing is stayed if the applicant's proposal requires or involves the variance. In this case, **the DRB variance, 14-16-5-3(E)(2)(a) is critical and fundamental in whole or in part of any or all EPC decisions.** If the EPC proceeds as such, it would be "in furtherance of the action appealed" if the stay has not been granted by an applicable certificate.

It is likely that DRB appeal process may reverse the decision, decide in favor of the appellant, or make a change to any or all requirements, decisions, and/or determinations pertaining to the DRB variance.

Very truly yours,

Taylor Ranch Neighborhood Association

Somerfeldt, Cheryl

From: Mary Raje <raje39@icloud.com>
Sent: Friday, January 18, 2019 8:09 AM
To: Somerfeldt, Cheryl
Subject: Re: Poole Estate - Identifying info for sender of this comment

> On Jan 18, 2019, at 8:07 AM, Mary Raje <raje39@icloud.com> wrote:
>
> The Poole Estate, bordering on the Rio Grande and the Oxbow Wetland, is an integral part of an ancient ecosystem which supports a network of life. This unspoiled area is part of the Rio Grande migration route for many species of birds as well as other wildlife. Please consider the harmful effect a subdivision of homes would have on this network. Instead, it should be knitted into an uninterrupted chain of wetlands in this important continuum of the Rio Grande, the Oxbow Wetland, the Rio Grande Nature Center, Shady Lakes & adjacent areas for the continued well being & health of this ecosystem. This will not only benefit wildlife and the river, but will also enhance healthy land use which attracts non-invasive business and tourism, adding to the New Mexico mystique upon which the "New Mexico True" tourism advertising is built.

Mary L. Raje 1213 Granite Ave. NW Albuquerque, NM 87102 =
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This message has been analyzed by Deep Discovery Email Inspector.

Somerfeldt, Cheryl

From: Seth Merkley <sethdmerkley@gmail.com>
Sent: Friday, January 18, 2019 4:55 PM
To: Somerfeldt, Cheryl
Subject: blfallon@gmail.com

Please ensure the proposed development has an adequate setback from the Oxbow to prevent the disturbance of wildlife. This is some of the best habitat along the middle Rio Grande and as a resident of the area I wish it to remain as pristine as possible.

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This message has been analyzed by Deep Discovery Email Inspector.

Somerfeldt, Cheryl

From: Crawford John Maccallum <mccallum@unm.edu>
Sent: Saturday, January 26, 2019 12:35 PM
To: Somerfeldt, Cheryl
Subject: Oxbow, reference PR-2018-001402

Environmental Planning Commission:

Please be very careful about allowing developers to endanger the Oxbow.

Sincerely,

Crawford MacCallum
144 Sedillo Hill Rd
Tijeras 87069

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This message has been analyzed by Deep Discovery Email Inspector.

PARID: 101106148219040203
LUC: 1100 **TRACKING: A** **NBHD: 3093** **ROLL: RP**
DANIELS FAMILY PROPERTIES LLC

Ownership (OWNDAT)

Owner and Address	DANIELS FAMILY PROPERTIES LLC 3550 SEQUOIA CT NW ALBUQUERQUE NM 87120
Special Tracking Flag	A
Listing in Lieu	
2nd Mailing	
Returned Mail	
CAB Number	
Bonds	
Special Assessments	
Value Freeze	

Legal Description (LEGDAT)

	* TAX YEAR *	2019
SITUS		ALBUQUERQUE, NM 87120
Tax District		A1A
Legal:		LTS 1 THRU 3 BLK 1 PLAT OF WEST BANK ESTATES TOGETHER WITH TR A1 LANDS OF SUZANNE H POOLE CONT 14.1326 AC
Deeded Acres		14.1326
Sq Ft		615616
Initial Listing Date		110702
Job Number		
Plat Number		
File Date		
Subdivision Name		
Notes:		CHILD OF SPLIT FROM 101106147518940203

Printed on Monday, January 28, 2019, at 11:45:21 AM EST

PARID: 101106142516140201
LUC: 9200 **TRACKING: A** **NBHD: 3093** **ROLL: RP**
DANIELS FAMILY PROPERTIES LLC

Ownership (OWNDAT)

Owner and Address	DANIELS FAMILY PROPERTIES LLC 3550 SEQUOIA CT NW ALBUQUERQUE NM 87120
Special Tracking Flag	A
Listing in Lieu	
2nd Mailing	
Returned Mail	
CAB Number	
Bonds	
Special Assessments	
Value Freeze	

Legal Description (LEGDAT)

* TAX YEAR *	2019
SITUS	ALBUQUERQUE, NM 87120
Tax District	A1A
Legal:	LOT 4-A PLAT OF TRS C-1, C-2 & LT 4-A LANDS OF SUZANNE H POOLE BEING A REPLAT OF TR C LANDS OF SUZANNE H POOLE TR C ANNEXATION PLAT LAND IN SEC 25 & 36 T11N R2E LT 4 BLK 1 WEST
Deeded Acres	3.5857
Sq Ft	156193
Initial Listing Date	110702
Job Number	
Plat Number	
File Date	
Subdivision Name	
Notes:	CHILD OF SPLIT FROM 2002190

Printed on Monday, January 28, 2019, at 11:44:50 AM EST

PARID: 101106148715940232
LUC: 1100 **TRACKING: A** **NBHD: 3093** **ROLL: RP**
DANIELS FAMILY PROPERTIES LLC **5001 NAMASITE RD**

Ownership (OWNDAT)

Owner and Address	DANIELS FAMILY PROPERTIES LLC 3550 SEQUOIA CT NW ALBUQUERQUE NM 87120
Special Tracking Flag	A
Listing in Lieu	
2nd Mailing	
Returned Mail	
CAB Number	
Bonds	
Special Assessments	
Value Freeze	

Legal Description (LEGDAT)

	* TAX YEAR *	2019
SITUS		5001 NAMASITE RD NW ALBUQUERQUE, NM 87120
Tax District		A1A
Legal:		TRACT C-1 PLAT OF TRS C-1, C-2 & LT 4-A LANDS OF SUZANNE H POOLE BEING A REPLAT OF TR C LANDS OF SUZANNE H POOLE TR C ANNEXATION PLAT LAND IN SEC 25 & 36 T11N R2E LT 4 BLK 1 WEST
Deeded Acres		4.9977
Sq Ft		217700
Initial Listing Date		110702
Job Number		
Plat Number		
File Date		
Subdivision Name		
Notes:		CHILD OF SPLIT FROM 2002190

Printed on Monday, January 28, 2019, at 11:43:58 AM EST

TAYLOR RANCH NEIGHBORHOOD ASSOCIATION INC.

February 1, 2019

Russell Brito, Manager
Cheryl Somerfeldt, Planner
Urban Design & Development Division
Planning Department, City of Albuquerque

The Taylor Ranch Neighborhoods Association requests the following Zoning Determinations regarding the proposed site plan 'Overlook at Oxbow' for the Poole Property:

Question 1: Does the proposed site plan violate the Area of Consistency Regulations of the IDO?

1. The site is in an Area of Consistency on the Comprehensive Plan Map and therefore the site plan is accountable to Area of Consistency Regulations of the IDO.

2. The Poole Property as a whole meets the definition of a block:
   a. It is bounded by streets and three sides and the Rio Grande (a barrier and unsubdivided area) on the fourth side.
   b. It is not crossed by other streets.

3. The platting in 1966 was intended to be the final lot layout of the block. The 1966 Covenants for this site show that this was to be a final plat of 4 lots. The covenants required that no lot sizes be reduced. Two homes or 'primary structures' have been built on two of the lots. (relevant portions of 1966 Covenants are on next 2 pages).

4. The Pool Property has three Bernalillo County Tax Assessor lots. Two of these lots contain a primary building and therefore, establish the measure for what the lot size is for the block. (see IDO criteria below). The two lots with primary structures are 5 acre and 14 acre lots. (**The tax parcel records for these lots are attached to this letter.)**

5. The IDO requires that the Tax Assessor Lots be used to establish the minimum and maximum block sizes. Since the block has three Tax Assessor Lots of (3.6 acres, 5 acres and 14 acres). The average size of these lots is (7.5 acres). The IDO requires that subsequent lots be 'consistent' with the average lot size. No future lot can be platted that is 75% less than or 125% more than the established lot size for the block. (see next page for lot size determinations based on Areas of Consistency.)

IDO References for Questions 1:

Area of Consistency
An area designated as an Area of Consistency in the Albuquerque/Bernalillo County Comprehensive Plan (ABC Comp Plan), as amended, where development must reinforce the character and intensity of existing development.

Block
An area that is bounded but not crossed by streets, railroad rights-of-way, waterways, unsubdivided areas, or other barriers. For the purposes of the large retail facility provisions and development in the NR-LM and NR-GM zone districts, drive aisles and private streets also qualify as block boundaries.

a. Manufactured home communities in the R-MC zone district.

b. Cluster development.

c. Cottage development.

2. All other development in any Residential zone district on blocks where lots have been platted and at least 1 primary building is constructed shall comply with the standards in Subsections (b) and (c) below.

5-1(C)(2)(b) Lot Size

In any Residential zone district in an Area of Consistency, the minimum and maximum lot sizes for construction of new low-density residential development shall be based on the size of the Bernalillo County Tax Assessor's lot, or a combination of adjacent Tax Assessor's lots, in the block where the new low-density residential development is to be constructed, rather than on the size of the individual subdivision lots shown on the existing subdivision plat.

1. New low-density residential development shall not be constructed on a Tax Assessor's lot, or combination of abutting Tax Assessor's lots, that is smaller than 75 percent of the average of the size of the Tax Assessor's lots, or combinations of adjacent Tax Assessor's lots, that contain a primary building, on that block.
2. New low-density residential development shall not be constructed on a Tax Assessor's lot, or combination of abutting Tax Assessor's lots, that is larger than 125 percent of the average of the size of the Tax Assessor's lots, or combinations of adjacent Tax Assessor's lots, that contain a primary building on that block.
3. In making these calculations, the size of any Tax Assessor's lot or combination of adjacent tax assessor's lots containing primary buildings on that block that are not low-density residential development shall be ignored.

5-1(C)(2)(c) Setbacks

In any Residential zone district in an Area of Consistency, the front setback for construction of new low-density residential development shall be based on the existing front setbacks of primary buildings on adjacent lots:

1. If only 1 of the abutting lots facing the same street is a low-density residential development, the front setback of any new dwellings shall be within 3 feet of the front setback of the existing primary dwelling on the adjacent lot or within the front setback required by Table 5-1-1, whichever allows the new buildings to be closer to the street.

Restrictive Covenants for the Poole Property recorded with the Bernalillo County Clerk 1966. (Excerpts)

DECLARATION OF RESTRICTIVE COVENANTS FOR WEST BANK ESTATES 602

Restrictive covenants for Block One (1) of West Bank Estates in Bernalillo County, New Mexico, as shown on a plat thereof filed on the 5th day of October, 1966, and recorded in Book C 6, Page 139 of the Records of the County Clerk of Bernalillo County, New Mexico.

WHEREAS, the undersigned are the owners of Lots 1, 2, 3 and 4 of Block One of West Bank Estates in Bernalillo County, New Mexico, as shown on a plat thereof, which lots are at the present time a part of land tract which is restricted as to use and occupancy by Restrictive Covenants filed May 15, 1959, recorded in Vol. D-480, page 647 and Restrictive Covenants filed December 24, 1958 and recorded in Vol. D-456, page 601, Records of County Clerk of Bernalillo County, New Mexico.

WHEREAS, the owners (who also own and reside upon lands adjoining said lots) desire for their benefit and enjoyment and the benefit and enjoyment of prospective purchasers of said lots to place further restrictions upon the use and occupancy of said lots and to this end and purpose the following restrictions are hereby imposed:

1. The lots herein described shall be used solely for single-family private residences or dwelling houses. No

15. Each lot herein shall be maintained both as to the size and form shown on the filed plat of said subdivision and shall not be reduced in size by the subdivision thereof or by the sale of a portion thereof. If any said lot is sold or conveyed the same shall be sold or conveyed in its entirety; provided that this covenant shall not prevent sales or conveyances of portions of a lot for required easements or rights of way;

Question 2: Should the application be considered a 23-acre parcel for purposes of applying the IDO to the Site Plan?

The applicant is saying they have 6 separate parcels with regard to certain IDO provisions. Then the applicant is saying they have one 23-acre subdivision for other IDO provisions. The applicant needs to be consistent in their application.

The applicant is submitting a site plan for the entire 23 acres. Therefore, the entire parcel should be considered together for IDO provisions:

a. The entire subdivision is subject to Sensitive Lands provisions.
b. The entire subdivision is subject to "Adjacent to MPOS" provisions.
c. The entire subdivision is subject to "Within 330 feet of MPOS" provisions.

If the applicant wants to use the six parcels as a separated lots; they can apply that way.

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 12/13/18 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 should be reviewed together and follow all IDO provisions together.

Note that the IDO talks about developments of "any size" being subject to the requirements <u>within 330 feet of MPOS</u>.

IDO, p. 205

> "5-2(H)(2) **Properties Adjacent to Major Public Open Space.**
> In addition to the standards that apply within 330 feet of Major Public Open Space in Subsection 14-16-5-2(H)(1) above, the following standards apply to development adjacent to Major Public Open Space. 5-2(H)(2)(a) Development on properties of **any size** adjacent to Major Public Open Space…"

The intent is that the entire development (entire subdivision with associated parcels) be subject <u>together</u> to the required provisions.

There was also a footnote reference in the Council IDO draft regarding <u>all land adjacent to MPOS</u> which shows there was a clear intent to "close the loophole of the carving up of property adjacent to MPOS into pieces less than 5 acres in order to avoid these requirements." (see excerpt below from the City Council redline draft.) The footnote uses "these requirements" and refers to the 9 requirements of the section.

[92] Added since EPC Draft to require EPC Site Plan approval prior to platting to close the loophole of the carving up of property adjacent to MPOS into pieces less than 5 acres in order to avoid these requirements.
[93] Revised since EPC Draft per Condition #120. This content will be moved to the DPM.

Integrated Development Ordinance
City of Albuquerque, New Mexico

City Council Redline Draft – July 2017
Page 226

Question 3: Is the Site in its Entirety Subject to the Sensitive Lands Provisions regarding lot dimensions? Is the clustering provision, therefore, not applicable to this site plan?

1. The IDO requires that the most restrictive provision of the IDO applies when two potentially conflicting provisions apply.

The IDO states:

> "1-8(A) If two or more of the regulations in this IDO conflict with each other, the **more restrictive provision shall prevail**, unless specified otherwise, except that when the provisions of an Overlay zone conflict with any other regulation in this IDO, the provisions of the Overlay zone shall prevail regardless of whether the Overlay zone provisions are less or more restrictive than the other regulations."[1]

The developer is attempting to use cluster provisions (to reduce lot sizes) which apply across zoning categories, while ignoring the sensitive lands provisions which clearly apply to this site. The sensitive land provision is more restrictive than the cluster provision in reducing lot sizes. Therefore, the more restrictive sensitive land provision applies to the site.

The sensitive land provision says the maximum lot size reduction is 25% to total area or width by Planning Director approval.[2] For RA zoning, the minimum lot size is 10,890 s.f. and 75 feet wide. Therefore, lots may be no less than 8170 s.f. This site plan is proposing lots that violate this IDO provision. And it should be emphasized that the IDO expressly states these are **minimum** standards[3] when there is sensitive land.

5-2(C)(4)	If avoidance of sensitive lands, other than floodways and flood fringe areas referenced in Article 14-5 of ROA 1994 (Flood Hazard and Drainage Control), results in the subdivision containing fewer buildable parcels than it would have if sensitive lands were not avoided, the Planning Director may adjust the minimum lot size or lot width dimensions by up to 25 percent to allow for additional lots that would have otherwise been possible if sensitive lands had not been avoided.

2. The 'Lot Design and Layout' section of the IDO (see next page) points out in (b) that the Sensitive Lands provision applies. Then it points out the other alternative (d) where the cluster provision may apply. There is no text that suggests both provisions can be used on the same site or that the cluster provision can be used on sensitive lands. The IDO actually states that the most restrictive provision applies.

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[1] IDO, p. 4.

[2] IDO, p. 198 "Site Design and Sensitive Lands."
…the Planning Director may adjust the minimum lot size or lot width dimensions by up to 25 percent to allow for additional lots that would have otherwise been possible if sensitive lands had not been avoided.

[3] IDO, p.198, "The design standards in this section are minimum standards."

IDO References for Question 3-2:

5-4(F) LOT DESIGN AND LAYOUT

5-4(F)(1) Avoidance of Sensitive Lands

5-4(F)(1)(a) Each subdivision shall comply with the provisions of Subsection 14-16-5-2(C) (Avoidance of Sensitive Lands).

5-4(F)(1)(b) Lots within floodplains or other designated flood hazard areas shall comply with Article 14-5 of ROA 1994 (Flood Hazard and Drainage Control), the DPM, and the requirements of the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA).

5-4(F)(2) Access to Public Streets

5-4(F)(2)(a) All lots shall have frontage on a street unless deemed impracticable due to topography or other constraints and a Variance – DRB for an alternative layout and access provisions is approved pursuant to Subsection 14-16-6-6(L).

5-4(F)(2)(b) Residential lots shall avoid layouts where the rear lot line is adjacent to an arterial or collector street to the maximum extent practicable. Local frontage roads may be used within a subdivision to avoid locating residential rear yard walls along collector and arterial streets.

5-4(F)(2)(c) In the case of cluster or cottage development or manufactured home communities in zone districts where those uses are allowed, the provisions in Subsections (a) and (b) above apply to the entire project site, not to individual lots within the project site.

5-4(F)(3) Lot Dimensions

5-4(F)(3)(a) Lot sizes shall comply with all applicable standards in this IDO, including but not limited to Section 14-16-5-1 (Dimensional Standards).

5-4(F)(3)(b) The Planning Director is authorized to make those adjustments to required lot dimensions shown in Subsection 14-16-5-2(C) (Avoidance of Sensitive Lands).

5-4(F)(3)(c) Through lots shall be avoided to the maximum extent practicable.

5-4(F)(3)(d) Cluster developments shall be subdivided pursuant to the standards in Section 14-16-5-1 (Dimensional Standards) and Subsection 14-16-4-3(B)(2) (Dwelling, Cluster Development) and the approval procedures in Subsections 14-16-6-6(I) (Subdivision of Land – Minor) and 14-16-6-6(J)6-6(J) (Subdivision of Land – Major), as applicable.

5-4(F)(3)(e) Tracts for open space, drainage, landscaping, or other communal purposes shall have their use, beneficiaries, and maintenance responsibilities clearly noted on the subdivision plat.

3. The Cluster Development provision of the IDO creates what is termed "**common open space**" set aside for agriculture, landscaping, on-site ponding, outdoor recreation, or any combination thereof." IDO 4-3(B)(2)(d) (see below).

The avoidance of sensitive lands creates "**private open space**" or "areas that will not be disturbed during the development process" because they are unstable soils, large stands of mature trees, steep slopes, etc. IDO 5-2(C)(1).

Therefore, cluster and sensitive lands provisions do not mix on the same subdivision because the nature and function of the open space areas created are different. The sensitive lands provision (which puts a limit of lot size reductions at 25%) is intended to preserve sensitive lands undisturbed **and** to limit the remaining density to lots of at least 75 percent of the lot size of the underlying RA zone (10,890 minimum lot size in the RA Zone reduced no more than to 8170 s.f.).

IDO References for Question 3-3:

Types of Open Space:

Open Space Definitions

Common Open Space
The area of undeveloped land within a cluster development that is set aside for the use and enjoyment by the owners and occupants of the dwellings in the development and includes agriculture, landscaping, on-site ponding, or outdoor recreation uses. The common open space is a separate lot or easement on the subdivision plat of the cluster development. See also *Dwelling, Cluster Development*.

Private Open Space
Open space for passive or active recreation that is owned, managed, and maintained privately in its natural state and accessible either to the public or to the residents of a subdivision and zoned NR-PO-C. In the case of cluster or cottage development, private open space that is created by clustering dwelling units may count as usable open space.

Usable Open Space
Outdoor space to be preserved on-site and managed privately to help ensure livable conditions on each site by providing light and air and meeting visual, psychological, and recreational needs. These areas can be used for a variety of purposes and are not required to be at ground level. Usable open space may include, but is not limited to, lawns; community gardens; decorative and native plantings; open balconies; rooftop decks; plazas; courtyards; covered patios open on at least 2 sides; walkways; landscaped medians, buffers, or setbacks; active and passive recreational areas; fountains; swimming pools; wooded areas; and water courses. Such space shall be available for entry and use by users of the development. Required drainage facilities or land within an easement for overhead utilities that are not landscaped shall not count toward required usable open space. Usable open space does not include public right-of-way, parking lots, off-street parking, driveways, other private vehicular surfaces, or buildings other than swimming pool rooms.

Note: Question 4 refers to Cluster Developments. TRNA proposes that the IDO only allows the provisions of the 'Sensitive Lands' and not the 'Cluster Development' on a site containing Sensitive Lands. TRNA requests this zoning determination question on Cluster Development only because the applicant is asking for a Cluster Development in the proposed site plan.

Question 4: Does the IDO intend that one cluster be allowed per project?

1. The IDO states that the minimum project size for a cluster is 1 acre.
2. The term 'project' is associated with a site plan. Note that this application has Project Number PR-2018-001402 which pertains to the entire subdivision.
3. IDO 4-3(B)(2)(b) below refers to the 'project site as a whole,' further reinforcing that the 'project' is the site plan.
4. IDO 4-3(B)(2)(c) below refers to the 'site area' being divided by the minimum lot size in the zone, further reinforcing that the entire site plan is the cluster.
5. IDO 4-3(B)(2)(d) below refers to '**the** cluster development project shall include **a** common open space' all in the singular form. So any project would have one cluster.
6. The proposed development is not an appropriate "cluster" development, under the IDO definition of "cluster development design" (p. 453), because it does not "concentrate" buildings. Proposed "Cluster B" is a cookie-cutter ring design and proposed "Cluster A" is a cookie-cutter design in a roughly oval interior area.
7. The proposed number of dwelling units of 76 exceeds the 50 unit limit for cluster development under IDO Section 4-3(B)(2)(c). The applicant should not be allowed to divide up its proposed cluster development to avoid the 50 unit limit.

<u>IDO References for Question 4:</u>

See 'Dwelling, Cluster Development' reference on the preceding page.

Definitions:

Cluster Development Design
A design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, open space, or preservation of sensitive lands. See also *Dwelling Definitions* for *Cluster Development*.

Dwelling Definitions

Dwelling, Cluster Development
A development type that concentrates single-family or two-family dwellings on smaller lots than would otherwise be allowed in the zone district in return for the preservation of common open space within the same site, on a separate lot, or in an easement. See also *Open Space, Common*.

4-3(B)(2) Dwelling, Cluster Development

4-3(B)(2)(a) Minimum project size for this use is 1 acre.

4-3(B)(2)(b) Zone district lot and setback requirements, including contextual standards in Subsection 14-16-5-1(C)(2), shall apply to the project site as a whole, but not to individual dwellings.

4-3(B)(2)(c) The number of dwelling units is determined by dividing the site area by the minimum lot size allowed in the zone rounded down to the nearest whole number but shall not exceed 50, except in the Los Duranes – CPO-6, where the number of dwelling units shall not exceed 20.

4-3(B)(2)(d) The cluster development project site shall include a common open space set aside for agriculture, landscaping, on-site ponding, outdoor recreation, or any combination thereof allowed in the zone district, and for the use and enjoyment of the residents.

1. The common open space area shall be 30 percent of the gross area of the project site or 100 percent of the area gained through lot size reductions, whichever is greater.
2. The common open space shall have a minimum length and width of 35 feet.
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.
4. No structure is allowed in the common open space except if necessary for its operation and maintenance.
5. Common open space may be dedicated to the City as Major Public Open Space if accepted by the Open Space Division of the City Parks and Recreation Department.

4-3(B)(2)(e) The cluster development shall be designated on a Site Plan and plat with each dwelling on an individual subdivided lot and the common open space on a separate subdivided lot or easement.

4-3(B)(2)(f) Maintenance for common open space areas is the responsibility of the property owner, unless those areas are dedicated the City. See Section 14-16-5-13(B) (Maintenance Standards).

4-3(B)(2)(g) If the zone district allows two-family detached (duplex) dwellings, a cluster development may include that dwelling type.

Question 5: Should 'land unsuitable for subdividing' be excluded from the calculation of open space lands required?

a. IDO 5-2(C)(4) states that in determining the buildable parcels on sensitive lands that 'floodways and flood fringe areas' would be excluded from that determination.

b. IDO 5-4(C)(2) No land shall be subdivided that is unsuitable for subdividing (flooding, adverse geological formations, unsatisfactory topography, lack of access). (see reference on next page)

IDO References for Question 5:

5-2(C)(4) If avoidance of sensitive lands, other than floodways and flood fringe areas referenced in Article 14-5 of ROA 1994 (Flood Hazard and Drainage Control), results in the subdivision containing fewer buildable parcels than it would have if sensitive lands were not avoided, the Planning Director may adjust the minimum lot size or lot width dimensions by up to 25 percent to allow for additional lots that would have otherwise been possible if sensitive lands had not been avoided.

5-4(C) COMPLIANCE WITH ZONING REQUIREMENTS

5-4(C)(1) All lots and parcels created by a subdivision shall comply with applicable standards in Part 14-16-3 (Overlay Zones); Section 14-16-5-1 (Dimensional Standards), particularly Subsection 14-16-5-1(C)(2) (Contextual Residential Development in Areas of Consistency; Section 14-16-5-3 (Access and Connectivity); and this Section 14-16-5-4.

5-4(C)(1)(a) The City shall take into consideration prior zoning actions and determinations of land use as decided by the appropriate zoning authority.

5-4(C)(1)(b) Nonconforming property may be replatted without requiring a lot size Variance if the replat meaningfully decreases the degree of already existing nonconformity.

5-4(C)(2) No land shall be subdivided that is found to be unsuitable for subdividing by reason of flooding, ponding, poor drainage, adverse soil conditions, adverse geological formations, unsatisfactory topography, limitations of water quantity, and/or quality, lack of access or restrictions on accessibility, or other conditions likely to be harmful to the public health, safety, or general welfare, unless such unsuitable conditions are corrected or mitigated to the satisfaction of the city. The Development Review Board (DRB) is responsible for making determinations regarding unsuitability of land for subdivision.

5-4(C)(3) The availability of adequate access, fire protection, police protection, refuse service, public schools, public parks and recreation facilities, other elements of public infrastructure or private facilities, and privately provided utilities shall all be weighed in considering proposed subdivisions. They are not all necessarily required.

5-4(C)(4) Each subdivision shall comply with the provisions of Subsection 14-16-5-2(C) (Avoidance of Sensitive Lands) unless encroachment into those sensitive lands is corrected or mitigated to the satisfaction of the City.

Question 6: Does the requirement for on-site open space to be contiguous to Major Public Open space preclude a street running through the open space?

The Zoning Enforcement Officer made a determination that the open space parcels on this site must be contiguous to the Open Space. The current site plan shows the open space separated by a street.

Reference 12/13/18 Staff Report:

Recommended Condition of approval #9: "The Site Plan shall locate all on-site 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 Park and Recreation Department (IDO Section 14-16-5-2(H)(2)(a)2)."

As a street is a defining feature of a block, a street implies separation.

From Merriam Webster Dictionary

contiguous

adjective

con·tig·u·ous | \ kən-ˈti-gyə-wəs, -gyü-əs\

Definition of *contiguous*

1 : being in actual contact **:** touching along a boundary or at a point the 48 *contiguous* states

2 *of angles* **:** ADJACENT SENSE 2

3 : next or near in time or sequence The fires were *contiguous* with the earthquake.

4 : touching or connected throughout in an unbroken sequence

IDO References for Question 6:

Block

An area that is bounded but not crossed by streets, railroad rights-of-way, waterways, unsubdivided areas, or other barriers. For the purposes of the large retail facility provisions and development in the NR-LM and NR-GM zone districts, drive aisles and private streets also qualify as block boundaries.

Question 7: Should a residential block be bounded only by streets, railroad rights-of-way, waterways, unsubdivided areas, or other barriers and not a pedestrian path?

The site plan has a block of homes measuring over 600 feet in length backing onto Tres Gracias/La Bienvenida (local streets). The only features internal to the block are residential lots and a pedestrian path. A pedestrian path is not a boundary feature which defines a block. It is not a barrier, for example. Therefore, the 'block' measures greater than 600 feet.

<u>IDO References for Question 7:</u>

Definitions:

Block
An area that is bounded but not crossed by streets, railroad rights-of-way, waterways, unsubdivided areas, or other barriers. For the purposes of the large retail facility provisions and development in the NR-LM and NR-GM zone districts, drive aisles and private streets also qualify as block boundaries.

IDO 5-4(E)(3) Block Dimensions

5-4(E)(3)(a) Block Lengths Block lengths shall meet the requirements …
Local Streets ≤600.

We would appreciate the staff taking the time to answer these Zoning Determination questions prior to the EPC hearing on the Site Plan for the Overlook at Oxbow.

Sincerely,

Jolene Wolfley, Director
Government Affairs
Taylor Ranch Neighborhood Association

Somerfeldt, Cheryl

From: Reuben Weisz <reuben@weisz.org>
Sent: Saturday, February 02, 2019 9:55 AM
To: Somerfeldt, Cheryl
Subject: Reuben Weisz's comment on the EPC February hearing on the Poole property: Case Number PR-2018-001402

Dear EPC,
This is the second comment that I'm sending to you on the Poole property case.
Unfortunately, I am out of the country this February and will return after your hearing date.

By now you are well aware of the potential negative impacts of high density real estate development adjacent to the San Antonio Oxbow on those precious wetlands in our community.
I won't reiterate what others have already said on this topic describing the negative environmental effects of this proposed development.

I hope that before your hearing you would have had a chance to view this video by Steven Siegel
https://www.youtube.com/watch?v=XAnVXndgs_Y&t=169s
which captures many of my feelings on this topic.

Ideally, the property would be left as is, or set aside for its historic value, or developed in a way that is less of a threat to the San Antonio Oxbow.
Please consider these thoughts as you evaluate this case.

Thank you,
Reuben Weisz
6409 Concordia Road NE
Albuquerque, NM 87111
==========
This message has been analyzed by Deep Discovery Email Inspector.

YNTEMA LAW FIRM P.A.
ATTORNEY AT LAW

HESSEL E. YNTEMA, III

February 4, 2019

HAND DELIVERED
Dan Serrano, Chairman
Environmental Planning Commission
City of Albuquerque Planning Department
600 Second Street NW
Albuquerque, NM 87102

Taylor Ranch Neighborhood Association
Objections to proposed "Overlook at Oxbow"
Poole Property Site Development Plan in
PR-2018-001402, SI-2018-00171

Dear Mr. Serrano and EPC Members:

Yntema Law Firm P.A. represents Taylor Ranch Neighborhood Association ("TRNA") in connection with the referenced matter of the site development plan application for the proposed "Overlook at Oxbow" (Poole Property) development. Please place a copy of this letter in the record for the case. Also, please put this firm on the list to receive all notices about this matter.

At this time, TRNA objects to the proposed site plan for the following reasons:

1. The hearing set for February 14, 2019 should be deferred until the appeal of the DRB decision granting a variance concerning connections to adjacent land for the project (AC-18-20; PR-2018-001402; VA-2018-00226) is resolved, as set out in my letter dated January 9, 2019 (copy attached as Exhibit A). The Official Notice of Decision dated April 19, 2016, in an unrelated case (16 EPC-4011) (copy attached as Exhibit B) indicates that a deferral is appropriate when a key underlying issue is under appeal. The May 12, 2012 Official Notice of Decision in Project #1003859/11 EPC-40067 and 11 EPC 40068 similarly indicates that deferral is appropriate when key issues are on appeal. The IDO should be interpreted to follow state law for stay on appeal under IDO Sections 1-2 and 1-8(B).

2. The site appears to fall within "sensitive lands" under IDO Section 5-2(C). The applicant has not submitted an "analysis of site constraints" under IDO Section 5-2(C).

3. The land at issue appears to be within an "Area of Consistency" under the Comprehensive Plan and the proposed site plan does not "reinforce the character and intensity of existing development" as required for an "Area of Consistency" under the IDO, p. 447.

4. The site should be considered a single 23.75 acre parcel for purposes of the IDO requirements.

215 Gold Ave. SW
Suite 201
Albuquerque, NM 87102
Phone (505) 843-9565
Fax (505) 242-2879
firm@yntema-law.com
hess@yntema-law.com

5. As the site involves "sensitive lands" under the IDO Section 5-2(C), which provides for adjustment of minimum lot sizes, "cluster" development provisions are not applicable. Generally, under IDO Section 1-8(A) when two or more regulations conflict, the more restrictive provisions prevail.

6. The proposed development is not an appropriate "cluster" development, under the IDO definition of "cluster development design" (p. 453), because it does not "concentrate" buildings. Proposed "Cluster B" is a cookie-cutter ring design and proposed "Cluster A" is a cookie-cutter design in a roughly oval interior area.

7. The proposed number of dwelling units of 76 exceeds the 50 unit limit for cluster development under IDO Section 4-3(B)(2)(c). The applicant should not be allowed to divide up its proposed cluster development to avoid the 50 unit limit.

8. It appears that the applicant's calculation of required open space is erroneous because the site plan includes land unsuitable for development.

9. The grading plan appears to provide for a higher site elevation than the existing La Bienvenida Place, contrary to IDO Section 5-4(J)(1)(b).

10. It appears that the applicant has not calculated required open space for Cluster A under the "100 percent of the area gained through lot size reductions" test under IDO Section 4-3-(B)(2)(d), which results in a requirement of substantially more open space.

11. The site plan's northern side "block" is greater than 600 feet contrary to IDO Section 5-4(E)(3)(a) and Table 5-4-1. Apparently the applicant erroneously interprets a pedestrian path as defining a block.

12. The site plan's proposed open space is not contiguous with the area's Major Public Open Space, and otherwise is contrary to IDO Section 5-2(H)(2).

13. In general, the site plan presents such a substantial change in density from the prior use, zoning and platting, that it should be accompanied by a zone change request. The current R-A zone is intended for low density single family residency and limited agricultural uses with minimum lot size of 10,890 square feet. TRNA objects to such a high density development which varies so greatly from the site's prior development, will impair sensitive lands, will adversely affect the neighborhood environment, and does not conform to the IDO.

14. The site plan appears to require and rely upon a variance concerning connections to adjacent land which is on appeal to the City Council (Land Use Hearing Officer), among other reasons because the variance was granted in violation of the Open Meetings Act ("OMA"), as set out in my letter dated January 3, 2019 (copy attached as Exhibit C). TRNA restates that the OMA violations render the DRB variance decision void. Further proceedings based on a void decision also are void.

15. The proposed site plan appears to involve numerous exceptions to dimensional standards or variations from the strict, literal interpretation of standards in the IDO and particularly the R-A zone. Any variance must satisfy IDO and state law standards for granting of variances. It does not appear that the applicant has provided any justifications for variances.

16. The current site plan should be rejected for adverse environmental impacts. The site plan would negatively affect the stability of the sandy Oxbow bluff, and would set the stage for major erosion and dangerous liabilities on this slope. Other adverse impacts include putting human habitation extremely close to the wild Bosque lands; disturbing and possibly eliminating native fauna; displacing common and rare birds' nesting and roosting habitat; disturbing the natural setting for recreationalists; allowing 'urban' yards directly adjacent to the Oxbow wetland and Bosque without controls; creating a negative visual intrusion both for homeowners and public who recreate in the Bosque; and privatizing this bluff overlook of the Rio Grande Bosque and Oxbow Wetland to a degree of excluding residents from enjoying the incredible views provided to the public open space.

17. The applicant's latest site plan only became available in mid-January, and further time is appropriate for fuller review of the latest revised submittal.

This letter is intended to supplement the various objections already presented by TRNA including but not limited to objections in letters dated October 23, 2018, December 4, 2018 and December 10, 2018. TRNA reserves the right to refine its objections or make other objections or comments upon further review of the application and any or all related matters.

TRNA intends to have speakers at the February 14, 2019 hearing to discuss some or all of the above objections.

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel Yntema
Hessel E. Yntema III

Attachments:
Exhibit A: January 9, 2019 Letter
Exhibit B: April 19, 2016 Official Notice of Decision in 16 EPC-4011
Exhibit C: January 3, 2019 Letter with enclosure

YNTEMA LAW FIRM P.A.
ATTORNEY AT LAW

HESSEL E. YNTEMA, III

January 9, 2019

HAND DELIVERED
Mr. Derek Bohannan, Chair
Environmental Planning Commission
City of Albuquerque Planning Department
600 Second Street NW
Albuquerque, NM 87102

RECEIVED
09 JAN. 2019
2:14 pm

Request for Stay in PR-2018-001402; SI-2018-00171 Site Plan; AC-18-20; PR-2018-001402; VA-2018-00226

Dear Chairman Bohannan:

Yntema Law Firm P.A. represents Kevin Dullea, Scot Moye, Barbara Tegtmeier, Lynley Moye, Susan Chaudoir, Kathy Adams, Jonathan Abdalla and Becky Davis (the "DBR Appellants") in AC-18-20, an appeal to the City Council of the DRB decision of December 5, 2018, to grant a variance for the referenced project. The DRB Appellants object to the EPC hearing the referenced site plan while their appeal to the City Council is pending, and request that the EPC not proceed until their appeal is resolved. The appeal of the DRB variance decision is under NMSA 1978, Section 3-21-8(B), which states (key language in bold):

> Any aggrieved person or any officer, department, board or bureau of the zoning authority affected by a decision of an administrative officer, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule of regulation adopted pursuant to these sections may appeal to the zoning authority. **An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property.** Upon certification the proceedings shall not be stayed except by order of district court after notice to the official, commission or committee from whom the appeal is taken and on due cause shown.

The DRB Appellants advise that the site plan at issue appears to rely upon and require approval of the subject variance. There does not appear to be any certification of the DRB that a stay would cause imminent peril of life or property. Under these circumstances, action by the EPC on this matter should be stayed under Section 3-21-8(B).

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel Yntema
Hessel E. Yntema III

215 Gold Ave. SW
Suite 201
Albuquerque, NM 87102
Phone (505) 843-9565
Fax (505) 242-2879
firm@yntema-law.com
hess@yntema-law.com

EXHIBIT
A

CITY OF ALBUQUERQUE

PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
600 2nd Street NW, 3rd Floor, 87102
P.O. Box 1293, Albuquerque, NM 87103
Office (505) 924-3860 Fax (505) 924-3339

OFFICIAL NOTIFICATION OF DECISION

April 14, 2016

Guardian Storage
Attn: Paul Hedges
9221 Eagle Ranch Rd NW
ABQ, NM 87114

Project# 1004167
16EPC-40011 Site Development Plan for Subdivision Amendment

LEGAL DESCRIPTION:
The above action for all or a portion of Lots 1-4, 5A, 6A, 7A,8A, 9, 10A, 10B1, 10B2, Bosque Plaza Subdivision, zoned C-1 (SC), located on SE Corner of La Orilla and SW corner of Coors Blvd., containing approximately 11.5 acres. (E-12)
Staff Planner: Maggie Gould

PO Box 1293

On April 14, 2016 the Environmental Planning Commission (EPC) voted to DEFER Project #1004167/16EPC-40011, a Site Development Plan for Subdivision Amendment , based on the following findings:

Albuquerque

FINDINGS:

1. Planning Staff and City Legal Staff recommend a 30 day deferral until the underlying issue (appeal of the ZHE decision regarding indoor storage) is resolved.

New Mexico 87103

2. Furthers deferrals will occur until staff informs the commission that the underlying issue has been resolved.

www.cabq.gov

APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **APRIL 29, 2016.** The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday or Holiday, the next working day is considered as the deadline for filing the appeal.

For more information regarding the appeal process, please refer to Section 14-16-4-4 of the Zoning Code. A Non-Refundable filing fee will be calculated at the Land Development Coordination Counter and is required at the time the appeal is filed. It is not possible to appeal EPC Recommendations to City Council; rather, a formal protest of the EPC's Recommendation can be filed within the 15 day period following the EPC's decision.

You will receive notification if any person files an appeal. If there is no appeal, you can receive Building

EXHIBIT
B

Permits at any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. Successful applicants are reminded that other regulations of the City Zoning Code must be complied with, even after approval of the referenced application(s).

ZONE MAP AMENDMENTS: Pursuant to Zoning Code Section 14-16-4-1(C)(16), a change to the zone map does not become official until the Certification of Zoning (CZ) is sent to the applicant and any other person who requests it. Such certification shall be signed by the Planning Director after appeal possibilities have been concluded and after all requirements prerequisite to this certification are met. If such requirements are not met within six months after the date of final City approval, the approval is void. The Planning Director may extend this time limit up to an additional six months.

SITE DEVELOPMENT PLANS: Pursuant to Zoning Code Section 14-16-3-11(C)(1), if less than one-half of the approved square footage of a site development plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically seven years after adoption or major amendment of the plan: within six months prior to the seven-year deadline, the property owners shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. Additional design details will be required as a project proceeds through the Development Review Board and through the plan check of Building Permit submittals for construction. Planning staff may consider minor, reasonable changes that are consistent with an approved Site Development Plan so long as they can be shown to be in conformance with the original, approved intent.

DEFERRAL FEES: Pursuant to Zoning Code Section 14-16-4-1(B), deferral at the request of the applicant is subject to a $110.00 fee per case.

Sincerely,

for Suzanne Lubar
Planning Director

SL/MG

cc: Guardian Storage, Attn: Paul Hedges, 9221 Eagle Ranch Rd NW, ABQ, NM 87114
Consensus Planning, James Strozier, 302 8th St NW, ABQ, NM 87102
Jolene Wolfley, Taylor Ranch NA, 7216 Carson Trl NW, ABQ, NM 87120
Rene Horvath, Taylor Ranch NA, 5515 Palomino Dr NW, ABQ, NM 87120
Patsy Nelson, Alban Hills NA, 3301 La Rabla NW, ABQ, NM 87120
Lynne Scott, Alban Hills NA, 6419 Camino Del Arrebol NW, ABQ, NM 87120
Judy Ortiz-Aragon, Rio Oeste HOA, 4115 Palacio Real NW, ABQ, NM 87120
Sandra Tinlin, Rio Oeste HOA, 4105 Moncloa Ct NW, ABQ, NM 87120
Gerald C. Worrall, Westside Coalition of NA's, 1039 Pinatubo Pl NW, ABQ, NM 87120
Harry Hendriksen, Westside Coalition of NA's, 10592 Rio Del Sole Ct NW, ABQ, NM 87114-2701
Tim Flynn-O'Brien, 817 Gold Av. SW, ABQ, NM 87111
Terri Spiak, 7406 Santa Fe Trl NW, ABQ, NM 87120
Nita D. Day, .CDR II HOA, 6127 Deergrass Cir. NW, ABQ, NM 87120

YNTEMA LAW FIRM P.A.
ATTORNEY AT LAW

HESSEL E. YNTEMA, III

January 3, 2019

RECEIVED
JAN - 3 2019
LAND DEVELOPMENT SECTION

HAND DELIVERED
Development Review Board
Planning Department
City of Albuquerque
600 Second St. NW
Albuquerque, NM 87102

Notice of Claimed Violations of the Open Meetings Act by the DRB in Project PR-2018-001402, VA-2018-00173-Variance

Dear Development Review Board:

Yntema Law Firm P.A. represents Kevin Dullea, Scot Moye, Barbara Tegtmeier, Lynley Moye, Susan Chaudoir, Kathy Adams, Jonathan Abdalla and Becky Davis (the "Neighbors") in connection with this letter. This letter is to provide notice, as provided by Section 10-15-3(B), NMSA 1978, on behalf of the Neighbors, of claimed violations of the Open Meetings Act ("OMA") by the Development Review Board ("DRB") in connection with Project PR-2018-001402, VA-2018-00173-Variance, on November 28, 2018 and December 5, 2018.

Attached is a copy of an Affidavit from Susan Chaudoir dated December 3, 2018, concerning ex-parte contacts after the November 28, 2018 DRB meeting, and a related transmission letter. It appears that the DRB Chair was acting with delegated authority for the DRB in directing the applicant's representative concerning the requested variance and assuring him that there would be no problem with the variance. The DRB ratified the results of the closed meeting by approving the variance.

In addition, it appears that the DRB went into closed session on December 5, 2018, to consider issues relating to the requested variance, without taking a recorded vote or discussing why a closed meeting was appropriate, in violation of Section 10-15-1(I), NMSA 1978. It does not appear that any exceptions to the requirement of an open meeting, as set out in Section 10-15-1(H), NMSA 1978, would apply to the circumstances.

Your prompt response to these claimed violations of the OMA is requested.

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel Yntema
Hessel E. Yntema III

215 Gold Ave. SW
Suite 201
Albuquerque, NM 87102
Phone (505) 843-9565
Fax (505) 242-2879
firm@yntema-law.com
hess@yntema-law.com

EXHIBIT
tabbies
C

TO: Mayor Tim Keller
Lawrence Rael, Chief Operating Officer
David S. Campbell, Planning Department Director
Cheryl Somerfeldt, Planner (for EPC hearing scheduled for December 13, 2018)

From: Dr. Susan Chaudoir, neighborhood constituent with Westside Coalition of Neighborhood Associations. I submit this memo solely on my own accord.

Date: December 3, 2018

Re: Affidavit of Witness on November 28, 2018, Planning Department Development Review Board Chair, PR-2018-001402

I am submitting this memo and the attached affidavit to you for the record, describing what prompted the affidavit.

I believe that I witnessed unethical conduct by the DRB Chair and the Applicant for PR-2018-001402. Please respond in a timely manner to disclose what actions, if any, shall be taken by appropriate authorities.

As stated in the affidavit, it is clear that the applicant was seeking advice in an unethical manner on ways to effectively justify the variance in order to receive an approval from the DRB Chair. The advice received from the Chair was explicitly and deliberatively included in the applicant's justification letter dated November 29, 2018 (see pg. 5).

It is unclear from the DRB procedures of the IDO about informal, off-the-record conversations with the decision-making Chair of the DRB committee, especially in the context of high-profile cases like this one, which has at least four deferrals, exceptionally high levels of public interest, and record levels of written submissions opposing the applicant's site plan and proposed variances.

According to the planning department DRB Agenda, PR-2018-001402 is a major case, which allows public comment, at a public hearing. According to the IDO, a public hearing is "a formal meeting open to the pubic in which the decision-making body ***makes a discretionary decision*** based on policy in addition to regulations" (IDO Section 7-1, p. 485, bold italic text for emphasis). While "discretionary decision," "decision", or "discretion" lacks definition in the IDO, "discretionary decision" is publically accepted as the power or right to make decisions using appropriate and reasonable judgment to evaluate carefully and thoroughly each and every alternative that can and will affect the outcome of a decision. In the context of a public hearing, which this is, the discretionary decision shall be *informed* and *unbiased*.

It appears the DRB Chair is not unbiased and not functioning in accordance with norms of discretionary decision making. The City of Albuquerque's DRB and EPC hearing process also appears to be designed with Taylor's rule of thumb, whereby procedures and regulations are enforced by measures of responsiveness and the application of regulations and procedures are favored by the Chair based on her past experience with the applicant. In this case, it is clear the applicant has an established, ongoing, familiar, and privileged relationship with the DRB Chair. It is also clear that public constituents like myself do not have an equally established relationship.

The DRB procedures do not explicitly state that the decision-making Chair can be contacted for questions, advice, support, or coaching in order to achieve a desired decision or outcome of the case. I have attempted on several occasions (Nov 7, Nov 14, and Nov 28) in person and by email (copies can be provided), asking the DRB planners Ms. Maggie Gould and Mr. Michael Vos for more details about the variance in question for the case. In fact, your planning department made the error of printing the wrong variance repeatedly in the DRB agenda (cf., Nov 7, Nov 14, and Nov 21) and the variances "changed" between Oct 31 and Nov 7 without notification to neighborhood associations.

When making queries with Ms. Gould and Ms. Dicome, I have been directed to consult the IDO manual. I have routinely been instructed to wait until the applicant first submits required documents. These repeated errors, changes, and "waiting game" put me at a clear disadvantage over the applicant.

I have NOT been granted the same level of detailed assistance that the applicant was given on November 28 by Ms. Dicome. Would Ms. Dicome be equally willing to share tips with the public constituents on how to get this variance denied, which is the desired decision that we seek from the Chair?

I look forward to hearing from you.

Dr. Susan Chaudoir
4040 St. Josephs Place NW #116
Albuquerque, NM 87120
edu.chaudoir@gmail.com

TO: Mayor Tim Keller
Lawrence Rael, Chief Operating Officer
David S. Campbell, Planning Department Director
Cheryl Somerfeldt, Planner (for EPC hearing scheduled for December 13, 2018)

From: Dr. Susan Chaudoir

Date: December 3, 2018

Re: Cover Letter and Affidavit of Witness on November 28, 2018, PR-2018-001402

Please sign below to verify receipt of the cover letter and affidavit referenced above.

Name	Received by: Print Name	Received by: Signature	Date
Mayor Tim Keller	Maray McKan	12-3 Maray	12-3 @ 10:55
Lawrence Rael	Maray McKan	12-3 Maray	12-3
David Campbell	Rita J Rodriguez	Rita J Rodriguez	12/3/18
Cheryl Somerfeldt	Rita J Rodriguez	Rita J Rodriguez	12/3/18

18 DEC -3 AM 10:51

Affidavit

City of Albuquerque Planning Department
Re: Agenda Item PR-2018-001402

Statement of Witness at Development Review Board Hearing November 28, 2018
Location: Planning Department, Basement Level Hearing Room, Plaza del Sol, 600 2nd Street, 87102

State of **New Mexico**, County of **Bernalillo**

I, **Susan Chaudoir**, affirm:

My current legal name is Dr. Susan Chaudoir, and my current occupation is Teacher and Researcher. I am presently 52 years old, and my current address of residence is 4040 St. Josephs Place NW, Albuquerque, New Mexico 87120.

1. I attended the Development Review Board (DRB) hearing on November 28, 2018, called to order at 9:00AM and adjourned at 9:40AM. This hearing is recorded; the recording stops when hearing is adjourned. The clerk formally announced that Item Number 4, a major case, PR-2018-001402, was deferred to December 5, 2018 and not topic on the November 28 agenda. This case was not discussed during the hearing.

2. At 9:43AM, after the hearing was adjourned and recording stopped, I witnessed a conversation between Mr. Jim Strozier of Consensus Planning Inc., agent for Gamma Development LLC, and DRB Chair Kym Dicome. Mr. Strozier approached Ms. Dicome, asking, "Do you have a few minutes to talk about that variance?" "Yes," replied Ms. Dicome. Mr. Strozier asked, "What do we need to do to justify the variance? What is the action we need to take on the variance?" [cf. PR-2018-001402] Ms. Dicome proceeded to describe, in detail, precisely what specifics they consider when reviewing the variance. Details included statements such as, "tell us why you cannot connect to adjacent subdivisions." She provided tips, specifying, "include pedestrian connection" and "emergency connections" and encouraged he reference other cases where the variance has previously been granted.

3. Mr. Strozier pressed further for disclosure of staff comments, wanting to know more about what was or was not in his favor. (Note: The public is told that staff comments are not available until Tuesday, December 4, at or before 5:00PM). Mr. Strozier also wanted to know the likelihood of approval. Ms. Dicome's replied several times, "There is nothing for you to worry about"; "you don't have to worry"; "you've got a good guy on this case." She assured Mr. Strozier he would get his variance.

4. I have no photographs, video, audio or other documents to support this conversation that I witnessed. To the best of my knowledge, I do not recall other participants in this conversation between Ms. Dicome and Mr. Strozier. However, there were at least three other staff members at or near the table where Ms. Dicome and Mr. Strozier had this conversation. Those individuals were: Michael Vos; Maggie Gould; and Racquel Michel. I do not recall public members in the hearing room other than myself.

I hereby state that I am competent to report the information in this affidavit; it is true, to the best of my knowledge, accurate and relevant.

03 DEC 2018
Date

Susan Chaudoir

OFFICIAL SEAL
Asha Marie Gales
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: June 28th, 2020

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

I, the undersigned Notary Public, do hereby affirm that Susan Chaudoir personally appeared before me on the 3rd day of December 2018, and signed the above Affidavit as her free and voluntary act and deed.

Notary Public

January 31, 2019

City of Albuquerque Planning Department
600 Second St. NW
Albuquerque, NM87102

Authorization Letter for Representation
in PR-2018-001402, SI-2018-00171
"Overlook at Oxbow" Project (Poole Property)
(Taylor Ranch Neighborhood Association)

Dear Planning Department,

This letter is to authorize Hessel E. Yntema III, Yntema Law Firm P.A., to represent Taylor Ranch Neighborhood Association in connection with the referenced "Overlook at Oxbow" project.

Very truly yours,

TAYLOR RANCH
NEIGHBORHOOD ASSOCIATION

Catherine Trujillo, President
P.O. Box 66288
Albuquerque, NM 87193-6288

Somerfeldt, Cheryl

From: gulleyt@aol.com
Sent: Monday, February 04, 2019 1:54 PM
To: Somerfeldt, Cheryl
Subject: Project #2018-001402; Opposition to Poole Property Site Plan
Attachments: Poole property memo.docx

Susan, it's Tom Gulley again. Attached is my memorandum with a legal analysis that demonstrates that the Poole Property Site Plan must not be approved. The IDO limits the Poole Property to one cluster development of no more than 50 lots.The guidelines for interpretation of zoning ordinances are set forth by our Supreme Court in High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, para.4, including a guideline that "[Z]oning regulations should not be extended by construction beyond the fair import of their language and **they cannot be construed to include by implication that which is not clearly within their express terms."** (Emphasis added). There is not even a hint in the IDO that multiple cluster developments are allowed on the Poole Property. Language allowing for multiple cluster developments cannot be read into the IDO without violating our Supreme Court's clear guidelines.

Please add this email and my memorandum to the record before the EPC. Thank you.

==========
This message has been analyzed by Deep Discovery Email Inspector.

February 4, 2019

To: Cheryl Somerfeldt (csomerfeldt@cabq.gov) and EPC

From: Tom Gulley, J.D. (gulleyt@aol.com)

Subject: Project #2018-001402, Poole Property site plan opposition

I live in El Bosque at 4701 Valle Bonita Ln NW, just north of the Poole Property. I write only on behalf of myself, although I believe that others have expressed support for the points I make.

The January 16, 2019, site plan shows the applicant's scheme of using multiple cluster developments to cram 76 lots on the Poole Property. The site plan must not be approved because the IDO limits the Poole Property to no more than 50 lots. Moreover, approval of the scheme would set a precedent that could be relied on by others to cram more lots on their R-A zoned property than the IDO allows.

The applicable principles of ordinance interpretation which the EPC must follow were stated by our Supreme Court in High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998 NMSC-050, para. 4. They are: 1) the plain language of an ordinance is the primary indicator of intent of the ordinance, 2) language will not be read into an ordinance which is not there, particularly if the language makes sense as written, and, most importantly, 3) zoning regulations cannot be construed to include by implication that which is not clearly within their express terms. Approval of the site plan would disregard the clear language of the IDO and require the EPC impermissibly by implication to read language into the IDO which is not there.

The IDO is clear that only one cluster development is allowed on the Poole Property. Although Regulation 4-2 allows for a cluster development in R-A zoned property, the allowance is for "a" cluster development, not multiple cluster developments. Regulation 4-3(B)(2)(c) states that "[T]he number of dwelling units is determined by dividing the **site area** ...." (Emphasis added). Regulation 4-3(B)(2)(d) states that "[T]he cluster development **project site** …." (Emphasis added). And, "project site' is defined in Regulation 7-1 to be [A]…collection of lots shown on a **site plan**." (Emphasis added). And, Regulation 4-3(B)(2)(e) states that [T]he cluster development shall be designated on a **Site Plan**…." (Emphasis added). Taken together, these regulations allow only one cluster development on the Poole Property. There is no regulation in the IDO that even hints that multiple cluster developments are allowed on one project site. Language to that effect would have to be read into the IDO, which the EPC may not do.

No more than 50 cluster development lots are allowed on the Poole Property. Regulation 4-3(B)(2)(c) states that the number of dwellings in a cluster development "shall not exceed 50…." The site plan is one 76 lot cluster development masquerading as two. Similar lots are placed artificially in separate clusters solely to evade the 50 lot limitation. There is no language in the IDO which allows use of multiple cluster developments to evade the 50 lot limitation. Language to that effect would have to be read into the IDO, which the EPC may not do.

The common open space must be 30 percent of the Poole Property on one separate lot. Regulation 4-3(B)(2)(d)(1) states that "[T]he common open space area shall be 30 percent of the gross area of the **project site**…." (Emphasis added). The definition of "Dwelling, Cluster Development" in Regulation 7-1 states that it is "[A] development type that concentrates…dwellings on smaller lots…in return for the preservation of common open space within the same site, **on a separate lot**...." (Emphasis added).

Likewise, Regulation 4-3(B)(2)(e) states that the common open space shall be designated "**on a separate subdivided lot**…." (Emphasis added). Cluster A has multiple open spaces scattered throughout that cluster, and there is another open space for Cluster B. These multiple open spaces conflict with the IDO regulations. Language allowing for common open space on two or more separate lots would have to read into the IDO, which the EPC may not do.

The open space must be contiguous to the Major Public Open Space at the east end of the Poole Property. Regulation 5-2(H) addresses property adjacent to Major Public Open Space. Regulation 5-2(H)(2)(a)(2) requires that a site plan must "[L]ocate on-site open space to be contiguous with the Major Public Open Space…." This regulation is clear as written. It requires that the separate lot of 30 percent common open space of the entire project site, about 7 acres, must be contiguous to the Major Public Open Space at the east end of the Poole Property.

In conclusion, there is no language in the IDO permitting multiple cluster developments on one project site. The IDO cannot be construed to include by implication language allowing multiple cluster developments on the Poole Property when that language is not clearly within the IDO's express terms. The IDO clearly limits the Poole Property to one cluster development of no more than 50 lots with 30 percent of common open space on a separate lot contiguous to the Major Public Open Space at the east end of the property. Approval of the site plan would be contrary to the IDO and would set a precedent to allow others to cram more lots on their R-A zoned property than the IDO allows. The site plan must not be approved.

February 3, 2019

Dan Serrano, Chairman
Environmental Planning Dept.
City of Albuquerque
600 Second St. NW
Albuquerque, NM 87102

Re: Project 2018-001402. **Request EPC Deny Current Site Plan**

Dear Chairman,

I am a citizen who is concerned about the proposed housing development at 5001 Namaste Road NW, the Poole Property. Concerned individuals like me and neighbors near the property all feel it should not be developed. So I first ask, strongly, that your committee deny the site plan and deny any high density construction on the site for the foreseeable future.

Second, the appeal of a recent DRB variance (issued prior to the approval of a site plan) is scheduled to go before the LUHO Board on February 26th. I/we ask that the EPC hearing scheduled for February 14th be deferred until after LUHO has brought in a decision on the appeal of the DRB variance.

Third. The last site plan justification I viewed was sent to your committee on 9/27/2018, and it was deeply flawed. A new site plan was prepared. Affected parties (Taylor Ranch NA, La Luz HOA, Andalucia HOA and interested individuals like me) have not been allowed to examine or reply to the latest site plan or justification by Gamma Development and Consensus Planning dated January 16, 2019.

Fourth. The last known warranty deed for ownership of the property (by Daniels Family) describes a land survey from 2013. It is unclear if a revised land survey was issued for a warranty deed at the resale of the property on or about 1/30/2019. The last site plan I viewed did not comply with IDO Sec. 14-16-3-4(C)(5)(a) (pages 70-71), or show how it will prevent negative effects of the proposed development on the floodplain. **Applicant fails to present EPC with sufficient information to make an adequate decision.** Applicant lacks 100-year floodplain analysis or any analysis that can guarantee the development will not damage the fragile lands on the Poole Property. Therefore, any decision made by the EPC is arbitrary and capricious.

Please **deny** this site plan and any other site plans for the Poole Property.

Respectfully yours,
Becky C. Davis

Becky C. Davis
500 Leeward Dr. NW
Albuquerque, NM 87121

Kevin and Christine Dullea
4704 Almeria Dr. NW
Albuquerque, NM 87120

Objections to proposed "Overlook at Oxbow"
Poole Property Site Plan in
PR-2018-001402, SI-2018-00171

Dear Mr. Serrano and EPC Members,

My name is Kevin Dullea and I am a mechanical designer at Sandia national Labs.
Over the last 20 years, I have worked on numerous projects that have come to the labs because they were too difficult or too expensive for private industry to solve. Many times in my career, I have looked at the direction the original developers where going and continued on that same direction until I realize it is going the wrong way. It is not unlike me to scrap 6 months to years of work based on a new innovation or discovery and lead the team in a new direction. I don't do this because I am the project lead, I am just a technologist, this change of direction occurs because I have done my research and have all the answers for those who are in charge, so that they can make the right decision.

The EPC has full authority to require any provisions on the site plan so development of the site would 'not create any material negative environmental impacts on the visual, recreational, and habitat values of the Major Public Open Space.'[1]

The current site plan would:

1. Negatively affect the stability of the sandy Oxbow bluff. It would set the stage for major erosion and dangerous liabilities of this slope.
2. Place human habitation extremely close to the wild Bosque lands and would drive away native fauna and birds as well as disturb the natural setting for recreationalists.
3. Allows 'urban' yards directly adjacent to the Oxbow cliff/Bosque with no controls over leaching of fertilizers/pesticides or transfer of plant seed into the natural bosque habitat.
4. Allows homes built near the edge of the bluff to visually loom over the Bosque—creating a negative visual intrusion both for those looking east toward the Bosque and those recreating in the Bosque looking west.
5. Would privatize this bluff overlook of the Bosque with back yard walls immediately adjacent to much of the Bluff/Bosque—few people would able to enjoy the incredible views provided to this public open space.

We live overlooking the Poole property, after Ms. Pooles death, we were constantly wondering what was going to happen to it. I was able to visit the property back in the late 90's and it was an amazing experience!

When I first heard that the Poole property was slated for development and they are asking to build 70 some odd homes, I was completely shocked! How could this happen? How come this beautiful piece property, owned by such philanthropists, sold and NOT be Protected? Since then I have found this out, there have been many mysteries surrounding what has happened leading up to and since Mrs. Poole's death, Newly relocated Netflix could do a new mini series! The story alone is probably worth more than the property!

After seeing the first then the second site plan before you, this is such a BAD idea and a BAD plan.

You the EPC know our lands and are familiar with your critical role as the primary regulators of land use and development activities. You also know our waters and wetlands, and you have authority to regulate land uses in order to conserve and protect these important community assets. You, like me, may not be at the top of this political structure, but with the right information, knowledge and forethought, you can confidently take this proposal in a new direction and shut it down! Regardless of how much time and money has been spent. It is never too late!
Albuquerque's treasured environment needs to be protected from insensitive and unanalyzed subdivision development. Protect our treasured open spaces. Protect visual, recreational, wetlands habitat and our environmental values. You have the authority, do the right thing! Deny this site plan now! Thank You!

A considerable amount of research addresses the size of buffers needed to remove sediments, phosphorous, nitrogen, and other pollutants. Sediments Buffers remove sediments and attached nutrients, toxics, and pesticides by reducing the velocity of surface flow, allowing the suspended solids to settle out on the surface and/or filter through the soil. A 150' buffer has been the standard in the area.

I believe EPC should require the developer to perform the analysis of sensitive lands required by the IDO, which must be competent and credible, you have no information regarding the development footprint setback from the bosque and wetlands to determine the material negative impact on habitat values per IDO 14-16-5-2(H)(2)(b)(2).

Sewage pumping proposed on the eastern part of the development included the words “public lift station” at the edge of the eastern cul de sac. The site plan before you for approval is speculative because they have not applied for a water and sewer availability statement from ABCWUA and may require the significant public subsidy of a public lift station owned and operated in perpetuity.

In the EPA 832-F-00-073 September 2000 Collection Systems Technology Fact Sheet Sewers, Lift

Station report states:

Disadvantages Compared to sewer lines where gravity drives wastewater flow, lift stations require a source of electric power. If the power supply is interrupted, flow conveyance is discontinued and can result in flooding upstream of the lift station, It can also interrupt the normal operation of the downstream wastewater conveyance and treatment facilities. This limitation is typically addressed by providing an emergency power supply.

Key disadvantages of lift stations include the high cost to construct and maintain and the potential for odors and noise.

Lift stations also require a significant amount of power, are sometimes expensive to upgrade, and may create public concerns and negative public reaction.

Operation and Maintenance Costs Lift station operation and maintenance costs include power, labor, maintenance, and chemicals (if used for odor control).

The low cost of gravity wastewater conveyance and the higher costs of building, operating, and maintaining lift stations means that wastewater pumping should be avoided, if possible and technically feasible.

Wastewater pumping can be eliminated or reduced by selecting alternative sewer routes or extending a gravity sewer using direction drilling or other state-of-the-art deep excavation methods.
The site plan before you should be denied until there is only gravity sewage service and until greater setbacks of structures along the bluff similar to city developments to south. (150Ft.) All housing should be built with substantial physical separation between structures and the sensitive lands, slopes, habitat and wildland fire potential. They would stick out like a sore thumb to the public detrimental to the Albuquerque environment.
This is 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 value.
Albuquerque's treasured environment needs to be protected from insensitive and unanalyzed adjacent subdivision development. Protect our treasured open spaces. Protect visual, recreational, and habitat environmental values.

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. 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. 3. The EPC should strictly enforce the explicit requirements of the IDO that are applicable as minimum conditions for EPC site plan approval.

Very truly yours,
Kevin J Dullea

Norman Gaume, P.E. (ret.)

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

Submitted through csomerfeldt@cabq.gov

February 5, 2018

David Campbell, Director, Planning Department
Dan Serrano, Chair, and members of the Environmental Planning Commission
City of Albuquerque

Re: Project #: 2018-001402 SI #: 2018-00171; Hearing Date: February 14, 2018

Dear Director Campbell, Chair Serrano, and EPC members:

The IDO is very clear: "both the subdivision and the site design process **shall begin** with an analysis of site constraints related to sensitive lands." IDO 5-2 (C)(1)

This subdivision and site plan design process is in violation of the ordinance requirements. The single drawing submitted by the developer's agents in December 2018 was untimely and incomplete. It apparently remains as the only document related to this IDO requirement. In no way can the cursory treatment of sensitive lands by the developer to date be considered an "analysis."

It is disappointing that the Planning Department has failed to put these clear requirements of the IDO into effect. There should be no EPC hearing on this site plan. Without a sensitive lands analysis as the IDO requires or an alternative substantive analysis, any EPC decision regarding the site plan will necessarily be arbitrary and capricious.

The IDO is clear on another directly related point: "Development on properties 5 acres or greater adjacent to Major Public Open Space shall … (n)ot create any material negative environmental impacts on the visual, recreational, or habitat values of the Major Public Open Space." The developer must "design grading and management stormwater to minimize impact to Major Public Open Space." IDO 5-2(H)(2)(b) 2 and IDO 5-2(H)(2)(b) 4.

The visual, recreational, and habitat values of the Major Public Open Space to the south and east of the proposed development will be materially degraded by the development. The Planning Department has not addressed these values to the best of my knowledge. If this is true, it's another example of the administration of the IDO failing to enforce its clear requirements, thus leaving the requirements to be without effect.

The stormwater drainage that now flows down Namaste Road, across major public open space, eroding the bluff on its path to the bosque and the Rio Grande will not be controlled by the storm drainage network illustrated in the new site plan. The stormwater

that flows into the cul de sac must be collected and property discharge by extending the storm drainage inlets and sewers to the Namaste cul de sac.

The developer has proposed a publicly owned sewage pumping station to serve a few lots located on sensitive lands that apparently cannot be served by a gravity sewer. The developer is attempting to shift the perpetual costs of operating a public sewage pump station on ABCWUA ratepayers, which should be unacceptable. This matter also provides another example of the developer's bad faith participation in the development process.

The DRB 8/8/18 "letter of advice" resulting from its sketch plat review in August 2018 stated the developer should apply for a water availability statement. The developer's application was made 1/9/19 and was accepted by the ABCWUA as complete on 1/25/19. The untimely application means the site plan scheduled for consideration by the EPC assumes the public buried sewage pump station illustrated to be without above grade features will be acceptable to the ABCWUA.

As a retired licensed engineer with expertise in wastewater collection and treatment, it is my professional opinion that such a buried sewage pump station located under a street and without above grade features is unsafe, disproportionately costly to operate and maintain. It will be a public nuisance.

My prior comments, submitted for consideration for the December 2018 hearing that was cancelled after the EPC made the public wait for hours only to not be heard, remain valid and are renewed herewith by attachment to this letter.

Sincerely,

/s/

Norm Gaume

Attachment

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

LA LUZ LANDOWNERS ASSOCIATION
1A Loop One N.W.
Albuquerque, New Mexico 87120
(505) 897-3030

January 29, 2019

Mr. Dan Serrano, Chair
Environmental Planning Commission
City of Albuquerque Planning Department
600 2nd Street NW
Albuquerque, NM 87120

RE: Request to Stay EPC Proceedings for PR-2018-001402: SI-2018-00171
Cf: DRB Appeal AC-18-20: Poole Property 5001 Namaste Rd

Chairman Serrano,

The La Luz townhome development is built on land that was owned by Suzy and Rufus Poole. Our commitment to open space is well known and is also part of the heritage of the Poole family. We feel strongly that any development needs to be carefully inspected to ensure high quality. We also feel that this site plan has numerous areas of questionable compliance with city regulations and requires total review. Therefore:

The **La Luz Landowners Association Board of Directors has voted to request that the EPC not proceed in review of the Poole Property Site Plan until the DRB appeal ruling is fully resolved.**

Please consider the following:

1) The EPC should not proceed unless it can be certified that it would cause imminent peril of life of property. Consider:
   a) NMSA 1978, Section 3-21-8 (B): [bold text for emphasis]
      i) Any aggrieved person or any officer, department, board or bureau of the zoning authority affected by a decision of an administrative officer, commission or committee in the enforcement of **Sections 3-21-1** through **3-21-14-NMSA** 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. **An appeal shall stay all proceedings in furtherance of the action appealed** unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life of property. Upon

certification, the proceedings shall not be stayed except by order of district court after notice to the official, commission or committee from whom the appeal is taken and on due cause shown.

2) The EPC hearing is stayed if the applicant's proposal requires or involves the variance. In this case, **the DRB variance, 14-16-5-3 (E)(2)(a) is critical and fundamental in whole or in part of any or all EPC decisions.** If the EPC proceeds as such, it would be "in furtherance of the action appealed" if the stay has not been granted by an applicable certificate.

It is likely that DRB appeal process may reverse the decision, decide in favor of the appellant, or make a change to any or all requirements, and/or determination pertaining to the DRB variance.

Respectfully,

La Luz Landowners Association

Somerfeldt, Cheryl

Subject: FW: EPC Submittal

Ken Churchill
Florence E. Pedersen
4612 Almeria DR NW
Albuquerque, NM 87120
(505) 990-3337
ken@abq45.com

February 4, 2019

Cheryl Somerfeldt, Planner
Planning Department
Urban Design & Development
Albuquerque, NM 87102
csomerfeldt@cabq.gov
(505) 924-3357

Regarding:
EPC: Environmental Planning Commission Hearing
Project No: PR-2018-001402
Case No. S1-2018-00171
Site Address: 5001 Nameste Rd. NW; Between La Bienvenida Place; and: Oxbow Open Space
Applicant: Gamma Development, LLC

GROUNDS FOR DENIAL/DEFERRAL.
The above referenced project application site plan, Cluster A, contains inadequate calculation of open space requirements.

Dear Planner Somerfeldt,

This Cluster A development site plan states that 1.98 acres of open space satisfies the cluster development open space requirement of the greater of:

1) 30 percent of the gross area of the cluster development project site or
2) 100 percent of the area gained through cluster lot size reductions

We believe this allocation of open space in Cluster A is deficient by 1.237 acres and OPPOSE EPC approval.

The proposed development is Area Coors Boulevard -- CPO2 Overlay Zone and is zoned R-A. Applicant has not requested rezoning. The minimum lot size for this zone is 10,890 square feet, which applicant acknowledges and uses in calculating the maximum number of lots allowed in the cluster development site plan.

Applicant does NOT provide a calculation of 100 percent of area gained through cluster lot size reduction.

IDO 14-16-4-3(B)(2)(d) specifies:

"The cluster development project site shall include a common open space set aside for agriculture, landscaping, on-site ponding, outdoor recreation, or any combination thereof allowed in the zone district, and for the use and enjoyment of the residents.

1. The common open space area shall be 30 percent of the gross area of the project site or 100 percent of the area gained through lot size reductions, whichever is greater. "

Applicant states that common open space requirement of 30 percent of gross area is "greater than 100 percent of the area gained through lot size reductions" but does not show any calculation of the latter.

The applicant cluster development site plan for Cluster A shows:
26 lots with total dimensions equalling 143,017 square feet

Using the required 10,890 square foot minimum lot size for 26 lots in zone R-A, the area gained by cluster development is:

283,140 required square feet (26 lots * 10,890 each)
- 143,017 clustered square feet of lot dimension
---
equals 140,123 square feet gained by lot size reduction,

which is 3.217 acres, the minimum open space per IDO

The open space area in Cluster A per site plan is 1.980 acres, resulting in a
DEFICIT of 1.237 acres which is 53,874 square feet

While this application satisfies the cluster development 30 percent of gross area test required for open space, it does NOT satisfy the greater 100 percent of gained area lot size test for open space compliance.

We request the EPC to DENY this application because it does not meet the IDO minimum requirements for cluster development.

Thank you,

Ken Churchill
Florence E. Pedersen

Somerfeldt, Cheryl

From: Dr. Susan Chaudoir <edu.chaudoir@gmail.com>
Sent: Tuesday, February 05, 2019 4:34 PM
To: Somerfeldt, Cheryl
Cc: Susan Hunter
Subject: Fwd: Comment on proposed development of "the Overlook at Oxbow"
Attachments: Attachment 1 Aerial image.pdf; Attachment 3 Mirehaven GoogleEarth_Image.jpg; Attachment 2 SUBDIVISION ELEVATION-PROFILE AND ELEVATION.pdf

Hello Cheryl, I believe Ms. Hunter meant to send this to you.
Just in case she did not, could you kindly enter her comment into the record and confirm receipt?
Thank you very much,
Susan

---------- Forwarded message ---------
From: **Susan Hunter** <shunter62@comcast.net>
Date: Tue, Feb 5, 2019 at 4:31 PM
Subject: Comment on proposed development of "the Overlook at Oxbow"
To:
Cc: Dr. Susan Chaudoir <edu.chaudoir@gmail.com>

I am opposed to the recent current proposed site plan of the “Overlook at Oxbow” from Gamma Development, LLC for numerous reasons. I am writing on behalf of myself and also as a member of the Central New Mexico Audubon Society, a volunteer gardener at the native plant gardens at the Rio Grande Nature Center and as a civil engineering designer who has helped detail plans for infrastructure in New Mexico and Albuquerque for over 45 years. Throughout my career I have found that compounded design problems, however small or seemingly insignificant at first, can assure the failure of a project. There are several extremely serious flaws to these plans that are being glossed over by the developers as presented to the DRC.

Foremost among the problems is the proposed density of the housing at this particular location. The property is now the only lightly developed parcel left on the river bank in the City. Light usage has helped protect the Oxbow’s habitat from degradation. Unfortunately, illegal access to the Oxbow and careless maintenance to the riverbank has begun to erode the soil and break down the older infrastructure as described in the AMAFCA document *1996114620 LO SH Poole AMAFCA red.pdf* that stipulates the type of structures and plantings in the easement of Parcel “A” to the agency from Ms. Poole. It should be noted that the plantings stipulated in this document were to be native plants. I will address this issue in my critique of the submitted Landscape Plan later in my letter.

The Oxbow area Is an enclave of our Major Planning Open Space as defined by the Zone Map of the IDO within the Comprehensive Plan’s Parks:Recreation designation (the Bosque). It is a critical habitat for endangered species, most notably the Silvery Minnow, which is an EPA protected species that the City and State have worked so hard to maintain and restore, and the endangered Willow Flycatcher (southwestern). The

Oxbow serves as a nursery for Silvery Minnow eggs and hatchlings. The Flycatcher, unfortunately, has rarely been present in recent years. An examination of the Cornell Lab of Ornithology's eBird website, there have been only a handful of sightings in the past 10 years in the Middle Rio Grande Valley. Additionally, eBird reports for the Oxbow "Hotspot" reveal 186 species of birds seen there in all years. In December of 2018, one count was made of 46 species. These are high numbers. The Oxbow needs continued protection from degradation in order to protect its unique, riparian habitat. Building 74 closely spaced residential lots directly above the Oxbow will surely increase foot traffic, additional stormwater runoff, dust and other unwanted trespass into the wetland.

The subdivision plans show several undefined boundary lines, including some approximate ones. The AMAFCA easement is not specified, nor is the FEMA Flood Zone. I have no idea of the size and type of the discharge sedimentation pond shown on the grading plan. Is it a retention or detention pond? Is it lined or unlined? What are the rates of flow calculated into the pond and out of it? If the homeowner's association is supposed to maintain the pond, and how often will cleanup be done? As you know, ponds and drainage holding areas rapidly fill with dirt, weeds and trash. How will this accumulation be mitigated and what will the water quality be when it is discharged to the irrigation ditch that terminates in the river immediately downstream of the property? Storm runoff from this dense housing will collect vehicle waste such as oils and detergents, leaf litter and other landscaping waste, animal excrement and paper and plastic trash and eventually deposit it into the Oxbow. Please see my attachment of a Google Earth image of the situation of the parcel to refresh your memory of its geographic location of upstream of the Oxbow in the Bosque.

I also noted that the proposed list to trees on the Landscape Plan includes several non-native species including: Golden Rain Tree (Taiwan), Austrian Pine, Chinese Pistache and Vitex (Mediterranean origin). Both Golden Rain Tree and Honeylocust are considered to be invasive species. I can attest from regretful personal experience that the debris and seeds from Golden Raintrees are a pernicious nuisance. The seeds are round and are carried by their seedpods into all sorts of spaces and sprout readily and grow rapidly. I spend a lot of time pulling countless seedlings from my yard and flowerbeds from the tree in my yard. If these seeds, which also are toxic with arsenic, wash into the Oxbow, I fear they will overcome the native vegetation much as Russian Olive has done without the attraction of fruits or food for wildlife. Additionally, many of these landscape trees are short-lived, brittle and have shallow root systems. Please be reminded that Ms. Poole specified that her easement was to be planted with native species.

Lastly, I would draw your attention to the spacing of the house lots. The majority of the building pads only are 10 feet apart from one another, Although this is allowable by the current RA-1 zoning, it will have the effect of row houses. Please see my second and third attachments. The second one is a plan and profile that I drew based on an elevation looking north at the unnamed street that runs east-west on the north side of the property. I based it on the submitted site plan. There is a vertical exaggeration of 5 in order to fit the profile onto the page. Imagine the sketch of the house at the left side of the profile repeated on every pad. Attachment 3 shows a view of a recently built Pulte Homes subdivision on the west side of the city. Is this the kind of bland, gritty place that we envision for this riverside property? It has no context to Albuquerque's unique geography, landscape or even older subdivision developments in the city. If the site is to be developed, let it be a more thoughtful and relevant configuration.

I would like to quote from *Albuquerque, A City at the End of the World*, by V.B. Price, our own scholar, writer and environmentalist. This book, I believe, influenced the Comprehensive Plan and development of neighborhoods in Albuquerque. From Chapter 1:

> "From an overall perspective, it is the absence of love, as much as the pressures of rapid growth, that causes eccentric cities like Albuquerque to become endangered places. Disrespectful, unloving change, which is not a part of a process of continuing transformation but an abrupt disconnection with the past, destroys local character and identity."

Most of have chosen our city as a place to live because it is not like other cities in the Sunbelt, such as Phoenix or the Colorado Front Range megaplex. We love our reach of river, the strange badlands of the volcanoes and the surrounding mountains. The mix of people and geographic features keeps us here in spite of growing pains of all sorts. A gated subdivision reinforces the idea that residents of the city will be cut off from their surroundings and the very Bosque we enjoy. I think the only overlook in this development will be of each other's gravel yards and uniform facades of boxy houses with minimal plantings in restricted areas. Please reject this concept of rows of congested houses and high walls to keep out the rest of Albuquerque.

Respectfully,

Susan B. Hunter

2529 Georgene Dr. NE

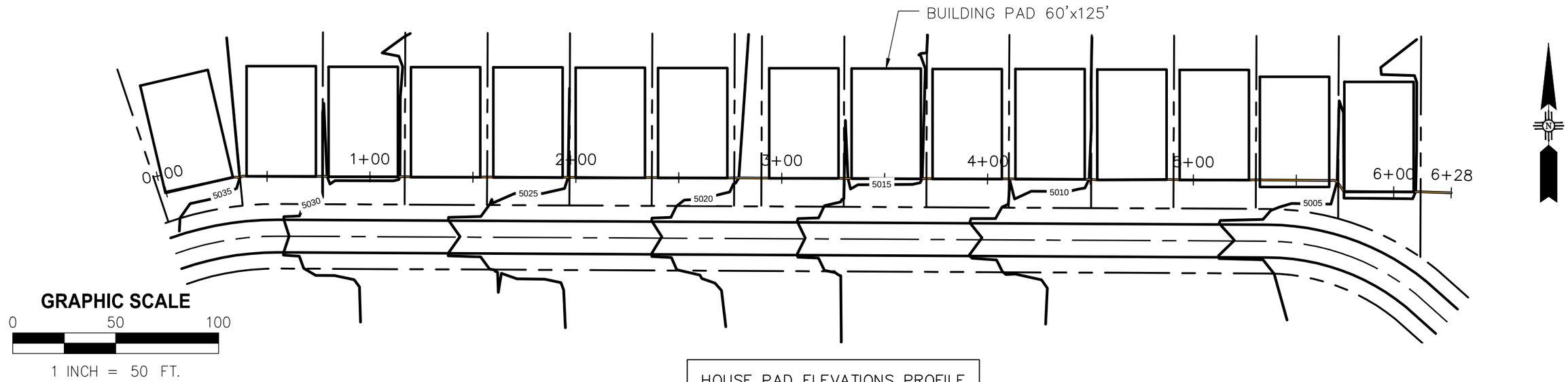
Albuquerque, NM 87112

--
Susan Chaudoir, PhD
MSc, MA, PGCD
Research in Education
edu.chaudoir@gmail.com
LinkedIn: Susan Chaudoir
985-302-2878 (mobile)
==========
This message has been analyzed by Deep Discovery Email Inspector.

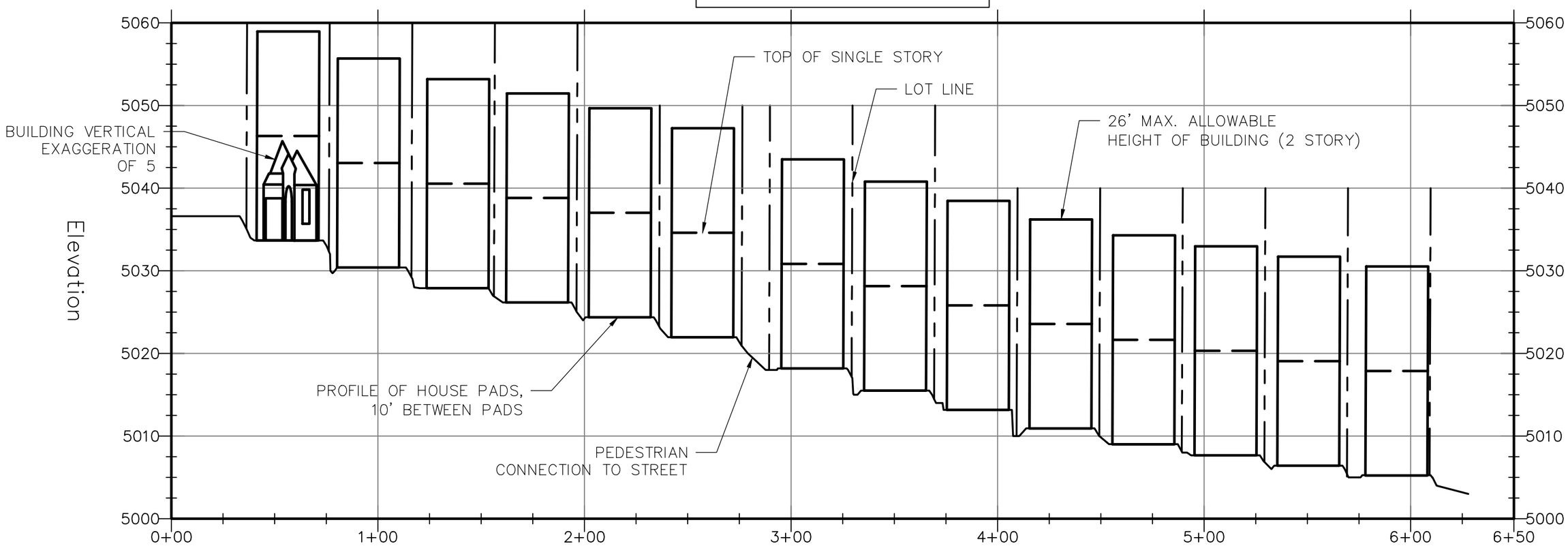
AERIAL IMAGE OF PROPOSED SUBDIVISION SITE AND THE RIO GRANDE OXBOW

NOT TO SCALE

1936 1936 Redondo Peak Dr NW
Exit Street View
1936
4 ft
Report a problem
©2019 Google
Google Earth
lat 35.105931° lon -106.744864° elev 0 ft eye alt 8 ft



HOUSE PAD ELEVATIONS PROFILE



PROPOSED SUBDIVISION PROFILE AT FACE OF BUILDING PAD