

Code Enforcement & Zoning Enforcement  
Planning Department  
600 2<sup>nd</sup> St., NW  
Albuquerque, NM 87102

## **ZONING COMPLAINT**

### **INTRODUCTION**

The Tree Farm owned by the City of Albuquerque and located at 3301 Rio Grande Boulevard, NW is in violation of the City of Albuquerque Zoning Code and IDO regulations. The Tree Farm is part of the “Candelaria Nature Preserve”. It is “Permanent Open Space”. **(City Resolution R-16-147, p. 1; Resource Management Plan (RMP) 12/19, p. iii, 98)**. The City has turned it into a “**Dump**”. Despite numerous and continuous complaints by the neighbors, and numerous promises by the City to clean it up, the site has been in violation of zoning requirements for years. In the last two years the dumping of waste has grown immensely. What started as a Tree Farm to grow trees for re-implantation to the City’s Parks **(See first photo of photos attached)** has become a waste and refuse station. **(See photos attached)**. Zoning needs to be enforced, the dumping of garbage and waste needs to stop and the area needs to be cleaned up immediately.

### **HISTORY**

The Tree Farm was originally purchased in 1978 with City, State and Federal funds. It was rezoned from R-2 to SU-1 for a Nature Study Center and Preserve **(R-16-147, p. 1 (A-1))**. The SU-1 imposed restrictions on the land. It is and has been for 42 years zoned as Open-Space for nature study and a wildlife preserve. **(See R-16-147, p. 4; RMP, (A-4))**. Any attempt to lessen restrictions or rezone the site under the new Comprehensive Zoning Code and IDO is

void. Because federal funds were used for the purchase it is subject to Federal restrictions “in perpetuity”. (RMP, 12/19, pp. iii and 7).

The original intent of the City was to use the site as a “Tree Farm”, grow trees and move the trees to the City’s Parks. (Mark Chavez, City Facilitated Meeting, 11/12/20; see first photo of photos attached). However, in 2009, the City, without notice to anyone, started using the site as a “staging ground” for road construction. (See second photo of photos attached). The neighbors complained and the City promised it was only temporary and would be cleaned up. It was never cleaned up. (See Dr. Gutierrez letter sent to Mayor Berry in 2011 attached).

The City’s use of the Tree Farm is in violation of the Zoning Code because it is being used as a Dump. It is being used as a “refuse station for green waste and other material that serves the greater park system”. (RMP, 12/19, p. 98). It is in violation of Federal, State and City requirements that it shall at all times be used for “permanent open space”, that it shall at all times be used as a “nature study area”, and that it shall at all times be used as a “wildlife preserve”. (R-16-47, pp. 1-4). The land was to “remain primarily natural with preservation of existing plant and animal life”. (R-16-47, p. 2). It is part of the Bosque Open Space Land Acquisition Project (R-16-47, p. 1). It is not zoned for a Dump. It has never been zoned for a Dump. It is not zoned for the collection of waste of any kind. It has never been zoned for the collection of waste of any kind. It is not zoned for a transfer station. It has never been zoned for a transfer station. (www.N.M. Environment Dept., Facilities and Haulers, List of Collection Facilities, N.M. Government Environment/Solid Waste; [www.cabq.gov/solidwaste/trash-collection-facilities](http://www.cabq.gov/solidwaste/trash-collection-facilities)).

The City has admitted that the site is being used for the collection of and a dumping ground for trash, green waste and waste hauled in from the 300 City parks around the City. **(Colleen McRoberts, Albuquerque Open Space Superintendent, Tree Farm meeting 12/10/19, Los Griegos Community Center; RMP, 12/19, p. 98).** Solid Waste being dumped on the site is evidenced by the photographs attached. **(See photos).** The City has admitted that the site has been used for “trash”. **(www.KRQE News 13 video and KRQE.com website article, posted May 22, 2019, statements by Mark Chavez, City Park Superintendent; News article is attached).** Hundreds of bags of trash have been dumped in the area. Bags of trash have been covered up with more waste. **(See photos attached).** The City has failed to provide any evidence that what is being dumped at the site currently does not contain regular trash. This property is not zoned for this purpose. In essence, the property is being used as an illegal commercial dump, an illegal transfer station, and an illegal construction yard. Contractor waste, landscape waste, excess rock, excess lumber, and “soil amendments” dominate the site. Dump trucks, loaders and smaller trucks bring in waste several days of the week if not daily. Construction material and landscaping material are piled on the east and north sides of the Tree Farm. Huge piles of waste and ground-up waste are piled throughout the Tree Farm. The newest waste is piled in the back of the Tree Farm to the west and then piled over the old waste which buries and hides the activity. **(See photos attached).**

The City argues that taking trash to the dump from the City’s 300 parks immediately would be inconvenient and cost too much. **(Mark Chavez, Associate Director, Parks and Rec., City Facilitated Meeting 10/22/20; 5/22/19 KRQE Channel 13 News Video and news article posted 5/22/19; News Article is attached).** Ironically, the City has posted signs at the Tree Farm prohibiting dumping on the land. **(See photos).** The City’s argument that it can’t do

the right thing and take each park's trash to the legal City dumps immediately, because it is inconvenient and costs too much, is specious. The waste is required to be taken to one of the three (3) Convenience Centers as the City directs (**[www.cabq.gov/solid waste/trash-collection/facilities](http://www.cabq.gov/solid_waste/trash-collection/facilities)**; **[www.cabq.gov/solid waste/green waste](http://www.cabq.gov/solid_waste/green_waste)**). The three convenience centers are Eagle Rock, Don Reservoir and Montessa. The Tree Farm is not a convenience center. Just like its citizens, the City of Albuquerque is required to follow its rules, regulations and laws. This is especially true since the City made these rules, regulations and laws.

Importantly, the Tree Farm was an original part of the Candelaria Farm Preserve (**R-16-147; RMP, 12/19, p. iii, p. 7**). The rules governing the use of Federal Land Water Conservation Funds (LWCF) and the LWCF rules apply to the "entire property purchased" with those funds and to the "entire management unit" "in perpetuity". (**RMP 12/9, p. iii, p. 7**); **Predock Plan (p. 5)**; and (**R-16-147 p. 1**).

The City, the Solid Waste Department, and the Open Space Department have promised for years to clean up this site. Throughout years 2019 and 2020 City Officials have promised to clean up the site immediately. (**Technical Advisory Group (TAG) meetings 9/11/19, 9/31/19; 5/22/19 KRQE Channel 13 video and news article posted 5/22/19**). Yet, no real, permanent efforts have been made to clean up this site. Rather, the City and Open Space Department have exponentially increased their efforts to dump more trash, more waste and create huge, 12 to 20 foot high piles on the site. (**See photos**).

Members of TAG and the Open Space Advisory Board (OSAB) have made statements that the site was being used for a "dump", that it was a "huge dumping ground", and that the area was an "eyesore". (**TAG Meetings 9/11/19, 9/30/19, 12/17/19; OSAB Meetings 1/28/20, 10/27/20**). Members of TAG and OSAB made statements that the area needed to be cleaned up

and no more dumping should be allowed. (**Id.**). Again, the City, the Open Space Department, the Department of Solid Waste, the Parks and Recreation Department, and City Officials have refused to take any substantial remedial action. Numerous neighbor requests and complaints to the City, to TAG and to City Officials have been ignored and disregarded except by a few members of TAG. The one Board that has taken action and tried to be responsive is the Open Space Advisory Board (OSAB) which acknowledged the problem and instructed the Open Space Department and City to take action (**OSAB Meetings 1/28/20; 10/27/20**). However, the City still refuses to place a deadline or even a timeline on the clean-up (**City Facilitated Meeting, 11/12/20**).

### **VIOLATIONS**

Based on the foregoing and the following specific violations, it is irresponsible that the City has failed to act and has actually compounded the problem:

1. The Tree Farm is not one of the five (5) permitted Waste Transfer Stations in Bernalillo County listed with the New Mexico Environmental Department. (**www.New Mexico Environment Department, Facilities and Haulers, List of Transfer Stations; N.M. Government Environment/Solid Waste**).
2. The Tree Farm is not one of the three (3) Convenience Centers permitted for trash in Albuquerque (**www.cabq.gov/solid waste/trash collection facilities;**  
**www.cabq.gov/solid waste/green waste**).
3. The “compost piles” are now enormous. Neighbors refer to these as “steaming piles”. (**12/10/19 Neighborhood Meeting with City**). The piles cause a “stench”. (**11/12/20 Facilitation Meeting with City**). Mark Chavez, the Associate Director of Parks and Rec and the Park Superintendent, stated on 10/22/20, that the piles are large, that the City has

to make massive changes to that area, and that \$70,000 to \$100,000 would be necessary to haul them away. **(10/22/20 Facilitated meeting set up by the City)**. The Tree Nursery is not one of the five (5) Open Registered Compost Facilities listed or allowed in Bernalillo County on the New Mexico Environment Department registry website list – October 2019. **(www.New Mexico Environment Department, Facilities and Haulers, List of Transfer Stations; N.M. Government Environment/Solid Waste)**.

4. Channel 13 KRQE TV news filmed the Tree Nursery trash on 5/22/19. Two neighbors in the story explained that they had called the City five (5) times in the last four months from February 2019 to May 2019 complaining “about the trash and fire hazard”. Nothing was done. **(www.KRQE Channel 13 news video, News article 5/22/19; News Article is attached)**.
5. Dr. John Gutierrez, a neighbor who’s property abuts the Tree Farm to the north, wrote Mayor Berry in 2011, complaining of the dust and dirt created by the dump trucks and loaders at the site. He explained how constant maintenance and service were required on the air conditioners because of the blowing stockpile dirt. Dr. Gutierrez believed that the property was in violation of the zoning code and noted that he thought the City was using it as a contractor’s yard, as dump trucks brought in and took out materials daily. **(See attached undated letter. Dr. Gutierrez has stated to TAG and to the OSAB that this letter was sent sometime in 2011)**. The City took no action to remedy the problem.
6. Waste and/or Recycling Transfer Stations are prohibited within 330 feet of Major Public Open Space **(IDO, p. 189, 4-3(E)(14)(16))**. Yet, alarmingly, the City has created a Waste/Recycling/Transfer Station directly in its own Open Space to the detriment of its citizens. This is a clear violation.

7. The City's IDO requires that the residential neighborhood character of established low-density homes in any district on lots adjacent to any mixed use or non-residential zone district be maintained. **(IDO p. 315, 5-9(A))**. Residential homes are on three sides. The operation of a dump at the Tree Farm violates the IDO.
8. The operation of a dump at the Tree Farm "creates objectionable conditions that create adverse impacts on the residents or neighboring properties" that are to be avoided. **(IDO 5-13(A))**. "All properties ... shall be maintained in a clean and safe condition and shall not create any public or private nuisance". **(IDO 5-13 (B))**. Dust, exhaust fumes, noise, trash and stench are clearly a "nuisance interfering with the use and enjoyment of adjacent properties". **(Id.)**. Clearly, the Tree Farm is not maintained as required by IDO standards.
9. Section 5-2, page 221, etc. seq. of the IDO to the new Comprehensive Zoning Code requires that development of "sensitive lands" is to be "avoided". Sensitive lands include "Irrigation Facilities" Acequias, Flood Plains and "Large Stands of Mature Trees". **(IDO 5-2(J))**. Open Space and Preserves are the City's most sensitive lands. **(See 1999 Major Open Space Facility Plan, p. 12)**.
10. The Current RMP reaffirms that "the farm is uniquely situated to create and protect habitat for birds and wildlife and "will be managed as a preserve in the strictest sense, whereby humans are only guests" . . . in order to provide the greatest possible protection to wildlife." **(R-16-147, pp. 2, 3)**. A dump violates this reaffirmation.
11. The established goals of the City's Open Space Division are to acquire and protect the natural character, natural reserves and environmental features. **(1999 Major Public Open Space Rank II Facility Plan (p. 1); RMP, 12/19, p. 1)**. An "Open Space

Preserve” is “an area that is set aside for its exceptional natural, cultural or scenic value. Resources are fragile, and protection is the primary management objective....

Development is limited to the minimum required public safety and resource protection and enhancement”. (1999 Major Public Open Space Rank II Facility Plan, p. 12). A dump violates this Rank II Plan’s edict.

12. **R-16-147** explicitly reaffirms the City’s representations made to the Federal Government in 1976. The Resolution states: “The City of Albuquerque hereby reaffirms that the Candelaria Nature Preserve is to be managed as a nature study area and wildlife preserve” . . . as required by the LWCF . . . in “fulfillment of the City’s fiduciary duties” (**R-16-147, p. 4; (RMP, 12/19 (A-4))**). The City has intentionally breached its fiducial duties to the public and especially to the surrounding neighbors by turning the Tree Farm into a Dump. The creation of a dump and huge waste piles at this protected Open Space Preserve violates Federal law. The Tree Farm is “Permanent Open Space”. It is a “Preserve”. An Open Space Preserve is not a Dump and is not a dumping ground or waste collection station.
13. The Land Water Conservation Funds Act (LWCF) requires that the entire property “shall be maintained so as to appear attractive and inviting to the public”. (**Section 6(f)(3) of the Land Water Conservation Funds Act (LWCF) and 36 CFR 59.3 Chapter 8B.1. of the LWCF State Assistance Program Manual**); (RMP 12/19, p. 7). The photos establish that the waste piles are not attractive and not inviting to the public. The Tree Farm is in violation of the LWCF requirements.
14. The LWCF specifically prohibits the Tree Farm from being “converted” to any use other than its original use of nature study and wildlife preserve without the approval of the



Secretary of the Interior and only if other conditions are met. The “conversion” of the Tree Farm to a dump and waste transfer station, and the failure to comply with federal requirements is a clear violation and is illegal. (43 CFR 12.83) (36 CFR 59.3, §6(f)(3)).

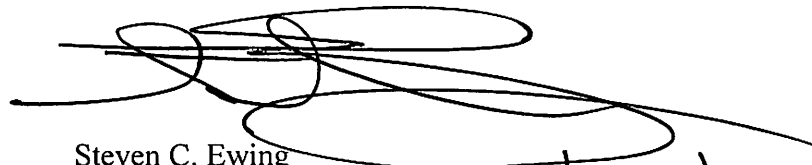
### CONCLUSION

At the City Facilitated Meeting on 11/12/20, the City admitted that all piles had to be removed, “It has to happen”, and the piles were only to be “temporary”. (**Mark Chavez, 11/12/20 City Facilitated Meeting**). Unfortunately, as usual, the City would not commit to a timeline or deadline. The reasons given, were again, budgetary constraints and convenience to the City. To the neighbors, this is just more of the same. The piles, in some form, have been there for over 10 years. The City needs to stop with the excuses and vague general promises and actually clean up the site. The neighbors are not willing to wait another 10 years for the City’s additional convenience.

If this Zoning Complaint needs to be sent to anyone else, please do so or advise me who else it needs to go to immediately.

Please advise within ten days what steps the City will take to immediately remedy this “dump”, “eyesore”, and zoning violation and fulfill its “fiducial duties” (**R-16-147 p. 4**). Thank you.

Sincerely,

  
Steven C. Ewing  
3401 Rio Grande, NW  
Albuquerque, NM 87107

11/18/20

cc: Mayor Tim Keller - [mayorkeller@cabq.gov](mailto:mayorkeller@cabq.gov)  
 Sarita Nair, Chief Administrative Officer, City of Albuquerque – [snair@cabq.gov](mailto:snair@cabq.gov)  
 Esteban A. Aguilar, Jr., City Attorney - [eaj@cabq.gov](mailto:eaj@cabq.gov)  
 Councilor Isaac Benton - [ibenton@cabq.gov](mailto:ibenton@cabq.gov)  
 Shanna Shultz, COA Council Services, City Council – [smshultz@cabq.gov](mailto:smshultz@cabq.gov)  
 Alfredo Salas, EPC for distribution to all EPC Council - [asalas@cabq.gov](mailto:asalas@cabq.gov)  
 Dan Serrano, Chair, Council District 1, EPC  
 Richard Meadows, Council District 2, EPC  
 Joseph Cruz, Council District 3, EPC  
 Robert Stetson, Council District 4, EPC  
 Gary L. Eyster P.E. (Ret.), Council District 6, EPC  
 David Shaffer, Vice Chair, Council District 7, EPC  
 Timothy J. MacEachen, Council District 8, EPC  
 Johnathan R. Hollinger, Council District 9, EPC  
 Cheryl Somerfeldt, City Planner/Zoning - [csomerfeldt@cabq.gov](mailto:csomerfeldt@cabq.gov)  
 Leslie Naji, Planning & Zoning – [lnaji@cabq.gov](mailto:lnaji@cabq.gov)  
 Nathan Molina, Policy Analyst to Councilor Benton - [nmolina@cabq.gov](mailto:nmolina@cabq.gov)  
 David Simon, Director of Open Space - [dsimon@cabq.gov](mailto:dsimon@cabq.gov)  
 Colleen Langan-McRoberts, Superintendent of Open Space - [cmcroberts@cabq.gov](mailto:cmcroberts@cabq.gov)  
 Mark Chavez, Associate Director of Parks and Recreation - [mschavez@cabq.gov](mailto:mschavez@cabq.gov)  
 Amanda Romero, Secretary of OSAB for distribution to all OSAB Members: -  
[aeromero@cabq.gov](mailto:aeromero@cabq.gov)  
 Twyla McComb, Chair of OSAB  
 Taylor Bui  
 Barbara Taylor  
 Michael Scisco  
 Don Meaders  
 Scott Forrester  
 Tasia Young  
 Michael Jenson, Former Chair of TAG - [michjensabq@gmail.com](mailto:michjensabq@gmail.com)  
 Brian Hanson, Chair of TAG - [bhanson5@comcast.net](mailto:bhanson5@comcast.net)  
 Peggy Norton, NVC - [peggynorton@yahoo.com](mailto:peggynorton@yahoo.com)  
 Eleanor Walther, RGBNA - [eawalth@comcast.net](mailto:eawalth@comcast.net)  
 Jocelyn M. Torres, Facilitator - [nmlawyer09@comcast.net](mailto:nmlawyer09@comcast.net)  
 Phillip Crump, Facilitator – [phcrumpsf@gmail.com](mailto:phcrumpsf@gmail.com)  
 Carolyn & Jonathan Siegel - [jonathan@siegeldesignarchitects.com](mailto:jonathan@siegeldesignarchitects.com)  
 Susan Shave - [sgshave@hotmail.com](mailto:sgshave@hotmail.com)  
 Denise Wheeler - [deniserw@unm.edu](mailto:deniserw@unm.edu)  
 Dr. John Gutierrez - [jrgutz@comcast.net](mailto:jrgutz@comcast.net)  
 Marta & Alan Galicki - [mmgalicki@comcast.net](mailto:mmgalicki@comcast.net)  
 Liz & Gil Carillo - [gccars1@gmail.com](mailto:gccars1@gmail.com)  
 Dorothy & Trancito Romero - [dltromero@aol.com](mailto:dltromero@aol.com)  
 Friedge VanGils & Dana McCabe - [friedje5176@gmail.com](mailto:friedje5176@gmail.com); [mccabedana@gmail.com](mailto:mccabedana@gmail.com)  
 Antoinette & Paul Aragon - [IRGrammy@Netzero.net](mailto:IRGrammy@Netzero.net)  
 Don Valencia – c/o [IRGrammy@Netzero.net](mailto:IRGrammy@Netzero.net)  
 Theresa Smith - [teresa.raquelita@yahoo.com](mailto:teresa.raquelita@yahoo.com)

Gerald Romero - [gromero5253@hotmail.com](mailto:gromero5253@hotmail.com)  
Doyle Kimbrough - [NewMexMBA@aol.com](mailto:NewMexMBA@aol.com)  
Patricia & Luis Stelzner - [pstelzner@aol.com](mailto:pstelzner@aol.com)  
Cori & Steve Ewing - [cewing8711@gmail.com](mailto:cewing8711@gmail.com); [steve@steveewing.com](mailto:steve@steveewing.com)  
Summons and Appeals - [Summonsandappeals@cabq.gov](mailto:Summonsandappeals@cabq.gov)  
Suzanna Sanchez, Zone Code Enforcement – [suzannasanchez@cabq.gov](mailto:suzannasanchez@cabq.gov)  
Robert Lucero, Zoning Hearing Examiner – [rlucero@cabq.gov](mailto:rlucero@cabq.gov)

Dr. John R. Gutierrez  
5501 Rio Grande Blvd. NW  
Albuquerque, NM 87107  
Ph 345-7013

Dear Mayor Richard Berry,

I am writing you concerning a piece of land that the City of Albuquerque owns at 3301 Rio Grande Blvd NW. This property is zoned for a nature study center and a nature preserve. I own the property adjacent to this land on the North side, my property contains two duplexes. My concern is with the amount of dirt and dust, created by the dump trucks and loaders, which blows onto my property especially in the spring when the winds are from the SW. The swamp coolers were constantly being replaced because of the dirt blowing from the city's land. Dump trucks bring in loads of dirt and dump it over a steel separating grid which is next to my property. I have installed refrigerated air on the apartments and they are constantly needing service because of the City's dirt.

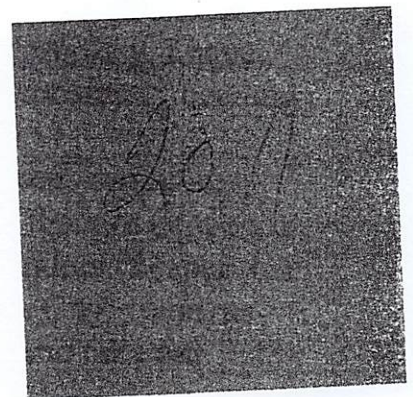
The City's land is not being used for its intended purpose, and in my opinion is in violation of the zoning code. The few trees that are kept on the property for transplanting could be bought from local vendors cheaper than paying city employees to care for them. By definition the City's land, as being used is a contractors yard. Dump Trucks bring in and take out material daily.

This is a great piece of land and could be used as part of the City's nature center. A crop could be planted to attract birds and wild life. The land has access to ditch irrigation and could be maintained inexpensively.

I appreciate any help you can provide to correct this situation.

Sincerely,

Dr. John R. Gutierrez





Krqe.com

posted ~~5/22/19~~  
May 22, 2019

## NEWS

# Neighbors call out city for dumping trash at Albuquerque tree nursery

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Posted: May 22, 2019 / 10:07 PM MDT / Updated: Jun 12, 2019 / 05:42 PM MDT

The Rio Grande Nursery is a place where the City of Albuquerque grows trees for its parks, but for the last two years, neighbors say the city has also been using it as a dump and they're fed up.

Cathy Hogan and Sandra Raun are not the only neighbors who live in the North Valley and love walking along a ditch back that runs behind the nursery. The nursery is located on Rio Grande just north of Candelaria.

"It's really popular," Raun said. "People out here with their dog and their kids."

The city's park superintendent, Mark Chavez, said a majority of the property is used to grow different types of trees.

"That's where we try new trees where we want to experiment possibly in parks," he said.

He said a portion of the land is also used to store landscaping material including soil and wood chips, but that's not all.

"There's someone's old tent. A car seat, a couple shopping carts," Hogan said. "It's a terrible eyesore when you're out here trying to enjoy nature."

Hogan said for at least two years, the city has been using part of the property as a dumping site.

Most of what you'll find piled up there is hauled away from different parks all across town. The city said crews will pick up the items and store them here temporarily.

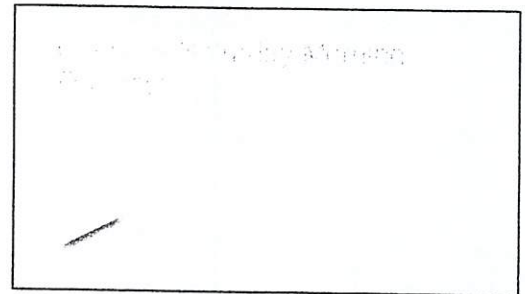
Chavez said it's a convenient spot for park crews.

"We'll take it there and then when we have enough for a

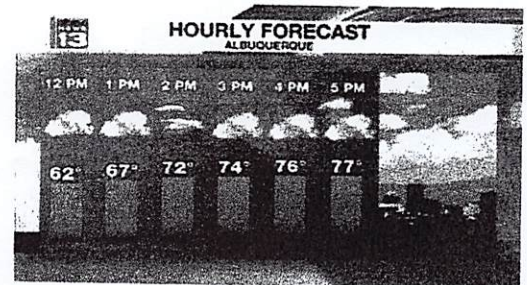
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large truck, we'll haul it out to the dump," he said. "It really wouldn't be cost effective to go to the dump every time we clean up a park, so we pick it up in larger trucks and haul it to the dump from there."

Neighbors, however, argue the piles never seem to get any smaller.

"Since February we've made five phone calls to 311 about his trash and fire hazard," Raun said.

Neighbors said the nursery was never intended for this and they want the trash gone for good.

"Straighten this out and make this a healthy, sustainable area again that's enjoyable to go by," Hogan said.

Chavez said the city's been working for the last two months to sort through what is trash and what can be recycled. He said they hope to have it cleaned up within the next month.

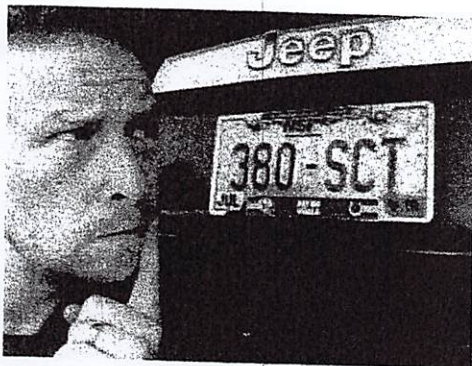
According to the city, it's been looking at other properties where they can store some of those items.

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