

YNTEMA LAW FIRM P.A.

ATTORNEY AT LAW

February 10, 2022

HESSEL E. YNTEMA, III

BY ELECTRONIC MAIL
Mr. Steve Chavez
Land Use Hearing Officer
One Civic Plaza NW, 9th Floor
Albuquerque, NM 87102

Written Arguments and Request for Admission of
Documents by Appellants in AC-22-1
(Alameda Luxury Apartments)

Dear Mr. Chavez:

This letter is on behalf of Appellants in AC-22-1 and is to provide additional written arguments under the City's Integrated Development Ordinance (2020) Section 6-4(V)(3)(d)(1) for the hearing before you as the Land Use Hearing Officer ("LUHO") scheduled for February 24, 2022 in AC-22-1. References to the Planning Department/DRB record submitted by the City Planning Department on February 2, 2022 and as amended apparently by you on December 7, 2022 (collectively "Record", being 641 pages including Table of Contents) are by "R" followed by the page. Appellants also request the admission of additional documents referenced in the arguments set out below and attached.

Appellants request that all prior submissions to the City for Project Number PR-2019-002496 including all prior appeals be included in the Record. The Record should be compiled in chronological order and with pages numbered consecutively for ease of reference and to know what has been considered in the decision process.

Appellants refer to their letter dated November 18, 2021 to the DRB ("November 18 Submissions", begins at R 391). Appellants' main arguments in summary are set out below, in somewhat different order than in the November 18 Submissions, or Appellants' Reasons for Appeal (R 71-76):

1. The DRB erred in applying the 2018 version of the Integrated Development Ordinance ("IDO"), rather than the latest 2020 version. Duly enacted legislation such as the IDO applies to pending development applications under New Mexico law.
2. The DRB lacked authority to conduct a quasi-judicial hearing on the subject site plan. Both the 2018 IDO and the 2020 IDO preclude the DRB from conducting quasi-judicial hearings. R-2019-035 also precludes the DRB from conducting a quasi-judicial hearing.

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

3. The DRB membership for the meeting was not properly appointed. The Planning Department switched individuals in and out of the DRB (R 11-12). For this matter there have been five separate DRB chairs. Multiple confusing agendas or notices were sent out as to who was on the DRB (copies attached to this letter). According to the apparently final notice (R 640) the decision had already been made as set out in that notice. By his Affidavit dated January 21, 2022 (R 11-12) Interim Planning Director Alan Varela argues that the irregular process of the appointments to the DRB is protected from disclosure due to attorney-client privilege. Mr. Varela's Affidavit indicates that a special set of DRB members was appointed on October 12, 2021, and that yet another special set of DRB members was appointed December 2, 2021 (the day before the DRB meeting of December 3, 2021). It is not clear whether the prior DRB members were removed or resigned. It does not seem likely that the just appointed DRB members on December 3, 2021 could have fairly considered, or actually considered, the submissions of Appellants including the November 18 Submissions for the December 3 meeting. The Remand Order at R 638 indicates that switching individuals in and out of the DRB for a decision is not appropriate for a quasi-judicial proceeding.

4. The DRB also denied Appellants due process because the record before the DRB was inadequate, confusing and not available in a meaningful way to Appellants or the public. It is not clear what record was considered by the DRB. Some Appellants were denied due process in that the developer submitted apparently new design sheets at the December 3, 2021 meeting which only then showed that their access from east bound Alameda would be cut off by a median (R 196, 197, re missing street alignment; R 288-230 (shows "New Median"), submitted after the hearing R 258). It does not appear that a copy of the District Court's Remand Order was in the Record until the Record was amended by the LUHO amended Record filed December 7, 2022 (copy of e-mail attached), so it is not clear if, when or how the DRB members reviewed the Remand Order, notwithstanding DRB counsel Nicole Sanchez's testimony that "DRB did receive the remand instructions" (R 205).

5. The DRB did not conduct a proper quasi-judicial hearing on other grounds as well. The DRB communicated ex parte with the developer about DRB comments and approvals, and apparently had ex parte briefings and meetings with other City employees about the application contrary to 2018 IDO Section 6-4-M-3-c and 2020 IDO Section 6-4-N-3-c. It appears that some of the critical decisions (such as that the 2018 version of the IDO applies and that the application was deemed complete on June 18, 2021) were made outside the DRB meeting based on matters that were not in the record. The DRB evidenced its approval decision by the DRB Chair's off-record e-mail dated December 2, 2021 to the applicant which was revealed only under testimony at the December 3, 2021 meeting. The DRB operated in a "rolling quorum" basis

by having each member express separate comments and approvals off-record to the developer. The DRB was controlled by and was an alter ego of the Planning Department for this application. The DRB ignored its Zoom “chat” function and declined to address chat comments and questions. DRB members and counsel provided evidentiary testimony at the meeting and upon information and belief in some instances were not sworn. Interested persons were not allowed access to the meeting by being held in the “Waiting Room” Zoom function. The DRB members were both witnesses as to and judges of the application approval issues. The DRB operated as an instrumentality of the Planning Department and other City departments, not as an independent quasi-judicial body.

6. The DRB did not vote on its findings (R 216). It is not clear how the findings came to appear in the DRB’s written decision.

7. It does not appear that either the Planning Director or the Planning Department determined that the application was complete on June 18, 2019. There is no substantial evidence in the record that the application was determined to be complete on June 18, 2019. By explanation as to how he arrived at the June 18, 2019 date, DRB Chair Jay Rodenbeck stated (R 205) “Reviewing our database system, it looks like, according to my analysis, like we accepted it on June the 18th of 2019, originally, when it originally came into our office. And when it was processed, it’s my determination that could have been when it was considered accepted” and later similarly (R 213) “Based on my analysis of our processing system, it was deemed complete on June 18th ...”. The DRB Chair apparently was relying on some unknown, off record materials or instructions for a finding that the application was deemed complete on June 18, 2019.

8. The determination of completeness of an application requires a quasi-judicial hearing under state law and 2018 IDO Section 6-4-M-3 or 2020 IDO Section 6-4-N-3 because that determination changes rights and entitlements for specific properties by locking in the existing zoning.

9. The determination of completeness for locking in the applicable zoning allegedly on June 18, 2019 was void under state law, NMSA 1978, Section 3-21-6(C), because that determination of completeness was made without notice and a public hearing, or notice of decision and of the right to appeal.

10. The DRB erred in not applying the “Neighborhood Edges” provisions (Section 5-9 in both the 2018 IDO and the 2020 IDO). “Neighborhood Edges” applies because the Planning Director did not determine that the application was complete and that determination had to be a quasi-judicial decision, and legislative enactments such as the Batch 1 and Batch 2 rezonings apply to

pending development applications under state law. Further, the applicable IDO provisions and the history of the IDO with its legislative rezonings indicate that the City Council intended that the legislative zonings would apply to pending applications.

11. The Planning Department did not present its “Review and Recommendation” as required by the IDO Table 6-1-1. The DRB Chair presented some Planning Department comments, apparently from off-record materials, after public comment and all other department comments (R 199).

12. The DRB violated the Open Meetings Act (“OMA”) in connection with its December 3, 2021 meeting because the DRB discussed public business outside the meeting and the DRB did not hold an open meeting as defined by the OMA. The DR effectively decided its approval, or conducted business outside of the meeting, on December 2, 2021 or earlier as evidenced by the some sort of “background” presentation to the DRB (R 205), the DRB Chair’s off-record e-mail to the applicant on December 2, 2021 (R 191, 204) and the DRB’s notice for the hearing declaring approval of the application (R 640). Decisions relating to the application purportedly by the DRB were in fact made outside the meeting or by DRB counsel and the DRB had material ex parte contacts with representatives of the applicant and various City department employees. The OMA does not authorize the fully remote (Zoom) meeting conducted by the DRB.

13. The IDO and the City’s development review process result in systemic illegal favoritism to developers. Under the DRB’s interpretation, acceptance of a development application by City staff triggers special protections for a developer’s project by freezing development requirements. The DRB is a mainly closed City staff/developer forum in which DRB members, developers and other City employees communicate privately to approve developer applications without meaningful consideration of neighbor or public comments.

14. The DRB did not follow the District Court’s remand instructions. The District Court did not rule that R-2019-035 was void, but rather that the application of R-2019-035 resulted in “substantial confusion” and was a “problem”. The DRB lacks authority to ignore or override R-2019-035 which is apparently a valid City Council enactment and an adopted City regulation as to the 2018 IDO and which has not been revoked by the City Council. The provisions of R-2019-035 apparently were effectively codified into the 2020 IDO. Application of R-2019-035 by the DRB is not “discretionary” as stated by the DRB in its Finding 3 (R 14). Under these circumstances, the District Court’s Remand Order should have been considered by the City Council before consideration of the application by the DRB: the Remand Order was directed to the City (not only the DRB) and the Remand Order identifies a systemic

problem with the City's development review process. The Planning Department's switching individuals in and out of the DRB during the proceedings does not follow the Remand Order instructions (R 638).

15. More than 20% of adjacent landowners have protested the proposed change in zoning regulations in writing (R 76) and state law requires a City Council majority to approve the application under such circumstances.

16. The DRB apparently did not consider submissions by Appellants and others about significant adverse impacts and did not require mitigation of significant adverse impacts to the maximum extent practicable.

17. The City has wrongfully withheld significant public records relating to this matter. Appellant Karen Baehr made a request for public records under the Inspection for Public Records Act on December 5, 2021 for all public records created by the Zoom meeting platform (copy and correspondence attached). The City's response so far apparently is that no public records were created by the Zoom meeting platform on December 3, 2021. The Zoom records if the City has not destroyed those records should be part of the Record. The video and chat records will provide the LUHO, the City Council and any reviewing court a more complete sense of the December 3, 2021 DRB meeting.

18. At this point, by its cumulative conduct the City Council/Planning Department/DRB has demonstrated that it cannot or will not conduct a quasi-judicial hearing in this matter. In that regard, some of Appellants have submitted a notice of claim against the City under the New Mexico Civil Rights Act (copy of acceptance e-mail and letter dated January 31, 2022 are attached).

For the foregoing reasons, the DRB site plan approval of December 3, 2021 should be reversed.

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel E. Yntema III
Hessel E. Yntema III

cc: Consensus Planning, Inc.



DEVELOPMENT REVIEW BOARD

Agenda

ONLINE ZOOM MEETING

December 1, 2021

Jolene Wolfley..... DRB Chair
 Jeanne Wolfenbarger Transportation
 Blaine Carter Water Authority
 Ernest Armijo.Hydrology
 Angelo Metzgar.....Code Enforcement
 Cheryl Somerfeldt.....Parks and Rec

Angela Gomez ~ DRB Hearing Monitor

NOTE: INDIVIDUALS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE TO PARTICIPATE AT THIS MEETING SHOULD CONTACT ANGELA GOMEZ, PLANNING DEPARTMENT, AT 924-3946. HEARING IMPAIRED USERS MAY CONTACT HER VIA THE NEW MEXICO RELAY NETWORK BY CALLING TOLL-FREE:1-800-659-8331.

NOTE: DEFFERRAL OF CASES WILL BE ANNOUCED AT THE BEGINNING OF THE AGENDA.

NOTE: IF THE APPLICANT/AGENT IS NOT PRESENT WHEN THEIR REQUEST IS CALLED, THEN THE REQUEST MAY BE INDEFINITELY DEFERRED ON A NO SHOW. PER THE DRB RULES OF PROCEDURE, AN INDEFINITE DEFERRAL REQUIRES A RE-APPLICATION AND REPAYMENT OF ALL APPLICATION FEES.

NOTE: CLICK ON THE BLUE HIGHLIGHTED PROJECT # LINK TO ACCESS THE CASE. (Place mouse over hyperlink, right-click, choose "open hyperlink")

- A. Call to Order: 9:00 A.M.**
- B. Changes and/or Additions to the Agenda**
 - a. Motion to amend the rules to allow a virtual meeting because of the public health emergency.**
 - b. Remote Meeting Information:**
 - <https://cabq.zoom.us/j/83684755205> (Place mouse over hyperlink, right-click, choose "open hyperlink")
 - Meeting ID: 836 8475 5205
 - Dial by your location +1 346 248 7799 or Find your local number: <https://cabq.zoom.us/j/83684755205>

MAJOR CASES



PUBLIC MEETING

**DEVELOPMENT REVIEW BOARD
CITY OF ALBUQUERQUE**

Notice is hereby given that the Development Review Board, City of Albuquerque, will hold a public **ONLINE ZOOM MEETING**, because of the public health emergency, Friday, **December 3, 2021** beginning at **9:00 a.m.** for the purpose of considering the following items:

Join Zoom Meeting:

<https://cabq.zoom.us/j/85499151537> Meeting ID: 854 9915 1537

By phone +1 253 215 8782 or Find your local number: <https://cabq.zoom.us/u/kXRilHhhy>

**Project #PR-2019-002496
SI-2019-00180 - SITE PLAN**

CONSENSUS PLANNING, INC. agent(s) for **BELLA TESORO LLC** request(s) the aforementioned action(s) for all or a portion of **LOT 1--4 BLOCK 4 TRACT 3 UNIT 3 NORTH ALBUQUERQUE ACRES**, zoned **MX-L**, located at the **SEC of BARSTOW ST NE AND ALAMEDA BLVD NE**, containing approximately 3.38 acre(s). (C-20)

PROPERTY OWNERS: MATONI GIUSEPPE & ANNA TRUSTEES MANTONI FAMILY TRUST, LINDBORG PHILIP L

REQUEST: MULTI-FAMILY RESIDENTIAL DEVELOPMENT

Details of the application(s) may be examined online at <http://data.cabq.gov/government/planning/DRB/>.

Scroll down to find the project number listed here, or:

Details of the application(s) may be examined online at: <https://www.cabq.gov/planning/boards-commissions/development-review-board/development-review-board-agenda-archives> 48 hours prior to the meeting.

INDIVIDUALS WITH DISABILITIES who need special assistance to participate at this meeting should contact Angela Gomez, Planning Department, at 924-3946 (VOICE) or teletypewriter (TTY) 924-3361 – TTY users may also access the Voice number via the New Mexico Relay Network by calling toll-free 1-800-659-8331

**Mikaela Renz-Whitmore, Chair
Development Review Board**

[Faint, illegible text, possibly a list of agenda items or names]

Subject: FW: AC-22-1 Appeal
From: "Salas, Alfredo E." <ASalas@cabq.gov>
Date: 2/7/2022, 6:29 PM
To: "'Hessel E. Yntema III'" <hess@yntema-law.com>

Good evening, the LUHO requested we update the appeal packet to include "JUDICIAL COURT ORDER REMANDING THE CASE TO THE DRB" click the link to download/view the updated appeal packet for [AC-21-1-PR-2019-002496](#), please let me know if you have any questions.

Thank you,



ERNESTO ALFREDO SALAS
Sr. Administrative Assistant
o 505.924-3370
e asalas@cabq.gov
cabq.gov/planning

From: Salas, Alfredo E.
Sent: Wednesday, February 2, 2022 7:41 AM
To: 'hess@yntema-law.com' <hess@yntema-law.com>
Subject: AC-22-1 Appeal

Good morning, the appeal packet for AC-22-1, PR-2019-002496_SI-2019- 00180_VA-2021-00456, is complete. Click the link to download/view the record [AC-22-1 appeal packet](#). Please forward this to the list of appellants (attached), and provide me with their e-mail addresses so I can forward them to City Council, to include in the Notice of Hearing.

Thank you,



ERNESTO ALFREDO SALAS
Sr. Administrative Assistant
o 505.924-3370
e asalas@cabq.gov
cabq.gov/planning

Communication History for IPRA #21-9539

IPRA #21-9539

Pursuant to the New Mexico Inspection of Public Records Act, I request all public records, as that term is defined in NMSA 14-2-6G, created by the Zoom meeting platform when recording the Development Review Board hearing held on December 3, 2021 for the Site Plan Application #PR-2019-002496.

Date: December 3, 2021

Event: Development Review Board Hearing for #PR-2019-002496

Content: All Zoom meeting recordings (audio and video) and text records made of the 12-3-21 hearing

The Zoom platform automatically creates both audio and video files when recording. This request includes recordings in both the audio and video digital file format, as well as any text files preserving the Zoom meeting chat messages. Digital file types encompassed in this request include, but are not limited to, MPEG-4 Audio, MP4 Video, and Text Documents.

Thank you.

Karen Baehr

Submitted via Next Request (12/5/21 1:47 p.m.) and assigned #21-9539.

Communication History for IPRA #21-9539

NextRequest System Log for #21-9539:

Request Opened Request received via web December 5, 2021, 1:47pm	Public
<i>(no confirmation email received)</i>	
Department Assignment Planning December 5, 2021, 1:47pm	Public
External Message Greetings: We have received your request for public records and will begin processing your request. This correspondence is intended to acknowledge your request and alert you that it may take up to fifteen days to process your request. NMSA 1978 14-2-8(D). We will be in contact with you as we process your request if we need additional information or if it appears that your request is excessively burdensome and broad. Please be advised, if you are requesting lapel and/or 911 audio from the Albuquerque Police Department (APD), your request may take a significant amount of time to review and provide the records. In lieu of the 911 audio, my office can provide the Computer Aided Dispatch (CAD). The CAD provides information of when the call was received, when and what officers were dispatched, and a description of what happens throughout the incident. In addition, please keep in mind a 5 minute lapel video can take up to 20 minutes to review depending on the type of redactions that are necessary to complete. Please do not hesitate to contact us if you would like to know the status of your request, and please communicate all questions and status updates via NextRequest. You may access your request by signing into your NextRequest profile at the following website: https://nextrequest.cabq.gov/users/sign_in If you have not created a profile, go to the following link: https://nextrequest.cabq.gov/sign_in_help Sincerely, Ethan Watson City Clerk December 5, 2021, 1:47pm	
<i>(no corresponding email received)</i>	

Communication History for IPRA #21-9539

External Message

Dear Requester:

This correspondence concerns your IPRA request. Please be advised upon further review, we have determined your request is "excessively burdensome and broad," and my office respectfully requests an "additional reasonable period of time" to complete the request. NMSA 1978, § 14-2-10. We have deemed your request as "excessively burdensome or broad" because we need additional time to identify whether we have responsive records, gather any such records, and review them.

We will be in contact regarding this request on approximately **1/4/2021**. We will continue to update you on our progress. We will promptly contact you as soon as those documents become available for your inspection or pick up.

Please let me know if you have any questions.

Sincerely,

Office of the City Clerk

December 20, 2021, 4:12pm by Gabryella Williams, Sr. Office Assistant (Staff)

(Email 1 - 12-20-21; note: has different date)

Communication History for IPRA #21-9539

Request Closed

Hello,

On **12/5/2021**, we received your public records request for the following records:

Pursuant to the New Mexico Inspection of Public Records Act, I request all public records, as that term is defined in NMSA 14-2-6G, created by the Zoom meeting platform when recording the Development Review Board hearing held on December 3, 2021 for the Site Plan Application #PR-2019-002496.

Date: December 3, 2021

Event: Development Review Board Hearing for #PR-2019-002496

Content: All Zoom meeting recordings (audio and video) and text records made of the 12-3-21 hearing

The Zoom platform automatically creates both audio and video files when recording. This request includes recordings in both the audio and video digital file format, as well as any text files preserving the Zoom meeting chat messages. Digital file types encompassed in this request include, but are not limited to, MPEG-4 Audio, MP4 Video, and Text Documents.

Thank you.

This communication will confirm our completion of your request. We have searched for responsive records and not been able to locate or identify any records. As a result, there are no responsive records related to your request that are maintained by my office. My office will now close your public records request.

Please let me know if you have any questions.

Sincerely,

Gabryella Williams

IPRA Tech

Office of the City Clerk

(Email 2 - 12-21-21)

Communication History for IPRA #21-9539

External Message

Hello Ms. Williams,

Thank you for the Dec. 21 update regarding this request. I did not receive an email notice that corresponded to the message being posted in NextRequest, so I was not aware of the closure until this week.

The Dec. 3 DRB Hearing was recorded in Zoom. It was publicly acknowledged that it was recorded by the Planning Department in the meeting and on the Zoom platform itself. Everyone who participated was required by Zoom to acknowledge that it was recorded. It was also stated by City representatives in the meeting that recordings and chat records would be retained (presumably by the Planning Department).

You indicate the following:

We have searched for responsive records and not been able to locate or identify any records. As a result, there are no responsive records related to your request that are maintained by my office.

As this IPRA response unfortunately puts the City Clerk's office in contradiction with public statements by Planning Department representatives, whom the public would presume to have been operating in good faith when stating the meeting would be recorded and records would be retained, could you please clarify the following points regarding your response to this request:

Was the meeting organizer/person responsible for recording the Dec. 3 DRB Zoom meeting consulted prior to your response?

Did the Planning Department confirm for you that no Zoom recordings of the Dec. 3 hearing exist?

What is the City's records retention policy regarding recorded Zoom public meetings?

Thank you for the clarification.

Karen
January 5, 2022, 12:05pm by the requester

(the message above was submitted via the Next Request system)

Next event: filing of IPRA #22-295 on 1/11/22 (see separate Next Request Log)

(Email 3 – Notice that IPRA #21-9539 has been reopened)

(Email 4: Note from Javier Urban re: reopening of #21-9539 and closing of #22-295)

(Email 5: Follow up email from Javier Urban re: consolidation of requests)

(Email 6: Notice of closure of #22-295)

Communication History for IPRA #21-9539

External Message

Hello Javier,

Thank you for reopening this request for further attention.

Could I please get an update regarding the current status of the original Dec. 5 request for the Dec. 3 DRB Zoom records that was denied on 12/21 / the questions from the January 11 request #22-295 (now closed) that were consolidated into this request)?

Thank you!

Karen

January 21, 2022, 1:32pm by the requester

(the message above was submitted via the Next Request system)

(No further communications)

Communication History for IPRA #21-9539

IPRA #22-295

This request references the response to a previous request and seeks clarification.

Referenced Request

Previous request #21-9539 for the Planning Department; specifically the denial and closure of request communication response provided by Gabryella Williams, IPRA Tech, Office of the City Clerk on 12-21-21. Ms. Williams indicates the following in her statement closing IPRA request 21-9539:

We have searched for responsive records and not been able to locate or identify any records. As a result, there are no responsive records related to your request that are maintained by my office.

Current IPRA Request:

This request is seeking clarification regarding the statement above from Ms. Williams that indicates there are no responsive records for IPRA 21-9539 regarding the Dec. 3 DRB Hearing for #PR-2019-002496.

Background for IPRA 21-9539: The Dec. 3 DRB Meeting referenced was held by Zoom call. It was recorded and publicly acknowledged by the Planning Department and all attendees as being recorded. It was further stated by a City representative in the meeting, possibly the City attorney who was present, that the recordings would be preserved.

This IPRA is seeking the following points of clarification:

- **What is the name and title (or position) of the person who was responsible for recording the Dec. 3 DRB Zoom meeting for #PR-2019-002496?**
- **Was the meeting organizer/person responsible for recording the Dec. 3 DRB Zoom meeting consulted prior to the IPRA response referenced above (Ms. Williams closure note on #21-9539 dated 12-21-21)?**
- **What is the name and title (or position) of the person(s) in the assigned department for IPRA #21-9539, the Planning Department, who denied that records of the Dec. 3 Zoom meeting exist prior to the City Clerk's office response and closing of IPRA request 21-9539?**

Supporting reference: *NM Inspection of Public Records Compliance Guide 2015*

14-12-11-B Procedure for Denied Requests - If a written request has been denied, the custodian shall provide the requestor with a written explanation of the denial. The denial shall...

(2) set forth the names and positions or titles of each person responsible for the denial.

Communication History for IPRA #21-9539

- **What is the City's records retention policy regarding recorded Zoom public meetings?**
- **If the records are located, this request restates the request for all records referenced in IPRA #21-9539 to be provided.**

Requested content: All Zoom meeting recordings (audio and video) and text records made of the 12-3-21 Development Review Board (DRB) Hearing for #PR-2019-002496 hearing. This request includes recordings in both the audio and video digital file format, as well as any text files preserving the Zoom meeting chat messages. Digital file types encompassed in this request include, but are not limited to, MPEG-4 Audio, MP4 Video, and Text Documents.

Thank you.

Karen Baehr

Submitted via Next Request (1/11/22 6:29 p.m.) and assigned #22-295.

Communication History for IPRA #21-9539

NextRequest System Log for #22-295

Request Opened

Request received via web
January 11, 2022, 6:29 pm

(no confirmation email received)

External Message

Greetings:

We have received your request for public records and will begin processing your request. This correspondence is intended to acknowledge your request and alert you that it may take up to fifteen days to process your request. NMSA 1978 14-2-8(D). We will be in contact with you as we process your request if we need additional information or if it appears that your request is excessively burdensome and broad.

Please be advised, if you are requesting lapel and/or 911 audio from the Albuquerque Police Department (APD), your request may take a significant amount of time to review and provide the records. In lieu of the 911 audio, my office can provide the Computer Aided Dispatch (CAD). The CAD provides information of when the call was received, when and what officers were dispatched, and a description of what happens throughout the incident. In addition, please keep in mind a 5 minute lapel video can take up to 20 minutes to review depending on the type of redactions that are necessary to complete. Please do not hesitate to contact us if you would like to know the status of your request, and please communicate all questions and status updates via NextRequest.

You may access your request by signing into your NextRequest profile at the following website:

https://nextrequest.cabq.gov/users/sign_in

If you have not created a profile, go to the following link:

https://nextrequest.cabq.gov/sign_in_help

Sincerely,

Ethan Watson

City Clerk

January 11, 2022, 6:29pm

(no corresponding email received)

Communication History for IPRA #21-9539

External Message

Hello Ms. Baehr,

I am reaching out to you in regards to request #21-9539. This request has been reopened, and I am following up with the Planning Department concerning your previous request. I will promptly contact you and send you a communication through request #21-9539, when I have received an answer from the Department. I apologize for any inconvenience and will be in touch. I will now close this request and will continue to process your previous request of #21-9539.

Thank you,

Javier Urban

IPRA Manager

January 12, 2022, 9:47am by Javier Urban (Staff)

(Email 4: Note from Javier Urban re: reopening of #21-9539 and closing of #22-295)

External Message

Hello Ms. Baehr,

I apologize, I did not inform you on my previous message, and I just wanted to let you know that I have consolidated the items requested in this request to your previous of #21-9539. I will notify you when I receive any information pertaining to these items.

Thank you,

Javier Urban

January 12, 2022, 9:54am by Javier Urban (Staff)

(Email 5: Follow up email from Javier Urban re: consolidation of requests)

Request Closed

Hello,

This request has been consolidated into request 21-9539, therefore it will be closed. Request 21-9539 has been reopened and will continue to be processed.

Javier Urban

IPRA Manager

(Email 6: Notice of closure of #22-295)

From: [City of Albuquerque Public Records](#)
To: klbaehr@msn.com
Subject: [External Message Added] City of Albuquerque public records request #21-9539
Date: Monday, December 20, 2021 4:12:24 PM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Albuquerque Public Records

A message was sent to you regarding record request #21-9539:

Dear Requester:

This correspondence concerns your IPRA request. Please be advised upon further review, we have determined your request is "excessively burdensome and broad," and my office respectfully requests an "additional reasonable period of time" to complete the request. NMSA 1978, § 14-2-10. We have deemed your request as "excessively burdensome or broad" because we need additional time to identify whether we have responsive records, gather any such records, and review them.

We will be in contact regarding this request on approximately **12/20/2021**. We will continue to update you on our progress. We will promptly contact you as soon as those documents become available for your inspection or pick up.

Please let me know if you have any questions.

Sincerely,

Office of the City Clerk

[View Request 21-9539](#)

<https://nextrequest.cabq.gov/requests/21-9539>



POWERED BY NEXTREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Albuquerque.

Technical support: See our [help page](#)

From: City of Albuquerque Public Records
To: klbaehr@msn.com
Subject: Your City of Albuquerque public records request #21-9539 has been closed.
Date: Tuesday, December 21, 2021 3:36:51 PM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Albuquerque Public Records

Record request #21-9539 has been closed.
The closure reason supplied was:

Hello,

On **12/5/2021**, we received your public records request for the following records:

Pursuant to the New Mexico Inspection of Public Records Act, I request all public records, as that term is defined in NMSA 14-2-6G, created by the Zoom meeting platform when recording the Development Review Board hearing held on December 3, 2021 for the Site Plan Application #PR-2019-002496.

Date: December 3, 2021

Event: Development Review Board Hearing for #PR-2019-002496

Content: All Zoom meeting recordings (audio and video) and

text records made of the 12-3-21 hearing

The Zoom platform automatically creates both audio and video files when recording. This request includes recordings in both the audio and video digital file format, as well as any text files preserving the Zoom meeting chat messages. Digital file types encompassed in this request include, but are not limited to, MPEG-4 Audio, MP4 Video, and Text Documents.

Thank you.

This communication will confirm our completion of your request. We have searched for responsive records and not been able to locate or identify any records. As a result, there are no responsive records related to your request that are maintained by my office. My office will now close your public records request.

Please let me know if you have any questions.

Sincerely,

Gabryella Williams

IPRA Tech

Office of the City Clerk

[View Request 21-9539](#)

From: [City of Albuquerque Public Records](#)
To: kbaehr@msn.com
Subject: Your City of Albuquerque public records request #21-9539 has been reopened.
Date: Wednesday, January 12, 2022 9:16:35 AM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Albuquerque Public Records

Record request #21-9539 has been reopened. You can see it anytime at the link below.

[View Request 21-9539](#)

<https://nextrequest.cabq.gov/requests/21-9539>



POWERED BY NEXTREQUEST

The All in One Records Requests Platform.

Questions about your request? Reply to this email or sign in to contact staff at City of Albuquerque.

Technical support: See our [help page](#)

From: [City of Albuquerque Public Records](#)
To: kbaehr@msn.com
Subject: [External Message Added] City of Albuquerque public records request #22-295
Date: Wednesday, January 12, 2022 9:47:56 AM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Albuquerque Public Records

A message was sent to you regarding record request #22-295:

Hello Ms. Baehr,

I am reaching out to you in regards to request #21-9539. This request has been reopened, and I am following up with the Planning Department concerning your previous request. I will promptly contact you and send you a communication through request #21-9539, when I have received an answer from the Department. I apologize for any inconvenience and will be in touch. I will now close this request and will continue to process your previous request of #21-9539.

Thank you,

Javier Urban

IPRA Manager

[View Request 22-295](#)

<https://nextrequest.cabq.gov/requests/22-295>

From: [City of Albuquerque Public Records](#)
To: kbaehr@msn.com
Subject: [External Message Added] City of Albuquerque public records request #22-295
Date: Wednesday, January 12, 2022 9:54:52 AM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Albuquerque Public Records

A message was sent to you regarding record request #22-295:

Hello Ms. Baehr,

I apologize, I did not inform you on my previous message, and I just wanted to let you know that I have consolidated the items requested in this request to your previous of #21-9539. I will notify you when I receive any information pertaining to these items.

Thank you,

Javier Urban

[View Request 22-295](#)

<https://nextrequest.cabq.gov/requests/22-295>

From: [City of Albuquerque Public Records](#)
To: kbaehr@msn.com
Subject: Your City of Albuquerque public records request #22-295 has been closed.
Date: Wednesday, January 12, 2022 10:08:00 AM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Albuquerque Public Records

**Record request #22-295 has been closed.
The closure reason supplied was:**

Hello,

This request has been consolidated into request 21-9539, therefore it will be closed. Request 21-9539 has been reopened and will continue to be processed.

Javier Urban

IPRA Manager

[View Request 22-295](#)

<https://nextrequest.cabq.gov/requests/22-295>

POWERED BY NEXTREQUEST

The All in One Records Requests Platform

Subject: RE: Claim under the New Mexico Civil Rights Act re December 3, 2021 DRB Meeting

From: "Gomez, Angela J." <agomez@cabq.gov>

Date: 1/31/2022, 9:29 AM

To: "Hessel E. Yntema III" <hess@yntema-law.com>, "Rodenbeck, Jay B." <jrodenbeck@cabq.gov>, Planning Department <planningdepartment@cabq.gov>, "Benton, Isaac" <ibenton@cabq.gov>

CC: "Sanchez, Nicole A." <nasanchez@cabq.gov>, "cp@consensusplanning.com" <cp@consensusplanning.com>, City Clerk Staff <CityClerk@cabq.gov>

Good morning Mr. Yntema,

The letter you have provided has been received and added to the file for this case.

Best,
Angela ~



ANGELA GOMEZ
DRB hearing monitor
development review services
o 505.924.3946
e agomez@cabq.gov
cabq.gov/planning

From: Hessel E. Yntema III <hess@yntema-law.com>

Sent: Monday, January 31, 2022 9:00 AM

To: Rodenbeck, Jay B. <jrodenbeck@cabq.gov>; Planning Department <planningdepartment@cabq.gov>; Benton, Isaac <ibenton@cabq.gov>; Gomez, Angela J. <agomez@cabq.gov>

Cc: Sanchez, Nicole A. <nasanchez@cabq.gov>; cp@consensusplanning.com; City Clerk Staff <CityClerk@cabq.gov>

Subject: Claim under the New Mexico Civil Rights Act re December 3, 2021 DRB Meeting

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Mr. Rodenbeck et al.,

Attached is a letter to provide notice of a claim under the New Mexico Civil Rights Act concerning the December 3, 2021 DRB meeting. Please acknowledge receipt of this letter by return e-mail.

Thank you,

Hessel E. Yntema III
Yntema Law Firm P.A.
215 Gold SW
Suite 201

YNTEMA LAW FIRM P.A.
ATTORNEY AT LAW

January 31, 2022

HESSEL E. YNTEMA, III

By Electronic Mail and Certified Mail, Return Receipt Requested

jrodenbeck@cabq.gov
Jay Rodenbeck
Chair, Development Review Board
City of Albuquerque
600 Second St. NW, 3rd Floor
Albuquerque, NM87102

By Electronic Mail

Alan Varela, Interim Director
planningdepartment@cabq.gov

By Electronic Mail and Certified Mail, Return Receipt Requested

ibenton@cabq.gov
Isaac Benton
President, City Council
City of Albuquerque
One Civic Plaza NW, 9th Floor
Albuquerque, NM 87102

Notice of Claimed Violations of the New
Mexico Civil Rights Act by the DRB in
Project PR-2019- 002946, at the December 3,
2021 Remand Hearing
(Alameda Luxury Apartments)

Dear Chair Rodenbeck, Planning Department and City Council:

Yntema Law Firm P.A. represents the individuals listed as Claimants at the end of this letter (collectively "Claimants") in connection with this letter. This letter is to provide notice under Section 41-4A-13(A), NMSA 1978 (2021), on behalf of Claimants, of a claim under the New Mexico Civil Rights Act ("NMCRA") against the Development Review Board ("DRB") and the City of Albuquerque City Council for actions at the December 3, 2021 DRB meeting referenced above.

At the December 3, 2021 DRB meeting, it became apparent that the DRB decision process for the Alameda Luxury Apartments site plan was controlled by the City Planning Department and that the meeting did not satisfy the requirements of a quasi-judicial hearing. DRB members had ex parte contacts with the developer's representatives and various City employees concerning the substance of the subject of the meeting, and made decisions applicable to the site plan application outside the December 3 meeting. The DRB did not

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

YNTEMA
LAW FIRM P.A.
ATTORNEY AT LAW

Jay Rodenbeck, DRB Chair
Alan Varela, Planning Department Director
Isaac Benton, City Council President
City of Albuquerque
January 31, 2022

fairly consider the Claimants' arguments about the subject site plan. Under these circumstances the DRB acting under color of law subjected or caused to be subjected the Claimants to deprivation of property rights without due process contrary to the New Mexico Constitution, Article II, Section 18 and the NMCRA.

Very truly yours,

YNTEMA LAW FIRM P.A.

By Hessel E. Yntema III
Hessel E. Yntema III

cc: Nicole Sanchez (DRB Attorney)
Consensus Planning, Inc. (Jim Strozier)

Claimants:

Stephen M. Wray
Randolph and Shannon Baca
Joe O'Neill and Karen Baehr
Dennis and Cheri Starner
Nancy Jones
Thomas M. Anderson
Juanita Duran
Paul and Marialuz Scarpa
Carl and Nancy Henry
Alex Liao and Xiaoya Wu
Paul and Jennifer Wever
Dennis and Donna Sauter
Anne and David Downing
Jeff and Oliva Bland
Philip and Amber Le