YNTEMA LAW FIRM P.A.
ATTORNEY AT LAW

HESSEL E. YNTEMA, III

November 18, 2021

VIA E-MAIL – agomez@cabq.gov

Mikaela Renz-Whitmore, Chair
Development Review Board
City of Albuquerque

Project: #PR-2019-002496
Alameda Luxury Apartments Complex
DRB Remand Meeting on December 3, 2021

Dear Chair Renz-Whitmore and DRB Members:

This firm represents the opponents of the referenced project listed at the end of this letter (the "Opponents") for the remand meeting following the decision of the District Court in Bernalillo County District Court No. D-202-CV-2020-03644 to reverse and remand the applicant's site plan approval to the City for further proceedings. The Opponents hope that the applicant will revise its project to better fit with the neighborhood. This letter is intended to provide evidence and argument for the remand meeting scheduled for December 3, 2021, at the Development Review Board ("DRB"). Please place this letter and attachments in the record for the DRB remand meeting.

1. Background

The District Court's decision entered June 2, 2021 ruled that the City's decision was not in accordance with law, and remanded the site plan approval decision to the City for reconsideration in a quasi-judicial hearing process. The District Court's main ruling (Order p. 2) was:

> The Court reverses the City's determination in its appellate capacity, concluding that the decision was not in accordance with the law requiring a quasi-judicial hearing, and remands the matter for further proceeding consistent with this Opinion. As a result, the Court does not consider Appellants' other appellate issues or the issues presented pursuant to the Declaratory Judgment Act.

The District Court stated concerning R-2019-035 (p. 5):

> The City's application of R-2019-035 plainly resulted in substantial confusion for the present matter which necessitates reversal and remand.

The District Court further ruled (p. 11):

> On remand, the City is directed to explicitly set out the date upon which the Developers' application was deemed complete,

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

> as this fact was subject to some confusion, with further explanation as to the finding by the DRB following the July 17, 2019, meeting that there were comments made by the DRB which needed to be addressed prior to any action on the application, as well as outstanding issues, including grading and drainage plans, infrastructure list, and other comments that necessitated deferring action from the August 14, 2019, DRB meeting, requiring further supplementation of their application.

The District Court also ruled (p. 15):

> The City, on remand, is directed to allow the DRB to analyze and explain Duran's legislative rezoning, a comparably simple matter which nonetheless took nearly a year to complete, Appellants' arguments concerning the intersection between § 1-10(B), other ordinances and the Official Zoning Map, and provide a detail written decision.

As to DRB quasi-judicial hearings, the District Court stated (p. 17):

> The problem was created by the City's enactment of R-2019-035, which purported to amend or revise procedures under the IDO, and provided that "DRB is a staff board for technical reviews and does not make discretionary decisions or hold quasi-judicial hearings."

The Opponents request that the entire record of the prior proceedings in PR-2019-002496 and related proceedings be included in this case for reference. The Opponents submit additional materials (Exhibits 1-32) with this letter and request that these exhibits be entered into evidence at the DRB remand meeting. The exhibits include demonstrative exhibits, e-mail strings obtained through the Inspection of Public Records Act ("IPRA"), e-mail strings related to the remand meeting, City enactments, materials from the City's website, and records of some of the Opponents.

The Opponents request that the DRB members who have had material ex parte contacts with the applicant, the applicant's representatives, or Planning Department employees concerning this PR-2019-002496 proceeding, R-2019-035, or any related cases, recuse themselves from the meeting. Ms. Renz-Whitmore should recuse herself from involvement as a quasi-judicial decision-maker in this matter, because of her active involvement in the City's enactment of R-2019-035 in response to the decision of the City's Land Use Hearing

Officer ("LUHO") in AC-18-20 (Exhibits 2-5) concerning excluding the DRB from quasi-judicial decisions. Ms. Renz-Whitmore apparently also was involved in the pre-application neighborhood meetings for PR-2019-002496. Her participation in the decision-making body in this matter is not appropriate.

The Opponents request that cross-examination be allowed of all witnesses at the meeting, and that representatives of the Planning Department be on hand as witnesses for cross-examination on relevant matters.

The Opponents should be allowed reasonable time to respond to any further submissions by the applicant or the Planning Department following the submission of this letter.

The Opponents object to an online DRB meeting. The DRB meeting should be conducted in accordance with the New Mexico Open Meetings Act.

2. A December 3, 2021 DRB meeting is premature

Important preliminary matters need to be resolved before a DRB decision meeting should be scheduled, including concerning the authority of the DRB to hold a quasi-judicial hearing and how "completeness" of an application is to be determined (discussed below). As noted above the District Court Order directed the City to explicitly set out the date on which the application was deemed complete. That date and the written analysis of how that date was determined should be in the record and available to the Opponents at least a few weeks before the meeting. The District Court also directed the DRB to analyze and explain the legislative rezoning of Juanita Duran's property. The City has the best access to information on that process, and the City's analysis should be written and made available to the Opponents some weeks before any meeting to approve the site plan. The District Court also stated that R-2019-035 was "the problem": City staff should explain in writing if the provisions of R-2019-035 were in effect when the application was filed, and if those provisions are in effect today, and further if the City Council has repealed R-2019-035.

This matter also should be deferred until an adequate record is available to the Opponents and the public. The records should include all communications to and from the Planning Department and other City departments concerning the application and the decision process. The record should be ordered chronologically and be numbered consecutively to allow for meaningful review on appeal. The District Court Remand Order should be part of the record.

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It appears that City Staff, not the DRB, is running the decision process. It appears that substitute DRB members are being specially appointed for the December 3 decision meeting. City staff has set the date for the DRB meeting apparently without any DRB involvement. City staff, not the DRB, also has determined that the initial record for the matter will consist of only the initial application and the District Court's Order, or of unnumbered papers (Exhibit 1). As further discussed below, the past IDO was and the current IDO is intended to prohibit and prohibit the DRB from holding a quasi-judicial hearing on a site plan. Under these circumstances, the process being imposed in response to the District Court Order is contrary to the District Court Order and sets up a sham proceeding.

3. The latest version of the Integrated Development Ordinance should apply

The subject remand meeting is to be under the City's Integrated Development Ordinance ("IDO"). The Opponents have been informed by the City Attorney that the IDO effective in 2018 ("2018 IDO") applies to the meeting (Exhibit 1). However, from the perspective of the Opponents, under New Mexico law, discussed further below, legislation enacted by a governing body or law established while a development application is pending applies to that development application. For example, the District Court Order in this matter applies to the application and the DRB proceedings. Upon information and belief, the version of the IDO applicable as of the date of this letter is the version "amended as of November 2020" ("2020 IDO"), and thus the 2020 IDO should apply for the remand.

4. The DRB lacks authority to hold a quasi-judicial hearing

Under either the 2018 IDO (whether or not modified by R-2019-150) or the 2020 IDO, the DRB is not authorized or prepared to conduct quasi-judicial hearings. IDO Table 6-1-1 in both versions of the IDO indicates that DRB site plan decisions are conducted as "public meetings" rather than as "public hearings". Under 2020 IDO Section 6-4(M), public meetings explicitly are not quasi-judicial. 2018 IDO Section 6-4(L) does not have the explicit language re public meetings not being quasi-judicial hearings, but whether any public discussion is allowed is discretionary, which is contrary to quasi-judicial standards allowing testimony and cross examination. In both IDOs the DRB is limited to "technical" review. The apparently current DRB Rules of Procedure (Exhibit 32), from 2013, do not provide for a quasi-judicial hearing format, for example the current DRB rules do not allow for cross-examination, and the DRB Rules provide for decision by consent rather than by vote. Upon

information and belief, the DRB has never conduced a quasi-judicial hearing, which is understandable as the City Council apparently has never authorized the DRB to conduct a quasi-judicial hearing. Even if the DRB somehow had authority to conduct a quasi-judicial hearing for a site plan application in 2019, that authority was withdrawn under the 2020 IDO which included restrictions on DRB quasi-judicial hearings imposed by R-2019-035 (earlier known as Resolution 19-150) (discussed in the District Court's Order). The City's current website for the "Legislative History" for the IDO (Exhibit 13) states that "Effective May 24, 2019, interim procedures related to the Development Review Board were adopted by the City Council via Resolution 19-150, which amended IDO text in Part 5 Development Standards and Part 6 Administration and Enforcement. These changes were incorporated into the 2019 IDO Effective Draft" (which 2019 IDO Effective Draft is the version which became effective November 2, 2020). The 2020 IDO Annual Update (page ii) identifies R-2019-035 as an "Adoption and Amendments" item (Exhibit 14).

In enacting the IDO, the City withdrew substantial site plan decision authority from the Environmental Planning Commission ("EPC") and placed that site plan decision authority with the DRB, but denied that such DRB site plans decisions were to be decided quasi-judicially. The City Council has never enacted a quasi-judicial hearing process for non-EPC site plan decisions. The City Council has not considered or acted upon the District Court Order that a quasi-judicial hearing is required for this matter.

The City's views of the DRB process are incompatible with quasi-judicial proceedings. As stated by the Planning Director in his Memo dated October 19, 2019 (Exhibit 11):

> … The DRB was created to offer efficient considerations of technical standards, a one-stop shop for property owners and developers alike, which would have otherwise required an applicant to meet individually with the City staff experts from divisions and departments across the city. The DRB streamlines the application process by bringing together key department staff responsible for the specialized/expert review of projects as the[y] relate to the IDO in a forum where the staff and applicant meet to discuss projects and the public can ask questions and share input for those decisions. The DRB is not a policy making board and performs no administrative adjudicatory functions regarding individual legal rights, duties or privileges. As such, the DRB staff communicates with the public and the applicants….

> Again, the DRB is a technical review board of the City staff and does not hold quasi-judicial hearings. By definition of the DRB and its purpose, the DRB staff members are required to communicate with the public and applicants. The DRB is a consensus board and requires each designated staff member, an expert in a specific area, to have no objections to an application. For each application, each member is asked whether they object. If there are no objections, meaning the application follows the requirements of the IDO, the application is approved with a consensus vote. The remaining alleged Open Meeting Act violations ("going in and out of public meetings and effectively into smaller group closed meetings") are fabrications of Appellant.

5. The DRB is not an impartial decision-maker for this matter

The Opponents object to the DRB, as presently constituted and operated, deciding this matter, because the DRB is not an impartial decision-maker for this matter. The configuration of this matter at this point appears to be that the DRB is to conduct a quasi-judicial hearing for approval of the applicant's site plan. Due process requires that the parties will have an impartial decision-maker. Procedural due process requires a fair and impartial hearing before a trier of fact who is "disinterested and free from any form of bias or predisposition regarding the outcome of the case". New Mexico Bd. of Veterinary Medicine v. Riegger, 2007-NMSC-044, ¶27, 142 N.M. 248. Parties are entitled to an impartial tribunal, i.e. having had no pre-hearing or ex parte contacts concerning the question at issue. Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2008-NMSC-025, ¶34, 144 N.M. 99. In this case, substantive decisions to approve the site plan apparently have already been made outside of a public hearing by the Planning Department and then imposed on the DRB, for example that the 2018 IDO applies, that the prior case record shall not be part of the remand hearing record, what process the DRB will follow, and even setting an accelerated date for the remand hearing.

The DRB is controlled by the Planning Department. The DRB is chaired by the City Planning Department Director or its assignee and the Zoning Enforcement Officer ("ZEO") also is a member, under both the 2018 IDO Section 6-2(D)(1)and the 2020 IDO Section 6-2(D)(1). Given the history of this case, it is not reasonable to have Planning Department employees control the decision process.

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The City has always organized and operated the DRB outside of quasi-judicial standards. In AC-18-20 (Exhibit 2), the LUHO ruled on March 28, 2019 that for certain variances\s the DRB would have to conduct quasi-judicial proceedings. City staff responded quickly against the LUHO decision, proposing a City Council resolution to make clear that, notwithstanding the LUHO decision, the DRB was not to conduct quasi-judicial proceedings (Exhibits 3-6). The then Planning Director, David Campbell, wrote on April 8, 2019, in response to a meeting about the proposed resolution:

> The DRB is a technical board who should not be acting on discretionary items. I am not sure how we get there except to remove the process through DRB and move to ZHE or EPC. The DRB members can supply comments to the ZHE or EPC as commenting agency(s) vs. being the decision making body. Also as a sidebar, I would suggest removing Public Hearing items from the DRB and make all actions Public Meeting items.

City staff and the City Council responded by enacting R-2019-035 on May 20, 2019 (Exhibit 8) on an expedited "holdover" basis without discussion or even explanation of what they were doing (Transcript is Exhibit 7). After R-2019-035 was enacted, City staff sought the opinion of the LUHO about the effect of R-2019-035 (Exhibits 9, 10). The LUHO stated (Exhibit 10): "the changes are superficial, changing labels only." Nonetheless, the City Council apparently has proceeded with the 2020 IDO continuing to applying R-2019-035 standards to DRB site plan decisions.

The DRB's methods of operation and structure are incompatible with the requirements for quasi-judicial proceedings. The DRB essentially conducts its business in a "rolling quorum" method. See NM Attorney General's Open Meetings Act Compliance Guide (2015), pp. 7-8. The DRB's methods allow an applicant to obtain separate, private persuasion of or approvals from the DRB members outside of the public hearing. The quorum is acting outside of an open public meeting even as the members are separated physically.

In this matter, there is confusion about the record, whether the record should be numbered, and whether "normal" DRB procedures should apply (Exhibit 1). It appears that R-2019-035 still is in effect and has not been repealed or revised.

The 2018 IDO and the 2020 IDO are fatally flawed for DRB site plan approvals, because state law and even the various IDO versions require a quasi-judicial hearing for a site plan approval, but neither IDO provides a quasi-

judicial hearing process for such site plan applications. The City Council should review the District Court Remand Order and revise the IDO to create a quasi-judicial hearing process for site plan approvals.

6. The Planning Director has not determined that the Application at issue is complete

In this matter the applicant submitted its application on June 17, 2019. Both 2018 IDO Section 6-4 (H) and 2020 IDO Section 6.4 (G) require that an application must be "complete" to be considered. The Planning Director "shall determine whether the application is complete". Incomplete applications are not to be set for a hearing. However, possibly due to the ex parte, rolling quorum manner in which the Planning Department and the DRB conduct development application reviews, the Planning Director never determined that the application was "complete". Despite that "no development application shall be reviewed for compliance or scheduled for a public meeting or hearing by any decision-making body until it is determined to be complete" the application apparently was set for a hearing on July 17, 2019 concurrently with the filing of the application. Similarly the pending December 3, 2021 meeting date for this remand hearing has been set without clarity as to if and when the application was determined to be complete. The current DRB Rules allow for consideration of an incomplete application, and it would appear that the Planning Department and the DRB operate with that approach. City Planner Maggie Gould's testimony at the August 14, 2019 DRB meeting (Exhibit 29) indicates that the Planning Department follows "kind of a two-step process" in determining if an application is complete.

The determination of completeness is not a merely clerical matter because, according to the City's interpretations of the IDO, that determination of completeness vests the applicant with rights as to how the IDO will apply. The determination of completeness, under the IDO as interpreted by the City, constitutes a discretionary decision which changes property rights or entitlements for a particular property, and thus itself requires a quasi-judicial hearing under 2018 IDO Section 6-4(M)(3) and 2020 IDO Section 6-4(N)(3). The City Council should amend the IDO to provide for a quasi-judicial process to determine "completeness" of an application.

Exhibit 15, an e-mail string (last date June 27, 2019) involving the then DRB Chair and the applicant's representative, indicates that the application was not complete as of June 27, 2019 because an owner's letter of authorization was lacking.

At its July 17, 2019 meeting about the application, the DRB ruled that additional submissions were required from the applicant (Exhibit 28). At its August 14, 2019 meeting about the application, the DRB ruled again that additional submissions were required from the applicant (Exhibit 30). The application was a work in progress even at the end of the DRB meeting of September 11, 2019: the DRB required "updating" and delegated review and approval for various matters (Exhibit 31). The actual drawings for which the applicant seeks approval at this point are dated November 27, 2019.

7. The IDO "Neighborhood Edges" Provisions Apply to the Applicant's Site Plan

The lots of various Opponents on Tierra Morena NE adjacent to the subject property are zoned "R-1B". Under the 2018 IDO's and 2020 IDO's "Neighborhood Edges" provisions (Section 5-9) these lots are entitled to certain "step-down" and other protections which are not provided in the applicant's site plan.

On August 5, 2019, the City Council approved "Batch 1" of the IDO legislative rezonings which included the property (home) of one of the Opponents, Juanita Duran, at 8419 Tierra Morena NE (Exhibits 19, 20). Ms. Duran's property abuts the subject development site and the rezoning imposes the "Neighborhood Edges" protections on the site plan. According to the Planning Department in one interpretation, that rezoning became final on September 8, 2019. The position of the Opponents is that the legislative rezoning approved August 5, 2019 applies to the development application filed June 17, 2019 because that application was pending when the legislative rezoning was enacted and under New Mexico law development applications are subject to changes in law during the approval process. An applicant does not obtain "vested rights" in the law applicable to a development application until the development is approved and the applicant invests some level of resources into the development.

In the prior administrative proceedings, the City did not consider important underlying facts and circumstances about the Neighborhood Edges provisions. The City relied upon and interpreted 2018 IDO Section 1-10(B), within the "Transitions from Previous Legislation" Section, which states:

> Any application that has been accepted by the City Planning Department as complete prior to the effective date of this IDO, or any amendment to this IDO, shall be reviewed and a decision

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> made based on the standards and criteria in effect when the application was accepted as complete.

The City ultimately interpreted this provision to mean that the IDO or the neighboring zoning were frozen, for the applicant's application, as of the date the Planning Department considered that the applicant's application was "complete". This interpretation is problematic because the provision, located in the "Transitions from Previous Legislation" Section and addressing initially applications submitted before the effective date of the IDO, does not appear to be intended to have such far reaching consequences (that legislative rezoning, legislative amendments to the IDO or other City regulations do not apply to an application which has been for a hearing). "Completeness" of an application is considered at 2018 IDO Section 6-4(H) and contemplates a determination by the Planning Director that an application is "complete", which does not appear to have happened in this case. If the Planning Director's determination of "completeness" of an application is a date which triggers a freeze on all IDO amendments or other City enactments as to that application, that date is important and should be identified, in the record.

The legislative rezoning at issue were changes to the "Official Zoning Map", which is a separate instrument from the 2018 IDO. 2018 IDO Section 1-6, Official Zoning Map, states:

> 1-6(A) The standards and regulations in this IDO applicable to specific zone districts or Overlay zones apply to the areas of the City shown with those zone districts or Overlay zones on the Official Zoning Map.

2018 IDO Section 1-6(B) indicates that the City Council intended the Official Zoning Map to be separate from the IDO, and separately amendable:

> The Official Zoning Map is the latest version of the zoning map as approved or amended by City Council and maintained in electronic form by the City Planning Department.

The most restrictive provisions of the IDO should apply to the applicant's proposal, if there is any conflict between IDO provisions and City regulations or state law. 2018 IDO Section 1-8(B) states:

> 1-8(B) If any regulation in this IDO conflicts with other applicable laws or regulations of the City, or conflicts with applicable state or federal law, the more restrictive provision

> shall prevail, unless the provisions of state or federal law, as interpreted by the courts, prevent that result.

The "Neighborhood Edges" provisions apply to this site plan for several reasons: the Tierra Morena voluntary zoning conversions were not "amendments" to the IDO; the IDO process contemplated the zoning conversions on Tierra Morena NE as an integral component of the IDO process; and granting the applicant a "vested right" for development upon filing an application conflicts with settled state law as to "vested rights" and quasi-judicial decision requirements.

Review of the various enactments for the "voluntary zoning conversions" (undertaken by various Tierra Morena Appellants), indicates that the "voluntary conversions" were not "amendments" to the IDO, and that the "zone conversion process" was contemplated and initiated even before the effective date of the IDO. Exhibits 12 through 25 set out some of the applicable enactments and related papers.

Enactment 0-2017-025 (Exhibit 12) shows that the IDO and the IDO Zoning Conversion Map were enacted together. Page 21 of O-2017-025 provides that "the Planning Department intends to submit and sponsor a series of zone changes". The City's website discussed the post-IDO Voluntary Zone Conversion Process (Exhibit 16). Enactment R-2017-01 (Exhibit 17) shows that the voluntary conversion process was started before the IDO became effective.

Section 3(D) of Enactment R-2018-19 (Exhibit 18) page 6, states:

> D. Final Decision Making Authority. The Phase II zoning conversion called for by this resolution is part of the comprehensive, City-wide rezoning associated with the IDO, and becomes effective only upon a final legislative action by the City Council. Property owners that are not eligible for the process outlined by this resolution, or that are otherwise unsatisfied with the zoning on their respective properties notwithstanding the results of this phase II process, may seek an individual zone map amendment through the relevant IDO zone map amendment process outlined in Section 14-16-7.

O-2019-021 (Exhibit 19) and the related Action Summary (Exhibit 20) show that "Batch 1" of the "Phase 2 Zoning Conversion Effort" was not a text or other amendment to the IDO, but was an "updating" of the Official Zoning

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LAW FIRM P.A.
ATTORNEY AT LAW

Map. As stated on page 3 of Exhibit 19, "the Official Zoning Map is used to apply land use regulations in the IDO to development throughout the City and in decision-making for zoning map amendments and long-range planning"; the conversion "will help preserve neighborhood stability and land predictability". Exhibit 21 and Exhibit 22 show that "Batch 2" similarly also was not a text amendment to the IDO but was an "updating" of the Official Zoning Map. Exhibit 23 shows that the Planning Department was following up on the zoning conversion requested by Appellant Marialuz Scarpa (8427 Tierra Morena) as of May 14, 2018. Appellants' Exhibit 24 shows Juanita Duran's (8419 Tierra Morena) zoning conversion request of October 26, 2018, confirmed by the Planning Department on November 5, 2018. Exhibit 25 shows the zoning conversion request of Opponent Stephen Wray (8505 Tierra Morena) on April 9, 2019.

In sum, the various enactments and related papers demonstrate that the zoning conversions for Tierra Morena NE to "R-1B" zoning were not IDO "amendments", were contemplated before the IDO became effective and were part of the IDO process, and were in process well before the applicant submitted its application on June 17, 2019.

The applicant claims that its rights to develop under the property's MX-L zoning vested as of the date the Planning Department considered that the application was "deemed complete". This interpretation is contrary to "vested rights" analysis under applicable New Mexico case law. As set out in Brazos Land, Inc. Board of County Commissioners of Rio Arriba County, 1993-NMCA-013, 115 N.M. 168, a developer achieves vested rights in a project not upon submission of a complete application, but only when the project has been finally approved and the developer has relied substantially on that approval. The concept of "complete application" as applied by the applicant in this case limits the City from exercising its legislative authority to amend zoning, the IDO, or other City enactments as to pending development applications.

The applicant's representative was aware of the timing and status of the "voluntary conversions", for example stating at the May 21, 2019 Facilitated Meeting:

> Q: What is the latest word from the City on the free zone conversion program?
> (1) The Agent stated that he understands that the City is processing the voluntary zoning conversions in batches. Batch 1 hasn't yet made it to City Council. When this project application is submitted, it's the conditions in effect at that time of

> application that apply. The second batch is taking longer than people expected and may be in a few batches.

8. Significant Adverse Impacts

The Opponents and other concerned persons have identified a number of significant adverse impacts of the project as currently proposed. The Project Meeting Report from the May 21, 2019 meeting under the City's Land Use Facilitation Program summarized the concerns expressed at that meeting as follows:

> Meeting participants raised concerns about many topics, including parking, light pollution, population density, traffic congestion, proximity to the school, safety, and impacts on existing property values. A number of neighbors expressed the concern that the number of units would result in unacceptable resident density in the context of the overall area and asked that the developer consider lowering the buildings to two stories, which would help address their parking and traffic concerns and ameliorate the impacts of light pollution, loss of privacy, and loss of mountain views. A summary of all concerns is included in the meeting specifics.

The density of the project and the impact on traffic and safety are priority concerns for the Opponents. Three schools, La Cueva High School, Desert Ridge Middle School, and Altura Preparatory Charter School, are each within a quarter mile of the proposed 93-unit site. Approximately 2,900 students travel to and from school each day in the area. Per 2018 IDO Section 6-4(J) "the location of the project, the amount of traffic generated from the development, and the existing conditions in the project area" are important for the extent of a traffic study. A traffic study for the project should be undertaken under these circumstances.

The garish colors proposed for the project also are an issue for the Opponents. The project should be designed to fit in with the generally subdued earth colors of homes and other buildings in the area.

The DRB should consider the concerns expressed in the various public meetings for the site plan application and mitigate the adverse impacts.

The IDO indicates that building height, parking, spacing, screening and buffering may have a significant adverse effect on neighboring residential

properties, by establishing the protections for "Neighborhood Edges" in Section 5-9. Section 5-6(E)(2) also indicates that buffering is appropriate for development next to low density residential zone districts. Features of the site plan at issue generate significant adverse effects for adjacent residential neighbors, for which the DRB should require mitigation.

The subject moderate density, garishly colored apartment project does not fit with their neighborhood and violates the "Area of Consistency" concepts of the Comprehensive Plan and consequently the IDO.

9. The Opponents Do Not Waive Other Issues Presented

The Opponents restate and do not waive any of the other arguments presented in this proceeding up to the District Court Order.

10. Proposed Findings and Conclusions of Law

The Opponents request the following findings and conclusions by the DRB:

1. The developer's application at issue was filed June 17, 2019.

2. The application was not "complete" when filed on June 17, 2021.

3. R-2019-035 applied to the application in this matter when filed on June 17, 2019.

4. Opponent Duran's property at Tierra Morena NE abutting the property was legislatively rezoned to "R-1B" effective no later than September 8, 2019.

5. The City Council has not repealed R-2019-035.

6. The substance of R-2019-035 was enacted into the 2020 IDO.

7. The 2020 IDO applies for this remand hearing.

YNTEMA
LAW FIRM P.A.
ATTORNEY AT LAW

8. The DRB lacks authority under the 2018 IDO and the 2020 IDO to hold a quasi-judicial hearing on site plan approval or the completeness of the initial application.

9. The DRB as presently constituted and operated is not compatible with quasi-judicial decision-making.

10. The application at issue has not been determined to be complete by the Planning Director.

11. The DRB is not able to determine when the applicant's application became "complete".

12. Opponent Juanita Duran's property was legislatively rezoned effective September 8, 2019 and became a "Protected Lot" under the Neighborhood Edges provisions. Several other Opponents also have had their properties rezoned such that those lots also are "Protected Lots" for the application at issue.

13. The IDO's "Neighborhood Edges" provisions apply to this Site Plan.

14. The Site Plan does not comply with the Neighborhood Edges provisions.

15. The Site Plan does not mitigate significant adverse impacts on the surrounding area to the maximum extent practicable.

16. The color of the project should match the earth tone colors of the area's neighborhood homes and other buildings.

17. Approval of this site plan is denied pending revisions of the site plan to satisfy the IDO's Neighborhood Edges provisions and mitigate adverse effects on the surrounding area to the maximum extent possible.

18. The DRB is not authorized to approve the site plan because the DRB is not a quasi-judicial decision body under the IDOs and because the Planning Director has not determined that the application is "complete" in a quasi-judicial process.

19. The application should be resubmitted under the provisions of the 2020 IDO.

YNTEMA
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ATTORNEY AT LAW

VIA E-MAIL – agomez@cabq.gov
Mikaela Renz-Whitmore, Acting Chair
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The Opponents reserve the right to supplement or amend these proposed findings and conclusions pending review of the evidence and testimony provided at the DRB meeting.

11. Conclusion

The Opponents request that the subject "moderate density" apartment project (in an ostentatiously "low density" zone) be redesigned to conform to their neighborhood's low density residential character and the intent and standards of the 2020 IDO and adjacent zoning. The Site Plan should be revised to comply with the Neighborhood Edges provisions of the 2020 IDO. The adverse effects of the proposed project should be mitigated to the maximum extent possible. The color scheme of the project should conform to the earth tones of the buildings in the area.

The 2018 IDO and the 2020 IDO created unworkable arrangements for (i) DRB site plan approvals and (ii) determinations by the Planning Director of "completeness" of applications: those decisions require a quasi-judicial process under state law and even the IDOs, but the IDOs and R-2019-035 route those decisions into an ad hoc, ex parte, rolling quorum decision path under the control of Planning Department. The City Council should establish appropriate quasi-judicial processes for those decisions.

Several of the Opponents intend to present comments and objections to the proposed site plan at the scheduled December 3, 2021 DRB remand meeting.

Very truly yours,

YNTEMA LAW FIRM PA

By Hessel Yntema
Hessel E. Yntema III

cc (by e-mail): Consensus Planning, Inc.
Peter Lindborg, Esq.
Nicole Sanchez, Esq.

Enclosures: Exhibits 1-32

YNTEMA
LAW FIRM P.A.
ATTORNEY AT LAW

VIA E-MAIL – agomez@cabq.gov
Mikaela Renz-Whitmore, Acting Chair
Development Review Board
City of Albuquerque

November 18, 2021

LIST OF OPPONENTS

Joe O'Neill and Karen Baehr
8805 Pico La Cueva NE
Albuquerque, NM 87122-1315

Randolph and Shannon Baca
8501 Alameda Blvd. NE
Albuquerque, NM 87122

David L. and Anne M. Downing
8801 Henriette Wyeth Dr. NE
Albuquerque, NM 87122

Philip and Amber Le
8815 Pico La Cueva NE
Albuquerque, NM 87122

Paul and Jennifer Wever
8409 Tierra Morena Pl. NE
Albuquerque, NM 87122

Stephen M. Wray
8505 Tierra Morena NE
Albuquerque, NM 87122

Juanita Duran
8419 Tierra Morena Pl. NE
and
8512 Tierra Morena Pl. NE
Albuquerque, NM 87122

Nancy Jones
8504 Tierra Morena Pl. SE
Albuquerque, NM 87122

Maria and Paul Scarpa
8427 Tierra Morena Pl. NE
Albuquerque, NM 87122

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Vineyard Estates Neighborhood Association
8405 Vintage Drive NE
Albuquerque, NM 87122
Attention: Elizabeth Meek, President

North Albuquerque Acres Community Association
1103 Anaheim Ave., NE
Albuquerque, NM 87122
Attention: David Neale, President

District 4 Coalition of Neighborhood Associations
4109 Chama St. NE
Albuquerque, NM 97109
Attention: Daniel Regan

Knapp Heights Neighborhood Association
4109 Chama St. NE
Albuquerque, NM 87109
Attention: Daniel Regan