

From: [Mike T.Voorhees](#)
To: [Rodenbeck, Jay B.](#); [Wolfley, Jolene](#)
Cc: [René Horvath](#)
Subject: Written Comments to the DHO for Inclusion in the Record regarding item #1, PR-2022-007712
Date: Tuesday, July 11, 2023 5:13:42 PM

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Mr. Rodenbeck and Ms. Wolfley,

Below are my written comments to the DHO for inclusion in the record regarding agenda item 1 for tomorrow's hearing. Please let me know that you received them and that they will be sent to the DHO.

Thank you,
Michael Voorhees

Memorandum to DHO Campbell

July 11, 2023

Re: 7-12-23 DHO Hearing/Agenda item #1: PR-2022-007712 SD-2023-00127 – FINAL PLAT IDO - 2021

Attn: David Campbell, DHO, and Planning Staff

July 11, 2023

Re: 7-12-23 DHO Hearing/Agenda item #1: PR-2022-007712 SD-2023-00127 – FINAL PLAT IDO - 2021

Attn: David Campbell, DHO, and Planning Staff

As an interested party, I write to you to raise several pertinent objections to a hearing on a Final Plat of Tract 1, Block 2 and Tract 5, Block 6, Volcano Cliffs Subdivision, Unit 26.

1. The first and most pressing, is that in their Application for a "Major - Final Plat", Ms. Fishman, in her letter to you dated June 22, 2023, fails to disclose that the DRB decision of November 9, 2022 (which she uses to satisfy certain requirements in submitting their application) is under appeal in Bernalillo County District Court (D-202-CV-2023-02637). There are multiple issues raised that have bearing upon a Final Plat approval and it would be premature to approve the Plat while the appeal is pending. We asked Mr. Jay Rodenbeck on June 23, 2023 for an explanation of the legal justification for moving forward with a hearing on this matter at this time, but only received a responsive reply contained in "DEVELOPMENT HEARING OFFICER Planning - Case Comments" that were transmitted 1 hour and 15 minutes before the close of business today. Waiting 18 days until the night before a hearing to inform interested parties of the rationale being asserted on an essential issue is a violation of IDO Purpose 1-3(P) "Provide processes for development decisions that balance the interests of the City, property owners, residents, and developers and *ensure opportunities for input by affected parties.*" [emphasis added] We appealed the City Council's Final Decision as transmitted to and received by the City Clerk. For the City to attempt to carve out the Preliminary Plat decision, for which the DRB had no lawful jurisdiction in the first place, is disingenuous at best. Since we have raised that issue in the District Court Appeal, the place for the City to assert this is in that venue, not to attempt an end run around the Court. We therefore request that any such hearing on this property be deferred until such time as the Courts have reached a final judgment or disposition of this matter.

2. Due to the proximity of the subject property to the La Cuentista Major Public Open Space, which under the definitions of the IDO is considered "adjacent", IDO Section 5-4(C)(6), requires an approved Site Plan - EPC for this site before any platting action. As such, under the City of Albuquerque Development Hearing Officer Rules of Procedure (*Effective Date: January 4, 2023*) Article III: Decision, Rule 7. Denial. "**If an application fails to comply with the requirements in the IDO and DPM, the DHO shall deny the application. Other grounds for denial include incomplete submissions, or providing inaccurate, false or misleading information.**" Based on this standard, the application should be denied for failure to comply with IDO Section 5-4(C)(6), and for Consensus Planning failing to acknowledge the adjacency to MPOS in the original preliminary plat application, and misleading the DHO by failing to acknowledge ongoing appeals.

3. Under the City of Albuquerque Development Hearing Officer Rules of Procedure (*Effective Date: January 4, 2023*) Article I: Introduction Rule 3. Conflict of Interest. "**The DHO shall recuse him/herself from hearing a matter if a conflict of interest exists or appears to exist, including, for example, a direct or indirect financial conflict of interest, or if circumstances exist which would impair or appear to impair the independence of judgment of the DHO. Because the DHO has a duty to hear applications**

presented to him/her, recusal should only occur for good reason.” While I would hope any DHO could exercise sound judgment in this matter, due to the specific allegations of unethical behavior against Mr. David Campbell in his prior role as Planning Director, the details of which were included in an administrative appeal of a building permit and a subsequent request for investigation into the matter to the City of Albuquerque Office of Inspector General, there may be specific animus against me, unconscious or otherwise. As such, I request that DHO Campbell recuse himself from this matter.

4. There is a second pending court appeal of relevance to the platting of this parcel challenging the recent amendment to the IDO’s VPO-2 provisions (D-202-CV-2023-03961), which potentially has ramifications on the property that is the subject of this hearing. It would thus be premature to proceed on a Final Plat on this basis of this pendency as well.

5. We request that we be timely notified in writing of the DHO’s decision in this matter with notice of appeal rights.

Sincerely,
Michael T. Voorhees