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Jennifer Hise, Village Clerk
4324 Corrales Rd.
Corrales, NM 07048

Gutierrez Appeal: Building Permit 2017-0103

Dear Ms. Hise,

I am writing on behalf of Steve Gutierrez, Frank Gutierrez, and Eileen Gutierrez, who are appealing the issuance of the Building Permit 2017-0103 (the "Permit").

The purpose of this letter is: (1) to set forth the material facts relevant to this appeal, (2) to set forth the issues and reasons in support of the Gutierrez appeal, and (3) to provide certain legal authority relevant to the appeal for the record. Please include this letter and attachments in the record of this case and the Governing Body hearing packets.

We assert that the appeal should be granted, and the Permit declared null and void, for any or all of the following reasons:

1. The Permit application violated the Village's Building Code requirements, because it failed to include pertinent and necessary facts that resulted in including incomplete, inaccurate, and incorrect information. This resulted in the failure of an adequate Permit application review for compliance with zoning regulations, the failure to receive a zoning approval before issuance of the Permit, and the absence of any assessment of the impact of the Department of Health's (DOH) regulations that prohibit a medical cannabis facility from being located within 300 feet of a daycare center.

2. The Permit was issued in violation of the Village's Land Use Code, Chapter 18, including, but not limited to, its permissive use provisions in the A-1 zone for "raising crops" and "accessory uses", grading and drainage plan requirements, and set back requirements.
3. The Permit was void because it was subject to the Village's Moratorium, R 18-040, and issued in conflict with the Moratorium.

The Facts:

This Permit was applied for by Britton Construction Inc. ("Contractor"), on behalf of the land owner, Verdes Farms LLC ("Verdes"). Verdes is owned by the Verdes Foundation (Foundation".) As stated in the Foundation's lawyer letter of August 1, 2017 that was addressed to the Village of Corrales, the Foundation is a non-profit organization which has been licensed since 2010 by the New Mexico Department of Health to produce and dispense medical cannabis. Exhibit A.[1] According to its lawyer's letter, the Foundation intends a medical cannabis farming project in Corrales. As shown on Exhibit 3 to the letter, the Foundation project includes a 50x100 ft. "Storage and *Processing*" structure, (emphasis added) and Exhibit 6 to the letter shows a 50x100 Warehouse on one lot and greenhouses on a separate and adjoining lot.

The first submitted building permit application, Exhibit B, describes the application as Commercial, including a 5000-square foot engineered metal warehouse building for warehouse use, located on Lot 2, Tony Garcia Subdivision. A corresponding building permit, Exhibit C, was signed by Manuel Pacheco, the Village's Building Inspector, showing a date and stamp of August 15, 2017. That permit provides that the project is Commercial and the structure a *Commercial Warehouse.*

A second building permit application, Exhibit D, was submitted for a metal, 5000 sq. foot agricultural *Storage Building*. A second building permit, presumably the Permit being appealed, for a Storage Building, S-2 Utility, was signed by Manuel Pacheco, also in Exhibit D.

The two building applications were the same, except as above indicated, and attached to the application(s) were architectural plans identified as A0, A0.1,

[1] All exhibits to this letter are provided under separate cover to the Village Clerk.

A2.1, A2.2, A3.1, A3.2, S2.1, S2.2, Exhibit E. (Avila Deposition (P 29 (7-24).[2] The project's Grading and Drainage Plan, stamped by a licensed engineer, was submitted to the Village on September 25, 2017, Exhibit F. As of September 25, 2017, there was no building permit with final Village approval. (Avila Depo. (P32 L (10-15)).

The Village of Corrales officials include a building inspector, village administrator and zoning coordinator. Mr. Pacheco has been the building inspector since May 2013, and before that was a building inspector and department director for the town of Taos for a period of 11 years. Pacheco Depo. (P 6 L (20) – P 7 (8)).[3] Mr. Avila has been the Village Administrator for 7 ½ years, and before that was the administrator for Las Cruces for three years. He also assumed the responsibilities of the Village zoning coordinator, last year. Avila Depo. (P 5 L 19 – P 7 L 5.)

The Village's building permit application form includes a "checklist" indicating "Office Use Only, Exhibit G, and Village instructions that include, in part, a "Plan Guide", Exhibit H. The Plan Guide requires a written and signed zoning approval on the building permit. The Village's Permit file includes a blank, unsigned checklist, and the Permit has no signed, written zoning approval on it.

Chapter 18 of the Village Code is the Corrales Land Use (zoning code), attached, in relevant part, Exhibit I. Among the relevant provisions of Chapter 18 are:

- Section 18-29, Definitions, that defines an "accessory uses and structures" as "clearly incidental and subordinate to principal uses and structures *located on the same property"*. Emphasis added.
- Section 18-30 provides that unestablished slopes are limited to no more than "3:1; unless a structural alternative such as a retaining wall...is provided."
- Section 18-33, A-1 zone provides for Permissive uses of "raising crops" and "accessory uses and structures."
- Section 18-35, H – Historical area zone purposes and intent provision provides for the preservation and protection "of the traditional

[2] The Depositions of Manuel Pacheco and John Avila are provided to the Village Clerk electronically so that they may be distributed to governing body members.

[3] Both officials gave sworn deposition testimony on the 4th day of January 2018, in the presence of the Village Attorney, Mr. Appel, and the attorney for Verdes and the Foundation, Mr. Feuchter. All attorneys have copies of the depositions.

architectural character of historic Corrales." 18-35 also includes the permissive uses of "raising crops" and "accessory uses and structures."

- Section 18-164 requires a grading permit for "any clearing, grubbing, or grading of land" and "ground disturbance of one thousand (1,000) square feet or more.
- Section 18-166 limits runoff of storm water to pre-development conditions.

Exhibit J is Village Ordinance 192 that is the Corrales 1989 Comprehensive Zoning Ordinance. It's A-1 zone includes the same permissive uses i.e. "raising crops" and "accessory uses and structures" that are found in the current zoning ordinance. Ordinance 192's Historic H zone, Section 8-1-11, provides that the zone "endeavors to preserve and promote the educational, cultural, and general welfare of the public through preservation and protection of the traditional architectural character of historic Corrales."

The Permit Grading and Drainage Plan did not conform to the requirements of Village regulations. Non-compliances included that the grading on the east and south sides of the building exceeded the allowable 3:1 for slopes shown, which means that runoff to the east and south would allow storm water runoff will flow on to adjoining lots, violating pre-development conditions, and the computation for the square footage of the impervious surfaces was erroneous, which means that the retention pond capacity to the south and west of the proposed structure was sub-standard.

Chapter 8, the Village Building Code, in relevant part, Exhibit K, includes:

- Section 8-39 a (1) provides for suspension, cancellation, or revocation of a permit issued under the Building code "Whenever the permit is issued in error, or on the *basis of incorrect, inaccurate or incomplete information*." (Emphasis added.)
- Section 8-41 a (4) provides for the denial of a permit for "Failure to obtain *pre-approval of the project for zoning regulation*." (Emphasis added.)
- Section 8-41 a (5) provides for the denial of a permit for the failure of the documents submitted to meet all the requirements set forth for such submittal documents in applicable ordinances, statutes, *rules or regulations*." (Emphasis added.)
- Section 8-36 requires that a permit be "prominently displayed on the site where the permitted work is to be performed".

The googled definition of crops includes the "cultivation of crops for food", and Webster's New Riverside University Dictionary defines crop as the "cultivated agricultural plants, as grains, vegetables, or fruit", Exhibit L.

The 2009 Village's Comprehensive Plan, Exhibit N, encourages development that is "in harmony with...the residential and agricultural character of the Village." The Village's 1999 Comprehensive Plan, Exhibit O, has as its purpose to "establish the philosophical base and reasoning from which future zoning... and land use decisions will be determined" and tracts state law that zoning regulations be in accordance with the comprehensive Plan.

The New Mexico Department of Health (DOH) regulations, NMAC 7.34.4.8(E) and 7.34.4.22, prohibit a medical cannabis facility from being within 300 feet of a daycare center, church, or school, Exhibit P. A review of the Foundation applications to DOH show that the Foundation was required to "prove" that its facilities in Albuquerque and Rio Rancho were not within the restricted 300-foot area. Exhibit Q.

Patricia S.(Susie) Morrow owns and operates a daycare center, entitled Primary Daycare and Tutoring, at her residence at 527 Starline Drive, Corrales, NM. She obtained a home occupation certificate for the daycare center, from the Village in July 2017. The New Mexico Taxation and Revenue Department issued Susie a registration certificate for her daycare center on August 1, 2017. The daycare center is within 300 feet of location for the Permit, 7648 Corrales Rd. Exhibit R.

In 2017, the Governing Body held study sessions and meetings in connection with several proposed Ordinances that provided either for an entire prohibition of the cultivation of medical cannabis in Corrales and/or prohibiting such cultivation in certain zoned areas. In connection with those proposed ordinances, the Foundations lawyer sent a second letter to the Village, dated September 5, 2017, Exhibit S, stating in part: (1) the Foundation's continuing support for "appropriate zoning regulations to address legitimate public concerns about the medical cannabis businesses", and claiming (2) "because medical cannabis is the raising of a crop, so medical cannabis is therefore entirely consistent with the character and heritage of Corrales, where agriculture is a long standing tradition."

On September 26, 2017, the Village enacted its Moratorium, R 17-040, Exhibit T, and extended the Moratorium by adopting R 17-044, Exhibit U on the 12th day of December 2017. The Moratorium states that it was enacted because (1) "the Governing Body has become aware that the growing, cultivation, harvesting, processing and distribution of cannabis and of cannabis-derived products have become a major industry" since New Mexico legalized medical cannabis in 2007, (2) "the Governing Body has been reliably informed that commercial facilities for the cultivation, processing, and distribution of cannabis and cannabis-derived products in New Mexico *where no effective zoning regulations apply,* have in some cases become large operations *that create serious problems for residential neighbors,* (Emphasis added), (3) "the Governing Body has received the input of many concerned residents about the possibility" of serious problems being created in Corrales from medical cannabis, and (4) because of the foregoing, "the Governing Body has found it necessary to address the question *of whether and under what circumstances the cultivation, processing, and distribution of cannabis and cannabis-derived products may or should be permitted in any zone or zones* of the Village (Emphasis added).

R 17-040 imposed a 90 day moratorium on the "acceptance, review, or consideration of any new applications, including but not limited to land use applications, *building permits,* and business registration applications related in any way to the development, erection, or establishment of facilities for the cultivation, processing, or distribution of cannabis or cannabis-derived products *that have not, as of the effective date of this resolution, received written final zoning* and building approval" from the Village (Emphasis added). The Moratorium exempted permits "having been *properly accepted* or issued" as of or on the date of adoption of the R17-040.

Reasons for Granting of the Appeal:

1. The Permit was issued without pertinent facts being disclosed to Village officials, the submitted Permit application(s) contained inaccurate, incomplete, and incorrect information, and issued in violation of Village Building Code, Chapter 8, and the Village's permit application rules.

Neither the Contractor or Verdes disclosed to the either of the Village officials, Manuel Pacheco or John Avila that the *use* of the "storage building" was for medical cannabis.

Mr. Avila testified that the application didn't say "what they're going to plant". Avila Depo (P 20 L 4-15), the Village didn't know what was going to be stored in the building, and no such information was brought to his attention. (Avila Depo (P 21 L (21) - 21 L (1-4)).[4]

Similarly, the same was true for Mr. Pacheco. He testified that he was not aware that the building would be related to the cultivation of medical cannabis (Pacheco Depo. (P 19 L 15-18); no one told him what would be in the building (Pacheco Depo P 20 L 9-11); when he signed the Permit, he had no idea what was going to be stored in it (Pacheco Depo P 19 L 19-23). In fact, Mr. Pacheco assumed the building would be used for the storage of hay, alfalfa as a typical agricultural building (Pacheco Depo P 19 L (3-11). Furthermore, he understood there would be no "processing" in the building. (Pacheco Depo 20 (12-15).)

The consequences of these non-disclosures are profound. Without the Village officials knowing that the permitted building was to part of a medical cannabis operation and used to store medical cannabis, no zoning review was made to determine if the medical cannabis use was a permissive use, "raising crops" in the A-1 zone. The failure of a zoning review for the intended use of the building is critical and illustrates the importance of requiring disclosure of all pertinent facts so that a permit is not erroneously issued on the basis of incorrect, inaccurate and incomplete information.

Mr. Avila testified that unless applicant specifies what would be the building would be used for, there is no way of knowing. (Avila Depo P 20 L 4-15). So, without knowledge of the intended growing and storage of medical cannabis, the Village would not make a zoning determination as to whether the "raising crops" and a permissive use in the A-1 zone, (See P 20 L 4-15). He stated that when there is a question of whether an intended use is permissive in a zone, then the zoning department would make a decision on it. (Avila Depo P14 L (1-8). He also confirmed that if the building inspector did not know if what

[4] The page of a deposition is indicated after P, and Lines on the page will follow the letter L.

was being applied for was allowed, then the inspector would ask the zoning officials for a determination. (Avila Depo P 17 L 18 – P 18 L (1-9)).

Mr. Pacheco testified that if there was a zoning approval for the Permit, it would have been on the application's Checklist page, indicating for Office Use Only. (Avila Depo P 10 L 25 – P 11 L 22. As noted, that application form was blank and unsigned. He also testified that he never saw a zoning approval from the Planning and Zoning Department. (P13 (25) – 14 ((3). Furthermore, Mr. Pacheco testified:

- He doesn't know that the building is within 300 feet of a daycare center. (P 21 L 1-4).
- If he knew that the building was within 300 feet of a daycare center and that it was going to be used for medical cannabis storage, then *he would have contacted zoning before issuing a permit.* (P 21 (5-17)). (Emphasis added.)
- He would *deny* the Permit if there was non-compliance with applicable ordinances, rules or regulations, as per 8-41 (5). (P 29 L 20 – P 30 (2), P 39 L (6-13)). (Emphasis added.)
- If all the facts of the *use* of the property were not presented to him in the application packet, he "*wouldn't have issued the building permit.*" (P 38 (18-24)). (Emphasis added.)

Mr. Avila testified that there should be a signed and completed application checklist. Avila Depo (P 70 L (9-14)). He further stated that if the checklist was not signed and completed, the issuance of the Permit would be in violation of the Village rules for the issuance of a permit. (P 71 (7-18)); the checklist for the Permit was blank/unsigned, it does not indicate whether anything was done or approved, and that if the checklist issues had been done, then it would have been signed, dated and the permit number shown at the bottom of the form. (P 73 (12) - 74 (4)).

In summary, the testimony of the Village officials establishes:

1. The building permit application did not receive a pre-zoning approval required by the Building Plan Guide, because the applicant did not disclose that the use of the building was the storage of medical cannabis, and
2. The Permit would have been denied without zoning approval for the storage of medical cannabis, and

3. The Mr. Pacheco did not contact the zoning department to get direction on the Department of Health rule prohibiting a cannabis facility within 300 feet of a daycare facility, because the applicant did not disclose the building would be used to store medical cannabis as part of medical cannabis operation[5] and,
4. Neither Mr. Pacheco or Mr. Avila would have issued the Permit, because all facts pertinent to the use of the property were not disclosed to them by the applicant, and
5. The Permit was issued in violation of the Village's permit application rules, because there is no evidence in the Village file that the Checklist reviews were done the Checklist form in the file of the Permit was blank and unsigned.

2. **The Permit was issued in violation of the A-1 provisions of the Village's land use code, Chapter Section 18-33.**

Section 18-33, the A-1 zone, includes permissive uses of "accessory structure" and "raising crops".

The Permit was wrongfully issued because (1) the "storage building" is not an "accessory structure" as defined by Section 18-29, (2) "storage building" (or agricultural building or warehouse) is not listed as a 18-33 permissive use, and therefore must be an "accessory structure", (3) the plain meaning of "crop" does not include the marijuana plant, and the meaning of "raising crops", at the time the zoning code was enacted, did not include the cultivation of medical cannabis , (4) the cultivation of medical cannabis is not "raising crops" because the cultivation of medical cannabis does not fall within the purposes and intent section of the H zone, and if not "raising crops" in the H zone, then the cultivation of medical cannabis cannot be "raising crops" in the A-1 zone, and (5) medical cannabis growing or storage is not a permissive use under the zoning code.

1. The "storage building" is not an Accessory Structure.

The architectural plans submitted with the Permit application show only the 50x100 foot building on the lot on which the building was permitted. Section 18-33 does not list a storage building as a permissive use. Thus, the building must be an *accessory structure* as defined by 18-29: "structures which are

[5] We are not asserting that the Village enforces State law or DOH rules and regulations. However, those rules are applicable to this Permit and therefore within the scope of Section 8-41 (5) of the Village building code, and relevant to the Village officials' testimony.

clearly incidental and subordinate to principal use and structures *located on the same property.* (Emphasis added.) The greenhouses shown on the plans for the growing of cannabis are not on the same lot as the building (lot 2), rather they are shown on the adjoining lot. Nothing but the building permitted is shown on its lot 2. Either the building is a principal use on lot 2 that is not a permissive use, or there is no principal use on lot 2 and the building, by definition, is not an accessory building.

Mr. Pacheco testified that he has never issue a building permit for an accessory structure that didn't have another building on the property or was otherwise vacant. Pacheco Depo (P 14 (11-17). He confirmed that the building plans attached to the application show only the "storage building" on the lot for which the Permit was issued. (P 15 L (23) – 16 (4). Mr. Pacheco considered an agricultural building as being for the storage *of anything from a tractor to a hay or horse barn.* Depo (P 28 L (6-19). (Emphasis added.)

Mr. Avila confirms that he never made an accessory structure zoning decision on the building. Avila Depo (P 27 (3-14)).

If, in fact and as at least represented to the Village on Exhibit 3 of the Foundation's August 1, 2017 letter, processing of medical cannabis is intended in the "storage building", that violates the "clearly incidental and subordinate" requirement of 18-29. Medical cannabis is an industry that requires the plant be processed and distributed. Processing of medical cannabis is a primary, not incidental and subordinate use. Cannabis growing and processing is analogous to the growing of wheat and a bakery making bread, growing of barley and making whiskey in a brewery, growing hops and a beer distillery, and growing corn and making corn oil in a structure. Structures that process a plant to create an end product are accessory buildings because they are principal structures and uses. Processing is in and of itself a primary function to create an end product. Processing is separate and distinct from the growing of a plant used for making the final product.

2. Medical Cannabis is not "raising crops" under the Village Land Use Code.

a. Plain Meaning of Crop.

The medical cannabis does not fit within the dictionary definition of a "crop". A Google search for crop defines a crop as "cultivated plan that is grown as

food, especially gain, fruit, or vegetable ". Webster's definition also excludes medical cannabis. Medical cannabis is a drug and pharmaceutical product, not a crop. The New Mexico criminal code classifies cannabis as a controlled substance.

In applying he plain meaning to an ordinance, New Mexico law requires that "absurd" results be avoided. Section 18-27 of the Village Land Use Code provides, as to the zoning code, that "Its purpose is to promote the health, safety, and general welfare of the residents of the Village by controlling the use of land so that it is developed in harmony with existing uses." Certainly, criminal activity doesn't "promote public health and safety, and general welfare of residents". Before 2007, cultivation of cannabis was illegal in New Mexico. Consequently, it would be an "absurd" result to define "raising crops" as including a criminal activity.

b. Medical cannabis was not within the meaning of "raising crops" at the time the Village's zoning code or the Village Comprehensive Plan was first adopted.

The Village's Comprehensive Zoning Ordinance, Ordinance 192, was first adopted in 1989. The ordinance states that it was adopted to maintain the rural character of the Village of Corrales. Under its Section 8-1-9, Zone A-1 Agricultural and Rural Residential, the ordinance provides for the permissive uses of "raising crops" and "accessory uses and structures". Unquestionably, at the time of adoption of Ordinance 192, medical cannabis didn't exist in New Mexico. In fact, the growing of cannabis was then illegal and continued to be so until 2007 when it could be grown for medicinal purposes under the strict New Mexico Department of Health regulations. Consequently, the definition of the permissive use of "raising crops" did not include, and could not have included, growing illegal cannabis or medical cannabis that didn't then exist.

Because the term "raising crops" was carried over into Chapter 18 and the provision for it as a permissive use was not changed by the adoption of Chapter 18, what was raising crops in 1989 is the same as in the current Land Use Code. It is no surprise that at no time before the Verdes application, Mr. Pacheco had not received a building application related to the cultivation or storage of medical cannabis. Pacheco Depo (P 14 L (7-10).

For the same reasons, the Village's initial Comprehensive Plan was adopted in February 1996 (prior to the recognition of medical cannabis) did not contemplate or include medical cannabis within its goal of to "encourage the preservation of agricultural land uses...". Exhibit O (P 18, Goal 5.1.) The Plan expressly states that it should be used as a base and reasoning for future zoning, (P 1). There is no Village Plan that has incorporated medical cannabis as part of the agricultural history of Corrales, and, contrary to the claim in the Foundation's September 5, 2017 letter, the medical cannabis industry is not part of the "character and heritage" of Corrales.

3. The inclusion of "raising crops" in 18- 35, H- Historic area zone, demonstrates that growing medical cannabis is not "raising crops" in 18-33.

As in the A-1 zone, the H zone includes "raising crops" as a permissive use. Therefore, whatever "raising crops" means in the A-1 zone it means in the H zone. Significantly, the purpose and intent section of the H zone states: The H zone preserves and promotes the educational, cultural, and general welfare of the public through preservation and protection of the traditional architectural character of historic Corrales. In light of the former illegality of growing cannabis, and the only now emergence of the cannabis industry, the cultivation of cannabis cannot be part of the purposes and intent of the H zone. There is nothing about the growing of medical cannabis or the medical cannabis industry that is cultural or historic to Corrales.

The Foundation's claim, in its September 5, 2017 letter, that medical cannabis is "entirely consistent with the character and heritage of Corrales, where agriculture is a long-standing tradition" is wrong. The cultivation of medical cannabis is new, not historic.

3. **If growing medical cannabis and the cannabis industry was within the A-1 permissive uses, then the Village would have adopted rules and regulations to address the public interests and concerns arising from such activity and business.**

Permissive uses may raise issues of public safety concerns. When that is the case, the Village adopts corresponding code requirements. For example, a single-family residence is a permissive use in the A-1 zone. Because of fire, electrical, mechanical, and plumbing issues associated with a residence, those

matters are addressed in applicable Village and State codes to protect public safety.

The medical cannabis industry raises public safety and environmental concerns. The Foundation letters admit to issues that are relevant to public safety and neighboring residential concerns, including lighting, noise, odor, crime and security, and traffic issues. In fact, the Foundation letter state support for the adoption Village rules and regulations to address these matters.

If the growing of medical cannabis was intended as a permissive use "(raising crops"), then as with a single-family residence structure, the Village would have already adopted appropriate rules and regulations to address the public safety concerns over the growing of cannabis and the medical cannabis industry.

4. **The Permit is invalid under the terms of the Village Moratorium, R 18-040.**

As noted above, the Moratorium applies to the acceptance, review, or consideration of any new applications, including *building permits* related in any way to the development, erection, or establishment of facilities for the cultivation, processing, or distribution of cannabis or cannabis-derived products that have not, as of the effective date of the resolution, received *written final zoning and building approval*" from the Village. Also, the Moratorium exempted permits "having been *properly accepted* or issued" as of or on the date of adoption of the R17-040.

Unquestionably, and as set forth above, the Permit falls squarely within the Moratorium. The Permit has never received a *written final zoning ...approval, and* the Permit was *not properly accepted or issued* before the Moratorium was adopted.

5. **There is no zone in the Village's Land Uses Code for the cultivation of medical cannabis or the cannabis business.**

The Village's Moratorium was adopted to determine *whether and under what circumstances the cultivation, processing, and distribution of cannabis and cannabis-derived products may or should be permitted in any zone or zones* of the

Village. If the Corrales Land Use Code already provided a zone or zones for the growing of medical cannabis, the Governing Body would not have enacted the Moratorium to determine those very questions. Indisputably, the medical cannabis industry is newly emerging and facing many state and federal challenges. These issues have not been previously decided by the Village Land Use Ordinance(s). Therefore, the Permit should not have been issued for a building in the A-1 zone that would store medical cannabis.

The governing body by legislatively deciding the issues of in what zone and under what circumstances the cultivation of medical cannabis and the medical cannabis industry may do business is doing exactly what the New Mexico appellate decisions require to create new policy: act legislatively and not otherwise by decision in a quasi-judicial proceeding.

Legal Authorities.

1. *City of Santa Fe v Gamble-Skogmo Inc.,* 73 NM 410, 398 P2d. 113 (1964) (Zoning must have a reasonable relationship to the public general welfare.)
2. *City of Albuquerque v. Pangaea Cinema,* 254 P 3d 1090, 2012 NMCA 75 (Determining whether an activity was illegal and in violation of applicable zoning.
3. *Lantz v Santa Fe Extraterritorial Zoning Authority,* 2004 NMCA 11 (Judicial interpretation of an ordinance invokes the same rules of construction as interpretation of a statute.)
4. *Smith v Bernalillo County,* 137 NM 280, 110 P3 496 (2005) (In following the plain language of an ordinance if it makes sense, in reviewing an ordinance, a court won't legislate in the guise of construction by inserting a matter in a zoning regulation not included by the legislative body; agreeing with the *Hinkle,* 126 NM 413, initial interpretation of ordinances is a de-facto policy that can only be changed legislatively.
5. *Albuquerque Commons Partnership v. City of Albuquerque,* 2008 NMSC 25, (Quasi-judicial matters are not politics as usual, the governing body doesn't sit as a mini-legislature, rather if functions like a judicial body; interested parties in a quasi-judicial matter "are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, and to an impartial decision maker; strict adherence to evidentiary and procedural standards of a court of law are not required in an administrative hearing, but fundamental principles of justice and

procedural due process must be provided; decision making body must provide a clear statement of what it believes are the relevant and important facts upon which its decision is based and a full explanation of why those facts lead it to the decision it makes.)

6. *City of Rio Rancho v Logan,* 2008 NMCA 11, (courts will avoid construction of an ordinance that would cause an "absurd" result.)
7. *Hinkle High Ridge Joint Venture v City of Albuquerque,* 119 NM 29 (App. 1994) (ordinarily deference is given to governmental agency's ordinance interpretation, unless the agency ignores pertinent facts relevant to the proper interpretation, or if the agency instead of discerning the policies of an ordinance at the time of its adoption, decides on the basis of what it now believes to be the best policy; it is not current intent, rather it is the meaning of an ordinance at the time of enactment, such that the governing body does not set policy rather it determines what policy had been set; governing body cannot retroactively change meaning of an ordinance, rather it must amend the ordinance by legislative action.)
8. *Hinkle High Ridge Joint Venture v City of Albuquerque,* 126 NM 413, 1998 NMSC 050, (administrative gloss is a rule of statutory construction that recognizes that interpretations of an ordinance by those charged with its administration and implementation, even if the governing body has not considered the issues at hand, are binding policy on the governmental entity; rules of statutory and ordinance interpretation include giving the words their plain meaning (so long as not to cause an absurd result, or as otherwise explicitly indicated by the legislative body) and giving effect to all relevant sections of an ordinance and reading them in harmony with each other.)
9. *Battershell v Albuquerque,* 777 P2d 386 (App 1989) (in quasi-judicial administrative proceedings, procedural due process should be flexible to adopt to the particular situation demands).

Respectfully submitted,

Mark Hirsch, attorney for appellants

CC: John Appel, via email
Benjamin Keuchter , via email