

March 5, 2019

An Open Letter to Mayor Keller

Dear Mayor Keller,

By good fortune, I received a copy of your letter dated February 28, 2019 regarding the 'Overlook at Oxbow' subdivision. While over 50 copies of your letter were sent out to your copied recipients, our company, Gamma Development, LLC – the applicant for the site - was not an addressee. I'll assume that this was an oversight for sake of this discussion.

I am deeply concerned by the content of your letter and I feel personally compelled to tell you why. President George Washington stated that "*Laws made by common consent must not be trampled on by individuals*". For a period of almost 2 years, the City of Albuquerque hosted a series of over 100 community meetings seeking input from the public with regards to the 'Integrated Development Ordinance' or 'IDO'. This IDO was essentially a complete 'Rewrite' of the rules of zoning and development for the city of Albuquerque. After hundreds of meetings, feedback from planners, city staff, industry associations, neighborhood associations and a most contentious debate at City Council, The City of Albuquerque PASSED the IDO on November 13<sup>th</sup>, 2017 – hours after your election and only a few short weeks before your inauguration. The IDO went into effect on May 17<sup>th</sup> 2018 after a 6-month vetting process.

While it may be debated, I still contest that the IDO is a success. The IDO promises to be a comprehensive rule book that outlines the parameters of 'acceptable' development in the ever-growing City of Albuquerque. This is critically important to those of us who risk *millions* of dollars by investing in land acquisition, development and construction in our city. Simply put, if there is a clear understanding of what would be permissible or not permissible, private parties can more clearly evaluate all opportunities for development in the City and invest in those projects that both serve the citizens (and the market demand) of Albuquerque while mitigating the risks of the unknown. The City's existing Comprehensive Plan and Integrated Development Ordinance provide this clarity. Gamma Development has worked earnestly with your planning, public works, and open space staff to develop a project that not only meets the spirit of those plans but does so in the best way possible. The updated site plan provides for over 7 acres of open space, or 31 percent of the property. This open space will be preserved in perpetuity at no cost to the city.

Your letter, while well-written and heart-felt, undermines the very law that your City adopted in 2017. The seller, Mr. Daniels, has owned this site for over 8 years and has never once received an inquiry from the City, the State, the Audubon Society or any other group concerning the potential acquisition or 'exchange' of this site. This property is not on, and has never been on, the City's Open Space Priority Acquisition List. A portion of the property was offered to the City Open Space Division and they have elected to support the open space buffer remaining in private ownership to be maintained by the Homeowner's Association. I'll also point out that our site plan is still yet to be heard in public by the Environmental Planning Commission.

What I fear is happening here is that the voices of few opponents to this project are loud and unyielding in reaching out to your office. I appreciate their enthusiasm and I appreciate that you lend an ear to your constituents, but I fear that your letter dated Feb. 28<sup>th</sup>, 2019 is misplaced, inappropriate, cowardly and seeks to undermine the quasi-judicial IDO process and -subverts the City's IDO. Intervention from the Mayor's office at this stage of the process implies that either the due process of the application process is unimportant to the mayor, or that the mayor himself is no longer impartial towards this site. It feels like the judge has made his ruling after hearing only one side of the case. Your opinion on this matter – at this early stage – is a vote of no confidence in your own planning department, your city council who passed the IDO, your appointed EPC members and the City staff (across departments) who have all reviewed (and recommended approval) for this project. I assure you that hundreds of CABQ staff members (and affiliates) are measuring this project against the rulebook to ensure its compliance. Pandering to the opponents and brokering an acquisition or 'exchange' of this site would do nothing more than fuel the NIMBY-ism that the IDO sought to impartially regulate and control.

As I am sure you know, we have already had 25+ meetings with various city departments and staff – including open space. It has been unanimously agreed upon that the City does not have the means to purchase this property. I'll also point out that the site is 'not for sale'. The site is under contract (with Gamma Development, LLC) and I interpret your letter as willful intent to interfere with a pre-existing contract, as well as an attempt by the City to further stall and procedurally delay a decision on the project. These actions at most constitute an attempt to "take" the property without due process and at least show a contempt of the process as defined by adopted city ordinance and the goals and policies set forth in the City's Comprehensive Plan.

As an entity, Gamma Development has invested over \$300,000 in the 'Overlook at Oxbow' project submittal to date. We did so ONLY after we had a thorough understanding of the IDO and the laws that have been established by the City of Albuquerque. We are willing to invest, we are willing to build, we are willing to grow – when we know that the rulebook is in place. Failure to uphold the IDO, failure to champion your own ordinances, failure to recognize the efforts of City Councilors and Staff will drive all future capital investment out of Albuquerque city limits – just as the project's opponents would like.

Mayor Keller, on December 1<sup>st</sup>, 2017 you took an oath of office to uphold the constitution of the State of New Mexico and all of its corresponding laws "faithfully, impartially, and sincerely". I ask of you that you reflect on this powerful oath, find your inner courage, and reply with conviction to the project's opponents that *ordinances mean something* in the City of Albuquerque. There is a process to be followed and they all have a chance to speak in opposition to the project through the hearings of the EPC and the DRB. Failure to do so is an act of disrespect to those "*Laws made by common consent*" that George Washington told us about.

Be strong my friend.

Best Regards,



Brian McCarthy

Gamma Development, LLC