STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FRIENDS OF LOS RANCHOS INC.,
A NEW MEXICO NONPROFIT CORPORATION,

Plaintiff

v. Case No. D-202-CV-2022-_____

VILLAGE OF LOS RANCHOS,
A NEW MEXICO MUNICIPAL CORPORATION,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff, Friends of Los Ranchos Inc., a New Mexico nonprofit corporation, by and through its attorneys of record, Sutin, Thayer & Browne A Professional Corporation (Wade L. Jackson), and for its Complaint for Declaratory Judgment and Injunctive Relief ("Complaint") states as follows.

Parties, Jurisdiction and Venue

1. The Plaintiff is a New Mexico nonprofit corporation and a 501(c)(4) nonprofit community association dedicated to preserving the rich cultural heritage, open space and trails, urban forest, agriculture, and architecture of the Village of Los Ranchos metro area. The Plaintiff works in partnership with the Defendant to acquire and preserve open space within the Village of Los Ranchos, Bernalillo County, New Mexico. The Plaintiff's members are residents of the Village of Los Ranchos.

2. The Defendant Village of Los Ranchos de Albuquerque is an incorporated municipality in Bernalillo County, State of New Mexico.

3. Pursuant to New Mexico statutes, the elected governing body of the Village is the Mayor and four members of the Board of Trustees. The elected Board of Trustees is the zoning authority of the municipality.

4. Jurisdiction and venue are proper in the District Court of Bernalillo County, New Mexico, pursuant to NMSA, 1978, § 38-3-1(A) and (F).

A DECLARATORY JUDGMENT IS APPROPRIATE RELIEF

5. The Plaintiff and its members claim interests relating to the property that is the subject of the Complaint, which Defendant declared blighted pursuant to the Metropolitan Development Code, NMSA 1978, Section 3-60A-1, *et seq.* (the "Code"), and thereafter acquired prior to the 2018 adoption by the Defendant of a Metropolitan Redevelopment Plan for the Project Area. The disposition of this action may as a practical matter impair or impede the ability of the Plaintiff and its members to protect their valuable interests in neighboring real property and could adversely damage the character and value of their real property and neighborhood.

6. The Plaintiff and its members vigorously oppose the sale of the project land to a private for-profit out-of-state developer for $1.00 per parcel. The Plaintiff and its members also object to the project because it is not consistent with the Defendant's 2018 Metropolitan Redevelopment Plan, violates numerous requirements of the existing Village zoning ordinances, and intrudes on the character of the Village by building a three-story, high-density residential building, hotel, amphitheater, brew pub, and 20 retail spaces in the heart of the Village.

THE PROJECT AREA IS NOT AND NEVER HAS BEEN "BLIGHTED"

7. On or about February 7, 2007, Sites Southwest, Ltd. Co. ("Sites") issued its Fourth and Osuna Village Center Conditions Analysis and Designation Report (the "Sites Report") pursuant to a contract with the Defendant.

8. On or about March 14, 2007, the Defendant adopted Resolution No. 2007-3-2, which designated a Metropolitan Redevelopment Project Area (the "Project Area") and designated the Project Area as "blighted."

9. The Defendant's blight designation of the Project Area was based on the following finding:

> WHEREAS, the Board [of Trustees] finds that a blighted area exists within the Village as the southeast corner of Osuna and 4th Street (also referred to as the Village Center Zone Project Area) by reason of the following:
>
> 1. presence of deteriorating and deteriorated structures;
> 2. inadequate street layout;
> 3. faulty lot layout in relation to size;
> 4. deterioration of the site or other improvements;
> 5. diversity of ownership;
> 6. defective or unusual conditions of title;
> 7. obsolete or impractical planning and platting; and
> 8. low levels of commercial or industrial activity.

10. The findings in Resolution No. 2007-3-2 were based entirely on the Sites Report, and the Sites Report is the only factual evidence offered in support of the finding of "blight" in the Resolution.

11. Resolution No. 2007-3-2 found:

> WHEREAS, the Board caused to be prepared [the Sites Report], and such Report specifically found that each of the above-referenced conditions exist in the Project Area.

12. As discussed in detail below, the Sites Report did not find that each of the conditions of "blight" existed in the Project Area, and the Defendant's finding was false.

13. The Code, in 2007 and now, provides:

> No local government shall exercise any of the powers conferred upon local governments by [the Code] until the local government has adopted a resolution finding that:
>
> A. one or more slum areas or blighted areas exist in the local government's jurisdiction; and

> B. the rehabilitation, conservation, slum clearance, redevelopment or development, or a combination thereof, of and in such area is necessary in the interest of the public health, safety, morals or welfare of the residents of the local government's jurisdiction.

NMSA 1978, § 3-60A-7.

14. The Code defines "blighted area" as:

> an area within the area of operation other than a slum area that substantially impairs or arrests the sound growth and economic health and well-being within the jurisdiction of a local government or a locale within the jurisdiction of a local government because of the presence of a substantial number of deteriorated or deteriorating structures; a predominance of defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision; lack of adequate housing facilities in the area; or obsolete or impractical planning and platting or an area where a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area, low levels of commercial or industrial activity or redevelopment or any combination of such factors; or an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use. . . .

NMSA 1978, § 3-60A-4(F).

15. There was not, at the time the Board made its "blight" designation, and there is not now, evidence of "the presence of a substantial number of deteriorated or deteriorating structures." *Id.*

16. The Sites Report describes 16 of 20 structures as being in good or fair condition. Sites Report at 11-12.

17. "Good condition means that the exterior of the building is in good repair without need for more than routine maintenance. Fair condition means that there are some cosmetic deficiencies such as minor peeling or faded paint." *Id.* at 11.

18. The Sites Report only mentioned three structures and one mobile home park as being in poor condition. One of the structures described as being in poor condition was so described due to "peeling paint," a condition that, according to Sites' own criteria, renders a structure in fair, not poor, condition. *Id.* at 12.

19. The Sites Report thus found that the Project Area included "the presence of *a substantial number* of deteriorated or deteriorating structures," NMSA 1978, § 3-60A-4(F) (emphasis added), because two structures were in "poor condition," though "none of the existing structures appear to be beyond repair." Sites Report at 11.

20. On or about February 5, 2020, the Defendant obtained an appraisal report performed by American Property Consultants (the "American Appraisal") of the properties in the Project Area.

21. The American Appraisal only lists the trailer park as being in "poor" condition. It lists all other structures in the Project Area as being in "good" or "fair" condition or vacant. American Appraisal, Ex. H, Table 1.

22. Numerous aerial and exterior photos in the American Appraisal show no deteriorating structures.

23. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "a predominance of defective or inadequate street layout." NMSA 1978, § 3-60A-4(F).

24. The Sites Report never mentions this factor and the Defendant considered no evidence in support of it.

25. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "faulty lot layout in relation to size, adequacy, accessibility or usefulness." *Id.*

26. The commercial buildings in the study area were successful operating enterprises for many years.

27. The residences fronting on Osuna were occupied and in "fair to good" condition. Sites Report at 11.

28. All other parcels were vacant land farmed for hay production, consistent with the Village's rural character.

29. After purchase of all parcels by the Defendant, the Defendant approved a new major subdivision plat.

30. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "unsanitary or unsafe conditions." NMSA 1978, § 3-60A-4(F).

31. No evidence of any such conditions are cited in the Sites Report or the Metropolitan Redevelopment Plan.

32. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "deterioration of site or other improvements." *Id.*

33. None of the 2020 aerial or exterior photographs show any such deterioration.

34. Neither the 2020 American Appraisal nor the Defendant's 2018 Metropolitan Redevelopment Plan cite any such deterioration.

35. The Sites Report includes only conclusory generalities without reference to particular defects on particular properties. For example, it states that "sites have never been constructed to meet standards," without any clarity as to whether that statement applies to all properties or includes the Walgreens constructed just the year prior to the Sites Report. Sites Report at 2.

36. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "diversity of ownership." NMSA 1978, § 3-60A-4(F).

37. The Sites Report indicates that the 20 parcels in the study area were owned by 15 different individual owners. Sites Report at 2.

38. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "tax or special assessment delinquency exceeding the fair value of the land." NMSA 1978, § 3-60A-4(F).

39. The Sites Report indicates that none of the 20 parcels in the study area had tax or assessment delinquencies exceeding the fair value of the land. Sites Report at 2.

40. The 2020 American Appraisal ordered by the Defendant contains at page 23 a table showing the tax history of the subject properties in the Project Area. It shows that tax values were stable or increasing.

41. Real estate market values in the Plan area have generally increased as proven by the purchase prices paid by the Village to purchase the land in the Project Area.

42. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "defective or unusual conditions of title; improper subdivision." NMSA 1978, § 3-60A-4(F).

43. The Sites Report identified only one of the 20 parcels in the study area as having any sort of title issue. Sites Report at 2.

44. The Defendant approved its own new major subdivision plat of the Project Area.

45. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "lack of adequate housing facilities in the area." NMSA 1978, § 3-60A-4(F).

46. The Sites Report never mentions this factor and the Defendant considered no evidence in support of it.

47. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "obsolete or impractical planning and platting or an area where a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area, low levels of commercial or industrial activity or redevelopment or any combination of such factors." *Id.*

48. The Sites Report describes "the historic agricultural platting of the North Valley," but does not any, let alone "a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area." Sites Report at 3.

49. There was not, in 2007 when the Board made its "blight" designation, in 2018 when Defendant adopted its MRA, and there is not now, evidence of "an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use." NMSA 1978, § 3-60A-4(F).

50. The Sites Report never mentions this factor and the Defendant considered no evidence in support of it.

51. Even if any of the aforementioned conditions existed, the Defendant received no evidence or proof, and made no finding, that those conditions substantially impaired or arrested the sound growth and economic health and well-being within the jurisdiction of a local government or a locale within the jurisdiction of a local government. NMSA 1978, § 3-60A-4(F).

52. After making the blight designation in 2007, the Defendant did not adopt a Metropolitan Redevelopment Plan for the Project Area. The Metropolitan Redevelopment Plan was not adopted until 2018, and the Defendant did not engage a contemporaneous Project Area conditions study to justify its reliance on the conclusory "blight" findings in the Sites Report made 11 years prior.

53. The Sites Report was 11 years old when the Defendant's Metropolitan Redevelopment Plan was adopted. It is not credible evidence of the conditions in the Project Area, which the Code required the Defendant to evaluate "in its present condition and use."

54. The Defendant acquired the 20 parcels of property in the Project Area between 2015-2017.

55. On or about March 14, 2018, the Defendant adopted Resolution 2018-3-2, its Metropolitan Redevelopment Plan for the Project Area.

56. Resolution 2018-3-2 did not include a designation of "blight" or any findings to support one. Nor did it attempt to update the findings that supported the Defendant's 2007 blight designation, or even address the ways in which conditions in the Project Area changed in the decade that had passed since the designation was made.

57. Resolution 2018-3-2 indicates that the Defendant expended more than $10,000,000 on the design and construction of roadways along the Fourth Street corridor and $6,000,000 on property acquisition in the Project Area.

58. On June 1, 2019, Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A., counsel for the Defendant, delivered a memo to the Defendant regarding its sale of property pursuant to the Code.

59. Although counsel for the Defendant opined that the Defendant could convey property in the Project area for its "fair value" rather than its "fair market value," counsel for the Defendant concluded that the Defendant could not receive less than "fair value" for the property without violating the Anti-Donation Clause.

60. The Defendant did not find that any portion of the Project Area was a "slum" as defined by the Code, whether in 2007, 2018, or any other time. Only conclusory findings of "blight" are suggested by the 2007 Sites Report.

61. The American Appraisal described the condition of the property as follows (emphasis added):

> Neighborhood Conclusion
>
> The economic needs of the immediate and surrounding area over the last five years *have exhibited growth*, with current stability in both population and employment. Commercial development is anticipated to remain at conservative levels due to the predominately residential nature of the area. The subject neighborhood is a well located and stable residential and commercial area, with all needed support facilities. Its centralized location within the North Valley *indicates a bright and stable future for the neighborhood.* Based on the surrounding properties and locational characteristics of the subject properties (a corner signalized intersection with frontage along two major arterials, Fourth Street and Osuna Road), *a good environment exists for a variety of commercial and mixed-use development upon demand*.

62. Effective October 14, 2020, the Defendant executed a Purchase, Sale and Development Agreement ("PSDA") with Palindrome Communities, LLC, a Nevada limited liability company ("Palindrome").

63. Despite all evidence and legal advice to the contrary, Section 5.2 of the PSDA requires the Village to sell each phased parcel in the 12.14-acre Project Area to Palindrome for $1.00.

64. Article 14 of the PSDA requires Palindrome to waive any claims it may have against the Defendant for the consequences on the project of the Defendant's violation of the Anti-Donation Clause or failure to comply with the Code.

THE PSDA VIOLATES THE ANTI-DONATION CLAUSE OF THE NEW MEXICO CONSTITUTION

65. Article IX, Section 14 of the New Mexico Constitution, known as the Anti-Donation Clause states, in pertinent part, "Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation. . . ."

66. The Anti-Donation Clause includes no exception to its constitutional prohibition for Metropolitan Redevelopment Projects, even those in compliance with the Code.

67. The Defendants conveyance of the various parcels in the Project Area for $1.00 each violates the constitutional prohibition on a municipality making a donation to a private entity.

THE PSDA VIOLATES THE CODE

68. Indeed, the Code provisions relating to the sale of municipally owned land only supplement the Anti-Donation Clause and are in accord with it. The Code only permits the Defendant to "sell, lease or otherwise transfer real property or any interest in real property acquired

by it in a metropolitan redevelopment area" for its "fair value" in the case of "slum" areas, NMSA 1978, § 3-60A-10(O)(4), or its "fair market value" in the case of other areas, NMSA 1978, § 3-60A-10(N)(3).

69. The Defendants conveyance of the various parcels in the Project Area for $1.00 each violates the Code's requirement that the Defendant only convey land to a private developer for its "fair market value." NMSA 1978, § 3-60A-10(N)(3).

DEFENDANT MAY NOT LAWFULLY DISPOSE OF PROPERTY WITHOUT COMPLYING WITH THE CODE

70. The evidence must have shown that a property was been blighted "in its present condition and use" in order for the Code to apply and the Defendant to have the authority to dispose of it pursuant to the Code.

71. If such evidence did not exist and the Defendant was not authorized to convey the property pursuant to the Code, the Defendant has also failed to comply with the provisions governing the disposal of public property. *See* NMSA 1978, §§ 13-6-1, *et seq.*

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court enter a ruling:

1. The Anti-Donation Clause of the New Mexico Constitution and the Metropolitan Redevelopment Code prohibit the Defendant from conveying property owned by the Defendant for anything less than the property's fair market value, and the Defendant had no power or authority to do so.

2. Any conveyance of property by the Defendant for less than the property's fair market value violated the Anti-Donation Clause of the New Mexico Constitution, the Metropolitan Redevelopment Code, and the scope of the Defendant's legal authority, and was therefore void *ab initio*.

3. The Defendant should be permanently enjoined from conveying property for less than the property's fair market value.

Respectfully submitted,

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