

## **Emails suggest lack of transparency on zoning plan**

**By J.R. Logan**

*The Taos News*, 2/18/2016

Town officials have been meeting with a real estate developer for nearly a year and a half to discuss the relocation of Smith's Food and Drug to an area just south of downtown, according to emails obtained by *The Taos News*.

The emails, provided in response to a public records request filed by *The Taos News*, appear to contradict statements made by Taos Town Manager Rick Bellis at a public meeting in January at which he insisted the town did not have a specific developer or project in mind when it proposed rezoning about 20 acres in the same area.

Additionally, the emails point to a potential conflict of interest involving town attorney Floyd Lopez. The correspondence shows Lopez was aware that his relatives (at least at some point) had a stake in a large property that is key to the development's success.

The proposed rezoning has become a point of contention between those who argue that encouraging investment will greatly improve the look and function of the corridor leading into the historic district and those who fear the goal is to invite corporate development and change the feel of the neighborhood near the center of town.

But that debate has been somewhat sidetracked by concerns that town officials have not been completely transparent in presenting the rezoning plan.

The Planning and Zoning Commission voted to recommend the rezoning earlier this month. The town council was scheduled to vote on it Feb. 23.

However, the town announced Friday (Feb. 12) it was canceling those hearings in order to "allow more time for public questions and staff preparation."

A new meeting date to discuss the issue has not yet been announced. The next town council meeting is Feb. 23. The planning commission's next meeting is scheduled for March 2.

### **'No secret plan'**

The town emails show Albuquerque developer John Mahoney has been courting town staff and elected officials since at least September 2014, when he accompanied Mayor Dan Barrone and Councilor Fred Peralta to tour a new Smith's Marketplace store in Los Alamos.

"I think it was productive and I hope it showed the potential for Taos," Mahoney said in a follow-up email sent to both Barrone and Peralta.

Subsequent correspondence shows the town manager was in regular contact with Mahoney for months. Bret Whalen, president of a Utah-based engineering firm that has done work for Smith's, is Cc'd on several emails between Mahoney and Bellis.

According to the emails, Mahoney had a clear interest in the rezoning and may have been preparing to file a formal application for a building permit once the rezoning had been approved. To date, however, no project application has been turned in to the town or made public.



**A man rides his bike down Quesnel Street in front of the northernmost side of the Couse Pasture, Tuesday (Feb. 16). Katharine Egli**

On Jan. 4 — two days before the first planning meeting to consider rezoning — Mahoney emailed Bellis asking to speak by phone. The next day, he again emailed Bellis asking to set up an in-person meeting for the morning after the commission hearing. An appointment reminder attached to a follow-up email was titled: “Meet with John Mahoney regarding zoning.”

But at the public planning meeting, Bellis said the goal of rezoning was to proactively attract economic development. “What we’re trying to do with changing this zoning is allow opportunity,” Bellis said at the time. “And there is no secret plan. ... But there are people we would like to attract and make it attractive to them.”

Bellis made no specific mention of a Smith's relocation nor of Mahoney, despite questions from the public about what spurred the rezoning proposal.

“Was it sort of like a virgin birth or something like that?” asked David Fernandez, a resident of Montoya Street, inquiring about the impetus for the plan.

Polly Raye, a resident of Quesnel Street who owns the John Dunn Shops in the historic district, told the commission she knew Smith's was behind the rezoning. She asked that the town be transparent about its plans to encourage a productive conversation about smart growth.

“I think we need to be really upfront about this,” Raye said. “Who wants to do what where? And how do we all work together?”

## **'The back door'**

The week after the Jan. 4 meeting, Marsha Gilford, a spokesperson for Kroger, the parent company of Smith's, confirmed to *The Taos News* that the store's current location needs extensive repairs, and it is looking to relocate.

After the rezoning had been indirectly linked to plans for moving Smith's, town officials were more forthcoming with information. "The only big mystery is they want to take the store from that side [of Paseo] and put it on the other side," Bellis said when the planning commission revisited the issue Feb. 3.

When asked about developer Mahoney's involvement, Bellis said in an interview Friday (Feb. 12) the town was not seeking rezoning on behalf of Smith's or Mahoney specifically. Since there are multiple property owners in the area (rezoning applications are usually submitted by owners, not the town) and the cost of land is so high, Bellis said it made sense for the town to seek rezoning to make things easier for any development, not just Smith's. Otherwise, investors might be wary of spending money to buy land and design plans for something that will never get approval.

"What you need to do is assure them they're not going to spend \$10 million only for the [town] council to chicken out at the last minute because there's a big crowd [of opponents] looking at them," Bellis said.

But according to at least one property owner, getting the town to rezone the area may have been Mahoney's only way to move the Smith's project forward.

Lloyd Abrams owns 1.7 acres inside the rezoning area, where Ace Hardware and Big 5 Sporting Goods are now located. In an interview this week, Abrams told *The Taos News* he was approached by Mahoney in December 2014 with a purchase offer from Smith's.

"They told me they wanted to acquire the motel next to me [Indian Hills Inn] and my property and the property behind me [the southern Couse Pasture] and they would build a big, beautiful shopping center," Abrams said.

Abrams said the offer was fair (he didn't disclose the dollar amount), but he was reluctant to sell because the sale was contingent on several approvals, such as the town giving the OK to a rezoning.

If Mahoney had similar trouble with other landowners, Abrams said it makes sense that Mahoney would ask the town to propose the rezoning.

"[Mahoney] took a stab at the easy approach, which was trying to tie me up, and I'm sure tying up the adjacent properties, then going in to put together this deal," Abrams said. "When I wasn't quite as cooperative as they wanted, I have to assume Smith's is still calling him saying, 'Hey, what are you doing? We still want a bigger store.' So Mahoney is saying: 'OK, how do we go around the back door?'" Abrams said he suspects Mahoney may have asked the town to take on the rezoning itself so the project didn't die.

When contacted by email Friday, Mahoney said he was not immediately available for an interview. He did not respond to additional requests for comment.

Taos Mayor Barrone said in an interview Friday the town is eager for outside investment to create jobs and spur economic activity. He said allowing growth in the area near downtown is vital if the town expects keep people there.

“I believe we were trying to be proactive and get something done, to clean up that area,” Barrone said. “That’s the gateway to our community.”

### **‘Connection to the players’**

To add to the controversy, there appear to be familial links between part-owners of the southern Couse Pasture and town attorney Lopez — a connection Lopez has not publicly disclosed.

According to county records, a group called Campo Sabio Limited Partnership is the owner of record for the part of the pasture said to be a key piece of land to make room for a Smith’s relocation.

Also included in county records is a partnership agreement for Campo Sabio dated March 1982. The agreement names Fernandez Company as a limited partner in the organization. According to the agreement, Fernandez Company contributed property valued at \$741,700 to the venture — an upscale condo development slated to be built on the pasture. The agreement said Fernandez Company was first in line to receive an equal amount once the company made a profit.

Three women — Frances Lee, Harriet Lee and Iona Lee — signed the partnership agreement on behalf of Fernandez Company. Based on an obituary and a family history obtained by *The Taos News*, Frances Lee is the aunt of town attorney Lopez. Harriet is his cousin. Iona is his cousin’s wife.

The language in the partnership agreement suggests the Lees had, at least at one point, a vested interest in that property. However, the partnership agreement was scheduled to expire in October 2001. It’s not clear if the agreement has been extended, or if an updated version of the agreement is still valid.

Whether the deal has expired or not, it’s a connection and potential conflict of interest that attorney Lopez has not publicly acknowledged, despite having overseen two public hearings on the rezoning issue.

An email included in *The Taos News*’ public records request suggests Lopez was aware of the connection and how it related to the Smith’s development.

In September 2014, developer Mahoney wrote an email to Lopez following an in-person meeting in Taos that was related to the project.

“Although I don’t believe in coincidence, your connection to the players in this deal is amazing,” Mahoney wrote. “I have been trying to figure out who the Fernandez people [Lopez’s relatives] are since I started working on this site in 2010.”

Mahoney went on to say he planned to meet with Rudolph “Rudy” Sacks in Santa Fe to “layout the overall plan including benefits to the community and ask him to set up a meeting with the principals.”

“Meanwhile if you have any thoughts after visiting with Owen, let me know,” Mahoney wrote.

“Thanks John. Will do,” Lopez wrote in a response.

Mahoney was presumably referring to Owen Lopez — Floyd’s brother — who was a practicing attorney when Campo Sabio was formed. Owen Lopez is named as an attorney for Fernandez Company in a lien filed by a Taos contractor in August 1983.

Floyd Lopez’s connection to the various parties extends beyond the property.

According to state campaign finance reports, Rudy Sacks, Iona Lee and Owen Lopez all contributed to Floyd Lopez’s unsuccessful bid to be elected district court judge in 2012.

Sacks, Lee and Owen Lopez did not return messages seeking comment.

Floyd Lopez did not respond to multiple requests for comment, including an email detailing the facts surrounding the possible conflict of interest that would be asserted in this story.

State law prohibits public employees from taking any official actions that could financially benefit them or their immediate family. Even in cases where money is not involved, the New Mexico Governmental Conduct Act states: “Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct.”

Since the rezoning controversy began, town attorney Lopez has had opportunities to make any connection to the property or the deal known.

At a planning commission meeting Feb. 3, there was some confusion over who actually owned the southern portion of the Couse Pasture, which was later determined to belong to Campo Sabio.

Jim Pollard, chairman of the planning commission, specifically asked Lopez to find out who owned the property.

“I’m going to ask attorney Lopez, if he gets an opportunity with his computer there, if he can try and access any of the county records, or any of our town records, which may be able to shed some light,” Pollard said. “I’ll check back in with you a little later.”

Pollard didn’t ask again. And Lopez didn’t volunteer any information at the meeting.

---

Copyright (c)2016 The Taos News 2/18/2016

Powered by TECNAVIA