

**Henry P. Roybal**  
Commissioner, District 1

**Anna Hansen**  
Commissioner, District 2

**Rudy N. Garcia**  
Commissioner, District 3



**Anna T. Hamilton**  
Commissioner, District 4

**Hank Hughes**  
Commissioner, District 5

**Katherine Miller**  
County Manager

February 18, 2022

**BY EMAIL AND HAND**

Shawn Beck, Director  
Special Investigations Division  
The Office of the State Auditor  
2540 Camino Edward Ortiz, Ste. A  
Santa Fe NM 87507  
Email: [shawn.beck@osa.state.nm.us](mailto:shawn.beck@osa.state.nm.us)

RE: Santa Fe County Acquisition and Disposition of 3600 and 3740 South Meadows Road

Dear Mr. Beck:

This follows-up on our conversation of Wednesday concerning the acquisition and disposition of real property located at 3600 and 3740 South Meadows Road (the "Property") by Santa Fe County ("County"). As we discussed, the Property was outside the city limits of the City of Santa Fe ("City") when acquired, but is currently inside the City limits due to annexation.

- *Source of funds for acquisition of the Property was General Obligation Bonds, Series 1999.*
  - Resolution No. 1999-59, which authorized the issuance and sale of Santa Fe County, New Mexico General Obligation Bonds, Series 1999 ("Series 1999 Bonds"), is enclosed. The resolution recites that the bonds were authorized at a special bond election held coincident with the November 3, 1998, general election.
  - Resolution Nos. 1998-80 is also enclosed. It called for the 1998 special bond election on the following question:

"Shall the County of Santa Fe, New Mexico be authorized to issue its general obligation bonds, in one or more series, in an aggregate principal amount not exceeding \$12,000,000 to acquire necessary real estate for open space, open space trails, and related areas and facilities within the County to establish 'The Wildlife Mountain Trails and Historic Places Program' in order to preserve historic and natural areas, including mountains and foothills, arroyos and river parkways, sacred sites, trails, and high desert habitats containing wildlife and native plants and to provide neighborhood parks and playfields for families and children, which Program shall be subject to annual audit and review by an independent citizen oversight committee, said bonds to be issued and sold as permitted by law?"
  - Relevant portions of the minutes of the August 11, 1998, meeting at which Resolution No. 1998-80 was adopted are enclosed. We would highlight the following:

- No specific projects are identified in the minutes.
- The minutes reflect that the Board of County Commissioners was advised to keep the bond question general and to not include specific projects.
- *Series 1999 Bonds were refunded in 2010 and refunding bonds were paid off in 2018.*
  - Enclosed is Resolution No. 2009-224, which authorized the issuance and sale of Santa Fe County, New Mexico General Obligation Refunding Bonds, Series 2010A (“Series 2010A Bonds”), for, among other purposes, redeeming the outstanding Series 1999 Bonds.
  - The Series 2010A Bonds were paid off in Fiscal Year 2019. [*Compare Santa Fe County, New Mexico Comprehensive Annual Financial Report for Fiscal Year 2018 ([5026 Santa Fe County FY2018 Final.pdf \(osa-app.org\)](#)), p. 77 with Santa Fe County, New Mexico Comprehensive Annual Financial Report for Fiscal Year 2019 ([015.01 - PDF Final CAFR FY 2019 \(Santa Fe County Audit 2019 \[6/30/2019\] \(In Process\)\) \(osa-app.org\)](#)), p. 79.]*]
- *2000 Open Land and Trails Plan was an element of the 1999 Santa Fe County Growth Management Plan, which was superseded in 2010. Resolution No. 2000-60 is enclosed. Per our conversation, my understanding is that citizens have complained that the County did not follow this plan when disposing of the Property.*
  - Page 9 of the plan reflects that it is an element of the 1999 Santa Fe County Growth Management Plan and that it contains recommendations, as follows:

“This *Open Land and Trails Plan* will become an element of the *1999 Santa Fe County Growth Management Plan*. **Recommendations of this Plan** are intended to reinforce and supplement the Growth Management Plan.” (Emphasis added.)
  - The 1999 Santa Fe County Growth Management Plan was superseded in 2010 when the County adopted the 2010 Sustainable Growth Management Plan via Resolution No. 2010-210.
    - The 2010 Sustainable Growth Management Plan had its own Open Space, Trails, Parks and Recreation Areas Element. That element, which is Chapter 6, is enclosed. It contains no recommendations concerning procedures for the disposition of open space property.
  - The 2010 Sustainable Growth Management Plan was superseded by the 2015 Sustainable Growth Management Plan, adopted via Resolution No. 2015-155.
    - The 2015 Sustainable Growth Management Plan has its own Open Space, Trails, Parks and Recreation Areas Element. That element, which is Chapter 6, is enclosed. It contains no recommendations concerning procedures for the disposition of open space property.
- *Even if it still was in effect, the 2000 Open Land and Trails Plan only made recommendations about disposition procedures and recognized that an ordinance would be necessary to implement them. No such ordinance was adopted.*

- The 2000 Open Land and Trails Plan recognized that an ordinance would be necessary to establish procedures for disposal of property and made recommendations for what should be included, as follows:

***“Use Restrictions***

Properties that the County purchases through bond proceeds need to be ‘flagged’ as such and in some cases may require a deed restriction. The County should describe the intended use for the property (as outlined in Chapter 6). **The County is working on developing an ordinance to establish procedures for changing the use of the property or disposal of the property.**

***Sale of Property***

The County purchases property for the Wildlife, Mountains, Trails and Historic Places Program with the intent that it remain open space in perpetuity. Each property acquired goes through an extensive public review process and has support prior to the acquisition. However, in the event that a sale or property is proposed, such proposal **should** be submitted to COLTPAC, the County Development Review Committee (CDRC) or other applicable local development review committee, and then proceed with recommendations to the Board of County Commissioners for a final decision. Two public hearings **should** take place at least six months apart, so the public has an opportunity to voice opinions about the sale.”

(Emphasis added.)

- The recommended ordinance establishing procedures for changing the use of open space property or disposing of open space property was never adopted. *See, generally, Santa Fe County : Ordinances and Resolutions (santafecountynm.gov) and Franklin Legal Publishing, powered by CTS z2.* Such an ordinance would be required for the disposition recommendations to bind the Board of County Commissioners. *Dugger v. City of Santa Fe*, 1992-NMCA-022, ¶ 27, 114 N.M. 47, 55, 834 P.2d 424, 432 (“the master plan, being only a resolution, does not bind the City to any specific procedures as would an ordinance”).
  - Moreover, as written, the recommended procedures were directory rather than mandatory. *Id.* at ¶ 15 (“[t]he emphasized language does not unequivocally require that the City annex certain land at certain times; it merely sets out certain policies, guidelines and factors that the City *should* consider in determining whether or not to annex territory”).
  - In sum, there are no mandatory County-imposed procedures that the County must follow when disposing of open space property.
- *County’s efforts to transfer Property to the City.*<sup>1</sup>

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<sup>1</sup> This information is being included because you asked about newspaper reporting concerning the County’s efforts to transfer the Property to the City.

- The Property was discussed at the June 15, 2017, Special Joint Meeting of the Board of County Commissioners and City Council, the minutes of which are enclosed. On pages 13-14 of the minutes, Rachel A. Brown is reported to have said the following:  
“There was also a park within the South Meadows areas that was annexed into the City. It is a County park which the County is prepared to turn over to the City and there are funds available for park improvements and there could be discussion regarding whether those funds should move over to the City for that purpose.”  
This is consistent with a June 14, 2017, memo from Ms. Brown, which was included in the packet material for the Special Joint Meeting provided to participating City Councilors and County Commissioners. A copy of Ms. Brown’s memo is also enclosed.
- The County followed up on the special meeting with Resolution No. 2017-127, a copy of which is enclosed. In it, the Board of County Commissioners specifically requested another joint meeting to discuss, among other topics, “[t]ransfer of ownership of a park on South Meadows from the County to the City.” So far as we can tell, City officials never proposed dates for another joint meeting as requested in the resolution.
- Finally, the County Manager and County Commissioner Hansen recall raising the offer to transfer the Property at a May 2, 2018, meeting with the Mayor, City Manager, and less than a quorum of City Councilors. No interest in the offer to transfer the Property was expressed, and both the County Manager and Commissioner Hansen recall former City Councilor Harris expressly stating that the City was not interested. A copy of the County Manager’s contemporaneous notes concerning that meeting are enclosed.

- *Sale of Property to Homewise, Inc.*

- In Resolution No. 2020-55, the Board of County Commissioners delegated authority to the County Manager to dispose of the Property by negotiated sale. A copy of that resolution and the agenda of the meeting at which it was adopted is enclosed. The resolution reflects:
  - The Board’s intent to use resources from the sale “for another open space project within Santa Fe County”;<sup>2</sup> and
  - The necessity of having the sale approved by the State Board of Finance.

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<sup>2</sup> Since the adoption of Resolution No. 2020-55, the Santa Fe River Greenway Project has been identified by management as the open space trail project to which proceeds from the sale of the Project would be allocated. This was one of the priority projects identified in the 2015 Sustainable Growth Management Plan. Under the Internal Revenue Code, IRS regulations, and State law, the County is not required to use proceeds from the disposition of the Property in accordance with the bond question because neither the original bonds or refunding bonds are outstanding. Nonetheless, as indicated, the County has committed the proceeds from the sale of the Property to another priority open space trail project.

- Pursuant to the authority delegated to her in Resolution No. 2020-55, the County Manager executed a Purchase Agreement with Homewise, Inc. concerning the Property, Agreement No. 2021-0218-PW, a copy of which is enclosed. As reflected in the agreement:
  - The purchase price for the Property is \$1,790,000, which was established by an appraisal, a copy of which is enclosed. [Purchase Agreement, Terms Summary.]
  - Homewise, Inc. has one year to secure from the City the appropriate land use, zoning, and development rights necessary to develop the Property for Homewise, Inc.'s intended purposes. [Purchase Agreement, General Addendum No. 1-2020, Paragraph 1.]
- The State Board of Finance approved the sale of the Property to Homewise, Inc. at its April 20, 2021, public meeting.
  - This approval is reflected on the Purchase Agreement.
  - Copies of the agenda and meeting minutes for the State Board of Finance's April 20, 2021, meeting are enclosed.<sup>3</sup>

In sum, even though the Series 1999 Bonds used to purchase the Property and Series 2010A Bonds used to refund the Series 1999 Bonds are no longer outstanding, the County has committed to using the proceeds from the sale of the Property for another priority open space trail project.

The 2000 Open Land and Trails Plan was an element of the 1999 Growth Management Plan, which was superseded in 2010. The County's 2015 Sustainable Growth Management Plan has its own Open Space, Trails, Parks and Recreation Areas Element, which does not contain recommendations concerning procedures for the disposition of open space property.

Even if the 2000 Open Land and Trails Plan was still in effect (which it is not), however, it contained recommended procedures only, which recommendations were never adopted by ordinance as would be required for any such procedures to be binding on the County. Moreover, as written, the recommended procedures concerning public hearings and recommendations were directory rather than mandatory.

Finally, the Board of County Commissioners authorized the sale of the Property by resolution adopted in open meeting, and the resolution was duly noted as an action item on an agenda, giving the public clear notice of the action being considered. The negotiated sale of real property is expressly authorized by law (NMSA 1978, Section 13-6-2(B)(3) (2007)), and the sale has been approved by the State Board of Finance, as required by law. NMSA 1978, Section 13-6-2.1(A) (2011).

Thank you for the opportunity to provide you with information and analysis relevant to the citizen complaints your office has received. Please do not hesitate to contact me should you have any additional questions or desire additional information concerning the acquisition and disposition of the Property.

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<sup>3</sup> The State Board of Finance agenda and meeting minutes were retrieved from the Board of Finance Division's website, <https://www.nmdfa.state.nm.us/board-of-finance/>.

Shawn Beck, OSA  
February 18, 2022  
Page 6 of 6

Sincerely,



Gregory S. Shaffer  
County Attorney

Encl.

1. Resolution No. 1999-59
2. Resolution No. 1998-80
3. Excerpts of Meeting Minutes from Board of County Commissioners' August 11, 1998 Meeting
4. Resolution No. 2009-224
5. Resolution No. 2000-60
6. Chapter 6 of the 2010 Sustainable Growth Management Plan
7. Chapter 6 of the 2015 Sustainable Growth Management Plan
8. Meeting Minutes of Joint Special Meeting on June 15, 2017
9. Rachel A. Brown's June 14, 2017, Memo to BCC and City Council
10. Resolution No. 2017-127
11. Katherine Miller's Notes of 5-2-2018 Meeting with City Officials
12. Resolution No. 2020-55
13. Meeting Agenda for July 14, 2020, Board of County Commissioners Meeting
14. South Meadows Purchase Agreement, No. 2021-0218 PW MM
15. Appraisal of South Meadows Property
16. State Board of Finance Agenda for April 20, 2021
17. State Board of Finance April, 20, 2021, Meeting Minutes

cc (w/o encl.):

Katherine Miller, County Manager