



ABQ HEARING OFFICER REMANDS DAWN LEGACY POINTE SOS APPLICATION FINDING 'SUBSTANTIAL AND MEANINGFUL' VIOLATIONS OF DUE PROCESS

Public Safety

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In response to appeals filed by the Santa Barbara Martineztown Neighborhood Association (SBMTNA), the Menaul School, and several local businesses, City of Albuquerque Land Use Hearing Officer Steven Chavez (LUHO) issued an October 10 ruling remanding the Dawn Legacy Pointe “safe outdoor space” (SOS) homeless encampment application back to planning. The officer found that in their rush to approve the SOS, City Staff and the applicant committed “substantial and meaningful” violations of “due process” by failing to provide appropriate notice.

In his ruling, Chavez wrote that, “...the applicants failed to properly send notification of the pending SOS application to all the qualifying abutting property owners within 100-feet of the proposed site (excluding right-of-way). Because the defect is so substantial and meaningful involving due process, a remand is fundamentally the shortest path to a final resolution of these appeals.”

Chavez also added that “Planning Staff disregarded the manner of notice required which is specifically applicable to all applications requiring “administrative decisions” in the IDO,” “The practical impact ... was that a

meaningful number of property owners who otherwise would be entitled to individualized notice of the application were not sent notice,” and, “Staff and the applicant erred because they disregarded an otherwise applicable process for a seemingly irreconcilable process that resulted in inadequate notice. Moreover, Staff’s interpretation of the IDO contravenes New Mexico law.” “Staff and the applicant erred and as stated above, a remand is the only cure to this due process violation.”

The [SBMTNA’s appeal](#) against Dawn Legacy Pointe’s ‘Safe Outdoor Space’ (SOS) application focused on several issues, not the least of which highlight the lack of transparency and due process extended to the public and the impacted communities. The appeal contended that by failing to follow established policies required for the approval of applications relating to ‘special’ or ‘conditional’ use zoning the City and the applicant ultimately acted in bad faith by “unilaterally” reviewing and approving Dawn Legacy Pointe’s application” behind closed doors” without notice to the public and without the required opportunity for public input. The appeal also claimed the City extended “preferential treatment” and gave “insider information” to Brad Day and Dawn Legacy Pointe while not affording the same to other SOS applicants.

[The New Mexico Sun](#) previously reported that days after the city of Albuquerque began accepting applications for safe outdoor spaces, the newly formed Dawn Legacy Pointe proposed an encampment at 1250 Menaul NE, a parcel just west of Interstate 25 within the Martineztown neighborhood. Following the news of the proposed encampment, the SBMTNA sent a letter to Family and Community Services Director Carol Pierce expressing outrage as the proposal was not discussed with them.

“The Santa Barbara Martineztown Neighborhood Association (SBMTNA) was informed that you attended a westside neighborhood meeting and informed them about providing homeless outdoor spaces in or near their area and the Martineztown Santa Barbara boundaries at 1250 Menaul NE,” the letter read. “This location is at the corner of Menaul NE and the Frontage Road. This news was disturbing because your office has never approached us to discuss this proposal.”

Albuquerque commercial real estate developer, Brad Day, has taken a special interest in pushing the ‘save outdoor space’ homeless encampment scheme for months. Despite not being listed on any of the corporate documents of Dawn Legacy Pointe or Street Safe New Mexico (the non-profit listed as

fiscally sponsoring DLP), Day's name appears several times on the 1250 Menaul 'safe outdoor space' application.

According to the [City Planning Department's instructions](#) for a 'special' or 'conditional' use (like SOS) as well as other SOS applications received, applicants are required to notify neighborhood stakeholders of their application to allow for public notice and hearings. However, Lopez and the members of the SBMTNA never received any notification from Dawn Legacy Pointe or Safe Streets New Mexico regarding their pending application to place a homeless encampment in their neighborhood.

New Mexico Sun [previously reported](#) that following an Aug. 11 meeting between local Santa Barbra Martineztown leaders and city officials which included commercial real estate developer and 'safe outdoor space' advocate Brad Day, where Day and officials informed the group that the Dawn Legacy Pointe encampment application had already been approved, SBMTNA President Loretta Naranjo Lopez told the New Mexico Sun that it "seems like the city has known what they were going to do here for a while."

"The city also knows the impact of homeless encampments next to neighborhoods and to not involve us from the beginning is incredibly discouraging," Lopez continued. "Failing to have us at the table, especially when they know how dangerous these encampments are, shows a complete lack of regard for the welfare and safety of our community. They can call it 'safe' all they want, but we're not safe and experience has shown us that."

Because the violations of notice and due process were so "substantial and meaningful" the LUHO did not make any rulings beyond those focused on the failure to follow appropriate notice processes - leaving the door open for those issues to be considered in future hearings should the application proceed following its remand. Saying in the ruling that, "[b]ecause a remand is appropriate, proposed findings regarding the other appealable issues are not deliberated here."