



Mark Scott, City Manager  
Elisa Montoya, Community Development Director  
City of Santa Fe  
200 Lincoln Ave  
Santa Fe, NM 87501

RE: Request for Staff to Appeal the Approval of the Zorro Blanco Development Plan

Dear Mark,

I am reaching out today to bring to your attention a matter that has significant implications both for the ability of the City to meet its affordable housing goals and for the implementation of the Tierra Contenta Master Plan in accordance with the Tierra Contenta Annexation Agreement. The matter at hand is the recent Planning Commission hearing of the Zorro Blanco Development Plan, which was approved with no requirement to contribute to affordable housing. At the advice of the City Attorney and Planning and Land Use (PLU) staff, the Planning Commission denied the Applicant the ability to participate in the Santa Fe Homes Program (SFHP), thereby preventing them from paying nearly \$700,000 to the Affordable Housing Trust Fund. In reviewing the application and associated documentation, we feel that the Planning Commission was led to rule in error on this case due to inaccurate and incorrect information provided by the City Attorney and PLU staff, and we respectfully request that your office address this error by appealing their decision to City Council before the upcoming end of the appeal period.

**Background**

In June 2025, TCVP LLC (the “Applicant”) submitted a Development Plan for the Zorro Blanco project to the Planning and Land Use Department, which would accommodate a 165-unit apartment complex on 6.9 acres (the “Project”). In the initial submittal, the Applicant proposed to pay a fee-in-lieu to meet the requirements of the Santa Fe Homes Program (SFHP). They were subsequently advised by the City Attorney and PLU staff that there was no legal mechanism whereby the City could allow the participation in the SFHP by the applicant because the Project was subject to the 1994 Tierra Contenta Annexation Agreement (“Annexation Agreement”), which predates SFHP requirements. We submit that this legal opinion was incorrect, and that the options available to the Planning Commission in making their final action on the Zorro Blanco Development Plan were therefore misrepresented, leading to a bad outcome for the City, for the Applicant, and for Tierra Contenta Corporation (TCC), the entity charged with implementing the Tierra Contenta Master Plan (“Master Plan”) in accordance with the Annexation Agreement.

Early on in their communications with the Applicant, City staff indicated that the Project must comply with the SFHP, which would require either 15% affordability among units built in the development or payment of a fee in lieu of building such affordable units. Months later, City staff changed its initial position, stating instead that the Project was not subject to the SFHP but rather

to the affordable housing requirements of the Annexation Agreement. City staff then directed the Applicant to work with TCC to determine the level of affordability required for the Project under the Annexation Agreement and Master Plan. Accordingly, the Applicant consulted with TCC, and the two parties ultimately agreed in May of 2025 that payment of a fee-in-lieu under the SFHP was the most logical path forward for the project, as is documented in written communications between the Applicant and TCC.

By the time the Project was brought forth to the Planning Commission in October 2025, the City Attorney's Office had advised PLU staff that Chapter 14-8.11(D)(3) prohibited the Applicant from participating in the SFHP and that there was "no legal mechanism" for accepting a fee-in-lieu or awarding a density bonus for the Project. As a result, PLU staff communicated to the Planning Commission that the SFHP did not apply to the Project and that the affordable housing requirements for Phase 2 of Tierra Contenta had previously been satisfied, resulting in no affordable housing requirements for the Project. Each of these two contentions by the City Attorney and PLU staff are incorrect, as described below, and resulted in harm to the City in preventing a sizable contribution to its Affordable Housing Trust Fund, to the Applicant in forcing them to add an acre of land to the Project in order to avoid redesigning to a lower density, and to TCC in jeopardizing their ability to implement the Tierra Contenta Master Plan in accordance with the Annexation Agreement.

### **Errors in the Case**

The Staff Report submitted to the Planning Commission for its hearing on October 16, 2025, relied on incorrect and inaccurate information to justify its position that the Project was not subject to any affordable housing requirement. The following describes errors that were made:

- 1. The City Attorney and PLU staff determined that the SFHP does not apply to the Project because it is subject to affordable housing requirements under the Annexation Agreement.**

Staff's claim is incorrect. Tract 51 did not have affordable housing requirements under the 1994 Tierra Contenta Annexation Agreement and Tierra Contenta Master Plan because its land use designation was "Office/Business Incubator," for which no housing units were contemplated or assigned. Article 7 of the Annexation Agreement requires that "approximately 40% ... of the units planned" (as identified in the Tierra Contenta Master Plan) be affordable homes. Because residential development was not contemplated for Tract 51, no units were planned for this tract. As a result, the affordable housing requirement of the Annexation Agreement did not apply to Tract 51, where the Zorro Blanco development is located.

In a May 8, 2025, letter to the Tierra Contenta Corporation Board and shared with PLU staff, Karl Sommer, attorney for the applicant, states: "it is our opinion that the TCVP property is not subject to an agreement that would exempt it from the Santa Fe Homes Program and that the strictures of the

Santa Fe Homes Program apply to the TCVP development plan application.” TCC agreed with this statement, and we concur.

SFCC Chapter 14-8.11(D)(3) states: “*The SFHP does not apply to ... a development or portion of a development that is subject to a formal written and binding agreement entered into prior to August 15, 2005, with the city or Santa Fe County in which the signatories agreed to provide affordable housing or payment in lieu thereof...*” Because the Zorro Blanco development is subject to the TC Annexation Agreement and TC Master Plan, the City Attorney concluded that the SFHP does not apply to the project. However, because the “portion of the development” at issue (Tract 51) was not subject to the affordable housing requirements of the prior Annexation Agreement, the City Attorney should have concluded that the SFHP therefore does apply to the Project.

**PLU staff determined that TCC has already met affordable housing requirements for Phase 2 under the Annexation Agreement.**

Staff’s claim is incorrect. Development in Phase 2 is not yet complete. Every new development that comes forward impacts TCC’s ability to meet its affordable housing obligations under the Annexation Agreement. According to TCC, although roughly 41% affordability had been achieved as of the last approved development in Phase 2C, this percentage would drop to approximately 35% if no new affordable housing is required for the remainder of the phase. Therefore, the affordable housing requirements under the Annexation Agreement have not been fully satisfied for Phase 2. Each new residential development must contribute affordable housing in some manner in order to meet these requirements for the Tierra Contenta overall.

The implications of staff’s faulty math are significant. It risks putting TCC out of compliance with the Annexation Agreement. Moreover, there are still remaining tracts of land remaining to be developed in Phase 2. The addition of 165 market-rate units to Phase 2 will reduce the level of affordability achieved to-date, such that the remaining tracts will have to increase their percentage of affordable housing over and above the 40% requirement, resulting in financial harm to TCC and other Phase 2 landowners.

**Remedy**

When Tract 51 was rezoned to C-1, as was required by the Annexation Agreement, the City could have imposed a condition of approval requiring compliance with the SFHP should the property be developed for residential use. It is unlikely that City staff would have recommended such a condition of approval on the rezoning of the parcel given that residential development was not permitted by the Master Plan and that no housing was being proposed for the site. That said, when the Applicant chose to pursue a residential Development Plan for the property, PLU staff in consultation with the City Attorney should have arrived at the conclusion that because Tract 51 was not subject to the affordable housing requirements of the Annexation Agreement, the SFHP does apply to the Project. This is the simplest and most straightforward path towards compliance with SFCC 14-8.11(D)(3), the Santa Fe Homes Program, and the Annexation Agreement.

## **Conclusion**

Despite staff's incorrect determinations with respect to affordable housing requirements, the Applicant continued to affirm their willingness to do the right thing and participate in the Santa Fe Homes Program. Meanwhile, the Planning Commission was misled, resulting in an outcome that causes harm to the City, to the Applicant, and to TCC.

We feel that the best path forward to rectify this situation would be for the City Manager to appeal the Planning Commission's decision on the Zorro Blanco Development Plan to the Governing Body. Chapter 14-3.17(B)(4) allows for such an appeal to be made by "City staff members acting in their official capacity." We respectfully request that in your capacity as City Manager, you appeal this matter so that the Governing Body has the opportunity to make a final decision that complies with Chapter 14 and allows the City to further its affordable housing goals, in accordance with the Santa Fe Homes Program.

Sincerely,



Mike Loftin  
CEO  
Homewise  
1301 Siler Rd. Building D  
Santa Fe, NM 87508  
[mloftin@homewise.org](mailto:mloftin@homewise.org)  
505-660-3354