

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

[REDACTED]

SAVE THE ELENA GALLEGOS,
a New Mexico Nonprofit Corporation,

Plaintiffs,

v.

[REDACTED]

CITY OF ALBUQUERQUE,
a New Mexico Municipal Corporation,

Defendant.

**ORDER GRANTING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY
JUDGMENT ON STANDING**

This matter comes before the Court upon Plaintiffs’ Motion for Partial Summary Judgment on Standing, which was filed on April 5, 2023 (the “Motion”). The Court has reviewed the Motion, Defendant’s April 18, 2023 response, and Plaintiffs’ May 4, 2023 reply.

Being fully advised, the Court finds that a hearing on this specific Motion is not necessary. *See, e.g.,* LR2-119(E) NMRA. *See also Nat’l Excess Ins. Co. v. Bingham*, 1987-NMCA-109, ¶ 9, 106 N.M. 325, 742 P.2d 537 (“In considering a motion for summary judgment, the court may, but is not required to, hold an oral hearing. Disposition of a motion for summary judgment, without oral argument, is appropriate when the opposing party has had an adequate opportunity to respond to movant’s arguments through the briefing process.” (internal citations omitted)); *Flagstar Bank v. Licha*, 2015-NMCA-086, ¶¶ 28 – 29, 356 P.3d 1102 (providing that

there is no authority requiring the district court to hold a hearing on a summary judgment motion) *abrogated on other grounds as recognized by PNC Mortg. v. Romero*, 2016-NMCA-064, ¶ 18, 377 P.3d 461. Nonetheless, on May 4, 2023, the Court held a hearing on May 4, 2023, on Defendant’s Motion for Summary Judgment where the issue of Plaintiffs’ standing was addressed.

The Court further finds that the material facts are undisputed and that the Motion should be granted. Plaintiffs, and each of them, have demonstrated sufficient injuries in fact to give them standing to seek to enforce the restrictions in the deed at issue here. *See* Undisputed Material Fact No. 1 in the Motion (the “Deed”). The relief they seek is a permanent injunction enforcing those restrictions in light of Defendant’s recent, specific (and perhaps ongoing) actions that Plaintiffs assert are contrary to the Deed’s restrictions. Thus, Plaintiffs have shown that their alleged injuries have been caused by Defendant and that those injuries may be redressed by a decision in their favor. *See, e.g., Forest Guardians v. Powell*, 2001-NMCA-028, ¶ 16, 130 N.M. 368. *See also id.* at ¶ 17 (providing that the plaintiffs there would have had standing if they were seeking redress from a specific, adverse action).

Defendant has conceded that it has considered building a visitor center in the Elena Gallegos Open Space. *See id.* at 5 – 6 (stating that “a feasibility study was conducted that included consideration of a Visitor/Education center *on* the Elena Gallegos Open Space . . .”) (emphasis added)). Although Defendant now states that it has abandoned the idea of building such a center in the Elena Gallegos, *id.* at 6, its planning efforts for such a structure to be built *somewhere* continue. *Id.* And, importantly, Defendant conceded during argument in the May 4, 2023 hearing that it could change its mind at any time and consider building the structure *in* the Elena Gallegos.

The Court, therefore, makes three findings that demonstrate these Plaintiffs have standing: (1) Defendant has not finalized its decision about where to put its planned Elena Gallegos visitor/education center, (2) Defendant's prior planning efforts included putting that structure *in* the Elena Gallegos, and (3) Plaintiffs have alleged and testified to their concrete injuries if the visitor/education center were to be constructed in the Elena Gallegos in the future. Thus, they have shown that they are "imminently threatened" with a "real risk of future injury" as a result of the alleged acts of Defendant. *See, e.g., ACLU of New Mexico v. City of Albuquerque*, 2008-NMSC-045, ¶ 11, 144 N.M. 471. In light of Defendant's previous and ongoing actions, the Court sees no reasons to limit Plaintiffs' standing to seek to enjoin the City's actions that Plaintiffs allege would violate the Deed's restrictions. *See, e.g., Forest Guardians*, 2001-NMCA-028, at ¶ 16 ("[S]tanding may be limited based upon prudential considerations.").

Turning now to the Deed's restrictions themselves, the Court finds and concludes that those restrictions are a covenant (or covenants) running with the land and that Plaintiffs have standing to seek to enforce those restrictions. *See, e.g., Dunning v. Buending*, 2011-NMCA-010, ¶ 11, 149 N.M. 260 (listing the three requirements to establish an enforceable covenant running with the land). All three *Dunning* requirements have been satisfied: the Deed's restrictions touch and concern the land, the original covenanting parties intended the covenant to run with the land, and the successor to that burden (here, Defendant) has and had notice of those burdens.

The only possible question based upon the undisputed facts is whether these Plaintiffs in particular have standing to enforce those covenants as set out in the Deed's restrictions. As stated above, the Court concludes that they do: Each Plaintiff benefits from the Deed's restrictions, and each Plaintiff is seeking to enforce those restrictions as covenants running with the land against

the party who bears that burden, Defendant City of Albuquerque. *See id.* at ¶ 14 (“Once the three requirements have been met, a covenant may be enforced against the party who bears the burden of the covenant by the party who receives the benefit of the burden.”).

Thus, Plaintiffs, and each of them, have standing to seek to enforce the restrictions in the Deed in their lawsuit here. However, the Court makes no ruling on the merits of Plaintiffs’ claims (*e.g.*, whether Defendant has violated the Deed’s restrictions or that a permanent injunction is the appropriate relief if Plaintiffs can establish those violations). Rather, the Court only concludes that Plaintiffs have standing to bring their claims against Defendant here because the restrictions in the Deed are covenants running with the land that Plaintiffs make seek to enforce.

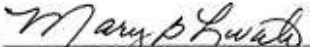
It is therefore ORDERED that Plaintiffs’ Motion for Partial Summary Judgment on Standing is **GRANTED**.

IT IS SO ORDERED.



Joshua A. Allison
District Court Judge

This certifies that a true and correct copy of this Order was served upon counsel through Odyssey.



Mary B. Lovato
TCAA to Division XXIII