

October 28, 2025

Dear Commissioner,

I am submitting this correspondence to each individual member of the Planning Commission and to the Town Attorney, at the request of a Commissioner who sought clarification of my statements that the Planning Commission's vote regarding Pagosa West on October 28, 2025, is procedurally invalid.

This correspondence documents multiple procedural and constitutional defects in that hearing, including the abuse of public participation through the weaponization of citizens' comments and the introduction of new evidence that was then used to justify decision-making during public comment.

#### 1. Timeline of Events

- October 15, 2025 — Public Notice and Opening of Public Comment

The Pagosa Springs SUN published the official public notice announcing that the Town had received and scheduled the Pagosa West Major Subdivision Sketch Plan for hearing.

The notice stated that written comments received within seven (7) days prior to the meeting would be forwarded to the Planning Commission, and encouraged members of the public to reach out with any questions or comments.

This language both invited and initiated public participation beginning on October 15, 2025, continuing through the hearing date.

At that time, Arena Labs, LLC was listed as the sole applicant. No notarized authorization from the property owner, Kisco, LLC, existed or was available to the public.

- October 25, 2025 — Public Comment Identifying Missing Authorization

I submitted a written public comment by email noting that the application lacked notarized owner authorization as required by LUDC §2.4.3(D), which limits applications to property owners or their authorized agents with written, notarized documentation.

- October 28, 2025 — Hearing and Appearance of Authorization Document

During the public-comment portion of the October 28 hearing, a Statement of Authority from Kisco, LLC was introduced for the first time in the middle of another citizen's comment.

The document was executed and notarized that same day, October 28, 2025, and did not exist when the application was filed, noticed, or when public comment opened.

Its sudden appearance mid-comment deprived the public of the opportunity to review or respond to new evidence introduced during the hearing.

## 2. Abuse and Weaponization of Public Participation

My October 25 public comment, as well as others' questioning ownership and authorization, were subsequently weaponized — used to prompt the creation of the notarized Statement of Authority that the Town and applicant then relied upon to justify proceeding with a hearing that should have never been scheduled to begin with, in order to attempt to cure a fatal defect in the application.

This constitutes an abuse of public participation.

Public comment is designed to ensure transparency and accountability, not to help supply or help to manufacture missing documentation necessary for an application's legal standing.

Because the Town explicitly encouraged citizens to participate and then used that participation to attempt to cure a fatal defect in the record, the process was both misleading and procedurally improper.

This conduct constitutes:

- Denial of procedural due process under Article II, Section 25 of the Colorado Constitution;
- Arbitrary and capricious administrative action under C.R.S. §24-4-106(7); and
- A potential deprivation of rights under 42 U.S.C. §1983, as it converted protected participation into a mechanism to justify unlawful government action.

## 3. Introduction of New Evidence Used to Justify Decision-Making

The Statement of Authority was introduced mid-meeting and was not included in the publicly available packet.

Planning Director James Dickhoff stated that the document “did not need to be included,” contradicting both LUDC §2.4.5 and C.R.S. §24-6-402(2)(c), which require that all materials relied upon for quasi-judicial decisions be available to the public contemporaneously.

This document—executed the same day as the hearing—was then used to justify moving forward with deliberation and a vote, despite being untimely, incomplete, and not part of the original record.

Because the Statement of Authority was relied upon as a basis for action, its introduction was not merely procedural but substantive, directly influencing decision-making.

During the meeting, I was told repeatedly that the Commission would rely on Mr. Dickhoff's personal “feelings” about the sufficiency of the document to guide their decision, rather than adhering to the objective procedural requirements of the Land Use Development Code.

This substitution of administrative discretion for legal compliance compounds the procedural defect and further undermines the legitimacy of the hearing and its outcome.

The use of newly created evidence to substantiate a recommendation after public comment had already commenced—combined with subjective reliance on “feelings” in place of codified standards—violates both due process and the Colorado Open Meetings Law, and renders the hearing procedurally defective.

#### 4. Applications Cannot Be Amended Post-Submittal

Under the Town's Land Use Development Code, applications cannot be amended post-submittal, particularly in the middle of an enforcement or quasi-judicial hearing.

The late-filed Statement of Authority constituted a substantive amendment to an otherwise incomplete application and therefore could not lawfully be considered by the Commission.

As affirmed in *Archuleta v. Roane*, local officials may not treat binding procedural law as optional or rely on personal discretion when statutory requirements are clear.

If the Planning Commission or Development Director disagree with the LUDC's requirements, their only lawful remedy is to petition Town Council for an amendment, not to ignore or reinterpret the Code.

This principle was stated by several members of the public earlier in the evening and was subsequently disregarded, indicating the Commission proceeded with knowledge of the procedural defect.

Such disregard of controlling law, particularly after public notice of the defect, suggests the Commission may have acted with malice or reckless disregard for due process and the limits of its own authority.

#### 5. Ongoing Misrepresentation of Applicant Standing

Even after the Statement of Authority was introduced, ArenaLabs, LLC remains listed as the sole applicant on all materials submitted to the Town.

No disclosure has been made identifying ArenaLabs as representing Kisco, LLC, the property owner of record.

This omission violates LUDC §2.4.3(D), which requires that any authorized agent act on behalf of the owner with notarized documentation submitted as part of the application.

Therefore, the record continues to misrepresent applicant standing, and the application remains legally incomplete.

#### 6. Procedural Invalidity

Because the application lacked notarized owner authorization when accepted, noticed, and opened for comment, it was incomplete under LUDC §§2.4.2(C)(2) and 4.3.D.

The Statement of Authority executed October 28 pertains only to title authority and does not confer power of attorney for land-use representation.

The application reflects ArenaLabs LLC's private interests as a pending buyer, while Kisco, LLC is actively divesting through the pending sale of the lots. None of the materials submitted represent Kisco's continuing ownership interest.

Accordingly:

- The Pagosa West Sketch Plan application was never legally complete;
- The October 28 hearing was improperly convened and void ab initio; and
- Reliance on the resulting recommendation exposes the Town to judicial reversal under Rule 106(a)(4) and potential TABOR violations if public funds or grants are expended based on the invalid action.

#### 7. Requested Action

I respectfully request that:

- The Town Attorney issue a written legal opinion acknowledging that the October 28, 2025 hearing was procedurally invalid and that its outcomes are void;
- The Town suspend all processing of the Pagosa West application pending lawful resubmittal and renote; and
- This correspondence be entered into the official record to preserve accuracy and transparency.

Because the Town's public notice explicitly encouraged citizens to reach out and participate, the Town bears full responsibility for ensuring that such participation is not manipulated to legitimize or cure procedural defects, and that newly introduced evidence or subjective opinions are not used to justify decision-making or sustain a hearing that should never have been scheduled.

No amount of post-hoc documentation, administrative belief, or personal discretion can retroactively legalize an incomplete application or cure a fatal procedural defect under the LUDC.

Respectfully,

Rachel Suh  
117 Maple Glen Pl  
Pagosa Springs, CO 81147

cc: Planning Commission Members; Town Attorney"