

PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
600 2nd Street NW, 3rd Floor, 87102
P.O. Box 1293, Albuquerque, NM 87103
Office (505) 924-3860 Fax (505) 924-3339



CERTIFICATE OF ZONING

July 5, 2019

Steven and Kara Grant
201, 207, 209 High St. NE
Albuquerque, NM 87102

Project Numbers: 1005206/17EPC-40054 and 17EPC-40067

FINAL ACTION: December 20, 2018- City Council

LEGAL DESCRIPTION:

Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning's Highlands Addition, zoned SU-2/MR, to SU-2/SU-1 for Bed and Breakfast to Include Special Events, located on High St. NE, between Central Ave. NE and Dr. Martin Luther King, Jr. Ave. NE, containing approximately 0.6 acre. (K-14)

Staff Planner: Catalina Lehner

AFTER FINAL ACTION BY THE CITY COUNCIL AND THE COMPLETION OF AN UPDATED AS-BUILT SITE PLAN, THE ZONING ON THE ABOVE REFERENCED PROPERTY IS NOW CHANGED AS FOLLOWS:

FROM: *SU-2/M-R (Mixed Residential)*


TO: *SU-2/SU-1 for Bed and Breakfast to Include Special Events,
with the following special event limitations:*

- A. Small intimate gatherings of families (50 persons or less) for birthday parties, graduations, showers, weddings, or other like events; and
- B. Corporate events, educational trainings or cooking classes, all with no more than 50 guests total whether they be overnight guests of the bed and breakfast or not;
- C. Amplified sounds shall be permissible subject to City ordinance restrictions on sound;
- D. All events shall be only between the hours of 12:30 pm and 10:00 pm;
- E. There shall be no special events during the months of November through March of any year;
- F. No more than a total of eighteen (18) special events are permitted between the months of April through October.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of the zoning is secured. Approval of a zone map amendment does not constitute approval of

plans for a building permit. Site development plans and building plans need to be reviewed, approved and signed-off by the Environmental Planning Commission (EPC), the Development Review Board (DRB), the Design Review Committee (DRC) and/or the Building and Safety Division as applicable, and as required by the site's zoning, before a building permit can be issued.

Sincerely,


for David S. Campbell
Planning Director

DSC/CLL

cc: Dayan Hochman-Vigil, Roybal-Mack & Cordova, 1121 4th St. NW, Ste. 10, ABQ, NM 87102
Broadway Central Corridors Partnership, Inc. Jim Maddox, 515 Central Ave. NE, ABQ, NM 87102
Broadway Central Corridors Partnership, Inc. Rob Dixon, P.O. Box 302, ABQ, NM 87102
Huning Highland Hist. Dist. Assoc., Bonnie Anderson, 522 Edith SE, ABQ, NM 87102
Huning Highland Hist. Dist. Assoc., Ann Carson, 416 Walter SE, ABQ, NM 87102
Larry Tucker, 210 Walter St. NE, ABQ, NM 87102
Sam Kochansky, 423 Walter St. SE, ABQ, NM 87102
Bruce Redford, 202 Edith Blvd NE, ABQ, NM 87102
Lauren Austin, 121 Edith NE, ABQ, NM 87102
Kevin Morrow kmorrow@cabq.gov
Kathy Berglund kberglund@cabq.gov
Code Enforcement Division
Michelle Gricius, AGIS Division
File

Project Number: 1005206/17EPC-40054 and 17EPC-40067 (Grant's property- Huning Highland)

LEGAL DESCRIPTION:

Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning's Highlands Addition, zoned SU-2/MR, to SU-2/SU-1 for Bed and Breakfast to Include Special Events, located on High St. NE, between Central Ave. NE and Dr. Martin Luther King, Jr. Ave. NE, containing approximately 0.6 acre.

Zoning certificate issued for:

SU-2/SU-1 for Bed and Breakfast to Include Special Events, with the following special event limitations:

- A. Small intimate gatherings of families (50 persons or less) for birthday parties, graduations, showers, weddings, or other like events; and
- B. Corporate events, educational trainings or cooking classes, all with no more than 50 guests total whether they be overnight guests of the bed and breakfast or not;
- C. Amplified sounds shall be permissible subject to City ordinance restrictions on sound;
- D. All events shall be only between the hours of 12:30 pm and 10:00 pm;
- E. There shall be no special events during the months of November through March of any year;
- F. No more than a total of eighteen (18) special events are permitted between the months of April through October.

The approved SU-1 zone above converts to the MX-T zone in the IDO.

**Notice of Decision
City Council
City of Albuquerque
December 20, 2018**

AC-18-14 Project #1005206/17EPC-40054 & 17EPC-40067: Dayan Hochman, of Roybal-Mack & Cordova, P.C., agents for Larry Tucker, appeal the decision of the Environmental Planning Commission (EPC) on remand to Approve a Sector Development Plan Map Amendment (Zone Change) and an associated, As-Built Site Development Plan for Building Permit for an approximately 0.6 acre site known as Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning's Highlands Addition

Decision

On December 17, 2018, by a vote of 7-1-1, the City Council voted to deny the appeal and affirm the decision of the Environmental Planning Commission by accepting and adopting the recommendation and findings of the Land Use Hearing Officer (LUHO) with one amendment the LUHO findings: Where the LUHO found that approximately twenty-four (24) special events per year should be permitted, the Council found that no more than eighteen (18) per year should be permitted.

Against: Gibson
Excused: Winter

**IT IS THEREFORE ORDERED THAT THE APPEAL IS DENIED, THE EPC'S
DECISION IS AFFIRMED, AND THE SITE DEVELOPMENT PLAN FOR BUILDING
PERMIT AND THE ZONE MAP AMENDMENT FROM SU-2 MR TO SU-2/SU-1 FOR
"BED AND BREAKFAST AND TO INCLUDE SPECIAL EVENTS" ARE APPROVED
WITH THE FOLLOWING SPECIAL EVENT LIMITATIONS:**

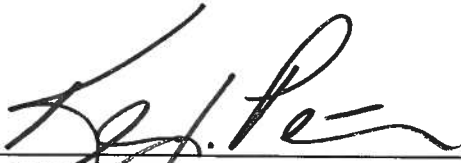
- A. SMALL INTIMATE GATHERINGS OF FAMILIES (50 PERSONS OR LESS) FOR BIRTHDAY PARTIES, GRADUATIONS, SHOWERS, WEDDINGS, OR OTHER LIKE EVENTS; AND**
- B. CORPORATE EVENTS, EDUCATIONAL TRAININGS OR COOKING CLASSES, ALL WITH NO MORE THAN 50 GUESTS TOTAL WHETHER THEY BE OVERNIGHT GUESTS OF THE BED AND BREAKFAST OR NOT;**
- C. AMPLIFIED SOUNDS SHALL BE PERMISSIBLE SUBJECT TO CITY ORDINANCE RESTRICTIONS ON SOUND;**
- D. ALL EVENTS SHALL BE ONLY BETWEEN THE HOURS OF 12:30 PM AND 10:00 PM;**
- E. THERE SHALL BE NO SPECIAL EVENTS DURING THE MONTHS OF NOVEMBER THROUGH MARCH OF ANY YEAR;**

F. NO MORE THAN A TOTAL OF EIGHTEEN (18) SPECIAL EVENTS ARE PERMITTED BETWEEN THE MONTHS OF APRIL THROUGH OCTOBER.”

Attachments

1. Land Use Hearing Officer's Recommendation
2. Action Summary from the December 17, 2018 City Council Meeting

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.



Klarissa J. Peña, President
City Council

Date: 1-8-19

Received by: Stephan Casaus
City Clerk's Office

Date: 01/08/2019

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**BEFORE THE CITY OF ALBUQUERQUE
LAND USE HEARING OFFICER**

APPEAL NO. AC-18-14

Related to Appeal AC-18-6

Project No. 1005206; 17-EPC-40054 and 17-EPC-40067; Rehearing

LARRY TUCKER, Appellant,

and

KARA GRANT and STEVEN GRANT, Party Opponents.

1 I. BACKGROUND & HISTORY

2 This is the second appeal regarding the issues and uses approved by the Environmental
3 Planning Commission (EPC) in this matter. In the first appeal from the decision of the EPC, the
4 EPC granted the zone change application of the Party Opponents, Kara Grant and Steven Grant
5 [R. 107]. That decision was appealed by the Appellant, Larry Tucker to the City Council, and the
6 City Council referred the appeal to this Land Use Hearing Officer (LUHO) [R. 264]. After an
7 appeal hearing, I recommended that the EPC's decision be reversed [R. 73]. Subsequently, the
8 City Council rejected that recommendation and held a hearing. The City Council then remanded
9 the appeal to the EPC to address and resolve specific issues and in doing so gave the EPC express
10 instructions [R. 70].

11 On September 13, 2018, the EPC held a scheduled public hearing on the City Council's
12 remand instructions and again approved the zone change application, but this time under a different
13 SU-1 zone classification [R. 28]. Mr. Tucker then timely appealed the EPC's remand decision to
14 the City Council and the City Council referred the second appeal to this LUHO. A LUHO appeal

15 hearing was held on November 16, 2018. The following relevant historical facts regarding the first
16 appeal have not changed, were well-stated in the first appeal LUHO recommendation and for
17 simplicity, to some extent, I will restate them here.

18 Because the appeal originates from a zone-change and a sector plan amendment decision of
19 the EPC regarding the City of Albuquerque Comprehensive Zoning Code (Code) which has been
20 replaced by the IDO, the IDO is inapplicable to this matter. The requested zone-change alters the
21 existing SU-2-MR zone on three abutting lots and homes to SU-2-SU-1 so that the applicants can
22 use all three homes as a bed and breakfast establishment and have special events such as weddings,
23 corporate retreats, reunions, and other similar gatherings on site [R. 50]. The addresses of the three
24 lots are 207, 209, and 201 High Street, NE. The three lots and homes comprise the zone-change
25 site. The one-change applicants, Kara and Steven Grant, purchased the three properties just over
26 fifteen years ago [R. 282]. The applicants reside at 201 High Street, NE, own all three homes, and
27 operate a lawful bed and breakfast establishment out of the home located at 207 High Street, NE.

28 The SU-2 and the existing MR zone are established at the site by the Huning Highland Sector
29 Development Plan (HHSDP) [See HHSDP, 31-33]. In the HHSDP, the SU-2 zone corresponds to
30 a Special Neighborhood zone and the MR zone corresponds to the R-1 zone for residential uses in
31 the City's Zoning Code [HHSDP, 31]. In December 2008, the City Zoning Hearing Examiner
32 (ZHE) granted a conditional use permit to Kara and Steven Grant to operate a bed and breakfast
33 establishment at the home located at 207 High Street, NE [R. 66A].¹ It is undisputed that under
34 the existing SU-2-MR zone, the HHSDP allows bed and breakfast uses as conditional uses
35 [HHSDP, 32]. The applicants' December 2008 conditional use permit does not include holding

¹ I note that the bate-stamped pages for the record in this appeal ends at page 315. However, there are 507 pages of this record. For clarity, after page number 315, I will refer to the previous record bate-stamping.

36 special events at the 207 High Street, NE location [R. 66A]. Each of the three lots have historic
37 residential homes on them that are further regulated through the Landmarks and Urban
38 Conservation Commission (LUCC).

39 In 2017, a neighbor filed a complaint with the City Zoning Enforcement Division because
40 the applicants had been holding special events at 207 High Street, NE [R. 34A]. The City issued a
41 Notice of Violation to the applicants for holding special events without a permit [R. 34A]. The
42 applicants met with City Zoning Staff and were directed to seek a zone-change so that they could
43 lawfully hold such special events and expand their bed and breakfast use to all three lots [R. 34A].

44 On August 1, 2017, the Grants met with City Planning Staff in a Pre-Application Review
45 Team (PRT) meeting [R. 109A]. Subsequently, the Grants submitted their application for the zone-
46 change on October 12, 2017 [R. 87A]. The applicants' Site Plan reveals that the combined three
47 residential properties total .6-acres of land. [R. 142A, 27A]. In addition, although not in the EPC
48 record, Steven and Kara Grant testified in the first LUHO hearing that their proposed bed and
49 breakfast use will have a total of eleven guest rooms in the three historic homes. The applicants
50 entered into a lease agreement with a nearby Church for overflow parking [R. 103A]. Finally, the
51 record identifies the functional classifications of the two streets that abut the Grants' proposed bed
52 and breakfast, Copper Avenue and High Street, as local streets [R. 36A].

53 In this second appeal, Appellant, Larry Tucker contends first that the EPC failed to follow
54 the explicit instructions of the City Council in its remand instructions. I agree. Next, Appellant
55 raises the same issues he raised in the first appeal regarding applicable criteria of R-270-1980.
56 Appellant contends that the EPC failed to meaningfully apply three significant applicable
57 standards of R-270-1980 to the zone-change application. Specifically, Appellant contends that the
58 applicants could not show that the allowed "special events" use approved by the EPC with the

59 zone-change will not cause harm to his residential use as required by R-270-1980 § 1.E. Appellant
60 contends that the EPC should have set reasonable conditions to mitigate harmful effects from the
61 special events allowed with the zone-change. Appellant further claims that because the zone-
62 change creates a spot-zone, there is insufficient evidence in the record to support the EPC's finding
63 that the zone-change "clearly facilitates realization of the Comprehensive Plan" [R-270-1980 §
64 1.I(1)]. Finally, regarding R-270-1980, Appellant claims that there is insufficient evidence in the
65 record demonstrating that the existing MR zone is inappropriate because all the goals and policies
66 the EPC found are furthered by the uses with the new zone are also applicable in the existing zone.²

67

68 **II. STANDARD OF REVIEW**

69 A review of an appeal is a whole record review to determine if the EPC erred:

- 70 1. In applying adopted city plans, policies, and ordinances in arriving at the
- 71 decision;
- 72 2. In the appealed action or decision, including its stated facts;
- 73 3. In acting arbitrarily, capriciously or manifestly abusive of discretion.

74 At the appeal level of review, the decision and record must be supported by a preponderance of
75 the evidence to be upheld. However, the standard of proof for the EPC is substantial evidence. The
76 LUHO is advisory to the City Council. If a remand is necessary to clarify or supplement the record,
77 or if the remand would expeditiously dispose of the matter, the LUHO has authority to recommend
78 that the matter be remanded for reconsideration by the EPC. The City Council may grant the appeal
79 in whole or in part, deny it, or remand it to the LUHO or to the EPC.³

2 Although the City Council rejected this LUHO's recommendation in AC-18-6, the full analysis of these issues can be found in that recommendation at R. 73-88.

3. See Rules of the Land Use Hearing Officer adopted by the City Council, February 18, 2004. Bill No. F/S OC-

80 **III. DISCUSSION**

81 In its remand to the EPC, the City Council did not instruct the EPC to hear the application
82 *de novo* (as if it had not considered the application before). That is, the City Council explicitly
83 instructed the EPC to clarify specific findings from its previous decision. The City Council did not
84 instruct the EPC to reconsider the spot zone justifications. Therefore, I will not consider the
85 analysis that R-270-1980, §1, I(1) requires. However, regarding the City Council’s explicit
86 instructions to the EPC to clarify its findings regarding R-270-1980 § 1, (D)(3), I find that the EPC
87 failed do perform any comparative analysis as required. City Council remand instruction number
88 1 states:

89 “Clarify findings required by R270-1980(D) to identify how, if at all, the
90 proposed zoning is more advantageous to the community as articulated by the
91 Comprehensive Plan or other City master plan...“**as compared to the existing**
92 **zoning at the site[”]** (emphasis added) [R. 70].
93

94 First the focus of this instruction is correctly on the zoning and not the uses. Remand
95 Instruction number 1 clearly requires that the EPC compare the policy advantages of maintaining
96 the existing zone with the policy advantages of the proposed zone. This is consistent with the intent
97 and language of R-270-1980 § 1(D)(3). After reviewing the entire record, I find that the EPC did
98 not follow the City Council’s instructions. All that the EPC did was add more Comp. Plan policies
99 (from those in its first decision) to support its findings. Certainly, that is helpful to the overall
100 analysis, but it is not the crux of the problem with its decision in the first place. I note that in the
101 first appeal recommendation, I expressly found that the comparative analysis is a necessary
102 requirement of R-270-1980 § 1(D)(3). Simply adding more policy justifications without the
103 comparative analysis does not fully address the R-270-1980 § 1(D)(3), but more importantly, it

04-6 and codified in Section 14-16-4-4 of the Zoning Code.

104 does not address the City Council’s clear concern and remand instruction. This is so because R-
105 270-1980 § 1(D)(3) requires a comparative analysis of the advantages of the proposed zone to the
106 existing zone.⁴ In my first recommendation to the City Council, I found that the EPC’s decision
107 lacked substance precisely because the EPC unsuccessfully satisfied all that R-270-1980(1)(D)(3)
108 requires. The precise language of R-270-1980 § 1(D)(3) in relevant part expressly requires that the
109 MR zone be shown to be “inappropriate because:

110 A different use category is more advantageous to the community, as articulated
111 in the Comprehensive Plan or other City master plan” [R. 270-1980 § 1.D(3)].
112

113 As I found in the first recommendation, the polices brought to bear on the analysis must both
114 demonstrate that the existing zone is inappropriate while simultaneously showing that the proposed
115 zone is more advantageous to the community than maintaining the existing zone. The proof for the
116 inappropriateness of the existing zone and the proof that the proposed zone is more advantageous
117 to the community arise from the policies in the applicable rank plans. In this matter it is the
118 Comprehensive Plan and the HHSDP. Conversely, if the Comprehensive Plan policies that are
119 applied to support the zone-change can similarly be applied to support the *status quo* or the
120 appropriateness of the existing zone, those Comprehensive Plan policy rationales necessarily fall
121 short to satisfy the full analysis required under R-2701980 § 1.D(3). In my previous
122 recommendation, I went through each of the policies put forth by the EPC that support the
123 proposed zone and showed how these same policies also support keeping in place the existing
124 zone. I did this not to show that there was an insufficient quantity of policies to support the zone-
125 change, but I did this pain staking analysis to show that each of the policies proffered to support

4 I note that in the remand instruction there is a minor error with the citation to the “more advantageous” section of R-270-1980.

126 the zone-change also support maintaining the existing zone. It is not a quantitative analysis. It is,
127 however, a qualitative one based on what R-2701980 § 1.D(3) requires.

128 Because “stability of land use and zoning is desirable...” maintaining the *status quo* is an
129 important policy goal of R-2701980. See R-270-1980 § 1.B. Thus, the comparative analysis is
130 essential and serves an important policy purpose. In the EPC’s first decision, the EPC failed to
131 perform the comparative analysis that R-2701980 § 1.D(3) requires. Similarly, in its remand
132 decision, even though the City Council explicitly instructed the City Council to perform the
133 required comparative analysis, for unknown reasons, it again failed to do so.

134 Notwithstanding, to avoid another remand and another similar outcome, I have reweighed
135 the evidence, and conclude that the proposed zone-change for the § 14-16-2-22(B)(35) *combined*
136 *uses* (bed and breakfast and special events use) satisfy R-270-1980 § 1.D(3). I note that the
137 proposed combination of uses, as opposed to the bed and breakfast use on its own, changes the
138 comparative analysis and the result I previously recommended. Quite simply, the combination of
139 uses (bed and breakfast and the “special events” use) are not permissive or conditional uses in the
140 existing zone. Because the combination of uses, as § 14-16-2-22(B)(35) uses, can technically be
141 considered not permissible uses in the existing zone and if reviewed not as a § 14-16-2-22(B)(7)
142 use in the existing zone, there is an argument that supports the zone-change under the comparative
143 analysis of R-2701980 § 1.D(3). Whether the analysis could bring about a different result is not
144 what is at stake here. What is at stake is whether there is substantial evidence to support the EPC’s
145 decision. Under § 14-16-2-22(B)(35), there is.

146 I note that Appellant asks that I find that the B(35) category is being used as an end run
147 around the B(7) use category. Appellant believes that because the B(7) category is expressly for
148 bed and breakfast uses, the EPC should have judged the application under that category. However,

149 it is not my role to decide which Zoning Code section the EPC should “pigeon hole” an applicant’s
150 proposed uses in, and therefore whether there is parity of this classification with the Zoning Code’s
151 intent. Whether the B(35) zoning classification as opposed to the B(7) is a prudent classification
152 for the uses is a policy decision for the EPC and the City Council.

153 Therefore, the policy rationales proffered for the combination of uses cannot be said to also
154 support maintaining the exiting zone (as I concluded in the first recommendation), because the
155 existing zone does not allow the combination of uses. Accordingly, I find that the EPC did not err
156 in finding that the uses as § 14-16-2-22(B)(35) uses can be more advantageous to the community
157 as compared to the existing MR zone classification for the simple fact that the combination of uses
158 proposed are not permissible in the MR zone. I also find that there is substantial evidence in the
159 record to support that finding.

160 In its remand, the EPC did sufficiently address the second remand instruction regarding
161 which SU-1 ordinance provision the EPC approved the uses under. The EPC categorized the “bed
162 and breakfast uses” and the “special events” uses as uses that satisfy § 14-16-2-22(B)(35). This
163 section is a “catch-all” for:

164 “Use combinations not adequately allowed and controlled in other zones,
165 relative to a specific site. Signs as permitted and regulated by the Planning
166 Commission” [§ 14-16-2-22(B)(35)].
167

168 Because the applicants’ bed and breakfast uses and the “special events” use do not satisfy
169 the limitation placed on bed and breakfast uses under § 14-16-2-22(B)(7) or under the definition
170 of a bed and breakfast under § 14-16-1-5, the EPC chose to characterize the uses as two distinctive
171 “combinations” of separate uses under § 14-16-2-22(B)(35). Again, whether the occasional special
172 events the applicants intend to have at the bed and breakfast location is a separate and distinct
173 primary use rather than an accessory use is a policy determination the EPC has authority to make.

174 Whether it is good policy or not is not for me to determine. I find that the EPC’s characterization
175 of the applicants’ uses satisfies § 14-16-2-22(B)(35).

176 Regarding the third remand instruction, I find that the EPC erroneously relieved itself of
177 following the City Council’s very explicit instruction. City Council remand instruction number 3
178 states:

179 “identify and appropriately limit the ‘special events’ that will be permitted
180 relative to type, size, hours, and frequency” [R. 70].
181

182 First, the EPC failed to “identify” what the term “special events” includes in this newly
183 created and undefined primary use. If the EPC is going to create a new separate and distinct
184 “special events” use that is not merely an accessory use to the Bed and Breakfast use, it stands up
185 to reason and prudence that it must also minimally define it. But, more importantly, in its remand
186 instructions, the City Council expressly instructed the EPC to “identify” the use and to place limits
187 on it. The EPC, for whatever reason, failed to do so.

188 Second, apparently the EPC concluded that the Zoning Enforcement Division of the City
189 cannot enforce any zoning conditions placed on the “special events” use. This is a poor reason on
190 two levels. First, land use restrictions are enforceable by the City. Just because the land use
191 restrictions concern the day-to-day use itself does not make them somehow unenforceable.
192 Appellant or any other private citizen who is affected by the special events use can also move to
193 enforce such conditions in a court of law.

194 As an example of the City setting conditions to land uses, the ZHE and the LUCC regularly
195 sets limits and conditions on uses. In fact, although inapplicable to this matter, but as another
196 example to demonstrate how limits on day-to-day land uses are commonplace and presumably
197 enforceable, under the IDO, “special events” at bed and breakfast locations are limited to 6 days
198 per year [IDO, § 14-16-4-3(D)(12)(e)(4), p. 146]. It is irrational to believe that such a restriction

199 in the IDO is unenforceable. Moreover, limitations and conditions on land uses are established
200 with regularity by the EPC, ZHE, and the LUCC. There is a presumption that the City can enforce
201 land use restrictions. In addition, private citizens, like Appellant, have a right to seek enforcement
202 in the Courts in the event the City cannot or does not.

203 However, instead of identifying and limiting the proposed special events use, the EPC
204 abdicated the City Council’s clear instruction and concluded that this endeavor should be left to
205 Mr. Tucker and the applicants to resolve on their own, *after* the EPC approved the uses, through a
206 “private agreement” retroactively [EPC Decision, Finding 16, R. 12]. Identifying and placing
207 reasonable limitations on “special events” in an otherwise residential neighborhood should not
208 have been so cavalierly avoided or discounted by the EPC. This is especially true for the
209 circumstances in this matter because the “special events” use approved by the EPC is not merely
210 an accessory use with the primary bed and breakfast use. It was considered by the EPC as one of
211 a combination of uses under § 14-16-2-22(B)(35). By its definition, this combination of uses is
212 “*not adequately allowed or controlled in other zones...*” and therefore it needs controls primarily
213 because it is surrounded by residential uses. In addition, because of its location (surrounded by
214 residential uses), common sense necessitates identifying the use and setting reasonable limitations
215 on it. More importantly though, the City Council explicitly instructed it.

216 However, despite the EPC’s failure, there is evidence in the record that the applicants and
217 Mr. Tucker through his counsel attempted to assist the EPC with resolving remand instruction
218 number 3. The applicants submitted how they proposed to identify and limit their special events
219 [R. 66]. Similarly, Mr. Tucker submitted to the EPC proposed limitations for the special events
220 [R. 68-69].

221 Because the City Council has delegated to the LUHO its authority to reweigh evidence in the

222 record, and because the EPC has twice failed to resolve this basic, yet paramount issue, I am tasked
223 with stepping into the EPC's shoes to resolve (in an advisory capacity) City Council remand
224 instruction number 3. In doing so, I first find that "special events" are well defined and limited by
225 the applicants in their proposal. Mr. Tucker proposed greater restrictions than those proposed by
226 the applicants in two ways: 1) occupancy and 2) frequency of special events. While Mr. Tucker
227 believes the "special events" should be limited to 25 guests, the applicants suggested 50. Regarding
228 frequency of "special events," Mr. Tucker suggests that such events should be limited to 6 per
229 year.⁵ And, the applicants suggest a number presumably based on their seasonal demand for such
230 events.

231 I believe the frequency of such events should have limits because the use is surrounded by
232 residential uses. But, I am mindful that it should not merely be an arbitrary number. I find that the
233 following limitations are appropriate. I recommend that the City Council adopt the following
234 restriction for all special events at the zone change site:

- 235 1. That the special events shall be limited to:
- 236 a. Small intimate gatherings of families (50 persons or less) for birthday parties,
237 graduations, showers and weddings and other like events;
- 238 b. Corporate events, educational trainings or cooking classes, all with no more than
239 50 guests total whether they be guest in the Bed and Breakfast or not;
- 240 2. Amplified sound shall be permissible subject to City ordinance restriction on sound;
- 241 3. All events shall be only between the hours of 12:30 PM to 10:00 PM;
- 242 4. There shall be no special events during the months of November, December, January,

5. I note that under the new Integrated Development Ordinance (IDO), which is not applicable to the zone-change application in this matter, bed and breakfast special events are limited to 6 per year.

- 243 February, and March of any year;
- 244 5. Between the months of April through June no more than one event per week shall be
- 245 allowed;
- 246 6. Between the months of July through August only one event per month shall be allowed
- 247 7. Between September through October, no more than one event per week shall be allowed.⁶
- 248

249 **IV. CONCLUSION**


250 For all the reasons described above, and for finality for the parties involved, I respectfully

251 recommend that Appellants' appeal be granted in part and denied in part. Specifically, I

252 recommend that the City Council grant the zone change and place reasonable limits on the special

253 events use as outlined above.

254


Steven M. Chavez, Esq.
Land Use Hearing Officer
November 26, 2018

Copies to:

Appellants
Party Opponent
City Staff

6. All these restrictions were proposed and stipulated to by the applicants in the record and at the LUHO hearing.



City of Albuquerque

Albuquerque/Bernalillo
County
Government Center
One Civic Plaza
Albuquerque, NM 87102

Action Summary

City Council

Council President, Klarissa J. Peña, District 3
Vice-President, Cynthia D. Borrego, District 5

Ken Sanchez, District 1; Isaac Benton, District 2
Brad Winter, District 4; Patrick Davis, District 6
Diane G. Gibson, District 7; Trudy E. Jones, District 8
Don Harris, District 9

Monday, December 17, 2018

5:00 PM

Vincent E. Griego Chambers
One Civic Plaza NW

Albuquerque/Bernalillo County Government Center

TWENTY-THIRD COUNCIL - TWENTY-FIFTH MEETING

1. ROLL CALL

Present 9 - Klarissa Peña, Cynthia Borrego, Ken Sanchez, Isaac Benton, Brad Winter,
Patrick Davis, Diane Gibson, Trudy Jones, and Don Harris

2. MOMENT OF SILENCE

Pledge of Allegiance - Ken Sanchez, Councilor, District 1

3. PROCLAMATIONS & PRESENTATIONS

4. ECONOMIC DEVELOPMENT DISCUSSION

5. ADMINISTRATION QUESTION & ANSWER PERIOD

6. APPROVAL OF JOURNAL

December 3, 2018

7. COMMUNICATIONS AND INTRODUCTIONS

8. REPORTS OF COMMITTEES

Finance and Government Operations Committee - December 10, 2018

Deferrals/Withdrawals

- b. R-18-78 A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 115 Charleston St SE 87108 Within The City Limits Of Albuquerque, New Mexico Is So Ruined, Damaged And Dilapidated As To Be A Menace To The Public Comfort, Health, Peace Or Safety And That It Is To Be Required To Be Removed (Davis, by request)
- A motion was made by Councilor Davis that this matter be Postponed to January 23, 2019. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

9. CONSENT AGENDA: {Items may be removed at the request of any Councilor}

- a. EC-18-236 Transmitting the Year End Status Report on FY/18 Objectives
- A motion was made by Vice-President Borrego that this matter be Receipt Be Noted. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- b. EC-18-237 Legal Department's Quarterly Litigation Reports for 2nd, 3rd and 4th Quarters of FY 2018
- A motion was made by Vice-President Borrego that this matter be Receipt Be Noted. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- c. EC-18-240 FY18 Goal #1 Priority Objective #5 - Status Report Vehicle Wrap Program
- A motion was made by Vice-President Borrego that this matter be Receipt Be Noted. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- d. EC-18-241 Reporting of expenditures by the Albuquerque Police Department related to the implementation of the Court Approved Settlement Agreement (CASA) - Fourth Quarter Fiscal Year 2018
- A motion was made by Vice-President Borrego that this matter be Receipt Be Noted. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- e. EC-18-242 FY 2019 State Certification of Budget
- A motion was made by Vice-President Borrego that this matter be Approved. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

- f. EC-18-266 Approval of the Third Supplemental Agreement for Professional Technical Contract- Route 66 Veterinary Emergency
- A motion was made by Vice-President Borrego that this matter be Approved.**
The motion carried by the following vote:
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- *g. EC-18-270 State of New Mexico Department of Public Safety ("DPS") Lease and Agreement
- A motion was made by Vice-President Borrego that this matter be Approved.**
The motion carried by the following vote:
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- h. EC-18-272 Mayor's Recommendation of Dekker/Perich/Sabatini for On Call Architectural Services for the Albuquerque International Airport and Double Eagle II Airports
- A motion was made by Vice-President Borrego that this matter be Approved.**
The motion carried by the following vote:
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- i. EC-18-273 Mayor's Recommendation of Dekker/Perich/Sabatini for Architectural Consultants for Construction of a Hangar Facility at the Albuquerque International Sunport and the Double Eagle II Airport
- A motion was made by Vice-President Borrego that this matter be Approved.**
The motion carried by the following vote:
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- j. EC-18-274 Mayor's Appointment of Mr. Mark L. Allison to the Albuquerque Energy Council
- A motion was made by Vice-President Borrego that this matter be Confirmed.**
The motion carried by the following vote:
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- k. EC-18-275 Mayor's Appointment of Mr. Mason L. Cannon to the Youth Advisory Council
- A motion was made by Vice-President Borrego that this matter be Confirmed.**
The motion carried by the following vote:
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- l. EC-18-276 Mayor's Reappointment of Ms. Rebecca G. Robinson to the Albuquerque Housing Authority Board
- A motion was made by Vice-President Borrego that this matter be Confirmed.**
The motion carried by the following vote:

- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- m.** EC-18-277 Mayor's Appointment of Ms. Tammy Fiebelkorn to the Albuquerque Energy Council
- A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- n.** EC-18-278 Mayor's Appointment of Ms. Jo C. Martin to the Urban Enhancement Trust Fund
- A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- o.** EC-18-279 Mayor's Appointment of Mr. Zackary A. Quintero to the Albuquerque Energy Council
- A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- p.** EC-18-280 Mayor's Appointment of Ms. Vera L. Berger to the Youth Advisory Council
- A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- q.** EC-18-281 Mayor's Appointment of Mr. John R. Castillo to the Personnel Board
- A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- r.** R-18-89 Approving A Grant Application For The FY19 Tesoro Foundation Grant And Providing For An Appropriation To The Fire Department In Fiscal Year 2019 (Harris, by request)
- A motion was made by Vice-President Borrego that this matter be Passed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- s.** R-18-90 Approving A Grant Application For The FY2019 Hazardous Materials Emergency Preparedness Grant In Compliance With The US Department Of Transportation And Pipeline And Hazardous Materials Safety Administration With The New Mexico Department Of Homeland

Security And Providing For An Appropriation To The Fire Department In Fiscal Year 2019 (Peña, by request)

A motion was made by Vice-President Borrego that this matter be Passed. The motion carried by the following vote:

For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

- t. R-18-91 Approving And Authorizing The Mayor To Execute A Grant Application For A Food Service Program For Children With The New Mexico Department Of Children, Youth And Families And Providing An Appropriation To The Department Of Family And Community Services, Beginning In Fiscal Year 2019 (Jones, by request)
- A motion was made by Vice-President Borrego that this matter be Passed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- u. R-18-92 Approving And Authorizing The Execution Of A Grant Agreement For A Food Service Program For Children With The State Of New Mexico Children, Youth And Families Department And Providing An Appropriation To The Department Of Family And Community Services, Beginning Fiscal Year 2019 (Winter, by request)
- A motion was made by Vice-President Borrego that this matter be Passed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- v. R-18-93 Establishing A Quarterly Reporting Process For The Three Eighths Of One Percent (.375%) Municipal Hold Harmless Gross Receipts Tax (Jones)
- A motion was made by Vice-President Borrego that this matter be Passed. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- w. OC-18-13 Office of Internal Audit's Annual Report for Fiscal Year 2018
- A motion was made by Vice-President Borrego that this matter be Receipt Be Noted. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- x. OC-18-14 Office of Inspector General's Annual Report for Fiscal Year 2018
- A motion was made by Vice-President Borrego that this matter be Receipt Be Noted. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- y. OC-18-19 Nominations for Public Improvement District (PID) Board Elections

**A motion was made by Vice-President Borrego that this matter be Approved.
The motion carried by the following vote:**

For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

14. FINAL ACTIONS

- d. R-18-109 Establishing A Standard City-Wide Policy And Fee Structure For Renting Space In City Owned Community Centers, Senior Centers, And Multigenerational Centers (Winter)

A motion was made by Councilor Winter that this matter be Postponed to January 7, 2019. The motion carried by the following vote:

For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

10. GENERAL PUBLIC COMMENTS

11. ANNOUNCEMENTS

12. PUBLIC HEARINGS: {Appeals, SAD Protest Hearings}

- a. AC-18-14 Project #1005206/17EPC-40054 & 17EPC-40067: Dayan Hochman, of Roybal-Mack & Cordova, P.C., agents for Larry Tucker, appeal the decision of the Environmental Planning Commission (EPC) on remand to Approve a Sector Development Plan Map Amendment (Zone Change) and an associated, As-Built Site Development Plan for Building Permit for an approximately 0.6 acre site known as Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning's Highlands Addition

A motion was made by Councilor Jones that this matter be To Accept the Land Use Hearing Officer Recommendation with Findings, with One Amendment to the Findings. The motion carried by the following vote:

For: 7 - Peña, Borrego, Sanchez, Benton, Davis, Jones, and Harris

Against: 1 - Gibson

Excused: 1 - Winter

- b. AC-18-18 Project #2018-001417 (1003699) RZ-2018-00023: The Group, agents for Vermont Hills Properties LLC, appeal the decision of the Environmental Planning Commission (EPC) to Deny a Zoning Map Amendment (Zone Change) for all or a portion of Tract B, Block 2 (less 27 ft out to R/W), Wells Sandia Manor, zoned PD to R-1D, located on Camino de La Sierra NE, between Trimble Blvd. NE and Camino de La Sierra NE, containing approximately 4 acres

A motion was made by President Peña that this matter be Withdrawal be

Approved. The motion carried by the following vote:

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

Excused: 1 - Winter

13. APPROVALS: {Contracts, Agreements, and Appointments}

14. FINAL ACTIONS

- a. O-18-37 Amending The Merit System; Personnel Policy Ordinance To Include Paid Parental Leave (Davis)
- A motion was made by Councilor Sanchez that this matter be Amended. Councilor Sanchez moved Amendment No. 1. The motion carried by the following vote:**
- For:** 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris
- Excused:** 1 - Winter
- A motion was made by Councilor Davis that this matter be Passed as Amended. The motion carried by the following vote:**
- For:** 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris
- Excused:** 1 - Winter
- c. R-18-105 Urging The Newly Elected Honorable Governor Of New Mexico And The New Mexico State Legislature To Petition The United States Congress To Re-Authorize The Rail Passenger Services Act With Amendments Addressing Discontinuing, Modifying Or Suspending Services (Borrego, Benton)
- A motion was made by Vice-President Borrego that this matter be Passed. The motion carried by the following vote:**
- For:** 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris
- Excused:** 1 - Winter
- e. R-18-110 F/S Consenting To The Assignment Of The Master Development Agreement For The Mesa Del Sol Tax Increment Development Districts 1 Through 5, By And Among The City Of Albuquerque, New Mexico, Mesa Del Sol, LLC And The Districts Recorded In The Bernalillo County, New Mexico Real Estate Records On June 19, 2008, As Amended And Supplemented, And Certain Other Related Agreements, In Connection With The Purchase Of The Property Underlying The Districts By MDS Investments, LLC, For The Purpose Of Financing Public Infrastructure Improvements Within The Districts (Davis)
- A motion was made by Councilor Davis that this matter be Substituted. The motion carried by the following vote:**

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

Excused: 1 - Winter

A motion was made by Councilor Davis that this matter be Passed as Substituted. The motion carried by the following vote:

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

Excused: 1 - Winter

f. R-18-111

F/S Consenting To The Assignment Of The Master Development Agreement For Mesa Del Sol Public Improvement Districts 1 Through 5, By And Among The City Of Albuquerque, New Mexico, Mesa Del Sol, LLC, And The Districts Recorded In The Bernalillo County, New Mexico Real Estate Records On March 3, 2008, As Amended And Supplemented, And Certain Other Related Agreements, In Connection With The Purchase Of The Property Underlying The Districts By MDS Investments, LLC, For The Purpose Of Financing Public Infrastructure Improvements Within The Districts (Davis)

A motion was made by Councilor Davis that this matter be Substituted. The motion carried by the following vote:

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

Excused: 1 - Winter

A motion was made by Councilor Davis that this matter be Passed as Substituted. The motion carried by the following vote:

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

Excused: 1 - Winter

***g.** R-18-115

Establishing Legislative And Budget Priorities For The City Of Albuquerque For The 2019 New Mexico State Legislature (Benton)

A motion was made by President Peña that this matter be Amended. President Peña moved Amendment No. 1. The motion carried by the following vote:

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

Excused: 1 - Winter

A motion was made by Councilor Sanchez that this matter be Amended. Councilor Sanchez moved Amendment No. 2. The motion carried by the following vote:

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

Excused: 1 - Winter

A motion was made by Councilor Benton that this matter be Passed as Amended. The motion carried by the following vote:

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

Excused: 1 - Winter

15. OTHER BUSINESS: {Reports, Presentations, and Other Items}

a. Approval of Committee Appointments

A motion was made by President Peña that the Committee Appointments dated December 17, 2018 be approved. The motion carried by the following vote:

For: 8 - Peña, Borrego, Sanchez, Benton, Davis, Gibson, Jones, and Harris

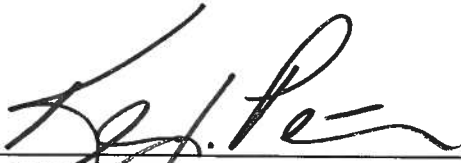
Excused: 1 - Winter

**F. NO MORE THAN A TOTAL OF EIGHTEEN (18)
SPECIAL EVENTS ARE PERMITTED BETWEEN THE MONTHS
OF APRIL THROUGH OCTOBER.”**

Attachments

1. Land Use Hearing Officer's Recommendation
2. Action Summary from the December 17, 2018 City Council Meeting

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.



Klarissa J. Peña, President
City Council

Date: 1-8-19

Received by: Stephan Casaus
City Clerk's Office

Date: 01/08/2019

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