

August 2, 2019

VIA E-MAIL AND U.S. MAIL

Environmental Planning Commission
EPC Commissioners
Planning Department
600 2nd Street NW, 3rd Floor
Albuquerque, NM 87102
(w/ 10 copies for distribution)

Re: Remand to EPC
OC-19-31 / AC-17-7 / Project #1011232 / 17EPC-40011

Dear Commissioners,

This office is litigation counsel for Darlene M. Anaya. Ms. Anaya successfully challenged, in Bernalillo County District Court, the attempted re-zoning of the above-referenced property. This letter makes four main points: (1) the court has remanded “for additional consideration and reasoned decision making,” not just conclusory findings; (2) the North Valley Area Plan contains substantive limitations on commercial development; (3) the proposed C-2 zone will be harmful to the neighborhood; and (4) there are alternatives, which should be considered.

I. The Court has remanded “for additional consideration and reasoned decision making,” not just conclusory findings.

The Court did **not** approve the zone change. Instead, the Court remanded this matter for “additional consideration and reasoned decision making”:

IV. CONCLUSION

The Court REMANDS the following two issues for additional consideration and reasoned decision making in accordance with Resolution 270-1980, §§ 1(C) and 1(E): (1) whether the proposed C-2 zone is in significant conflict with purported NVAP limitations on commercial development; and (2) whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, the neighborhood or the community. In all other respects, the decision is **AFFIRMED**.

IT IS SO ORDERED.


C. SHANNON BACON
DISTRICT COURT JUDGE

Accordingly, the assertion that this zone change has been approved is inaccurate. As a result, any assertion that the IDO automatically converts this zoning is also inaccurate.

Furthermore, the assertion that findings are sufficient is inaccurate and deceptive. “Additional consideration and reasoned decision making” is necessary. At a bare minimum, this implies notice to interested parties, a hearing and discussion on the remanded issues.

II. The North Valley Area Plan contains substantive limitations on commercial development.

The EPC's previous consideration of the North Valley Area Plan was inadequate. In particular, the Court held as follows:

The EPC's explanation is inadequate because it does not address the particular NVAP provisions that Anaya claims limit the size and location of commercial development. Under the heading of “Preferred” the NVAP states:

Larger scale community or regional commercial development would be located in the available areas within the North I-25 Corridor.

Large scale [industrial and heavy commercial] uses would be located only on the east mesa and would be served by transit.

[NVAP at 36–38.] The subject site is not within the North I-25 Corridor, nor is it suggested that it is on the east mesa. Though the EPC's decision states the proposal “generally furthers” the goals and policies of the NVAP, it does not explain why the proposal does not significantly conflict with these particular provisions regarding commercial development.

The overwhelming intent of the North Valley Area Plan is to (a) limit large commercial development in the Valley; and (b) locate any large commercial development to the North I-25 corridor.

The North Valley Area Plan, page 38, reads in relevant part:

Commercial Uses

New commercial uses in the valley would meet local neighborhood needs and would be oriented to those neighborhoods through provision of access to pedestrians and bicyclists. These businesses would be smaller scale and would incorporate Village Center Principles of pedestrian access, mixed use and valley scale and character.

Larger scale community or regional commercial development would be located in the available areas within the North I-25 Corridor.

The proposed C-2 zoning violates the intent of the North Valley Area Plan because it proposes a large commercial zone in an inappropriate area, and because the proposed C-2 zoning is not “smaller scale” or “valley scale and character.”

III. The proposed C-2 zone will be harmful and alternatives should be considered.

The Court held that:

Section 1(E) is not satisfied by a general observation that the proposed zone is a less intense category of use than the current zones. By its express terms, Section 1(E) requires consideration of the permissive uses of the proposed zoning. The City's decision does not identify the permissive uses of a C-2 zone nor does it contain a discussion or analysis of the harm, if any, the C-2 permissive uses may pose.

There is significant testimony in the record regarding the harm to the neighborhood if the proposed C-2 zoning is utilized. The harm would be in the form of traffic, noise, congestion, light pollution and air pollution. The proposed C-2 zoning was opposed by the Near North Valley Neighborhood Association, the North Valley Coalition, the West Old Town Neighborhood Association, and the Downtown Neighborhoods Association.

III. Alternatives should be considered.

In light of the foregoing, the EPC and Garcia entities should consider alternatives to the proposed C-2 zoning, including, but not limited to, the use of C-1 commercial zoning, the use of special use zoning and/or limiting the C-2 zoning to the original M-1 zone.

Very Truly Yours,



Edward M. Anaya

EMA:

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NEAR NORTH VALLEY NEIGHBORHOOD ASSOCIATION

VOLUNTEERS WORKING INCLUSIVELY TO PROTECT,
PRESERVE, AND ENHANCE THE COMMUNITY

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Copy:
Councilor Isaac Benton
CAO Sarita Nair
North Valley Coalition

August 5, 2019

Dan Serrano, Chair
Environmental Planning Commission
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102

Sent via e-mail to Russell Brito at rbrito@cabq.gov

Re: Project #2019-002629 (formerly #1011232); zoning for the Garcia property north of I-40, west of the Alameda Drain

Dear Mr. Serrano and Commissioners:

On behalf of Near North Valley Neighborhood Association's board, I request that the EPC defer its reconsideration of the Garcia property zoning matter until notice is provided to the public, including the affected neighborhood associations.

The Garcia property falls within NNV's boundaries. Like numerous neighborhood groups and individuals, NNV was actively involved during the EPC hearings which resulted in the EPC's July 2017 rezoning of the majority of the property from M-1 and R-1 to C-2 and R-2. We followed the North Valley Coalition's appeal of the original EPC decision.

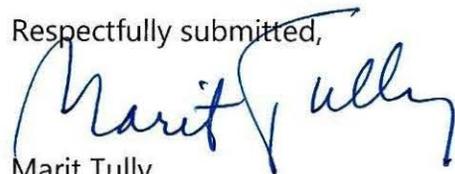
In the two years since, this case has gone to District Court, appealed by a private property owner. We were not provided any notice of the City's decision to send this matter back to the EPC to resolve the two issues remanded by District Court. We were not provided any notice of this Thursday's EPC hearing. We have been deprived of the opportunity to submit written comments.

Fairness requires that the EPC's decision be deferred. Notice may not be

required as a technical matter, but given the high community interest in this case and the significant passage of time since the last EPC hearing, notice should have been provided.

We appreciate your consideration of our request for a deferral.

Respectfully submitted,

A handwritten signature in blue ink that reads "Marit Tully". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Marit Tully
President

NORTH VALLEY COALITION, INC.

Individuals, Neighborhood Associations, Businesses & Community Groups Working Together

August 5, 2019

Dan Serrano, Chair, Environmental Planning Commission
Russell Brito, Division Manager, Planning Department
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102

The North Valley Coalition is submitting comments on project 2019-002629, formerly project 1011232, scheduled to be heard by the Environmental Planning Commission on August 8, 2019. Part of the purpose of the Coalition, formed as required by the North Valley Area Plan (NVAP), is to provide public input, oversight, and assistance. Its formation was necessary for "effective implementation of this plan" (p.178). This is a project that generated much public interest. We have reviewed the Memorandum Opinion and Order issued by the Second Judicial District Court and both issues remanded by the Court affect the North Valley. It is important to state that the two issues raised indicate non-alignment with Resolution 270-1980, the important guiding document for a zone map amendment.

The Court determined that the EPC did not provide appropriate consideration of limitations on commercial development as proscribed by the NVAP and therefore the EPC's action was arbitrary. We concur with that statement. A C-2 zone in the proposed location is in significant conflict with NVAP; its very name is Community Commercial Zone. The NVAP states that larger scale **community** development be within the North I-25 Corridor (p. 38). New commercial uses in the valley would be of "valley scale and character" (p. 38), i.e. "smaller businesses in smaller stores" (p. 136). Uses should relate to the "surrounding context of the site and special attention should be given to existing area character" (p. 136). This property is between two acequias, the Campbell Ditch and the Alameda Drain, which have a rich history in the valley. To allow a major commercial development between the two acequias threatens their wildlife, vegetation, and recreational use, all key characteristics of valley character.

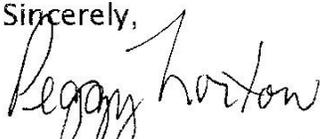
New retail uses allowed by a C-2 zone, as opposed to a C-1 zone, are alcoholic drink sales for consumption off premises; vehicle sales, rental, service, repair, and storage; building materials that can extend beyond an enclosed building; drive-in restaurant. These uses do not incorporate "Village Center Principles, including pedestrian attraction and accessibility, mixed use development, and valley scale and character" (p. 142).

The second issue remanded by the Court addresses the fact that the EPC did not adequately justify their decision that permissive uses of the proposed C-2 zone

would not be harmful to adjacent property, the neighborhood or the community. Numerous residents, both opponents and supporters of the project, raised legitimate and reasoned concerns about traffic, particularly because as designed, all vehicular ingress and egress would be off Rio Grande Boulevard. One commissioner stated that traffic was so bad in the area now that maybe this project would force the New Mexico Department of Transportation to redesign the area. Given that the applicants are planning a large grocery store, hotel and other commercial uses, the traffic would be steady and heavy all day long. However, City Planning did not require a traffic study, claiming that the threshold to require one was not met. This, however, could not be determined unless the uses of the property were determined. To compare the traffic generated by C-2 and M-1 uses is irrelevant; an M-1 use could generate very little traffic and be much more limited by time of day. The draft traffic study that was completed by the applicant was not approved by the City nor did it comply with City guidelines. The threat to turn the Campbell ditch into a secondary access point for the development has never been resolved.

Resolution 270-1980 also states that the burden is on the applicant to show why the zone change should be made. They have not done so, as affirmed by the Second Judicial District Court. There is much in the public record supporting harm to adjacent property, the neighborhood or the community. We urge you to consider that record as well as our determination of non-compliance with the North Valley Area Plan, its goals and stated policies regarding commercial development that have not been met, and deny the zone map amendment to C-2.

Sincerely,

A handwritten signature in cursive script that reads "Peggy Norton".

Peggy Norton, President
North Valley Coalition

NORTH VALLEY COALITION, INC.

Individuals, Neighborhood Associations, Businesses & Community Groups Working Together

August 5, 2019

Dan Serrano, Chair, Environmental Planning Commission
Russell Brito, Division Manager, Planning Department
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102

The North Valley Coalition requests a deferral of project 2019-002629, formerly project 1011232, to be heard by the Environmental Planning Commission (EPC) on August 8, 2019. We heard about this hearing August 1, and believe that official notification should have been sent to appropriate neighborhood associations and particularly the North Valley Coalition, as required by the Neighborhood Recognition Ordinance. Having received no notification, we have inadequate time to respond to the issues being presented and our opportunity to meet the 10-day deadline for written comments has lapsed.

When this case was first decided by the EPC in July, 2017, the Coalition, and separately Darlene Anaya, appealed the case to the LUHO. When the LUHO upheld the decision, the Coalition did not pursue further action but Darlene Anaya chose to appeal to District Court.

Two items of the appeal were upheld by the 2nd Judicial District Court in January, 2019 and one item particularly addresses the North Valley Area Plan and commercial development. The Court required "additional consideration and reasoned decision making in accordance with Resolution 270-1980" on these two items. In order for the EPC to meet the Court's directive, it should hear from the North Valley Coalition, which is recognized as the steward responsible for effectively implementing the North Valley Area Plan and working with local leaders.

Numerous individuals and groups presented testimony during the prior EPC hearing, and the Coalition appealed the original EPC decision. For the sake of transparency, open government, public participation, and due process, official notification of Thursday's hearing should have been provided.

Again, the North Valley Coalition requests a deferral of this case.

Sincerely,



Peggy Norton, President
North Valley Coalition