



**Environmental
Planning
Commission**

**Agenda Number: 02
Project # 1011232 (PR-2019-002629)
Case Number: 17EPC-40011
Hearing Date: 12 December 2019**

Supplemental Staff Report to the June 8 & July 13, 2017 and August 8, 2019 Staff Reports

Agent	Design Workshop
Applicant	Garcia Auto Group
Request	Zone Map Amendment (Zone Change)
Legal Description	Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35
Location	North of I-40 and East of Rio Grande Blvd between the Alameda Drain and Campbell Ditch
Size	20 acres
Existing Zoning	M-1 and R-1
Proposed Zoning	C-2 and R-2

Staff Recommendation

**APPROVAL of
Project # 1011232 (PR-2019-002629)
Case # 17EPC-40011
based on Findings in this report
beginning on page #**

**Staff Planner
Russell Brito**

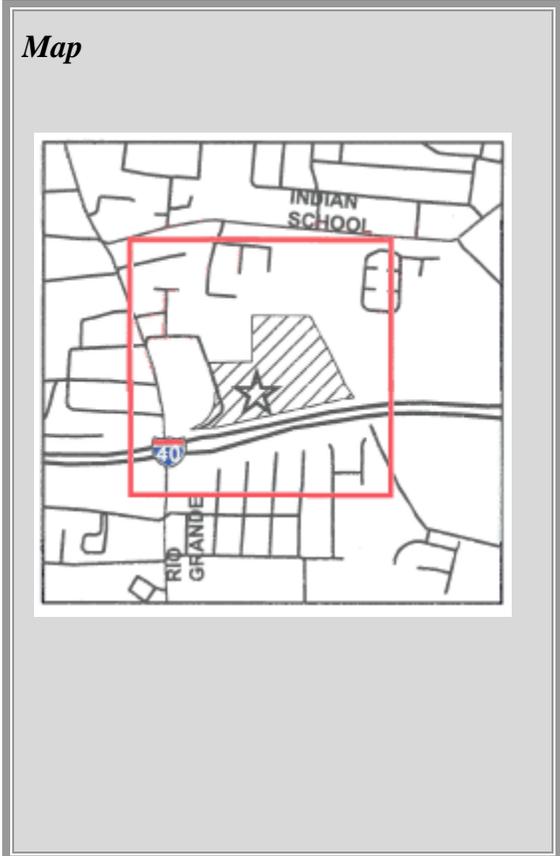
Summary

The EPC approved this zone change in July 2017, which was appealed to City Council, who denied the appeal in October 2017. That decision was appealed to District Court, who remanded the applicaiton back to the City in January 2019. The City Council sent it back the EPC in June 2019 with the District Court order to further consider two items:

- 1) Whether the proposed C-2 zone is in significant conflict with purported NVAP limiations on commercial development; and
- 2) Whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, neighborhood, or community

The EPC approved this zone change again in August 2019, which was then appealed. The Land Use Hearing Officer (LUHO) jointly heard two appeals in September 2019 and the City Council voted in October 2019 to remand the case back to the EPC per the LUHO’s recommendation to provide mailed notice to all property owners within 100 feet of the subject site per Zoning Code section 14-16-4-1(C)(6)(b).

This application was submitted under the old Zoning Code and is to be reviewed, analyzed, and decided per R-270-1980, the 2017 Comp Plan, and the 1993 North Valley Area Plan. Staff recommends approval per the findings in this report.



I. INTRODUCTION

A. Overview

This is a supplemental staff report to the June 8 & July 13, 2017 and August 8, 2019 staff reports.

2017 EPC Decision

The Environmental Planning Commission (EPC) approved the requested zone change at the July 13, 2017 hearing. That decision was appealed to City Council, who in October 2017 accepted the Land Use Hearing Officer's recommendation to deny the appeal. The City Council's decision was appealed to District Court. The Second Judicial District Court affirmed the City Council's decision in January 2017 except for two items that are remanded back to the City for further consideration:

- 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, neighborhood, or community

Please see the attached City Council Other Communication, OC-19-31, and District Court Memorandum Opinion and Order for more details. The EPC is charged with reviewing only the two items above for further consideration.

2019 EPC Decision

The EPC approved the zone change again at the August 8, 2019 EPC hearing. Two parties appealed the EPC's approval and the Land Use Hearing Officer (LUHO) heard the appeals jointly in September 2019. The City Council voted in October 2019 to accept the LUHO's recommendation to remand the case back to the EPC with instructions to notify property owners within 100 feet per Zoning Code section 14-16-4-1(C)(6)(b). No other instructions or errors were noted in the LUHO recommendation nor the City Council's decision (see City Council Notice of Decision dated October 22, 2019).

In 2012, the City Council adopted Council Bill F/S O-11-1 (Enactment O-2012-036), a text amendment to the Zoning Code. This text amendment altered the notification requirements of 14-16-4-1(C)(6)(b) and required certified mail notice to be sent to all owners of property within 100 feet of a zone change request area. As has been the practice since at least 2013, because the Planning Department did not have adequate resources to address this updated requirement, it put the burden of the notification requirement on the applicant, both the expense and the mailing.

The applicant in this case sent the required notice via certified mail to all owners of property on November 21, 2019, which is 20 days before the December 12, 2019 date of the EPC hearing (see applicant's Proof of Mailing). This notice includes the required information: date, time, and place of the EPC hearing. It also includes a legal

description of the site, a description of the request, contact information for Planning staff, and contact information for the applicant's agent.

The applicant also sent notice to two representatives each of the seven Neighborhood Associations nearest the subject site, which is above and beyond the City Council's remand instructions.

II. ANALYSIS of APPLICABLE ORDINANCES, PLANS AND POLICIES

This application was submitted under the old Zoning Code, prior to the adoption and effective date of the Integrated Development Ordinance (IDO), and is to be reviewed, analyzed, and decided per the zone change criteria of R-270-1980, the applicable policies of the 2017 Comp Plan, and the 1993 North Valley Area Plan (NVAP).

III. AGENCY & NEIGHBORHOOD CONCERNS

A. Agency

There are no additional agency comments for this application.

B. Neighborhood/Public

Planning staff received:

- Letter of support from a property owner at 1306 Rio Grande Blvd NW
- Letter of opposition from the agent for the Anaya/Allen family, owners of property in the area
- Letter of opposition from a member of the North Valley Coalition (NVC).
- Letter of opposition from the NVC

Issues and concerns brought up in the opposition letters generally address:

- Expansion of the commercial zoning beyond the existing industrially-zoned area
- Purported limitations on future commercial development in the NVAP
- Permissive uses harmful to adjacent property, neighborhood, or community in the C-2 zone based on potential traffic, air quality, and loss of neighborhood character

The City and Bernalillo County was redesignated to attainment status for Carbon Monoxide (CO) by the Federal government in 1996 and the maintenance plan to maintain Federal requirements has been in effect from 1996 – 2016. As of 2017, all CO areas have been redesignated to maintenance. The City Council removed all of the requirements for air quality impact assessments (AQIAs) from the Zoning Code in 2010 via Council Bill O-10-9.

There is no regulatory nor technical requirement for a Traffic Impact Study (T.I.S.) related to the subject zone change request. Traffic impacts and the off-site improvements needed to address them are determined on a use-by-use and/or consolidated use basis for actual, proposed development as part of the site plan review process. Any necessary off-site improvements to address traffic impacts related to proposed development will be

identified and required by both the City and the NM Department of Transportation because of the site's adjacency to Interstate 40 and its interchange with Rio Grande Blvd. The ability of an applicant to implement any necessary off-site improvements, such as intersection improvements, access enhancements, new crossings of the Alameda Drain, or other needed infrastructure may limit the intensity of development that can occur on the subject site.

The site and the surrounding area has a "horizontal mixed-use" character with non-residential development along the Rio Grande Blvd corridor, an elevated interstate highway to the south, multi-family residential and institutional to the east, and single-family residential to the north. Neighborhood and community character will be further identified, defined and addressed as part of the site plan review process, which will require public notice and a public hearing or meeting. The proposed zoning pattern would create a large "buffer area" along Interstate 40 in the form of the requested C-2 zone and then an appropriate transition to R-2 and then R-1 zoning from south to north towards the existing single-family neighborhoods.

IV. ANALYSIS

The applicant did not supplement their justification from the August 2019 EPC hearing, except to respond to comments about drive-through/drive-in restaurants; these uses are already allowed in the existing M-1 zoning.

The applicant addresses the District Court order to consider the two remanded items in a detailed letter to the EPC dated 29 July 2019. These two items correspond to criteria C and D)3, and criterion E, respectively, of R-270-1980, the City's policies/criteria for zone map changes in effect at the time of submittal in 2017. The summaries of the applicant's responses to the two items are in italics and the Planning staff analysis follows each one:

- 1) Whether the proposed C-2 zone is in significant conflict with purported NVAP limitations on commercial development.

*The C-2 rezoning is **not in conflict with the NVAP** because the NVAP does not limit commercial development to a specific area and, moreover, the rezoning furthers the NVAP which specifically calls for commercial development in this very area along I-40, which it designates as "Central Urban," and because the NVAP, the 2001 amendments to the City's previous 1989 Comp. Plan, as well as the City's controlling 2017 Comp. Plan, all call for "village center" and "centers and corridors" commercial development in this area adjacent to I-40 and Rio Grande Blvd.*

Staff: The applicant correctly notes that the NVAP language cited by the appellant (NVAP, page 38) is a description of a preferred scenario and not a Goal or Policy that reflects the land use and/or transportation strategy for the area. Per R-270-1980, a change shall not be in conflict with adopted elements of the Comprehensive Plan or other city master plans; adopted Goals and Policies best express the articulated intent for the community (R-270-1980, (C) and (D)3).

The applicant correctly cites the most applicable articulation of the NVAP's intent for commercial development as Goal 11 on page 6:

11. To locate commercial and industrial development within the I-25 corridor, and selected areas along the I-40 corridor, especially as an alternative to extensive lower valley commercial/industrial development.

The applicant also notes that the NVAP reflected the previous 1989 Comp Plan Areas that designated the subject area as "Central Urban" (NVAP, Comprehensive Plan Areas map, page 42) and as a "Village Center Area" (NVAP, Preferred Scenario Land Use Plan map, page 37). The map on page 37 also identifies the subject site as Housing, but the retention of some of the existing R-1 zoning maintains consistency with this Preferred Scenario map. Of note, the map on page 37 designates an area along I-40, at the southeastern corner of the NVAP area, as "Large Scale Community & Regional Commercial," but this map does not fully reflect existing nor limit commercial development elsewhere in the NVAP area (e.g. commercial zoning and uses exist at the intersection of Rio Grande and Griegos, a location designated as Housing on the page 37 map).

NVAP Goal/Issue 6 on page 6 states:

6. To encourage quality commercial/industrial development and redevelopment in response to area needs in already developed/established commercial industrial zones and areas. To discourage future commercial/industrial development on lots not already zoned commercial/industrial.

The above Goal may appear to limit future commercial development, but the language is "discourage" not prohibit. But it does encourage development in already established commercial industrial zones and areas, which the subject site already is with the existing M-1 zoning. Furthermore, and most importantly, any perceived or alleged limitation on commercial development in the Rank II NVAP is tempered and superseded by the Policy direction of the Rank I Comp Plan, per Section 14-13-2-2 Rank Importance of City Plans:

"Adopted city plans for urban development and conservation are of varying rank importance. Lower ranking plans should be consistent with higher ranking plans, and when this is indisputably not the case, the conflicting provision of the lower ranking plan is null and void. Plans should identify how they relate to relevant, higher ranking plans."

The requested C-2 zone is not in significant conflict with purported NVAP limitations on commercial development because the most applicable Goal/Policy language (Goals 6 and 11, page 6) does not limit commercial development on the subject site. Moreover, the applicant has demonstrated compliance with R-270-1980, criteria (C) and (D)³, because the requested change is not in conflict with the Comp Plan nor the NVAP, and is more

advantageous to the community, as articulated by the vision, Goals, and Policies of the Comp Plan (including the elimination of M-1 uses that would be harmful to the community). The NVAP was not updated/amended with the adoption of the 2017 Comp Plan to reflect the updated Rank I vision and policy direction.

- 2) Whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, neighborhood, or community

The C-2 permissive uses will not be harmful to adjacent property owners, the neighborhood or the community, because (1) all C-2 uses will be buffered from all R-1 property with an R-2 buffer owned entirely by the Garcia Entities, (2) because the C-2 rezoning removes a previous intensity mismatch where 5.29 acres of M-1 property was directly adjacent to R-1, (3) because the rezoning creates a properly scaled village center infill site for a much needed modern grocery store, (4) because the village center and centers and corridors commercial redevelopment objectives expressed in the City's controlling 2017 Comp. Plan and other Plans for the area operate as a finding that C-2 Community Commercial zoning here is not harmful, as well as (5) for each of the specific reasons given in the table of specific C-2 permissive uses which is provided in the applicable section of this letter below.

Please see the 29 July 2019 Letter to EPC, pages 5 – 9 for applicant's use tables.

Staff: The applicant's outline of each C-2 use and the explanation of no harm to the community is comprehensive and useful. Staff is in agreement with the applicant's analysis because many of the commercial uses are either already allowed in some fashion by the existing M-1 zoning and/or any adverse impacts of the C-2 uses will be addressed by site design requirements, distance separation requirements, required off-site infrastructure (vehicular access) per use and intensity, and/or by required landscape and buffering. The applicant correctly notes that C-2 zones and C-2 uses "coexist with adjacent and nearby residential neighborhoods in many areas throughout Albuquerque." It is not unusual for C-2 zoning to be next to residential neighborhoods and there are existing buffer and separation requirements when this occurs.

The applicant goes further by outlining multiple M-1 uses that would be eliminated by the zone change request that would be harmful adjacent property, the neighborhood, or community including, but not limited to, C-3 permissive uses, IP (industrial park) uses, manufacturing, vehicle dismantling, truck terminal, poultry and rabbit killing, concrete batch plant, gravel stockpiling, and construction equipment sales.

Given the context of the site, the proposed zoning pattern with transitions of use intensity from I-40 northward, the permissive uses of the proposed C-2 zone would not be harmful to adjacent property, neighborhood, or community (R-270-1980, (E)).

V. CONCLUSION

The request is for a Zone Map Amendment (Zone Change) for 21 contiguous parcels of land within MRGCD Map #35, generally located to the north of Interstate 40 and east of Rio Grande Blvd between the Alameda Drain and Campbell Ditch containing approximately 20 acres (the “subject site”).

The property is currently zoned a combination of M-1 Light Industrial and R-1 Residential, and the applicant is proposed to change the zoning of 11.61 acres at the southern portion of the site to C-2 Community Commercial with approximately 7.85 acres of R-2 Residential located to the north of that. A portion of the subject properties closest to the existing single-family residential homes at the northern edge of the project are proposed to remain with R-1 zoning. The request is generally consistent with and furthers numerous goals of the updated 2017 Comprehensive Plan, and is well justified in accordance with R-270-1980 as analyzed in the June 8 and July 13, 2017 staff reports.

The Second Judicial District Court affirmed the City Council’s decision in January 2017 except for two items that are remanded back to the City for further consideration:

- 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, neighborhood, or community

Staff recommends approval of the request based on the findings outlined in this supplemental staff report. New recommended findings that address the two items above are in **bold text**.

FINDINGS, Zone Map Amendment

Project # 1011232, Case # 17EPC-40011

1. This is a request for a Zone Map Amendment (Zone Change) for Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35 located north of Interstate 40 and east of Rio Grande Blvd between the Alameda Drain and Campbell Ditch and containing approximately 20 acres.
2. The subject site is currently zoned a combination of R-1 (Residential Zone) and M-1 (Light Industrial Zone). The request is for a zone change for approximately 11.61 acres to C-2 (Community Commercial Zone) and 7.85 acres to R-2 (Residential Zone). The R-2 zone would allow townhomes and apartments in addition to what is currently allowed under the R-1 designation, and the C-2 zone would allow for a wide variety of office, commercial and service, and some institutional uses generally of a lower intensity than is allowed by the existing M-1 zone.
3. The existing R-1 zoning is the original zoning of the subject site. The M-1 zoning was the subject of a zone change request in 1957 (Z-440) and pre-dated the existence of I-40.
4. The 2017 Albuquerque/Bernalillo County Comprehensive Plan (Comp Plan), North Valley Area Plan, Alameda Drain and Trail Master Plan, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is just northwest of the I-40 and Rio Grande Blvd interchange, which is the nexus of three Comp Plan Corridors: Rio Grande Blvd immediately west of the subject site from I-40 going north and then east on Indian School Road is a Multi-Modal Corridor; Rio Grande Blvd south of I-40 and heading west on I-40 is a Major Transit Corridor; and I-40 east of Rio Grande Blvd is a Commuter Corridor.
6. The subject site is within both the Area of Change and the Area of Consistency of the Comp Plan. The request is in compliance with and furthers the following applicable goals and policies of the Comprehensive Plan:

Policy 5.1.1 Desired Growth: Capture regional growth in Centers and Corridors to help shape the built environment into a sustainable development pattern.

(c) Encourage employment density, compact development, redevelopment, and infill in Centers and Corridors as the most appropriate areas to accommodate growth over time and discourage the need for development at the urban edge.

The request furthers Policy 5.1.1 c) because the subject site is a large infill site in close proximity to multiple corridor types, including Major Transit, and the change in zoning will allow for additional employment and housing density in a location not at the urban edge.

Policy 5.1.10 Major Transit Corridors: Foster corridors that prioritize high-frequency transit service with pedestrian-oriented development.

(b) Minimize negative impacts on nearby neighborhoods by providing transitions between development along Transit Corridors and abutting single-family residential areas.

The request furthers Policy 5.1.10 b) because the requested zone change creates a step-down from more intense commercial uses adjacent to I-40 and Rio Grande Boulevard to medium density residential down to single-family residential to the north.

(c) Encourage mixed-use development in Centers and near intersections.

The request furthers Policy 5.1.10 c) because the combination of Community Commercial and medium density multi-family development would foster more active mixed-use development near the intersection of three different Comprehensive Plan corridor types at the I-40 and Rio Grande Blvd interchange.

Policy 5.2.1 Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

(a) Encourage development and redevelopment that brings goods, services, and amenities within walking and biking distance of neighborhoods and promotes good access for all residents.

The request furthers Policy 5.2.1 a) because the requested zone change will facilitate redevelopment of long vacant land with goods, services, and amenities that is accessible to nearby residents within the Los Duranes neighborhood, as well as farther away, via walking and along a number of existing and proposed bicycle facilities.

(b) Encourage development that offers choice in transportation, work areas, and lifestyles.

The request furthers Policy 5.2.1 b) because the subject site is within ¼ mile of multiple transit stops, adjacent to convenient bicycle facilities, and close to a major interchange between I-40 and an arterial roadway that offers easy access for automobiles allowing for choice in transportation and lifestyles for both those residents living in the proposed development and those who live elsewhere and will travel to the development for employment and other activities.

(d) Encourage development that broadens housing options to meet a range of incomes and lifestyles.

The request furthers Policy 5.2.1 d) because changing some of the zoning from R-1 to R-2 will allow for a wider variety of housing options than currently exists on the subject site including single-family houses, townhomes, and medium density apartments.

(e) Create healthy, sustainable communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

The request furthers Policy 5.2.1 e) because the combination of R-2 and C-2 zoning requested allows for a wide mix of uses that will benefit the surrounding neighborhoods that can access the site via automobile, transit, bicycle, or walking.

(f) Encourage higher density housing as an appropriate use in the following situations:

- iii. In areas where a mixed density pattern is already established by zoning or by use, where it is compatible with existing area land uses, and where adequate infrastructure is or will be available;
- iv. In areas now predominately zoned single-family only where it comprises a complete block face and faces onto a similar or higher density development;
- v. In areas where a transition is needed between single-family homes and much more intensive development;

The request furthers Policy 5.2.1 f) because it includes higher density housing at the subject site in an area with a mix of uses already established, infrastructure in place, is of a size comparable to an entire block face, and will abut and be a transition between more intensive commercial development and existing developed single-family homes.

(n) Encourage more productive use of vacant lots and under-utilized lots, including surface parking.

The request furthers Policy 5.2.1 n) because it will facilitate redevelopment of long vacant and under-utilized lots.

Policy 5.3.1 Infill Development: Support additional growth in areas with existing infrastructure and public facilities.

The request furthers Policy 5.3.1 because rezoning the vacant subject site supports growth in an infill location surrounded by existing infrastructure including paved roads and various utilities.

Policy 5.6.1 Community Green Space: Provide visual relief from urbanization and offer opportunities for education, recreation, cultural activities, and conservation of natural resources by setting aside publicly-owned Open Space, parks, trail corridors, and open areas throughout the Comp Plan area as mapped in Figure 5-3.

(a) Maintain existing irrigation systems as Community Green Space and to help ensure agricultural lands in rural areas.

The request furthers Policy 5.6.1 a) because the development will maintain and enhance the Alameda Drain and Campbell Ditch adjacent to the subject site thus offering recreation and some visual relief from the surrounding urbanization, as well as contributing to the vision for this section of the Alameda Drain as described in the Alameda Drain and Trail Master Plan.

Policy 5.6.2 Areas of Change: Direct growth and more intense development to Centers, Corridors, industrial and business parks, and Metropolitan Redevelopment Areas where change is encouraged.

(b) Encourage development that expands employment opportunities.

The request will allow for development of long vacant parcels with a more productive use, including commercial uses that will expand employment opportunities on land that is partially designated as an Area of Change thus furthering Policy 5.6.2 b).

(c) Foster a range of housing options at various densities according to each Center and Corridor type.

The request includes R-2 zoning, which allows for a variety of housing options and densities up to medium density apartments thus furthering Policy 5.6.2 c).

(d) Encourage higher-density housing and mixed-use development as appropriate land uses that support transit and commercial and retail uses.

The request furthers Policy 5.6.2 d) because the combination of R-2 and C-2 zoning requested will allow for higher-density housing and mixed-use development that will support transit along Rio Grande Boulevard, as well as supporting the existing and future commercial and retail uses in the area.

(f) Minimize potential negative impacts of development on existing residential uses with respect to noise, stormwater runoff, contaminants, lighting, air quality, and traffic.

The proposed zoning steps down in intensity from south to north and development of the vacant parcels will add an additional buffer between the existing residential and Interstate 40. Future development proposals will need to address stormwater, lighting that is in compliance with Night Sky and zoning regulations, and traffic circulation. In particular, a Traffic Impact Study has been completed for all of the proposed Rio Grande Crossing and shows that the transportation system can support this request thus furthering Policy 5.6.2 f).

(g) Encourage development where adequate infrastructure and community services exist.

The request furthers Policy 5.6.2 g) because redevelopment of the subject site will utilize existing available infrastructure including water, sewer, and electricity, as well as better utilizing other existing services as an infill location rather than new edge development.

Policy 5.6.3 Areas of Consistency: Protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space.

(b) Ensure that development reinforces the scale, intensity, and setbacks of the immediately surrounding context.

The requested R-2 and C-2 zones reinforce the surrounding context by allowing similar uses and intensities of development as the commercial zoning to the west and R-3 to the east, as well as creating a step-down transition of intensities to the existing R-1 located to the north of the subject site, so the request furthers Policy 5.6.3 b).

(c) Carefully consider zone changes from residential to non-residential zones in terms of scale, impact on land use compatibility with abutting properties, and context.

A portion of this request is to change the zoning from residential to commercial, and it has been considered carefully based on its context. The proposed zones are compatible with and reinforce the land uses on properties located immediately east and west of the subject site and step down in intensity to the properties to the north including leaving a portion of the

applicant's property zoned R-1 to maintain land use compatibility thus furthering Policy 5.6.3 c).

Policy 5.6.4 Appropriate Transitions: Provide transitions in Areas of Change for development abutting Areas of Consistency through adequate setbacks, buffering, and limits on building height and massing.

(a) Provide appropriate transitions between uses of different intensity or density and between non-residential uses and single-family neighborhoods to protect the character and integrity of existing residential areas.

The request furthers Policy 5.6.4 a) because the applicant has made a request with appropriate variations in housing densities and commercial intensity in appropriate locations as to effectively transition to the existing residential areas to the north of the subject site. In addition, the applicant will need to comply with all zoning standards for setbacks, height, landscaping, and buffering when the site is eventually developed.

Policy 9.1.1 Housing options: Support the development, improvement, and conservation of housing for a variety of income levels and types of residents and households.

(a) Increase the supply of housing that is affordable for all income levels.

The request furthers Policy 9.1.1 a) because the requested R-2 zone allows for a variety of housing types and densities such as single-family houses, townhomes, and apartments that allows for free-market housing options to suit various income levels.

(e) Provide for the development of quality housing for elderly residents.

The applicant indicates a desire to develop a senior living facility as allowed by the requested zoning that will provide for quality housing for elderly residents thus furthering Policy 9.1.1 e).

(i) Provide for the development of multi-family housing close to public services, transit, and shopping.

The request for R-2 adjacent to C-2 will allow for development of multi-family housing immediately adjacent to shopping options, and the proposed development will be in close proximity to transit options along Rio Grande Boulevard, so the request furthers Policy 9.1.1 i).

Policy 9.3.2 Other areas: Increase housing density and housing options in other areas by locating near appropriate uses and services and maintaining the scale of surrounding development.

(a) Encourage higher density residential and mixed use development as appropriate uses near existing public facilities, educational facilities, job centers, social services, and shopping districts.

The proposed mixed-use development is near to existing public facilities, educational facilities, job centers, and shopping districts such as Duranes Elementary School, which has

capacity, the Indian Pueblo Cultural Center and new development along 12th Street between Menaul and I-40, and Old Town thus furthering Policy 9.3.2 a).

(b) Encourage multi-family and mixed use development in areas where a transition is needed between single-family homes and more intense development.

The request furthers Policy 9.3.2 b) because the proposed multi-family zoning is a transition between existing single-family residential and the proposed C-2 zoning and the Interstate 40 corridor.

Policy 10.1.1 Distribution: Improve the community's access to recreational opportunities by balancing the City and County's parks and Open Space systems with the built environment.

The requested zone change will help better balance the parks and Open Space system by establishing more active commercial uses adjacent to the Alameda Drain and Trail system, which will encourage more users and activation of the future trail facility thus furthering Policy 10.1.1.

Policy 12.1.5 Irrigation System: Coordinate with MRGCD and other stakeholders to protect the irrigation system.

The request furthers Policy 12.1.5 because, in addition to being a stakeholder as a property owner abutting the Alameda Drain, the applicant has forged a relationship with MRGCD to support and protect the irrigation system abutting the subject site by improving access and generally supporting development of the Alameda Drain and Trail Master Plan.

Policy 13.5.1 Land Use Impacts: Prevent environmental hazards related to land uses.

(b) Protect public health, safety, and welfare by discouraging incompatible land uses in close proximity, such as housing and industrial activity.

The request furthers Policy 13.5.1 b) because it will replace an incompatible industrial zone that is currently adjacent to residential with a more appropriate commercial zone, while creating an effective transition from the busy I-40 corridor and the commercial zoning down to the lower density single-family residential north of the subject site.

7. The subject site is within the boundaries of the North Valley Area Plan. The request generally furthers the North Valley Area Plan goals and policies by:

- a. providing a variety of choices for housing and lifestyles,
- b. planning to address land use conflicts such as between industrial and residential zoning,
- c. redevelopment of vacant land,
- d. promoting higher density development where there is adequate infrastructure,
- e. encouraging mixed use development,
- f. promoting development that encourages more sustainable transportation options, and
- g. The requested C-2 zone is not in significant conflict with purported NVAP limitations on commercial development because the most applicable Goal/Policy**

language (Goals 6 and 11, page 6) does not limit commercial development on the subject site. Any perceived or alleged limitation on commercial development in the Rank II NVAP is tempered and superseded by the Policy direction of the Rank I Comp Plan, per Section 14-13-2-2 Rank Importance of City Plans.

8. The subject site abuts the Alameda Drain on its west side, so considerations of the Alameda Drain and Trail Master Plan apply. The Alameda Drain and Trail Master Plan is primarily concerned with the design and routing of the proposed trail along the Alameda Drain, but it contemplated the future development of the subject site in its narrative stating the southern portion of the trail is fronted by vacant properties “with potential commercial uses.” The request furthers the Master Plan because the proposed development offers an opportunity to create additional amenities along the trail corridor, as well as provide access and a destination for future trail users.
9. The zone change request has been justified pursuant to *R-270-1980* as follows:
 - A. The applicant’s justification letter and the policies cited and analyzed in Findings 6 through 8 substantiate the claim that the request is consistent with the health, safety, morals, and general welfare of the city.
 - B. The proposed zoning categories allow for similarly intense uses as those surrounding the subject site – commercial to the west and multi-family residential to the east – and the request lays them out in a thoughtful manner stepping the intensity of the freeway to commercial zoning, followed by a medium density multi-family transition to the existing single-family residential located to the north of the subject site, which improves land use stability not found with vacant properties and industrial zoning adjacent to single-family residential.
 - C. The request is consistent with and furthers adopted plans and policies, including the Comprehensive Plan, North Valley Area Plan, and Alameda Drain and Trail Master Plan as summarized in Findings 6 through 8.
 - D. The existing zoning is inappropriate because it predates significant changes in the area, as well as the existing M-1 in particular being in an inappropriate location abutting single-family residential. Changed community conditions include the routing of Interstate 40 and the adoption of the Los Duranes Sector Development Plan by the City. The industrial zoning of the subject site was bisected by Interstate 40 when the highway was built, and the remaining portion is too small and inappropriately close to residential to be properly developed and utilized. Adoption of the plan, which affected the properties on the west side of the Alameda Drain and are not a part of this request, created zoning along Rio Grande Boulevard that allows for a mix of uses. The requested zone change would extend a mix of commercial and residential uses farther east and could lead to a more cohesive development with those other properties to the west. In addition, as shown in the policy analysis, the request furthers numerous policies of the Comprehensive Plan and generally supports the North Valley Area Plan and Alameda Drain and Trail Master Plan, so the requested use categories are more advantageous to the community.

- E. The proposed R-2 and C-2 zones allow uses that will not be harmful to the adjacent property, neighborhood, or community because the uses of these two zones are the same or less harmful than the uses already allowed on the subject site in the M-1 zone or in the adjacent R-3 zone to the east and the SU-2 LD MUD-2, which refers to the C-2 zone to the west. **Given the context of the site, the down-zoning of 5.29 acres of M-1 to C-2 associated with the 6.32 acres of new C-2, and the proposed zoning pattern with transitions of use intensity from I-40 northward, none of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, neighborhood, or community because many of the commercial uses are either already allowed in some fashion by the existing M-1 zoning and/or any adverse impacts of the C-2 uses will be addressed by site design requirements, distance separation requirements, required off-site infrastructure (vehicular access) per use and intensity, and/or by required landscape and buffering, including the new R-2 buffering proposed by the Applicant. A table of the M-1 and C-2 permissive uses is attached to and incorporated in these findings.**
- F. Approval of the requested amendment will not require any capital improvements because the site is located in an area that already has infrastructure. If future development requires additional infrastructure the applicant will have to make those improvements themselves.
- G. Economic considerations are not the determining factor in the request, rather the request is justified based on changed community conditions and being more advantageous to the community in accordance with the policies of the Comprehensive Plan.
- H. The subject site does not front directly onto any major street except for I-40, which does not allow for direct access, and the request is not justified by the location. The request is justified based on changed community conditions and as being more advantageous to the community as articulated by the Comprehensive Plan.
- I. The request is not creating a small area of zoning different from the surrounding zoning, so the request does not constitute a spot zone.
- J. The request is not for a strip of land along a street, so it does not constitute a request for strip zoning.
10. The Near North Valley, Sawmill Area, Los Duranes, and West Old Town Neighborhood Associations, Symphony HOA, and the North Valley Coalition, as well as property owners within 100 feet were notified of the request, as required.
11. A facilitated meeting was held on May 23, 2017. The meeting report submitted by the facilitator indicates a primary concern of the neighbors related to traffic and what the impacts development of commercial uses on the subject site will have on Rio Grande Blvd and the I-40 interchange, including a request that the application be deferred until a Traffic Impact Study can be completed. Other questions and comments included discussion about the height and density allowed by the R-2 zone, as well as the possibility of a grocery store and what type it could be.

12. Staff has talked with numerous individuals about the request in person or over the phone indicating varying levels of support and concern over aspects of the proposal. Six written letters of support were received before the June 8, 2017 hearing, as well as four letters in opposition to the request – two of which are from the owner and family of the closest neighboring R-1 zoned properties. The letters in opposition question the intensity and allowed uses of the C-2 zone, as well as reiterate the traffic concerns that were discussed extensively at the facilitated meeting.
13. At its June 8, 2017 hearing, the EPC voted to defer the request to the July 13, 2017 hearing to allow for continued discussion with affected neighbors regarding traffic and other issues related to the development proposal.
14. Since the deferral, approximately 32 more written public comments were received. Six of these comments are in support of the request with an additional two comments from the Los Duranes Neighborhood Association and homeowners within the Symphony subdivision offering conditional support.
15. 17 letters are opposed and three ask for another deferral related to continued concerns related to traffic, the potential closure of the Campbell Ditch to accommodate vehicular ingress/egress, the scale of development and density allowed by the requested zones, and the proposal taking away from the rural character of the North Valley.
16. Four letters take a more neutral tone asking questions and offering possible solutions to concerns that have been raised.
17. A Traffic Impact Study (TIS) was not required by Transportation Development for this zone change request; however, in the time since the deferral, the applicant has completed a TIS showing the impacts of their proposed development on the surrounding transportation system. The TIS shows there is sufficient capacity on Rio Grande Blvd. to handle the additional trips generated by the proposed development.
18. A second TIS was completed looking at the use of the Campbell Ditch alignment for ingress/egress, and it was shown that such a connection did not yield enough benefit to warrant an alternative connection.
19. The requested C-2 zoning is greater than 5 acres in size, which under the current Zoning Code would constitute a Shopping Center site and future development would have to comply with those regulations.
- 20. The Environmental Planning Commission (EPC) approved the requested zone change at the July 13, 2017 hearing. That decision was appealed to City Council, who in October 2017 accepted the Land Use Hearing Officer's recommendation to deny the appeal. The City Council's decision was appealed to District Court.**
- 21. The Second Judicial District Court affirmed the City Council's decision to grant the zone map amendment request in January 2017 except for two items that are remanded back to the City for further consideration:**

- 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, neighborhood, or community
22. The applicant has replatted the site and created lot lines that correspond to the proposed zoning boundaries as accurately shown on Exhibit 1 of the applicant's Appendix to the July 29, 2019 letter.
 23. The EPC approved the requested zone change at the August 8, 2019 hearing. That decision was appealed by two parties to the City Council. The Land Use Hearing Officer (LUHO) heard the appeals jointly in September 2019 and the City Council voted to remand the case back to the EPC per the recommendation of the LUHO.
 24. The City Council's remand of this case related to appeals AC-19-14 and 15 required notice be sent to owners of property within 100 feet of the subject site per Zoning Code section 14-16-4-1(C)(6)(b). As has been the practice since at least 2013, the Planning Department put the burden of the notification requirement on the applicant, both the expense and the mailing.
 25. 93 Certified Mail notices were sent to owners of property within 100 feet of the subject site as required and also to contact persons for the 7 nearest Neighborhood Associations.
 26. The Planning Department received letters of support and opposition to the request. Concerns and issues raised include traffic, air quality, and neighborhood character, which are all items most appropriately addressed with subsequent site plan review.

RECOMMENDATION

APPROVAL of 17EPC-40011, a request for Zone Map Amendment from M-1 and R-1 to C-2 and R-2 for Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, based on the preceding Findings.

*Russell Brito
Planning Manager*

CITY OF ALBUQUERQUE



Planning Department *David Campbell, Director*

Development Review Division

600 2nd Street NW – 3rd Floor
Albuquerque, NM 87102

NOTICE OF APPEAL

August 19, 2019

TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on August 15, 2019. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Salas, Planning Administrative Assistant at (505) 924-3370.

Please refer to the enclosed excerpt from the City Council Rules of Procedure for Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have regarding the Land Use Hearing Officer rules of procedure.

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Crystal Ortega, Clerk to the Council, (505) 768-3100.

CITY COUNCIL APPEAL NUMBER: AC-19-14
PLANNING DEPARTMENT CASE FILE NUMBER:
17EPC-40011, 1011232, PR-2019-002629, VA-2019-00270

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

APPLICANT: Darlene M. Anaya
2000 Lilac Ave. NW
Albuquerque NM 87104-2537

AGENT: Anaya Law
1728 Ocean Ave. #240
San Francisco CA 94112

cc: Crystal Ortega, City Council, City county bldg. 9th floor
Kevin Morrow/Legal Department, City Hall, 4th Floor-
Zoning Enforcement
EPC File
Edward T. Garcia, co/o Garcia Auto Group LLC, 8100 Lomas Blvd NE, ABQ, NM
87110
Design Workshop Inc 120 East Main Street, Aspen, CO 81611
Near North Valley NA, Joe Sabatini, 3514 6th St. NW, ABQ, NM 87107
Near North Valley NA, Randy Cole, 1501 Los Arboles NW, ABQ, NM 87107
John Roche, 1814 Old Town Rd, NW, ABQ, NM 87104
Christina Blatchford, 1009 18th St NW, ABQ, NM 87104
Ed Garcia, 4200 Aspen NE, ABQ, NM 87110
Christine Dilks, 2458 Rose NW, ABQ, NM 87104
Jackie Fishman, 1820 Gabaldon NW, ABQ, NM 87104
Alan Varela, avarela@cabq.gov

Sawmill area NA, Julie Henss, 1724 Band Saw Pla. NW, ABQ, NM 87104
Sawmill area NA, Dianne Jones, 1400 Lumberton Dr. NW, ABQ, NM 87104
Los Duranes NA, Jose Viramontes, 1317 Gabaldon DrNW, ABQ, NM 87104
Los Duranes NA, William C. Herring, 3104 Cocoa Rd NW, ABQ, NM 87104
Symphony HOA, Inc. Charles Hostetler, 1908 Allegretto Trol NW, ABQ, NM 87104
Symphony HOA Inc. Bernadette Sanchez, 2012 Allegretto Trl. NW, ABQ, NM 87104
West Old Town NA, Benjamin Lovato, 2820 Azar Pl. NW, ABQ, NM 87104
West Old Town NA, Glen Effertz, 2918 Mountain Rd. NW, ABQ, NM 87104
North Valley Coalition, Peggy Norton, PO. Box 70232, ABQ, NM 87197
North Valley Coalition, Doyle Kimbrough, 2327 Campbell Rd. NW, ABQ, NM 87104
Ed Paschich, 1512 Summer Ave. NW, ABQ, NM 87104
Felice Garcia, 1024 Forrester NW, ABQ, NM 87102
Kathleen Allen, 721 17th St NW, ABQ, NM 87104
Patricia Allen, 1900 Lilac NW, ABQ, NM 87104
John Wright, 2220 Wilma Rd NW, ABQ, NM 87104
Ben M. Barreras, 2801 Carson NW, ABQ, NM 87104
Mimi Lopez, 1209 Amado St. NW, ABQ, NM 87104
Harold & Nancy Magnusson, 1309 Fruit Ave NW, ABQ, NM 87104
Anaya Law LLC, Attn: Edward M. Anaya, 1728 Ocean Avenue #240, SF, CA 94112
Deborah Ridley, TVNA Board of Directors, 3247 Calle de Deborah NW, ABQ, NM 87104
Ed Mahr, 1331 Park SW, ABQ, NM 87102
Gary Pierson, 3819 Palacio Del Rio Grande, ABQ, NM 87107
GP Benjamin Lovato, 2820 Azar Pl. NW, ABQ, NM 87104
David Lopez, 2416-B Rice NW, ABQ, NM 87104
Paul Gallegos, 3021 Mackland Ave NE, ABQ, NM 87106
Theresa Anaya, 2708 Los Anayas Rd NW, ABQ, NM 87104
Doyle Kimbrough, 2327 Campbell Rd NW, ABQ, NM 87104
Dennis Lapcik, 1916 Indian School Rd NW, ABQ, NM 87104
Tim & Sandy Pederson, 1918 Indian School Rd NW, ABQ, NM 87104
Linda Lapcik, 1916 Indian School Rd NW, ABQ, NM 87104
Carla Baron, 990 18th St NW, ABQ, NM 87104
Janet Harman, 2432 Rose Ave NW, ABQ, NM 87104
Jason Kent 2021 Mountain Rd NW, ABQ, NM 87104
Roger Melone, 2822 Euclid Ave NE, ABQ, NM 87106
Dimian DuSanti, 2419 Floral NW, ABQ, NM 87104
Matt Digregory, P.O. Box 914, Placitas, NM 87043
Connie Nellos, 2717 Sheridan St NW, ABQ, NM 87104
Charlotte Walton, 3608 Amber Dr. NW, ABQ, NM 87107
Joe Sabatini, 3514 6th St NW, ABQ, NM 87107
Sarah Robinson, 1920 Indian School Rd NW, ABQ, NM 87104
Nathan Bush, 1920 Indian School Rd NW, ABQ, NM 87104
Darlene Anaya 2000 Lilac Dr. NW, ABQ, NM 87104
Rachel Anaya, 2000 Lilac Dr NW, ABQ, NM 87104
Edward Anaya 2000 Lilac Dr NW, ABQ, NM 87104
David Martinez, 1801 Rio Grande NW, ABQ, NM 87104
Marit Tully, 1107 La Poblana NW, ABQ, NM 87107
Jodi Colchamiro, 2525 Zearing Ave NW, ABQ, NM 87104
Alex Allen, 717 17th St, ABQ, NM 87104
Rich Baca, 9805 Kokopelli Dr NW, ABQ, NM 87114



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

Administrative Decisions	<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	Policy Decisions
<input type="checkbox"/> Historic Certificate of Appropriateness – Minor (Form L)	<input type="checkbox"/> Master Development Plan (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Site Plan – DRB (Form P2)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Subdivision of Land – Minor (Form S2)	<input type="checkbox"/> Annexation of Land (Form Z)
Decisions Requiring a Public Meeting or Hearing	<input type="checkbox"/> Subdivision of Land – Major (Form S1)	<input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)
<input type="checkbox"/> Conditional Use Approval (Form ZHE)	<input type="checkbox"/> Vacation of Easement or Right-of-way (Form V)	<input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)
<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Variance – DRB (Form V)	Appeals
<input type="checkbox"/> Expansion of Nonconforming Use or Structure (Form ZHE)	<input type="checkbox"/> Variance – ZHE (Form ZHE)	<input checked="" type="checkbox"/> Decision by EPC, LC, DRB, ZHE, or City Staff (Form A)

APPLICATION INFORMATION

Applicant: Darlene M. Anaya		Phone:
Address: 2000 Lilac Ave, NW		Email:
City: Albuquerque	State: NM	Zip: 87104-2537
Professional/Agent (if any): Anaya Law		Phone: (505) 333-9529
Address: 1728 Ocean Ave., #240		Email: edward@anayalawllc.com
City: San Francisco	State: CA	Zip: 94112
Proprietary Interest in Site: Owner	List all owners:	

BRIEF DESCRIPTION OF REQUEST

Appeal to City Council re: Approval of Project #1011232, Case No. 17EPC-40011

SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)

Lot or Tract No.: See application	Block:	Unit:
Subdivision/Addition: Land of JA Garcia	MRGCD Map No.:	UPC Code:
Zone Atlas Page(s): H-13	Existing Zoning: R1 and C2	Proposed Zoning: R-2 and C2
# of Existing Lots:	# of Proposed Lots:	Total Area of Site (acres):

LOCATION OF PROPERTY BY STREETS

Site Address/Street: North of I-40, East of Rio Grande Between: Alameda Drain and: Campbell Ditch

CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

Signature:	Date: 8/15/2019
Printed Name: EDWARD M. ANAYA	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent

FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees
-		
-		
-		

Meeting/Hearing Date:	Fee Total:
Staff Signature:	Date:
	Project #

FORM A: Appeals

Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.

- APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)
- APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)

Interpreter Needed for Hearing? No if yes, indicate language: _____

A Single PDF file of the complete application including all documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD. PDF shall be organized with the Development Review Application and this Form A at the front followed by the remaining documents in the order provided on this form.

Project number of the case being appealed, if applicable: 1011232

Application number of the case being appealed, if applicable: 17EPC-40011

Type of decision being appealed: EPC approval of zone change

Letter of authorization from the appellant if appeal is submitted by an agent

Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2)

Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4)

Copy of the Official Notice of Decision regarding the matter being appealed

<i>I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.</i>	
Signature:	Date: August 15, 2019
Printed Name: EDWARD M. ANAYA	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent
FOR OFFICIAL USE ONLY	
Case Numbers: _____	Project Number: _____

Staff Signature: _____	
Date: _____	

August 15, 2019

Albuquerque City Council
P.O. Box 1293
Albuquerque, N.M. 87102

Re: Appeal of EPC Decision
OC-19-31 / AC-17-7 / Project #1011232 / 17EPC-40011

Dear Councilors,

This is an appeal of the Environmental Planning Commission's (EPC) August 8, 2019, "Official Notification of Decision" in this matter.

As set forth herein, the EPC's decision: (1) is invalid because it did not comply with procedural due process protections of written notice to affected parties; (2) is not supported by substantial evidence with respect to Finding No. 7(g) regarding the North Valley Area Plan; and (3) is not supported by substantial evidence with respect to Finding No. 9(E) regarding harm to the community.

I. Standing

This office is litigation counsel for Darlene M. Anaya. Ms. Anaya is the owner of residential property located at 2000 Lilac Drive, NW, in Albuquerque, which is immediately adjacent to the above-referenced zone map amendment. Ms. Anaya also has an ownership interest in residential property in Tract 223D, which is a parcel of residential property directly adjacent to the proposed zone change. Attached to this letter is a Letter of Authorization signed by Ms. Anaya. (Exhibit A)

II. Procedural History

This office successfully challenged, in District Court, the EPC's previous attempted rezoning of this property. In an Order dated January 7, 2019, Judge C. Shannon Bacon remanded this matter back to the City of Albuquerque regarding: "(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." (Order, pg. 15).

III. Legal Argument

A. The EPC's decision is invalid for lack of notice.

No parties were notified of the EPC's August 8, 2019, hearing. Neither this office; nor the Near North Valley Neighborhood Association; nor the North Valley Coalition; nor any nearby residents. Notably, the Coalition, in particular, is tasked under the North Valley Area Plan to “facilitate implementation” of the Plan. (Pg. 178). Both the Near North Valley Neighborhood Association and the Coalition requested deferral of this matter, which was not granted. It begs the question of how the EPC could have complied with the Order of “additional consideration and reasoned decision making” if the interested stakeholders on the remanded issues were not notified of the EPC's hearing. **Notice was all the more necessary because the Applicant is now asserting that the zone change will have an automatic conversion under the new IDO; this begs the question of what additional uses may be allowed under any automatic conversion.**

The case of *Miles v. Board of County Com'rs of Sandoval*, 1998-NMCA-118, 125 NM 608 (1998) analyzed what notice is required in zoning actions:

[W]hen government action is concentrated on a relatively small number of persons, based on individual grounds, then the dictates of constitutional due process require individualized notice and an opportunity to be heard. However, when the matter concerns general statutes or other enactments in which all are equally concerned, notice and an opportunity to be heard may not be constitutionally required... Ultimately, the character of the action, rather than its label, determines whether those affected by it are entitled to constitutional due process.

(Miles, supra, at ¶ 9, citations and quotations omitted, emphasis added.)

The City will likely argue that no notice was required here, because notice was initially provided in 2017 when the applicant initially filed its request for a zone change application. However, here, the applicable notice statute very broadly requires notice: “No zoning regulation, restriction or boundary shall become effective, amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard.” NMSA § 3-21-6 (emphasis added). Here, the plain language and intent of this notice statute is to provide written notice when a zone change “becomes effective.” This did not happen.

Moreover, this is a quasi-judicial proceeding. “In New Mexico, decisions that determine how a particular piece of property can be used have been held to be quasi-judicial.” *Dugger v. City of Santa Fe*, 114 N.M. App. 47, 834 P.2d 424, 428 (Ct. App. 1992). Quasi-judicial proceedings “must adhere to fundamental principles of justice and procedural due process.” *West Bluff v. City of Albuquerque*, 2002-NMCA-075, 46, 132 N.M. 433.

If the City or its attorneys have any case law or statutory law supporting its position that no written notice of the August 8, 2019, EPC hearing was necessary, please immediately forward it onto this office.

B. The EPC's decision is not supported by substantial evidence with respect to Finding No. 7(g) regarding the North Valley Area Plan.

EPC Finding 7(g) states that the instant zoning action is not in significant conflict with the North Valley Area Plan because “the most applicable Goal/Policy language (Goals 6 and 11, page 6) does not limit commercial development on the subject site.” Goal 6, on page 6 of the North Valley Area Plan, reads as follows:

6. To encourage quality commercial/industrial development and redevelopment in response to area needs in already developed/ established commercial industrial zones and areas. To discourage future commercial/industrial development on lots not already zoned commercial/industrial.

While Goal 6 may support the rezoning of the existing 5.26 acres of M-1 light industrial, it does not support the rezoning of the residential property into commercial/industrial property. The second sentence of Goal 6 clearly states that future commercial/industrial development on lots not already zoned commercial/industrial is “discourage[d].”

Goal 11, page 6, of the North Valley Area Plan reads as follows:

11. To locate commercial and industrial development within the I-25 corridor, and selected areas along the I-40 corridor, especially as an alternative to extensive lower valley commercial/industrial development.

The EPC misconstrues the phrase “selected areas along the I-40 corridor” as support for its position that the 11.61 acres of C-2 commercial zoning approved here is permissible. However, the visual depiction of future permissible development on Page 37 of the North Valley Area Plan does not support this position. On Page 37 of the Plan, “Large Scale Community” development is clearly not supported in this area. Instead, such “Large Scale Community” is restricted to I-40 near the I-25 juncture.

Furthermore, the Plan at page 35, specifies that “most commercial development in the valley would be oriented to the local service needs of residents and located at major intersections in Village Centers.” Likewise, the Plan at page 36 states, that “new commercial uses ... would be smaller scale and incorporate Village Center Principles.” The Plan further defines “village centers” as having “greater importance to the community than standard commercial centers or strip commercial development...” Here, the approved 11.61 acres of blanket C-2 commercial zoning conflicts with these village center policies.

Furthermore, the approval of the proposed zoning conflicts with Goal/Policy No. 1 of the North Valley Area Plan to “recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the metropolitan area.” (Pg. 5). Likewise, it also conflicts with Goal/Policy No. 2, which states that the North Valley Area Plan is intended to “preserve and enhance the environmental quality of the North Valley Area.” (Pg. 5).

C. The EPC's decision is not supported by substantial evidence with respect to Finding No. 9(E) regarding harm to the community.

There is substantial testimony in the record regarding the harm to the community if this proposed zoning is permitted. While the C-2 zoning may be less harmful than some permitted M-1 uses, the intrusion of C-2 into residential zones is inexcusable and will cause additional harm. Notably, Resolution 270-1980(E) states that “A change of zone shall **not be approved** where some of the permissive uses in the zone would be harmful to adjacent property, the neighborhood, or the community. (emphasis added.)

IV. Conclusion

In summary, the EPC's action: (1) did not comply with procedural due process protections of written notice to interested parties; (2) is not supported by substantial evidence regarding its assertion that the C-2 commercial zoning does not substantially conflict with the North Valley Area Plan; and (3) is not supported with substantial evidence that the proposed zoning will not cause harm to the community and/or neighborhood.

Please contact this office if you have any questions or concerns.

Very Truly Yours,



Edward M. Anaya

EMA:
[2019.08.15.Appeal.of.EPC.Decision.doc]

Exhibit A – Letter of Authorization

August 2, 2019

City of Albuquerque
Planning Department
600 2nd Street NW, Third Floor
Albuquerque, NM 87102

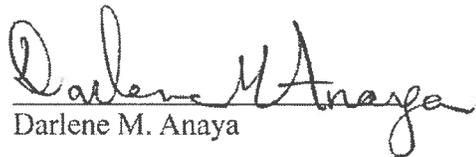
Re: Letter of Authorization
OC-19-31 / AC-17-7 / Project #1011232 / 17EPC-40011

To Whom It May Concern,

I am the owner of residential property located at 2000 Lilac Avenue, NW, in Albuquerque, New Mexico 87104 (Parcel No. 101305915324032828). I also own an interest in residential Parcel No. 101305917021632826, which is situated at approximately Lilac and Saiz roads, NW, in Albuquerque, New Mexico.

Both of these parcels are zoned residential and are in the immediate vicinity and/or adjacent to the above- referenced proposed zone map amendment.

Please be advised that Edward M. Anaya is my agent and is authorized to interact with the Planning and Zoning Departments and the City of Albuquerque to act on my behalf regarding the above referenced matter, including my authorization to act as my legal counsel.


Darlene M. Anaya

CITY OF ALBUQUERQUE



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

OFFICIAL NOTIFICATION OF DECISION

August 8, 2019

Edward T. Garcia
c/o Garcia Auto Group LLC
8100 Lomas Blvd NE
ABQ, NM 87110

Project# 2019-002629 (1011232)
17EPC-40011 Zone Map Amendment (Zone Change)

LEGAL DESCRIPTION:

The above action for all or a portion of Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, zoned M-1 and R-1 to C-2 and R-2, located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres. (H-13)

PO Box 1293

On August 8, 2019 the Environmental Planning Commission (EPC) voted to Approve Project 2019-002629 (1011232), 17EPC-40011, a Zone Map Amendment (Zone Change), based on the following findings:

FINDINGS:

1. This is a request for a Zone Map Amendment (Zone Change) for Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35 located north of Interstate 40 and east of Rio Grande Blvd between the Alameda Drain and Campbell Ditch and containing approximately 20 acres.
2. The subject site is currently zoned a combination of R-1 (Residential Zone) and M-1 (Light Industrial Zone). The request is for a zone change for approximately 11.61 acres to C-2 (Community Commercial Zone) and 7.85 acres to R-2 (Residential Zone). The R-2 zone would allow townhomes and apartments in addition to what is currently allowed under the R-1 designation, and the C-2 zone would allow for a wide variety of office, commercial and service, and some institutional uses generally of a lower intensity than is allowed by the existing M-1 zone.
3. The existing R-1 zoning is the original zoning of the subject site. The M-1 zoning was the subject of a zone change request in 1957 (Z-440) and pre-dated the existence of I-40.

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4. The 2017 Albuquerque/Bernalillo County Comprehensive Plan (Comp Plan), North Valley Area Plan, Alameda Drain and Trail Master Plan, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is just northwest of the I-40 and Rio Grande Blvd interchange, which is the nexus of three Comp Plan Corridors: Rio Grande Blvd immediately west of the subject site from I-40 going north and then east on Indian School Road is a Multi-Modal Corridor; Rio Grande Blvd south of I-40 and heading west on I-40 is a Major Transit Corridor; and I-40 east of Rio Grande Blvd is a Commuter Corridor.
6. The subject site is within both the Area of Change and the Area of Consistency of the Comp Plan. The request is in compliance with and furthers the following applicable goals and policies of the Comprehensive Plan:

Policy 5.1.1 Desired Growth: Capture regional growth in Centers and Corridors to help shape the built environment into a sustainable development pattern.

(c) Encourage employment density, compact development, redevelopment, and infill in Centers and Corridors as the most appropriate areas to accommodate growth over time and discourage the need for development at the urban edge.

The request furthers Policy 5.1.1 c) because the subject site is a large infill site in close proximity to multiple corridor types, including Major Transit, and the change in zoning will allow for additional employment and housing density in a location not at the urban edge.

Policy 5.1.10 Major Transit Corridors: Foster corridors that prioritize high-frequency transit service with pedestrian-oriented development.

(b) Minimize negative impacts on nearby neighborhoods by providing transitions between development along Transit Corridors and abutting single-family residential areas.

The request furthers Policy 5.1.10 b) because the requested zone change creates a step-down from more intense commercial uses adjacent to I-40 and Rio Grande Boulevard to medium density residential down to single-family residential to the north.

(c) Encourage mixed-use development in Centers and near intersections.

The request furthers Policy 5.1.10 c) because the combination of Community Commercial and medium density multi-family development would foster more active mixed-use development near the intersection of three different Comprehensive Plan corridor types at the I-40 and Rio Grande Blvd interchange.

Policy 5.2.1 Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

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(a) Encourage development and redevelopment that brings goods, services, and amenities within walking and biking distance of neighborhoods and promotes good access for all residents.

The request furthers Policy 5.2.1 a) because the requested zone change will facilitate redevelopment of long vacant land with goods, services, and amenities that is accessible to nearby residents within the Los Duranes neighborhood, as well as farther away, via walking and along a number of existing and proposed bicycle facilities.

(b) Encourage development that offers choice in transportation, work areas, and lifestyles.

The request furthers Policy 5.2.1 b) because the subject site is within ¼ mile of multiple transit stops, adjacent to convenient bicycle facilities, and close to a major interchange between I-40 and an arterial roadway that offers easy access for automobiles allowing for choice in transportation and lifestyles for both those residents living in the proposed development and those who live elsewhere and will travel to the development for employment and other activities.

(d) Encourage development that broadens housing options to meet a range of incomes and lifestyles.

The request furthers Policy 5.2.1 d) because changing some of the zoning from R-1 to R-2 will allow for a wider variety of housing options than currently exists on the subject site including single-family houses, townhomes, and medium density apartments.

(e) Create healthy, sustainable communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

The request furthers Policy 5.2.1 e) because the combination of R-2 and C-2 zoning requested allows for a wide mix of uses that will benefit the surrounding neighborhoods that can access the site via automobile, transit, bicycle, or walking.

(f) Encourage higher density housing as an appropriate use in the following situations:

iii. In areas where a mixed density pattern is already established by zoning or by use, where it is compatible with existing area land uses, and where adequate infrastructure is or will be available;

iv. In areas now predominately zoned single-family only where it comprises a complete block face and faces onto a similar or higher density development;

v. In areas where a transition is needed between single-family homes and much more intensive development;

The request furthers Policy 5.2.1 f) because it includes higher density housing at the subject site in an area with a mix of uses already established, infrastructure in place, is of a size comparable to an entire block face, and will abut and be a transition between more intensive commercial development and existing developed single-family homes.

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(n) Encourage more productive use of vacant lots and under-utilized lots, including surface parking.

The request furthers Policy 5.2.1 n) because it will facilitate redevelopment of long vacant and under-utilized lots.

Policy 5.3.1 Infill Development: Support additional growth in areas with existing infrastructure and public facilities.

The request furthers Policy 5.3.1 because rezoning the vacant subject site supports growth in an infill location surrounded by existing infrastructure including paved roads and various utilities.

Policy 5.6.1 Community Green Space: Provide visual relief from urbanization and offer opportunities for education, recreation, cultural activities, and conservation of natural resources by setting aside publicly-owned Open Space, parks, trail corridors, and open areas throughout the Comp Plan area as mapped in Figure 5-3.

(a) Maintain existing irrigation systems as Community Green Space and to help ensure agricultural lands in rural areas.

The request furthers Policy 5.6.1 a) because the development will maintain and enhance the Alameda Drain and Campbell Ditch adjacent to the subject site thus offering recreation and some visual relief from the surrounding urbanization, as well as contributing to the vision for this section of the Alameda Drain as described in the Alameda Drain and Trail Master Plan.

Policy 5.6.2 Areas of Change: Direct growth and more intense development to Centers, Corridors, industrial and business parks, and Metropolitan Redevelopment Areas where change is encouraged.

(b) Encourage development that expands employment opportunities.

The request will allow for development of long vacant parcels with a more productive use, including commercial uses that will expand employment opportunities on land that is partially designated as an Area of Change thus furthering Policy 5.6.2 b).

(c) Foster a range of housing options at various densities according to each Center and Corridor type.

The request includes R-2 zoning, which allows for a variety of housing options and densities up to medium density apartments thus furthering Policy 5.6.2 c).

(d) Encourage higher-density housing and mixed-use development as appropriate land uses that support transit and commercial and retail uses.

The request furthers Policy 5.6.2 d) because the combination of R-2 and C-2 zoning requested will allow for higher-density housing and mixed-use development that will

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support transit along Rio Grande Boulevard, as well as supporting the existing and future commercial and retail uses in the area.

(f) Minimize potential negative impacts of development on existing residential uses with respect to noise, stormwater runoff, contaminants, lighting, air quality, and traffic.

The proposed zoning steps down in intensity from south to north and development of the vacant parcels will add an additional buffer between the existing residential and Interstate 40. Future development proposals will need to address stormwater, lighting that is in compliance with Night Sky and zoning regulations, and traffic circulation. In particular, a Traffic Impact Study has been completed for all of the proposed Rio Grande Crossing and shows that the transportation system can support this request thus furthering Policy 5.6.2 f).

(g) Encourage development where adequate infrastructure and community services exist.

The request furthers Policy 5.6.2 g) because redevelopment of the subject site will utilize existing available infrastructure including water, sewer, and electricity, as well as better utilizing other existing services as an infill location rather than new edge development.

Policy 5.6.3 Areas of Consistency: Protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space.

(b) Ensure that development reinforces the scale, intensity, and setbacks of the immediately surrounding context.

The requested R-2 and C-2 zones reinforce the surrounding context by allowing similar uses and intensities of development as the commercial zoning to the west and R-3 to the east, as well as creating a step-down transition of intensities to the existing R-1 located to the north of the subject site, so the request furthers Policy 5.6.3 b).

(c) Carefully consider zone changes from residential to non-residential zones in terms of scale, impact on land use compatibility with abutting properties, and context.

A portion of this request is to change the zoning from residential to commercial, and it has been considered carefully based on its context. The proposed zones are compatible with and reinforce the land uses on properties located immediately east and west of the subject site and step down in intensity to the properties to the north including leaving a portion of the applicant's property zoned R-1 to maintain land use compatibility thus furthering Policy 5.6.3 c).

Policy 5.6.4 Appropriate Transitions: Provide transitions in Areas of Change for development abutting Areas of Consistency through adequate setbacks, buffering, and limits on building height and massing.

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(a) Provide appropriate transitions between uses of different intensity or density and between non-residential uses and single-family neighborhoods to protect the character and integrity of existing residential areas.

The request furthers Policy 5.6.4 a) because the applicant has made a request with appropriate variations in housing densities and commercial intensity in appropriate locations as to effectively transition to the existing residential areas to the north of the subject site. In addition, the applicant will need to comply with all zoning standards for setbacks, height, landscaping, and buffering when the site is eventually developed.

Policy 9.1.1 Housing options: Support the development, improvement, and conservation of housing for a variety of income levels and types of residents and households.

(a) Increase the supply of housing that is affordable for all income levels.

The request furthers Policy 9.1.1 a) because the requested R-2 zone allows for a variety of housing types and densities such as single-family houses, townhomes, and apartments that allows for free-market housing options to suit various income levels.

(e) Provide for the development of quality housing for elderly residents.

The applicant indicates a desire to develop a senior living facility as allowed by the requested zoning that will provide for quality housing for elderly residents thus furthering Policy 9.1.1 e).

(i) Provide for the development of multi-family housing close to public services, transit, and shopping.

The request for R-2 adjacent to C-2 will allow for development of multi-family housing immediately adjacent to shopping options, and the proposed development will be in close proximity to transit options along Rio Grande Boulevard, so the request furthers Policy 9.1.1 i).

Policy 9.3.2 Other areas: Increase housing density and housing options in other areas by locating near appropriate uses and services and maintaining the scale of surrounding development.

(a) Encourage higher density residential and mixed use development as appropriate uses near existing public facilities, educational facilities, job centers, social services, and shopping districts.

The proposed mixed-use development is near to existing public facilities, educational facilities, job centers, and shopping districts such as Duranes Elementary School, which has capacity, the Indian Pueblo Cultural Center and new development along 12th Street between Menaul and I-40, and Old Town thus furthering Policy 9.3.2 a).

(b) Encourage multi-family and mixed use development in areas where a transition is needed between single-family homes and more intense development.

The request furthers Policy 9.3.2 b) because the proposed multi-family zoning is a transition between existing single-family residential and the proposed C-2 zoning and the Interstate 40 corridor.

Policy 10.1.1 Distribution: Improve the community's access to recreational opportunities by balancing the City and County's parks and Open Space systems with the built environment.

The requested zone change will help better balance the parks and Open Space system by establishing more active commercial uses adjacent to the Alameda Drain and Trail system, which will encourage more users and activation of the future trail facility thus furthering Policy 10.1.1.

Policy 12.1.5 Irrigation System: Coordinate with MRGCD and other stakeholders to protect the irrigation system.

The request furthers Policy 12.1.5 because, in addition to being a stakeholder as a property owner abutting the Alameda Drain, the applicant has forged a relationship with MRGCD to support and protect the irrigation system abutting the subject site by improving access and generally supporting development of the Alameda Drain and Trail Master Plan.

Policy 13.5.1 Land Use Impacts: Prevent environmental hazards related to land uses.

(b) Protect public health, safety, and welfare by discouraging incompatible land uses in close proximity, such as housing and industrial activity.

The request furthers Policy 13.5.1 b) because it will replace an incompatible industrial zone that is currently adjacent to residential with a more appropriate commercial zone, while creating an effective transition from the busy I-40 corridor and the commercial zoning down to the lower density single-family residential north of the subject site.

7. The subject site is within the boundaries of the North Valley Area Plan. The request generally furthers the North Valley Area Plan goals and policies by:
 - a. providing a variety of choices for housing and lifestyles,
 - b. planning to address land use conflicts such as between industrial and residential zoning,
 - c. redevelopment of vacant land,
 - d. promoting higher density development where there is adequate infrastructure,
 - e. encouraging mixed use development,
 - f. promoting development that encourages more sustainable transportation options, and
 - g. The requested C-2 zone is not in significant conflict with purported NVAP limitations on commercial development because the most applicable Goal/Policy language (Goals

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6 and 11, page 6) does not limit commercial development on the subject site. Any perceived or alleged limitation on commercial development in the Rank II NVAP is tempered and superseded by the Policy direction of the Rank I Comp Plan, per Section 14-13-2-2 Rank Importance of City Plans.

8. The subject site abuts the Alameda Drain on its west side, so considerations of the Alameda Drain and Trail Master Plan apply. The Alameda Drain and Trail Master Plan is primarily concerned with the design and routing of the proposed trail along the Alameda Drain, but it contemplated the future development of the subject site in its narrative stating the southern portion of the trail is fronted by vacant properties "with potential commercial uses." The request furthers the Master Plan because the proposed development offers an opportunity to create additional amenities along the trail corridor, as well as provide access and a destination for future trail users.
9. The zone change request has been justified pursuant to *R-270-1980* as follows:
 - A. The applicant's justification letter and the policies cited and analyzed in Findings 6 through 8 substantiate the claim that the request is consistent with the health, safety, morals, and general welfare of the city.
 - B. The proposed zoning categories allow for similarly intense uses as those surrounding the subject site – commercial to the west and multi-family residential to the east – and the request lays them out in a thoughtful manner stepping the intensity of the freeway to commercial zoning, followed by a medium density multi-family transition to the existing single-family residential located to the north of the subject site, which improves land use stability not found with vacant properties and industrial zoning adjacent to single-family residential.
 - C. The request is consistent with and furthers adopted plans and policies, including the Comprehensive Plan, North Valley Area Plan, and Alameda Drain and Trail Master Plan as summarized in Findings 6 through 8.
 - D. The existing zoning is inappropriate because it predates significant changes in the area, as well as the existing M-1 in particular being in an inappropriate location abutting single-family residential. Changed community conditions include the routing of Interstate 40 and the adoption of the Los Duranes Sector Development Plan by the City. The industrial zoning of the subject site was bisected by Interstate 40 when the highway was built, and the remaining portion is too small and inappropriately close to residential to be properly developed and utilized. Adoption of the plan, which affected the properties on the west side of the Alameda Drain and are not a part of this request, created zoning along Rio Grande Boulevard that allows for a mix of uses. The requested zone change would extend a mix of commercial and residential uses farther east and could lead to a more cohesive development with those other properties to the west. In addition, as shown in the policy analysis, the request furthers numerous policies of the Comprehensive Plan and generally supports the North Valley Area Plan and

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Alameda Drain and Trail Master Plan, so the requested use categories are more advantageous to the community.

- E. The proposed R-2 and C-2 zones allow permissive uses that will not be harmful to the adjacent property, neighborhood, or community because the uses of these two zones are the same or less harmful than the uses already allowed on the subject site in the M-1 zone or in the adjacent R-3 zone to the east and the SU-2 LD MUD-2, which refers to the C-2 zone to the west fronting Rio Grande Blvd. The EPC has considered all of the permissive uses in the C-2 Zone as set forth in 14-16-2-17(A), a listing of which appears in the table attached to these findings. Given the context of the site, the down-zoning of 5.29 acres of M-1 to C-2 associated with the 6.32 acres of new C-2, and the proposed zoning pattern with transitions of use intensity from I-40 northward, none of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, neighborhood, or community because many of the commercial uses are already allowed in some fashion, as well as more intense uses, by the existing M-1 zoning and/or any adverse impacts of the C-2 uses will be addressed by site design requirements, distance separation requirements, required off-site infrastructure (vehicular access) per use and intensity, and/or by required landscape and buffering, including the new R-2 buffering provided by Applicants. A table of the M-1 and C-2 permissive uses is attached to and incorporated in these findings.
 - F. Approval of the requested amendment will not require any capital improvements because the site is located in an area that already has infrastructure. If future development requires additional infrastructure the applicant will have to make those improvements themselves.
 - G. Economic considerations are not the determining factor in the request, rather the request is justified based on changed community conditions and being more advantageous to the community in accordance with the policies of the Comprehensive Plan.
 - H. The subject site does not front directly onto any major street except for I-40, which does not allow for direct access, and the request is not justified by the location. The request is justified based on changed community conditions and as being more advantageous to the community as articulated by the Comprehensive Plan.
 - I. The request is not creating a small area of zoning different from the surrounding zoning, so the request does not constitute a spot zone.
 - J. The request is not for a strip of land along a street, so it does not constitute a request for strip zoning.
10. The Near North Valley, Sawmill Area, Los Duranes, and West Old Town Neighborhood Associations, Symphony HOA, and the North Valley Coalition, as well as property owners within 100 feet were notified of the request, as required.
11. A facilitated meeting was held on May 23, 2017. The meeting report submitted by the facilitator indicates a primary concern of the neighbors related to traffic and what the

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impacts development of commercial uses on the subject site will have on Rio Grande Blvd and the I-40 interchange, including a request that the application be deferred until a Traffic Impact Study can be completed. Other questions and comments included discussion about the height and density allowed by the R-2 zone, as well as the possibility of a grocery store and what type it could be.

12. Staff has talked with numerous individuals about the request in person or over the phone indicating varying levels of support and concern over aspects of the proposal. Six written letters of support were received before the June 8, 2017 hearing, as well as four letters in opposition to the request – two of which are from the owner and family of the closest neighboring R-1 zoned properties. The letters in opposition question the intensity and allowed uses of the C-2 zone, as well as reiterate the traffic concerns that were discussed extensively at the facilitated meeting.
13. At its June 8, 2017 hearing, the EPC voted to defer the request to the July 13, 2017 hearing to allow for continued discussion with affected neighbors regarding traffic and other issues related to the development proposal.
14. Since the deferral, approximately 32 more written public comments were received. Six of these comments are in support of the request with an additional two comments from the Los Duranes Neighborhood Association and homeowners within the Symphony subdivision offering conditional support.
15. 17 letters are opposed and three ask for another deferral related to continued concerns related to traffic, the potential closure of the Campbell Ditch to accommodate vehicular ingress/egress, the scale of development and density allowed by the requested zones, and the proposal taking away from the rural character of the North Valley.
16. Four letters take a more neutral tone asking questions and offering possible solutions to concerns that have been raised.
17. A Traffic Impact Study (TIS) was not required by Transportation Development for this zone change request; however, in the time since the deferral, the applicant has completed a TIS showing the impacts of their proposed development on the surrounding transportation system. The TIS shows there is sufficient capacity on Rio Grande Blvd. to handle the additional trips generated by the proposed development.
18. A second TIS was completed looking at the use of the Campbell Ditch alignment for ingress/egress, and it was shown that such a connection did not yield enough benefit to warrant an alternative connection.
19. The requested C-2 zoning is greater than 5 acres in size, which under the current Zoning Code would constitute a Shopping Center site and future development would have to comply with those regulations.
20. The Environmental Planning Commission (EPC) approved the requested zone change at the July 13, 2017 hearing. That decision was appealed to City Council, who in October

2017 accepted the Land Use Hearing Officer's recommendation to deny the appeal. The City Council's decision was appealed to District Court.

21. The Second Judicial District Court affirmed the City Council's decision to grant the zone map amendment request in January 2017 except for two items that are remanded back to the City for further consideration:

- 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, neighborhood, or community

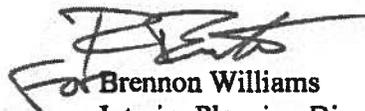
22. The applicant has replatted the site and created lot lines that correspond to the proposed zoning boundaries as accurately shown on Exhibit 1 of the applicant's Appendix to the July 29, 2019 letter.

APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **AUGUST 23, 2019**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday or Holiday, the next working day is considered as the deadline for filing the appeal.

For more information regarding the appeal process, please refer to Section 14-16-6 of the IDO, Administration and Enforcement. A Non-Refundable filing fee will be calculated at the Land Development Coordination Counter and is required at the time the appeal is filed. It is not possible to appeal EPC Recommendations to City Council; rather, a formal protest of the EPC's Recommendation can be filed within the 15 day period following the EPC's recommendation.

You will receive notification if any person files an appeal. If there is no appeal, you can receive Building Permits at any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. Successful applicants are reminded that other regulations of the City Zoning Code must be complied with, even after approval of the referenced application(s).

Sincerely,



For Brennon Williams
Interim Planning Director

BW/CL

cc: Edward T. Garcia, co/o Garcia Auto Group LLC, 8100 Lomas Blvd NE, ABQ, NM 87110
Design Workshop Inc 120 East Main Street, Aspen, CO 81611
Near North Valley NA, Joe Sabatini, 3514 6th St. NW, ABQ, NM 87107
Near North Valley NA, Randy Cole, 1501 Los Arboles NW, ABQ, NM 87107

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Sawmill Area NA, Julie Henss, 1724 Band Saw Pla. NW, ABQ, NM 87104
Sawmill area NA, Dianne Jones, 1400 Lumberton Dr. NW, ABQ, NM 87104
Los Duranes NA, Jose Viramontes, 1317 Gabaldon DrNW, ABQ, NM 87104
Los Duranes NA, William C. Herring, 3104 Cocoa Rd NW, ABQ, NM 87104
Symphony HOA, Inc. Charles Hostetler, 1908 Allegretto Trl NW, ABQ, NM 87104
Symphony HOA Inc. Bernadette Sanchez, 2012 Allegretto Trl. NW, ABQ, NM 87104
West Old Town NA, Benjamin Lovato, 2820 Azar Pl. NW, ABQ, NM 87104
West Old Town NA, Glen Effertz, 2918 Mountain Rd. NW, ABQ, NM 87104
North Valley Coalition, Peggy Norton, PO. Box 70232, ABQ, NM 87197
North Valley Coalition, Doyle Kimbrough, 2327 Campbell Rd. NW, ABQ, NM 87104
Ed Paschich, 1512 Summer Ave. NW, ABQ, NM 87104
Felice Garcia, 1024 Forrester NW, ABQ, NM 87102
Kathleen Allen, 721 17th St NW, ABQ, NM 87104
Patricia Allen, 1900 Lilac NW, ABQ, NM 87104
John Wright, 2220 Wilma Rd NW, ABQ, NM 87104
Ben M. Barreras, 2801 Carson NW, ABQ, NM 87104
Mimi Lopez, 1209 Amado St. NW, ABQ, NM 87104
Harold & Nancy Magnusson, 1309 Fruit Ave NW, ABQ, NM 87104
Anaya Law LLC, Attn: Edward M. Anaya, 1728 Ocean Avenue #240, SF, CA 94112
Deborah Ridley, TVNA Board of Directors, 3247 Calle de Deborah NW, ABQ, NM 87104
Ed Mahr, 1331 Park SW, ABQ, NM 87102
Gary Pierson, 3819 Palacio Del Rio Grande, ABQ, NM 87107
GP Benjamin Lovato, 2820 Azar Pl. NW, ABQ, NM 87104
David Lopez, 2416-B Rice NW, ABQ, NM 87104
Paul Gallegos, 3021 Mackland Ave NE, ABQ, NM 87106
Theresa Anaya, 2708 Los Anayas Rd NW, ABQ, NM 87104
Doyle Kimbrough, 2327 Campbell Rd NW, ABQ, NM 87104
Dennis Lapcik, 1916 Indian School Rd NW, ABQ, NM 87104
Tim & Sandy Pederson, 1918 Indian School Rd NW, ABQ, NM 87104
Linda Lapcik, 1916 Indian School Rd NW, ABQ, NM 87104
Carla Baron, 990 18th St NW, ABQ, NM 87104
Janet Harman, 2432 Rose Ave NW, ABQ, NM 87104
Jason Kent 2021 Mountain Rd NW, ABQ, NM 87104
Roger Melone, 2822 Euclid Ave NE, ABQ, NM 87106
Dimian DuSanti, 2419 Floral NW, ABQ, NM 87104
Matt Digregory, P.O. Box 914, Placitas, NM 87043
Connie Nellos, 2717 Sheridan St NW, ABQ, NM 87104
Charlotte Walton, 3608 Amber Dr. NW, ABQ, NM 87107
Joe Sabatini, 3514 6th St NW, ABQ, NM 87107
Sarah Robinson, 1920 Indian School Rd NW, ABQ, NM 87104
Nathan Bush, 1920 Indian School Rd NW, ABQ, NM 87104
Darlene Anaya 2000 Lilac Dr. NW, ABQ, NM 87104
Rachel Anaya, 2000 Lilac Dr NW, ABQ, NM 87104
Edward Anaya 2000 Lilac Dr NW, ABQ, NM 87104
David Martinez, 1801 Rio Grande NW, ABQ, NM 87104
Marit Tully, 1107 La Poblana NW, ABQ, NM 87107
Jodi Colchamiro, 2525 Zearing Ave NW, ABQ, NM 87104
Alex Allen, 717 17th St, ABQ, NM 87104
Rich Baca, 9805 Kokopelli Dr NW, ABQ, NM 87114

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John Roche, 1814 Old Town Rd, NW, ABQ, NM 87104
Christina Blatchford, 1009 18th St NW, ABQ, NM 87104
Ed Garcia, 4200 Aspen NE, ABQ, NM 87110
Christine Dilks, 2458 Rose NW, ABQ, NM 87104
Jackie Fishman, 1820 Gabaldon NW, ABQ, NM 87104
Alan Varela, avarela@cabq.gov

Table of C-2 Permissive Uses under § 14-16-2-17(A)

Sub #	Use
(1)	Antenna (up to 65 feet)
(2)	Clinic
(3)	Copying, blueprinting
(4)	Institution (club, day-care, library, school, museum)
(5)	Office
(6)	Park-and-ride temporary facilities
(7)	Public utility structure
(8)	Residential uses permissive in R-3 Zone (subject to conditions)
(9)	Sign, off-premise (subject to conditions)
(10)	Sign, on-premise (subject to conditions)
(11)	Radio or television studio or station
(12)	Recycling bin (accessory use)
(13)	Retailing of consumer products and services
	Excluding:
	• Adult amusement/adult book stores §14-16-2-17(A)(13)
	• Hospitals for humans §14-16-2-17(A)(13)
	• Transit facilities §14-16-2-17(A)(13)
	• Auto dismantling §14-16-2-17(A)(13)(s)
	• Sheet metal working §14-16-2-17(A)(13)(s)
	• Tire retreading §14-16-2-17(A)(13)(s)
	Including, subject to specified conditions:
(13)-a	• Alcoholic drink sales for consumption off-premises (subject to conditions)
(13)-b	• Vehicle sales, rental, service, repair and storage (subject to conditions, excluding truck terminal)
(13)-c	• Banking, loaning money, including pawn
(13)-d	• Building materials (subject to conditions)
(13)-e	• Temporary circus or carnival operation (only 7 days per year)
(13)-f	• Drive-in restaurant (subject to conditions)
(13)-g	• Dry cleaning, laundry, clothes pressing (subject to conditions)
(13)-h	• Flowers and plants
(13)-i	• Gasoline, oil, and liquefied petroleum gas retailing (excluding truck terminal)
(13)-j	• Golf driving range, miniature golf course, baseball batting range (subject to conditions)
(13)-k	• Hospital for animals (subject to conditions)
(13)-l	• One mobile home for watchman or caretaker on same lot with otherwise permitted commercial uses (subject to conditions)
(13)-m	• Parking lot, as regulated in O-1 zone
(13)-n	• Pet shop
(13)-o	• Restaurant, including outdoor seating
(13)-p	• Sample dwelling unit used to sell similar dwelling units
(13)-q	• Second-hand store (subject to conditions)
(13)-r	• Stand or vehicle selling fruit, vegetables or nursery stock, up to 90 days per year
(14)	Temporary storage incidental to on-site construction
(15)	Wholesaling of jewelry
(16)	Otherwise permitted uses but in a tent, temporarily for 7 days twice per year
(17)	Wireless telecommunications facility (subject to conditions)

**Notice of Decision
City Council
City of Albuquerque
October 22, 2019**

AC-19-14 Project PR-2019-002629/ 1011232/ VA-2019-00270: Anaya Law, Agents for Darlene M. Anaya, Appeals the Environmental Planning Commission Decision to Approve a Zone Map Amendment for all or a Portion of Tracts 22403B, 225B2AIA1 & 226C2B, 225B2AIA2, 225B2B, 225B2C, 225B20, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225821, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, zoned M-I and R-I to C-2 and R-2, located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres

Decision

On October 21, 2019, by a vote of 8 FOR, 0 AGAINST, the City Council voted to grant the appeal by accepting and adopting the recommendation and findings of the Land Use Hearing Officer.

Excused: Sanchez

IT IS THEREFORE ORDERED THAT THE APPEAL IS GRANTED, AND THIS MATTER IS REMANDED TO THE ENVIRONMENTAL PLANNING COMMISSION

Attachments

1. Land Use Hearing Officer's Recommendation
2. Action Summary from the October 21, 2019 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.



Date: 10-22-19
Klarissa J. Peña, President
City Council



Date: 10/22/19
Received by: _____
City Clerk's Office

X:\CL\SHARE\CL-Staff\Legislative Staff\Reports\LUPZ\DAC-19-14.mmh.doc

RECEIVED
ALBUQUERQUE CITY CLERK
2019 OCT 22 PM 4: 18

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

CONSOLIDATED APPEALS. AC-19-14 and AC-19-15

**Project: PR-2019-002629 (1011232);
VA-2019-00270; VA-2019-00274;17EPC-40011**

**DARLENE ANAYA (AC-19-14),
NORTH VALLEY COALITION (AC-19-15), Appellants,**

and,

**GARCIA REAL ESTATE INVESTMENTS, LLC,
G3 INVESTORS, LLC, DOS VIENTOS, LLC, and
SINCLAIR PROPERTIES, LLC, Party Opponents.**

1 In this matter, the Appellants filed separate appeals of a single zone-change decision from
2 the Environmental Planning Commission (EPC). Because the individual appeals concern the
3 same zone-change application and the same decision of the EPC, for expediency and efficiency
4 the appeals were consolidated. The zone-change application has an extensive history that
5 includes two previous consolidated appeals, and one District Court appeal that resulted in the
6 matter being remanded back to the EPC to “consider” two issues. The appeals in this matter
7 concern the EPC’s subsequent handling of the District Court’s remand.

8 Appellants first challenge the EPC decision on procedural grounds having to do with
9 notice. They also challenge the substantive merits of the decision. On the grounds having to do
10 with notice, or lack thereof, it would be convenient to overlook or finesse the validity of the
11 defect alleged by Appellants. However, although there is already a protracted history to this

12 matter, it would be a mistake to compound the EPC error by explaining it away. I have no choice
13 but to find and to recommend to the City Council that there is a notice defect in this matter that
14 strikes at the core of the EPC’s burden to the public—fairness, transparency, and due process.¹

15 The undisputed evidence demonstrates that the EPC ostensibly intended to perform a
16 closed record review of the District Court remanded issues, but in doing so, it concurrently
17 opened the floor to three citizens to testify in support of the application in the process.² It did
18 this without affording notice “to all owners of property within the area proposed to be changed
19 and to all owners of property within 100 feet of the exterior boundaries of the area proposed to
20 be changed, excluding public right-of-way” [Comprehensive Zoning Code, § 14-16-4-
21 1(C)(6)(b)]³ Regrettably, as explained below in more detail, the EPC erred, and it is for this
22 reason, another remand to the EPC is unavoidable. Because of the notice defect, the substantive
23 challenges to the EPC’s reconsideration are not ripe for review until the EPC record can be closed
24 or until the City Council decides otherwise.

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

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

1. I note that I mistakenly informed the parties at the LUHO hearing that the IDO standard of LUHO review applies rather than the standard under the Comp. Zoning Code (there is a significant difference in in how remands are handled). I correct that mistake herein.

2. For purposes of these consolidated appeals, the term “opening the floor” means allowing testimony from the public and adding new evidence in the record.

3. Because the zone-change application was decided under the previous Comp. Zoning Code, the Integrated Development Ordinance (IDO) is inapplicable in all respects.

30 At the appeal level of review, the decision and record must be supported by a preponderance
31 of the evidence to be upheld. The Land Use Hearing Officer is advisory to the City Council.
32 If a remand is necessary to clarify or supplement the record, or if the remand would
33 expeditiously dispose of the matter, the Land Use Hearing Officer has authority to
34 recommend that the matter be remanded for reconsideration by the EPC. The City Council
35 may grant the appeal in whole or in part, deny it, or remand it to the Land Use Hearing
36 Officer or to the EPC.⁴

37 As stated above, the history of the zone-change application is protracted. Briefly, after a
38 July 13, 2017 public hearing, on July 14, 2017, the EPC issued its Official Notification of
39 Decision approving the zone-change application. That decision was appealed by the same
40 Appellants. The City Council referred the appeals to the Land Use Hearing Officer (LUHO). A
41 LUHO hearing was held on both appeals in September of that same year of which the City
42 Council adopted as its own decision. The City Council's decision was subsequently appealed to
43 the Second Judicial District Court by Appellant, Darlene Anaya only. On January 7, 2019, the
44 District Court Judge assigned to the appeal, rendered her decision. On all but two issues, the
45 Court upheld the City Council's decision. Specifically, on the two remaining issues, the Court
46 held and remanded:

47 "the following two issues for additional consideration and reasoned
48 decision making in accordance with Resolution 270-1980, §§ 1(C) and 1(E):
49 (1) whether the proposed C-2 zone is in significant conflict with purported
50 NV AP limitations on commercial development; and (2) whether some of
51 the permissive uses of the proposed C-2 zone would be harmful to adjacent
52 property, the neighborhood or the community" [Court Order].
53

4. See Rules of the Land Use Hearing Officer adopted by the City Council, February 18, 2004. Bill No. F/S OC-04-6 and codified in Section 14-16-4-4 of the Zoning Code.

54 Because the EPC is delegated the task of the finder of fact in zone-change applications, and
55 because this matter originated at the EPC, after the District Court remand, the City Council
56 referred the matter back to the EPC to take up the two issues remanded by the District Court.
57 The EPC took the remand issues up at its scheduled public hearing on August 8, 2019. It is
58 undisputed that before the August 8, 2019 public hearing, the City Planning Department Staff
59 caused a generalized public notice of the zone-change application and hearing to be posted in
60 the Albuquerque Journal Newspaper [R. 423].⁵ It is also undisputed that individual notices to
61 neighboring residents who qualify under § 14-16-4-1(C)(6)(b) was not afforded.

62 No one disputes that because the zone-change proposal affects a relatively small number
63 of citizens, the EPC’s role in judging the applicants’ application is adjudicative rather than
64 legislative. In short, there is no question that the EPC is held to a quasi-judicial standard in
65 judging the applicants’ zone-change application. And no one disputes that among the specific
66 processes exercised by the EPC when it performs its quasi-judicial role, it “must adhere to
67 fundamental principles of justice and procedural due process” [*State Ex Rel. Battershell v. City*
68 *of Albuquerque*, 1989-NMCA-045, ¶ 17]. In doing so, it need not “comport with the same
69 evidentiary and procedural standards applicable to a court of law” [*Albuquerque Commons*
70 *Partnership v. City Council*, 2008-NMSC-025, ¶ 34]. However, there can be no shortcuts to
71 notice and affording the right to be heard in quasi-judicial hearings. This is because “fundamental
72 fairness is the essence of due process” [*N.M. Dep’t of Workforce Solutions v. Garduño*, 2016-
73 *NMSC-002*, 363 P.3d 1176, ¶ 39]. Notice is an indispensable component for achieving fairness
74 in the process. Thus, it should not be surprising that the right to notice flows from the right of an

5. Notably, the newspaper notice had no information to distinguish that the hearing would be a closed record review of the zone-change application.

75 opportunity to be heard. This right and opportunity are at the core of fairness in the quasi-judicial
76 processes [*Los Chavez Cmty. Assn. v. Valencia Cnty.*, 2012-NMCA-044, ¶ 23]. These core
77 principles apply to determining what notice was required in the EPC’s remand hearing.
78 Generally, because the EPC is a factfinder and was performing its fact-finding tasks in a quasi-
79 judicial capacity, in zone-change hearings individual notice under § 14-16-4-1(C)(6)(b) is the
80 default notice required to area residents (under the Comp. Zoning Code).

81 However, the Party Opponents contend that the EPC’s fact-finding role was truncated or
82 altered by the District Court’s remand order. In short, they contend that because the EPC already
83 heard the zone-change application in July 2017, and because the remand was only for two issues,
84 the right to notice and the opportunity to be heard at the second remand hearing is inapplicable
85 to property owners within 100-feet of the zone-change sites. Accordingly, they contend that
86 notice under § 14-16-4-1(C)(6)(b) was not necessary. Moreover, City Planning Staff asserted
87 at the EPC hearing that the August 8, 2019 remand hearing was similar in nature to a routine
88 EPC deferral or continuance matter [R. 93]. In those instances, notice under § 14-16-4-1(C)(6)(b)
89 for the deferred or continued hearing is apparently not given. However, what differentiates a
90 deferral or a continuance from the August 8, 2019 hearing is that in a routine deferral or
91 continuance the EPC opens the hearing and give actual notice of the deferral or continued date
92 when the matter will be heard at the hearing. This fact pattern, however, is not what occurred in
93 this case because at the July 2017 EPC hearing the EPC did not defer or continue its hearing, nor
94 did it give notice of the August 8, 2019 hearing date at that July 2017 hearing. In short, the EPC
95 never gave individualized notice to neighboring residents of the August 8, 2019 hearing. That is
96 undisputed.

97 Because notice and an opportunity to be heard is a bedrock of the quasi-judicial processes,
98 we must look to the nature of the acts performed at the EPC remand hearing, rather than merely
99 calling it a closed record, remand hearing to determine whether § 14-16-4-1(C)(6)(b) notice was/
100 is necessary. The record shows that the EPC apparently embraced the remand hearing as a record
101 review of the zone-change application, not requiring § 14-16-4-1(C)(6)(b) notice. But it is a fact
102 that it also allowed some neighboring residents to testify. Opening the floor to allow the three
103 neighboring residents who coincidentally spoke in support of the zone-change has the practical
104 impact of supplementing the record with new evidence, and in doing so, it reshaped the process.
105 [R. 91, 103-105].

106 It cannot be overstated that the EPC allowed this testimony even though it did not give §
107 14-16-4-1(C)(6)(b) notice. The testimony may have been considered by the EPC to be
108 extraneous, or it may not have assisted the EPC in making their decision, but that is not what is
109 important because what is meaningful is the nature of the process allowed and what in fact
110 transpired at the hearing. Fundamental fairness requires that a record cannot be selectively
111 opened to a few attendees while bypassing others. Although the EPC may have intended their
112 review to be a closed record review, that intent was unmistakably abrogated by their conduct.
113 For all practical purposes, but for the remand from District Court, the nature of the EPC's hearing
114 was in fact anything but a closed record hearing, giving rise to the need for § 14-16-4-1(C)(6)(b)
115 notice to qualifying property owners.

116 Because of the protracted history of this matter, I respectfully find it regrettable to
117 recommend a remand, but the most expedient path to finality is to cure the defects at the time
118 when they are discovered. In so finding, I also respectfully offer these suggestions to the City
119 Council. In a remand, the EPC cannot treat the hearing of the two remand issues as a closed

120 record review anymore. It cannot close what it already partially opened. It cannot merely strike
121 the testimony from the record, as that is no different than ignoring it. To achieve the greatest
122 transparency and fairness to the public, at least regarding testimony from affected neighbors who
123 have a right to notice under § 14-16-4-1(C)(6)(b), the EPC must now open the hearing and the
124 record. That is the most transparent and fair manner to appropriately cure the error. Because the
125 record was supplemented in the EPC hearing with some witness testimony, the basic principles
126 of fairness require a new hearing and that all qualifying property owners within 100-feet of the
127 project site (the entire project site) must be given an opportunity to be heard.⁶ Accordingly, I
128 respectfully recommend that if the City Council remands this matter to the EPC, the EPC must,
129 at a minimum give § 14-16-4-1(C)(6)(b) notice and allow testimony.



Steven M. Chavez, Esq.
Land Use Hearing Officer

October 4, 2019

Copies to:

Appellants
Party Opponents
City Staff

6. The Party Opponents argue that because not all the zone-changes in the application are challenged, the notices should be similarly limited in scope. However, Section 14-16-4-1(C)(6)(b) does not limit notice according to what is challenged. It expressly requires that “all” owners surrounding the zone-changes in the application have right to notice.



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, October 21, 2019

5:00 PM

Vincent E. Griego Chambers

One Civic Plaza NW

Albuquerque/Bernalillo County Government Center

TWENTY-THIRD COUNCIL - FORTY-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 - Klarissa J. Peña, President, District 3

3. PROCLAMATIONS & PRESENTATIONS

4. ECONOMIC DEVELOPMENT DISCUSSION

5. ADMINISTRATION QUESTION & ANSWER PERIOD

6. APPROVAL OF JOURNAL

October 7, 2019

7. COMMUNICATIONS AND INTRODUCTIONS

8. REPORTS OF COMMITTEES

Finance and Government Operations Committee - October 14, 2019

Land Use, Planning and Zoning Committee - October 16, 2019

Deferrals/Withdrawals

- *f. R-19-201 Requiring The Department Of Municipal Development To Install Speed Humps On Dover Street Northwest To Improve Public Safety (Borrego)
- A motion was made by Vice-President Borrego that this matter be Postponed to November 18, 2019. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- a. EC-19-473 Request to Approve Supplemental Agreement with the Albuquerque Hispano Chamber of Commerce to Oversee the Creation and Launch of a Public Engagement Campaign
- A motion was made by President Peña that this matter be Postponed to November 4, 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}**10. GENERAL PUBLIC COMMENTS****11. ANNOUNCEMENTS****12. PUBLIC HEARINGS: {Appeals, SAD Protest Hearings}**

- a. AC-19-14 Project PR-2019-002629/ 1011232/ VA-2019-00270: Anaya Law, Agents for Darlene M. Anaya, Appeals the Environmental Planning Commission Decision to Approve a Zone Map Amendment for all or a Portion of Tracts 22403B, 225B2AIA1 & 226C2B, 225B2AIA2, 225B2B, 225B2C, 225B20, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225821, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, zoned M-I and R-I to C-2 and R-2, located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres
- A motion was made by Councilor Benton that this matter be To Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:**
- For:** 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris
- Excused:** 1 - Sanchez
- b. AC-19-15 Project PR-2019-002629/ 1011232/ VA-2019-00274: Peggy Norton, North Valley Coalition, Appeals the Environmental Planning Commission Decision to Approve a Zone Map Amendment for all or a Portion of

Tracts 22403B, 225B2AIA1 & 226C2B, 225B2AIA2, 225B2B, 225B2C, 225B20, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225821, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, zoned M-I and R-I to C-2 and R-2, located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres

A motion was made by Councilor Benton that this matter be To Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:

For: 7 - Peña, Borrego, Benton, Winter, Davis, Gibson, and Harris

Against: 1 - Jones

Excused: 1 - Sanchez

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

14. FINAL ACTIONS

- a. O-19-80 F/S Authorizing The Issuance And Sale Of The City Of Albuquerque, New Mexico Taxable Industrial Revenue Bond (Arrive Albuquerque Hotel Project) Series 2019 In The Maximum Principal Amount Of \$20,800,000 To Provide Funds To Finance The Acquisition, Redevelopment, Renovation, Rehabilitation And Equipping Of A Hospitality Project; Authorizing The Execution And Delivery Of An Indenture, Lease Agreement, Bond Purchase Agreement, Bond, And Other Documents In Connection With The Issuance Of The Bond And The Project; Making Certain Determinations And Findings Relating To The Bond And The Project (Benton, by request)

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

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

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

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

- b. R-19-155 A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 600 Dallas St NE 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 November 18, 2019. The motion carried by the following vote:

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

- c. R-19-156 A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 8400 Chico Rd NE 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 Passed. The motion carried by the following vote:**
- For:** 8 - Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- Against:** 1 - Peña
- d. R-19-199 F/S Adjusting Fiscal Year 2020 General Fund Appropriations To Provide Funding For The Albuquerque Police Department Party Intervention Team (PIT) Program (Winter, Jones, Sanchez)
- A motion was made by Councilor Sanchez that this matter be Substituted. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- A motion was made by Councilor Sanchez that the rules be suspended for the purpose of allowing R-19-199 to be adopted the same evening it is substituted. The motion carried by the following vote:**
- For:** 6 - Sanchez, Winter, Davis, Gibson, Jones, and Harris
- Against:** 3 - Peña, Borrego, and Benton
- A motion was made by Vice-President Borrego that this matter be Postponed to November 4, 2019. The motion failed by the following vote:**
- For:** 4 - Peña, Borrego, Benton, and Gibson
- Against:** 5 - Sanchez, Winter, Davis, Jones, and Harris
- A motion was made by Councilor Davis that this matter be Amended. Councilor Davis moved Amendment No. 1. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- A motion was made by President Peña that this matter be Amended. President Peña moved Amendment No. 2. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- A motion was made by Councilor Benton that this matter be Amended. The motion died for a lack of a second.**
- A motion was made by Councilor Sanchez that this matter be Passed as Substituted, as Amended. The motion carried by the following vote:**
- For:** 7 - Borrego, Sanchez, Winter, Davis, Gibson, Jones, and Harris
- Against:** 2 - Peña, and Benton
- *e. R-19-196 Changing The Name Of Gallatin Place Northwest Between Fortuna Road And Los Volcanes Road To Ben E. Keith Way (Sanchez)

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

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

CITY OF ALBUQUERQUE



Planning Department

David Campbell, Director

Development Review Division

600 2nd Street NW – 3rd Floor

Albuquerque, NM 87102

NOTICE OF APPEAL

August 22, 2019

TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on August 21, 2019. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Salas, Planning Administrative Assistant at (505) 924-3370.

Please refer to the enclosed excerpt from the City Council Rules of Procedure for Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have regarding the Land Use Hearing Officer rules of procedure.

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Crystal Ortega, Clerk to the Council, (505) 768-3100.

CITY COUNCIL APPEAL NUMBER: AC-19-15

PLANNING DEPARTMENT CASE FILE NUMBER:

17EPC-40011, 1011232, PR-2019-002629, VA-2019-00270

PO Box 1293

Albuquerque

NM 87103

APPLICANT: North Valley Coalition

Peggy Norten

PO Box 70232

Albuquerque NM 87107

www.cabq.gov

cc: Crystal Ortega, City Council, City county bldg. 9th floor

Kevin Morrow/Legal Department, City Hall, 4th Floor-

Zoning Enforcement

EPC File

Edward T. Garcia, co/o Garcia Auto Group LLC, 8100 Lomas Blvd NE, ABQ, NM 87110

Design Workshop Inc 120 East Main Street, Aspen, CO 81611

Near North Valley NA, Joe Sabatini, 3514 6th St. NW, ABQ, NM 87107

Near North Valley NA, Randy Cole, 1501 Los Arboles NW, ABQ, NM 87107

John Roche, 1814 Old Town Rd, NW, ABQ, NM 87104

Christina Blatchford, 1009 18th St NW, ABQ, NM 87104

Ed Garcia, 4200 Aspen NE, ABQ, NM 87110

Christine Dilks, 2458 Rose NW, ABQ, NM 87104

Jackie Fishman, 1820 Gabaldon NW, ABQ, NM 87104

Alan Varela, avarela@cabq.gov



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

Administrative Decisions	Decisions Requiring a Public Meeting or Hearing	Policy Decisions
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<input type="checkbox"/> Historic Certificate of Appropriateness – Minor (Form L)	<input type="checkbox"/> Master Development Plan (Form P1)	<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Annexation of Land (Form Z)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	<input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)
	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)	<input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)
		Appeals
		<input checked="" type="checkbox"/> Decision by EPC, LC, ZHE, or City Staff (Form A)

APPLICATION INFORMATION

Applicant: North Valley Coalition - Peggy Norton, President Phone: 505-345-9567

Address: PO Box 70232 Email: PE NVC abq@gmail.com

City: Albuquerque State: NM Zip: 87107

Professional/Agent (if any): _____ Phone: _____

Address: _____ Email: _____

City: _____ State: _____ Zip: _____

Proprietary Interest in Site: _____ List all owners: _____

BRIEF DESCRIPTION OF REQUEST

appeal a decision made by EPC / appeal to City Council project #2019-02629(1011232) on Remand

SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)

Lot or Tract No: multiple tracts - see application Block: _____ Unit: 1

Subdivision/Addition: _____ MRGCD Map No.: _____ UPC Code: _____

Zone Atlas Page(s) H-13 Existing Zoning: R-1 and M-1 Proposed Zoning: C-2, R-1, R-2

of Existing Lots: _____ # of Proposed Lots: _____ Total Area of Site (acres): _____

LOCATION OF PROPERTY BY STREETS

Site Address/Street: North of I-40 East Rio Grande Blvd. Between: Alameda Drain and: Campbell Ditch

CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

Signature: Peggy Norton President David Wood V.R. Date: 8-21-19

Printed Name: Peggy Norton David Wood Applicant or Agent

FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees	Case Numbers	Action	Fees
<u>VA-2019-00274</u>	<u>Appeal</u>	<u>\$130</u>			

Meeting/Hearing Date: _____ Fee Total: \$130

Staff Signature: [Signature] Date: 8-21-19 Project # PR-2019-002629

FORM A: Appeals

Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.

A single PDF file of the complete application including all plans and documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD.

- APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)
- APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)

- Interpreter Needed for Hearing? No if yes, indicate language: _____
- Project number of the case being appealed, if applicable: (1011233) 2019-02629
- Application number of the case being appealed, if applicable: 17 EPC 40011
- Type of decision being appealed: EPC approval of zone change
- Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4) see attached
- Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2) see attached
- Letter of authorization from the appellant if appeal is submitted by an agent
- Copy of the Official Notice of Decision regarding the matter being appealed

<p><i>I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.</i></p>		
Signature: <u>Debra North</u> <u>David Wood</u>	Date: <u>8-21-2019</u>	<input type="checkbox"/> Applicant or <input type="checkbox"/> Agent
Printed Name: <u>Debra North</u> <u>V.P. David Wood</u>		
FOR OFFICIAL USE ONLY		
Project Number:	Case Numbers	
<u>PR-2019-002629</u>	<u>VA-2019-00274</u>	
Staff Signature: <u>[Signature]</u>		
Date: <u>8-21-19</u>		

I. Introduction

The North Valley Coalition is appealing the decision by the Environmental Planning Commission to approve a zone map amendment for the referenced case. This appeal will only address the issues and instructions stated in the 2nd Judicial District Court Memorandum Opinion and Order. Lack of notification of neighborhood associations and other stakeholders did not comply with the instructions of the Memorandum Opinion and Order. The findings of the Commission did not resolve the remand issues.

II. Standing

The proposed zone map amendment is within the boundaries of the North Valley Coalition (NVC). NVC is a City- and County-recognized neighborhood coalition. The Office of Neighborhood Coordination listed NVC as an "affected neighborhood association" for this zone change.

III. Denial of Due Process

The North Valley Coalition, and others, were denied due process at this hearing due to the fact we were not notified of this hearing. Mr. Brito stated that Legal Counsel considered this hearing to be no different than a continuance or a deferral. However, it was very different.

One property owner pursued this case in District Court, outside City jurisdiction, and neighborhood associations were not involved in this process. Two years after the original Notice of Decision, City Council referred the remand by District Court to the EPC. However, it does not appear on City Council agenda; a person needs to check the President agenda to determine items of communication (as well as know that this is the process if a Court remands an EPC case) which are included in the agenda. This represents an unreasonable and arbitrary expectation for citizens to comply with for two years of City Council meetings.

This case went outside the City system to District Court and when it returned to the EPC, all parties of standing and interest should have been notified. Comparing this series of actions to a continuance or deferral misstates the circumstances. A continuance or deferral generally gives specific dates and usually this time frame is within a couple of months that the EPC will hear the case again. The trail is easy to follow by checking the EPC agenda each month. The case does not change, although it might have additional information available. While City staff had time to discuss whether notification was required or not, it would have been much fairer and transparent to send out notification, and would have complied with the intent of the Court Order. The case attracted a lot of neighborhood participation in the original hearing and these people would have been present at this meeting if they had known about it. The Coalition, which appealed the original decision, would have had time to prepare more thorough comments. The applicant's lawyer stayed knowledgeable about the scheduling of the case by staying in touch with Russell Brito. It is an unreasonable expectation to have expected a citizen to contact Mr. Brito every

month to get an update. Additionally, Mr. Brito was not the planner on the prior hearing.

IV. The North Valley Coalition should have been notified because it has a special role under the North Valley Area Plan

The Coalition was formed to “facilitate implementation” of the North Valley Area Plan and it was denied the right to thoroughly weigh in on the two issues remanded by the Court (p. 178). “Additional consideration and reasoned decision making”, as required by the Court, could not occur without input from the North Valley Coalition, at the very least. Other citizens and neighborhood associations would likely have had public comments that should have been considered by the EPC in determining their findings on the two issues. While the Los Duranes Neighborhood Association approval of this zone map amendment was mentioned, there were many residents of that neighborhood opposed to it, and the Association had specific concerns and criteria that needed to be met. Other nearby affected neighborhoods expressed opposition - such as Near North Valley, Sawmill, and West Old Town. These associations should have been allowed to be participants in the continuation of the approval process of this zone map amendment.

V. The EPC improperly marginalized the position of the North Valley Coalition at its hearing.

As President of the Coalition, I also want to make clear for the record that public comment speaker, John Wright, spoke for the Coalition and had authority to do so. He did an excellent job of stating the concerns of the Coalition which had been voted on by either the Executive Committee or the Board and his comments should not be marginalized for the record. While his exact comments were not voted upon, he accurately summarized our comment letter and issues stated/written in the prior hearing and our prior appeal. The interrogation regarding his comments was inappropriate.

VI. Conclusion of due process concerns

The EPC did not use “additional consideration” as required in addressing the remand by the Court and we therefore dispute the findings of the EPC based on lack of an appropriately notified meeting which would have allowed the public to present facts for additional consideration.

The following two issues needing to be addressed by the EPC are fairly major, since two different points in R 270-1980 have not been complied with.

VII. Whether the proposed C-2 zone is in significant conflict with purported North Valley Area Plan (NVAP) limitations on commercial development

The findings addressing this issue are contained in 7g of the Notice of Decision. The EPC stated the North Valley Area Plan (goals 6 and 11) does not limit commercial development on the subject site and that the NVAP is tempered and superseded by

the Comprehensive Plan.

We interpret the Court Order to acknowledge the importance of the NVAP in guiding commercial development in the North Valley and did not consider it superseded by the Comprehensive Plan. We cited numerous sources in our comments that address the scale of development and the location of development. Large scale development is to be located along the I-25 corridor.

Goal 11 is a general goal and states that commercial and industrial development could occur along selected areas of the I-40 corridor. However, this goal is expanded upon in the rest of the plan in the sources we listed and this expansion should have been considered by the EPC.

Goal 6 discourages commercial development on lots not already zoned commercial and yet commercial development is encouraged by approval of this amendment request. This request includes rezoning residential lots to commercial. Therefore, this request does not comply with goal 6, and the Commission erred in stating that. To comply with the NVAP, "discourages" would be to not allow the zone change request.

In response to the submission by the applicant of a land use map in the NVAP (p.37), this area is to be a village center: mixed small-scale neighborhood commercial and residential uses with pedestrian amenities. This concept is not supported by a C-2 zone - C-2 is named **community** commercial zone which indicates a zone of larger scale than a **neighborhood** commercial zone, which is intended in the NVAP. This zone map amendment is for a large-scale community project and is not supported in this area by the NVAP. Following, for the sake of comparison, are the definitions for C-1 and C-2 zones (Section 14-16-2-17, City Zone Code, p. 2-49 and p. 2-63).

C-1 Neighborhood Commercial Zone - This zone provides suitable sites for office, service, institutional, and limited commercial uses to satisfy the day-to-day needs of residential areas.

C-2 Community Commercial Zone - This zone provides suitable sites for offices, for most service and commercial activities, and for certain specified institutional uses.

The question was asked "could a Walmart or Home Depot be put on this site"? According to Mr. Brito, "probably not" because any big box would need direct access. That answer seems vague and indicates that it is a possibility. Could direct access be supplied from the frontage road? So, a C-2 could accommodate this but these could not be considered neighborhood commercial uses.

VIII. Whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, the neighborhood or the community

The EPC did not do additional consideration and reasoned decision making to determine that there would be no harm to adjacent property, the neighborhood, or the community, 9E of the Notice of Decision. The EPC accepted the applicant's chart of C-2 permissive uses and analysis to support their finding. However, the reasons on the chart do not adequately justify this finding.

1. Stating that the use is already allowed in M-1 does not either justify the zone change of this property (R270-1980, 1B) nor does it address harm
2. Stating that the use is a useful service does not address harm
3. Stating that the use is allowed on Rio Grande Boulevard does not address harm resulting from a zone change on a site across the Alameda Drain with no direct access from Rio Grande Boulevard

The chart states no negative impacts for all permissive uses, yet the Notice of Decision states any adverse impacts will be addressed in the future.

Rezoning the M-1 property to C-2 and the R-1 property to C-2 more than doubles the area available for commercial use and allows for more intense permissive uses of the C-2 property than would have been allowed without the change. This will have harmful impacts to adjacent property, the neighborhood or the community. A commercial project on 5.29 acres (current M-1, 230,500 sq. ft.) and a project on 11.61 acres (proposed C-2, 505,700 sq. ft.) will significantly increase the amount of traffic and its related impacts, such as air quality.

Retailing of any consumer product (with a few exceptions) is a permissive use. A retail project allowed on more than twice the original M-1 area would attract more than twice the number of people and cars, even assuming some of them would walk there from the neighborhood. It also would require more parking area, leaving less landscaped area. As noted above, this area, if the zone map amendment is granted, is at risk for big box store development, along with all the associated negative impacts: traffic, air quality, noise, light pollution, harm to other neighborhood small businesses. Some of the retail outlets (grocery stores, alcohol drink sales) proposed increase traffic during peak hours, which are the most congested times currently.

Supplying building materials is permissive. While it is "probably" not feasible, the closest Home Depot stores are on Coors and Renaissance, none in the general area. This represents a high traffic use, and a sizable parking area, reducing green space and providing a heat sink.

A drive-in restaurant is a permissive use in C-2. This use attracts more vehicles than a sit-down restaurant, due to the fast turn-around. The effect on air quality of idling cars is not something that is mitigated by the R-2 buffer.

Gasoline retail is a permissive use in C-2. This increases rapid turn-over traffic, especially being near the highway, and the fumes affect air quality for nearby residents.

Residential uses, up to 30 dwelling units per acre is permissive. R-1 zoned land has been requested to be R-2 zone (higher density). This use can increase residential density beyond the original request. This increases traffic at peak hours in the morning and evening beyond what was intended and these are the most congested times currently.

Vehicle sales is permissive and generally attracts people from the entire city as

opposed to the local area. This represents new traffic to the area. This use is not appropriate next to residential properties including R-2.

The above are specific permissive uses which will have negative impacts - traffic, air quality, green space. However, the primary harm from the more intensive permissive uses resulting from doubling the commercial area will come from increased traffic. As stated at the hearing, there is an estimate of 8,300 additional trips a day as a result of this change. Reassurance was made that the streets can handle that much increased traffic. However, almost all public comments addressed concerns about harm from increased traffic, adding to the substantial congestion present today.

A traffic study was done by the applicant but was not authorized nor was it approved by the City. The City referred to the intersection Rio Grande Boulevard and I-40 access as a "failing intersection". Without a site plan, which would be required in a special use zone, this harm cannot be prevented or alleviated by a U-turn which was one proposal of the traffic study. There was much discussion about the buffer of R-2, but this does not address the harm to property, health, and safety caused by such an increase in traffic, accidents and air quality.

**Notice of Decision
City Council
City of Albuquerque
October 22, 2019**

AC-19-15 Project PR-2019-002629/ 1011232/ VA-2019-00274: Peggy Norton, North Valley Coalition, Appeals the Environmental Planning Commission Decision to Approve a Zone Map Amendment for all or a Portion of Tracts 22403B, 225B2AIAI & 226C2B, 225B2AIA2, 225B2B, 225B2C, 225B20, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225821, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, zoned M-I and R-I to C-2 and R-2, located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres

Decision

On October 21, 2019, by a vote of 7 FOR, 1 AGAINST, the City Council voted to grant the appeal by accepting and adopting the recommendation and findings of the Land Use Hearing Officer.

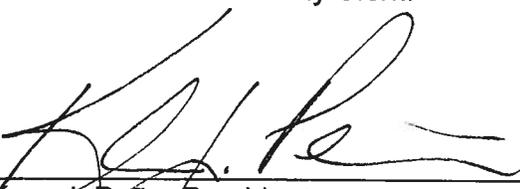
Against: Jones
Excused: Sanchez

IT IS THEREFORE ORDERED THAT THE APPEAL IS GRANTED, AND THIS MATTER IS REMANDED TO THE ENVIRONMENTAL PLANNING COMMISSION

Attachments

1. Land Use Hearing Officer's Recommendation
2. Action Summary from the October 21, 2019 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: 10-22-19

Received by: 

City Clerk's Office

Date: 10/22/19

RECEIVED
ALBUQUERQUE CITY CLERK
2019 OCT 22 PM 4:18

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

CONSOLIDATED APPEALS. AC-19-14 and AC-19-15

**Project: PR-2019-002629 (1011232);
VA-2019-00270; VA-2019-00274;17EPC-40011**

**DARLENE ANAYA (AC-19-14),
NORTH VALLEY COALITION (AC-19-15), Appellants,**

and,

**GARCIA REAL ESTATE INVESTMENTS, LLC,
G3 INVESTORS, LLC, DOS VIENTOS, LLC, and
SINCLAIR PROPERTIES, LLC, Party Opponents.**

1 In this matter, the Appellants filed separate appeals of a single zone-change decision from
2 the Environmental Planning Commission (EPC). Because the individual appeals concern the
3 same zone-change application and the same decision of the EPC, for expediency and efficiency
4 the appeals were consolidated. The zone-change application has an extensive history that
5 includes two previous consolidated appeals, and one District Court appeal that resulted in the
6 matter being remanded back to the EPC to “consider” two issues. The appeals in this matter
7 concern the EPC’s subsequent handling of the District Court’s remand.

8 Appellants first challenge the EPC decision on procedural grounds having to do with
9 notice. They also challenge the substantive merits of the decision. On the grounds having to do
10 with notice, or lack thereof, it would be convenient to overlook or finesse the validity of the
11 defect alleged by Appellants. However, although there is already a protracted history to this

12 matter, it would be a mistake to compound the EPC error by explaining it away. I have no choice
13 but to find and to recommend to the City Council that there is a notice defect in this matter that
14 strikes at the core of the EPC’s burden to the public—fairness, transparency, and due process.¹

15 The undisputed evidence demonstrates that the EPC ostensibly intended to perform a
16 closed record review of the District Court remanded issues, but in doing so, it concurrently
17 opened the floor to three citizens to testify in support of the application in the process.² It did
18 this without affording notice “to all owners of property within the area proposed to be changed
19 and to all owners of property within 100 feet of the exterior boundaries of the area proposed to
20 be changed, excluding public right-of-way” [Comprehensive Zoning Code, § 14-16-4-
21 1(C)(6)(b)]³ Regrettably, as explained below in more detail, the EPC erred, and it is for this
22 reason, another remand to the EPC is unavoidable. Because of the notice defect, the substantive
23 challenges to the EPC’s reconsideration are not ripe for review until the EPC record can be closed
24 or until the City Council decides otherwise.

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

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

1. I note that I mistakenly informed the parties at the LUHO hearing that the IDO standard of LUHO review applies rather than the standard under the Comp. Zoning Code (there is a significant difference in how remands are handled). I correct that mistake herein.

2. For purposes of these consolidated appeals, the term “opening the floor” means allowing testimony from the public and adding new evidence in the record.

3. Because the zone-change application was decided under the previous Comp. Zoning Code, the Integrated Development Ordinance (IDO) is inapplicable in all respects.

30 At the appeal level of review, the decision and record must be supported by a preponderance
31 of the evidence to be upheld. The Land Use Hearing Officer is advisory to the City Council.
32 If a remand is necessary to clarify or supplement the record, or if the remand would
33 expeditiously dispose of the matter, the Land Use Hearing Officer has authority to
34 recommend that the matter be remanded for reconsideration by the EPC. The City Council
35 may grant the appeal in whole or in part, deny it, or remand it to the Land Use Hearing
36 Officer or to the EPC.⁴

37 As stated above, the history of the zone-change application is protracted. Briefly, after a
38 July 13, 2017 public hearing, on July 14, 2017, the EPC issued its Official Notification of
39 Decision approving the zone-change application. That decision was appealed by the same
40 Appellants. The City Council referred the appeals to the Land Use Hearing Officer (LUHO). A
41 LUHO hearing was held on both appeals in September of that same year of which the City
42 Council adopted as its own decision. The City Council's decision was subsequently appealed to
43 the Second Judicial District Court by Appellant, Darlene Anaya only. On January 7, 2019, the
44 District Court Judge assigned to the appeal, rendered her decision. On all but two issues, the
45 Court upheld the City Council's decision. Specifically, on the two remaining issues, the Court
46 held and remanded:

47 "the following two issues for additional consideration and reasoned
48 decision making in accordance with Resolution 270-1980, §§ 1(C) and 1(E):
49 (1) whether the proposed C-2 zone is in significant conflict with purported
50 NV AP limitations on commercial development; and (2) whether some of
51 the permissive uses of the proposed C-2 zone would be harmful to adjacent
52 property, the neighborhood or the community" [Court Order].
53

4. See Rules of the Land Use Hearing Officer adopted by the City Council, February 18, 2004. Bill No. F/S OC-04-6 and codified in Section 14-16-4-4 of the Zoning Code.

54 Because the EPC is delegated the task of the finder of fact in zone-change applications, and
55 because this matter originated at the EPC, after the District Court remand, the City Council
56 referred the matter back to the EPC to take up the two issues remanded by the District Court.
57 The EPC took the remand issues up at its scheduled public hearing on August 8, 2019. It is
58 undisputed that before the August 8, 2019 public hearing, the City Planning Department Staff
59 caused a generalized public notice of the zone-change application and hearing to be posted in
60 the Albuquerque Journal Newspaper [R. 423].⁵ It is also undisputed that individual notices to
61 neighboring residents who qualify under § 14-16-4-1(C)(6)(b) was not afforded.

62 No one disputes that because the zone-change proposal affects a relatively small number
63 of citizens, the EPC's role in judging the applicants' application is adjudicative rather than
64 legislative. In short, there is no question that the EPC is held to a quasi-judicial standard in
65 judging the applicants' zone-change application. And no one disputes that among the specific
66 processes exercised by the EPC when it performs its quasi-judicial role, it "must adhere to
67 fundamental principles of justice and procedural due process" [*State Ex Rel. Battershell v. City*
68 *of Albuquerque*, 1989-NMCA-045, ¶ 17]. In doing so, it need not "comport with the same
69 evidentiary and procedural standards applicable to a court of law" [*Albuquerque Commons*
70 *Partnership v. City Council*, 2008-NMSC-025, ¶ 34]. However, there can be no shortcuts to
71 notice and affording the right to be heard in quasi-judicial hearings. This is because "fundamental
72 fairness is the essence of due process" [*N.M. Dep't of Workforce Solutions v. Garduño*, 2016-
73 NMSC-002, 363 P.3d 1176, ¶ 39]. Notice is an indispensable component for achieving fairness
74 in the process. Thus, it should not be surprising that the right to notice flows from the right of an

5. Notably, the newspaper notice had no information to distinguish that the hearing would be a closed record review of the zone-change application.

75 opportunity to be heard. This right and opportunity are at the core of fairness in the quasi-judicial
76 processes [*Los Chavez Cmty. Assn. v. Valencia Cnty.*, 2012-NMCA-044, ¶ 23]. These core
77 principles apply to determining what notice was required in the EPC’s remand hearing.
78 Generally, because the EPC is a factfinder and was performing its fact-finding tasks in a quasi-
79 judicial capacity, in zone-change hearings individual notice under § 14-16-4-1(C)(6)(b) is the
80 default notice required to area residents (under the Comp. Zoning Code).

81 However, the Party Opponents contend that the EPC’s fact-finding role was truncated or
82 altered by the District Court’s remand order. In short, they contend that because the EPC already
83 heard the zone-change application in July 2017, and because the remand was only for two issues,
84 the right to notice and the opportunity to be heard at the second remand hearing is inapplicable
85 to property owners within 100-feet of the zone-change sites. Accordingly, they contend that
86 notice under § 14-16-4-1(C)(6)(b) was not necessary. Moreover, City Planning Staff asserted
87 at the EPC hearing that the August 8, 2019 remand hearing was similar in nature to a routine
88 EPC deferral or continuance matter [R. 93]. In those instances, notice under § 14-16-4-1(C)(6)(b)
89 for the deferred or continued hearing is apparently not given. However, what differentiates a
90 deferral or a continuance from the August 8, 2019 hearing is that in a routine deferral or
91 continuance the EPC opens the hearing and give actual notice of the deferral or continued date
92 when the matter will be heard at the hearing. This fact pattern, however, is not what occurred in
93 this case because at the July 2017 EPC hearing the EPC did not defer or continue its hearing, nor
94 did it give notice of the August 8, 2019 hearing date at that July 2017 hearing. In short, the EPC
95 never gave individualized notice to neighboring residents of the August 8, 2019 hearing. That is
96 undisputed.

97 Because notice and an opportunity to be heard is a bedrock of the quasi-judicial processes,
98 we must look to the nature of the acts performed at the EPC remand hearing, rather than merely
99 calling it a closed record, remand hearing to determine whether § 14-16-4-1(C)(6)(b) notice was/
100 is necessary. The record shows that the EPC apparently embraced the remand hearing as a record
101 review of the zone-change application, not requiring § 14-16-4-1(C)(6)(b) notice. But it is a fact
102 that it also allowed some neighboring residents to testify. Opening the floor to allow the three
103 neighboring residents who coincidentally spoke in support of the zone-change has the practical
104 impact of supplementing the record with new evidence, and in doing so, it reshaped the process.
105 [R. 91, 103-105].

106 It cannot be overstated that the EPC allowed this testimony even though it did not give §
107 14-16-4-1(C)(6)(b) notice. The testimony may have been considered by the EPC to be
108 extraneous, or it may not have assisted the EPC in making their decision, but that is not what is
109 important because what is meaningful is the nature of the process allowed and what in fact
110 transpired at the hearing. Fundamental fairness requires that a record cannot be selectively
111 opened to a few attendees while bypassing others. Although the EPC may have intended their
112 review to be a closed record review, that intent was unmistakably abrogated by their conduct.
113 For all practical purposes, but for the remand from District Court, the nature of the EPC's hearing
114 was in fact anything but a closed record hearing, giving rise to the need for § 14-16-4-1(C)(6)(b)
115 notice to qualifying property owners.

116 Because of the protracted history of this matter, I respectfully find it regrettable to
117 recommend a remand, but the most expedient path to finality is to cure the defects at the time
118 when they are discovered. In so finding, I also respectfully offer these suggestions to the City
119 Council. In a remand, the EPC cannot treat the hearing of the two remand issues as a closed

120 record review anymore. It cannot close what it already partially opened. It cannot merely strike
121 the testimony from the record, as that is no different than ignoring it. To achieve the greatest
122 transparency and fairness to the public, at least regarding testimony from affected neighbors who
123 have a right to notice under § 14-16-4-1(C)(6)(b), the EPC must now open the hearing and the
124 record. That is the most transparent and fair manner to appropriately cure the error. Because the
125 record was supplemented in the EPC hearing with some witness testimony, the basic principles
126 of fairness require a new hearing and that all qualifying property owners within 100-feet of the
127 project site (the entire project site) must be given an opportunity to be heard.⁶ Accordingly, I
128 respectfully recommend that if the City Council remands this matter to the EPC, the EPC must,
129 at a minimum give § 14-16-4-1(C)(6)(b) notice and allow testimony.



Steven M. Chavez, Esq.
Land Use Hearing Officer

October 4, 2019

Copies to:

Appellants
Party Opponents
City Staff

6. The Party Opponents argue that because not all the zone-changes in the application are challenged, the notices should be similarly limited in scope. However, Section 14-16-4-1(C)(6)(b) does not limit notice according to what is challenged. It expressly requires that “all” owners surrounding the zone-changes in the application have right to notice.



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, October 21, 2019

5:00 PM

Vincent E. Griego Chambers
One Civic Plaza NW

Albuquerque/Bernalillo County Government Center

TWENTY-THIRD COUNCIL - FORTY-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 - Klarissa J. Peña, President, District 3

3. PROCLAMATIONS & PRESENTATIONS

4. ECONOMIC DEVELOPMENT DISCUSSION

5. ADMINISTRATION QUESTION & ANSWER PERIOD

6. APPROVAL OF JOURNAL

October 7, 2019

7. COMMUNICATIONS AND INTRODUCTIONS

8. REPORTS OF COMMITTEES

Finance and Government Operations Committee - October 14, 2019

Land Use, Planning and Zoning Committee - October 16, 2019

Deferrals/Withdrawals

- *f. R-19-201 Requiring The Department Of Municipal Development To Install Speed Humps On Dover Street Northwest To Improve Public Safety (Borrego)
- A motion was made by Vice-President Borrego that this matter be Postponed to November 18, 2019. The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- a. EC-19-473 Request to Approve Supplemental Agreement with the Albuquerque Hispano Chamber of Commerce to Oversee the Creation and Launch of a Public Engagement Campaign
- A motion was made by President Peña that this matter be Postponed to November 4, 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}**10. GENERAL PUBLIC COMMENTS****11. ANNOUNCEMENTS****12. PUBLIC HEARINGS: {Appeals, SAD Protest Hearings}**

- a. AC-19-14 Project PR-2019-002629/ 1011232/ VA-2019-00270: Anaya Law, Agents for Darlene M. Anaya, Appeals the Environmental Planning Commission Decision to Approve a Zone Map Amendment for all or a Portion of Tracts 22403B, 225B2AIAI & 226C2B, 225B2AIA2, 225B2B, 225B2C, 225B20, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225821, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, zoned M-I and R-I to C-2 and R-2, located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres
- A motion was made by Councilor Benton that this matter be To Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:**
- For:** 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris
- Excused:** 1 - Sanchez
- b. AC-19-15 Project PR-2019-002629/ 1011232/ VA-2019-00274: Peggy Norton, North Valley Coalition, Appeals the Environmental Planning Commission Decision to Approve a Zone Map Amendment for all or a Portion of

Tracts 22403B, 225B2AIA1 & 226C2B, 225B2AIA2, 225B2B, 225B2C, 225B20, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225821, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, zoned M-I and R-I to C-2 and R-2, located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres

A motion was made by Councilor Benton that this matter be To Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:

For: 7 - Peña, Borrego, Benton, Winter, Davis, Gibson, and Harris

Against: 1 - Jones

Excused: 1 - Sanchez

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

14. FINAL ACTIONS

- a. O-19-80 F/S Authorizing The Issuance And Sale Of The City Of Albuquerque, New Mexico Taxable Industrial Revenue Bond (Arrive Albuquerque Hotel Project) Series 2019 In The Maximum Principal Amount Of \$20,800,000 To Provide Funds To Finance The Acquisition, Redevelopment, Renovation, Rehabilitation And Equipping Of A Hospitality Project; Authorizing The Execution And Delivery Of An Indenture, Lease Agreement, Bond Purchase Agreement, Bond, And Other Documents In Connection With The Issuance Of The Bond And The Project; Making Certain Determinations And Findings Relating To The Bond And The Project (Benton, by request)

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

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

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

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

- b. R-19-155 A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 600 Dallas St NE 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 November 18, 2019. The motion carried by the following vote:

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

- c. R-19-156 A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 8400 Chico Rd NE 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 Passed. The motion carried by the following vote:**
- For: 8 - Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- Against: 1 - Peña
- d. R-19-199 F/S Adjusting Fiscal Year 2020 General Fund Appropriations To Provide Funding For The Albuquerque Police Department Party Intervention Team (PIT) Program (Winter, Jones, Sanchez)
- A motion was made by Councilor Sanchez that this matter be Substituted. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- A motion was made by Councilor Sanchez that the rules be suspended for the purpose of allowing R-19-199 to be adopted the same evening it is substituted. The motion carried by the following vote:**
- For: 6 - Sanchez, Winter, Davis, Gibson, Jones, and Harris
- Against: 3 - Peña, Borrego, and Benton
- A motion was made by Vice-President Borrego that this matter be Postponed to November 4, 2019. The motion failed by the following vote:**
- For: 4 - Peña, Borrego, Benton, and Gibson
- Against: 5 - Sanchez, Winter, Davis, Jones, and Harris
- A motion was made by Councilor Davis that this matter be Amended. Councilor Davis moved Amendment No. 1. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- A motion was made by President Peña that this matter be Amended. President Peña moved Amendment No. 2. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- A motion was made by Councilor Benton that this matter be Amended. The motion died for a lack of a second.**
- A motion was made by Councilor Sanchez that this matter be Passed as Substituted, as Amended. The motion carried by the following vote:**
- For: 7 - Borrego, Sanchez, Winter, Davis, Gibson, Jones, and Harris
- Against: 2 - Peña, and Benton
- *e. R-19-196 Changing The Name Of Gallatin Place Northwest Between Fortuna Road And Los Volcanes Road To Ben E. Keith Way (Sanchez)

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

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

ATTORNEY
AT LAW

JASON KENT, P.C.

2021 Mountain Rd. NW
Albuquerque, New Mexico 87104-1444
Phone: (505) 345-8400
Fax: (505) 345-9100

Jason W. Kent
jkent@nmlex.com

July 29, 2019

HAND-DELIVERED (with 10 copies)

Dan Serrano, Chair (hand-delivered)
Russell Brito, Division Manager (via email rbrito@cabq.gov and hand delivery)
Environmental Planning Commission
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102

Re: OC-19-31 - Remand for Supplemental Findings on Two Issues
AC-17-7; Project #1011232; 17EPC-40011
Rio Grande Blvd. NW at I-40, between Alameda Drain and Campbell Ditch

Dear Chair Serrano and Commissioners:

With attorney Tim Flynn-O'Brien I represent Garcia Real Estate Investments, LLC, G3 Investors, LLC, Dos Vientos, LLC, and Sinclair Properties, LLC ("**Garcia Entities**"), who are the successful rezone applicants in this two-issue, **record-only remand from District Court** for supplemental findings.

I. BACKGROUND

In 2017, the Garcia Entities applied for a zone change for property located at approximately I-40 and Rio Grande Blvd. NW, between the Alameda Drain and the Campbell Ditch. The zone change was decided under the City's previous Zoning Code. This remand is therefore also subject to the previous Zoning Code, rather than the City's new IDO. This is a record-only remand, **limited to two issues**, and limited to the Garcia Entities and the District Court appellant, Darlene Anaya ("**Anaya**").

The zone change was approved by EPC on July 13, 2017 and by the City Council on October 17, 2017. The zone change created an 11.62 acre Village Center site by: (1) down-zoning 5.29 acres of M-1 to C-2, (2) rezoning 6.32 acres of adjoining R-1 to C-2, and (3) rezoning 7.78 acres of adjoining R-1 to R-2 (as a buffer or step down zone). (Please see the before/after map of the subject property, Exhibit 1 in the Appendix provided with this letter.)

The zone change created an 11.61 acre C-2 ("Community Commercial") village center site for a grocery store and other neighborhood amenities along I-40, with three access points from Rio Grande Blvd. through direct frontage on Rio Grande also owned by the Garcia Entities.

The M-1 property directly adjoined R-1 zoned property prior to the rezoning. The rezoning eliminated the M-1 zoning. The new C-2 site is now completely buffered by R-2 from all nearby R-1 property. The R-2 buffer is also entirely owned by the Garcia Entities.

EPC made findings and approved the zone change after a lengthy public hearing on July 13, 2017. Anaya, a San Francisco resident who owns an interest in some family R-1 property near the site, appealed from EPC to the City Council. The Council referred Anaya's appeal to the City's Land Use Hearing Officer ("LUHO"). The LUHO held another lengthy hearing on September 21, 2017, and recommended adoption of the EPC's rezone approval in a 23 page decision, containing

additional findings and dated October 2, 2017. The City Council adopted the LUHO recommendation by a vote of 7-2 on October 17, 2017, finding the rezoning to be in compliance with City Res. 270-1980.

Anaya subsequently appealed the City Council decision to Bernalillo County District Court, alleging nine (9) separate legal errors. District Court Judge Shannon Bacon rejected seven (7) of Anaya's claims of error **and did not overturn the rezoning**, but remanded for supplemental findings on two issues, as follows:

“[F]or 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 [North Valley Area Plan] 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.”¹

Anaya did not challenge the R-2 rezoning in her appeal. Nor did she challenge the downzoning of M-1 to C-2. This remand therefore concerns only the 6.32 acres rezoned from R-1 to C-2. As noted, this is a record-only remand, limited to two issues and the District Court parties. The previous record including the EPC transcript of July 13, 2017 and LUHO transcript of September 21, 2017 should be reviewed in connection with this remand.

II. SUMMARY OF GARCIA ENTITIES' POSITION ON TWO REMAND ISSUES

As noted, the District Court requested further findings clarifying (1) why C-2 rezoning is not in conflict with “purported” NVAP limitations on commercial zoning in this area, and (2) clarifying why the specific permissive uses listed under C-2 will not be harmful to adjacent property, the neighborhood or the community.

The C-2 rezoning is **not in conflict with the NVAP** because the NVAP does not limit commercial development to a specific area and, moreover, the rezoning furthers the NVAP which specifically calls for commercial development in this very area along I-40, which it designates as “Central Urban,” and because the NVAP, the 2001 amendments to the City's previous 1989 Comp. Plan, as well as the City's controlling 2017 Comp. Plan, all call for “village center” and “centers and corridors” commercial development in this area adjacent to I-40 and Rio Grande Blvd.

The **C-2 permissive uses will not be harmful** to adjacent property owners, the neighborhood or the community, because (1) all C-2 uses will be buffered from all R-1 property with an R-2 buffer owned entirely by the Garcia Entities, (2) because the C-2 rezoning removes a previous intensity mismatch where 5.29 acres of M-1 property was directly adjacent to R-1, (3) because the rezoning creates a properly scaled village center infill site for a much needed modern grocery store, (4) because the village center and centers and corridors commercial redevelopment objectives expressed in the City's controlling 2017 Comp. Plan and other Plans for the area operate as a finding that C-2 Community Commercial zoning here is not harmful, as well as (5) for each of the specific reasons given in the table of specific C-2 permissive uses which is provided in the applicable section of this letter below.

III. RELATIONSHIP BETWEEN 2017 COMPREHENSIVE PLAN AND NVAP

The NVAP was a Rank II Plan adopted in 1993. The City's original (1989) Comp. Plan was the Rank I Plan in effect at the time the NVAP was adopted. The 1989 Comp. Plan was amended in 2001. The 2001 Comp. Plan provided that the area around Rio Grande at I-40 “shall allow a full

¹ See Bacon Memorandum Opinion and Order dated January 7, 2019 at p. 15.

range of urban land uses” and is appropriate for mixed use infill. (See 2001 Comp. Plan, Section §2.B.5, Note at II.6 at page II-33; id at §2.B.5 Policies a, e, and j.). The new 2017 Comprehensive (Rank I) Plan, which controls this rezoning, replaced the 2001 Plan and adopted a “centers and corridors” approach to development, encouraging mixed use redevelopment of underutilized property within the urban core of the City. The 2017 Comp. Plan specifically contemplates mixed use commercial development at Rio Grande and I-40, due to the convergence of multiple existing transportation modes and corridors, including walking and bicycle pathways (such as the Alameda Drain and Campbell Ditch).

The NVAP contained only general guidelines for north valley development, dating to 1993, without actual legal zoning mandates, rezoning or use restrictions. Despite adoption of subsequent new Comprehensive Plans, the NVAP was never amended. One of the reasons for the new 2017 Comp. Plan was that previous overlapping Sector Plans like the NVAP were not coordinated and often contained ambiguous and conflicting policies. See R-16-108 - Resolution to adopt 2017 Comp. Plan.

The 2017 Comp. Plan incorporated aspects of some of the City’s Rank II Sector Plan goals and policies (like NVAP), but generally superseded and eliminated many guidelines from previous Rank II Sector Plans. (See R-16-108 at Section 2, Paragraph 6.) The 2017 Comp. Plan is expressly intended to “guide the implementation, enforcement, and administration of land use plans and regulations that reflect current trends and priorities as well as the future vision for growth and development.” (Id. Section 2, Paragraph 9. B.) The 2017 Comp. Plan provides, via ordinance, that “other adopted City and County plans are subordinate to and must be consistent with this Comp. Plan.” 2017 Comp. Plan §1.6 at page 1-8. This means any interpretation conflicts between the NVAP and the 2017 Comp. Plan are to be resolved in favor of the 2017 Comp. Plan. The NVAP was eventually repealed altogether by adoption of IDO, after the instant rezoning.

IV. THE C-2 REZONING IS NOT IN SIGNIFICANT CONFLICT WITH THE NVAP

This C-2 (“Community Commercial”) zoning is not in significant (or any) conflict with the NVAP, because **the NVAP does not limit commercial development at this I-40 location**. In fact, the NVAP encourages “village center” commercial development at this location on I-40, designated “central urban” in the NVAP. The NVAP does not confine new commercial development of this type to areas along I-25, as Anaya purported to the District Court.

To determine whether this C-2 rezone “significantly conflicts” with the NVAP, the first step is to determine the intent of the NVAP (a Rank II Plan). See *Smith v. Board of County Comm’rs*, 2005 NMSC-12, ¶18, 137 N.M. 280, 110 P.3d 496. Anaya argued in the District Court that the following language in the NVAP describing “preferred scenarios” in the 1989 City Comprehensive Plan precludes new commercial development along I-40:

“Larger scale community or regional commercial development would be located in the available areas within the north I-25 corridor.” NVAP at p. 38.² See Appendix Exhibit 2.

The quoted language is not a NVAP goal or policy but a description of a preferred scenario in the 1989 (now repealed) Comprehensive Plan. See NVAP beginning at p. 35 in Appendix Exhibit 2. Anaya’s interpretation of this quote as barring new commercial development along I-40 is wrong and conflicts with the actual “Goals” section of the NVAP, which expressly calls for new

² This is apparently what Judge Bacon described as the “purported” limitation on commercial development under the NVAP, as alleged by Anaya. See Bacon Memorandum Opinion at pp. 7 and 15.

commercial development to be located along selected portions of I-40 such as this. See NVAP at p.6, No. 11. The Goals section of the NVAP specifically provides that one of its goals was:

“To locate commercial and industrial development within the I-25 corridor, **and selected areas along the I-40 corridor**, especially as an alternative to extensive lower valley commercial/industrial development.” See NVAP Goal No. 11 at page 6 and Appendix at Exhibit 2 (emphasis added).

In the NVAP this area along I-40 is designated “Central Urban,” the most intensive development category in the NVAP. See NVAP at p. 42 and Appendix at Exhibit 2. The NVAP also designates this area as appropriate for a “village center.” See NVAP at p. 37 and Appendix at Exhibit 2. And, incidentally, the 2001 amendments to the 1989 Comp. Plan also identified the intersection of I-40 and Rio Grande as a nexus of important transportation corridors where future “centers and corridors” development should be focused.³

The “preferred scenario” language in the NVAP (on which Anaya relies), and which specifically refers to the former (1989) Comp. Plan, later replaced by the 2001 amendments and then again by the 2017 Comp. Plan, is not probative of any intent in the NVAP to block commercial development at Rio Grande and I-40.

The rezone area on I-40 is quite obviously one of the “selected areas” along I-40 where commercial development of this type is expressly intended by the NVAP under NVAP Goal No. 11. The NVAP does NOT limit commercial development at this location as “purported” by Anaya. To preclude commercial development in this area on I-40, in reliance on the excerpted “I-25” language relied upon by Anaya, would render the NVAP Goal No. 11 language meaningless.

To the extent anyone might argue that there is ambiguity in the NVAP with respect to commercial development along I-40 at Rio Grande because of the 1989 Comp. Plan “preferred scenario” language relied upon by Anaya, any such ambiguity is resolved by reference to the new 2017 Comp. Plan which supersedes the NVAP and governs this rezoning. This area at I-40 and Rio Grande is specifically called out for village center commercial development in the 2017 Comp. Plan (as well in the NVAP sections identified above), due to the proximity of multiple important transit corridors at Rio Grande and I-40. The 2017 Comp. Plan makes it plain that commercial redevelopment is desired at Rio Grande and I-40.

In addition, this zone change at I-40 and Rio Grande furthers specific goals and policies in the 2017 Comp. Plan, including (1) promoting desired growth in this location, (2) fostering existing major transit corridors while minimizing negative impacts on nearby neighborhoods by providing a step-down transition from more intense commercial near I-40 to medium density residential to SF residential, (3) promoting desirable land use by facilitating redevelopment, and (4) allowing a wider variety of housing options than currently exist in an area where a mix has already been established, as well as the policy concerning buffers and transitions. See Planning Department EPC testimony at Record 130-133 and 182 in Appendix Exhibit 3. This interpretation is also

³ Even if the Anaya language were in the form of an NVAP goal and the 1989 Comp Plan were still in effect, the resulting C-2 zoned area in this case is by any reasonable and objective measure a “medium scale” neighborhood-oriented village center redevelopment, rather than “large scale” commercial and industrial development more likely to be found along I-25. (Approximately 6.7 acres of R-1 rezoned to C-2, resulting in 11 acres of C-2 when combined with the previous M-1.) This would not result in large scale industrial or heavy commercial use, or a large scale community or a regional commercial development, as is obviously meant by the “preferred scenario” language cited by Anaya.

consistent with other past interpretations of the NVAP. See existing sector Development Plan/Corridor Plan/Design Overlay Summary Sheet for NVAP, prepared by City during consideration of IDO, at #644 page 5 of 15, concerning location of commercial development within the I-25 corridor **and selected areas along I-40**; there was no reference to any policy exclusively limiting commercial development to I-25 corridor; this area remained Central Urban “the most intense central urban core of the city.” See Appendix Exhibit 3 at Record 182, and Appendix Exhibit 4 at pp 142-144.

That this new commercial development furthers the 2017 Comp. Plan goals was upheld by Judge Bacon in her affirmance of EPC’s determination that village center infill rezoning in this case justified expanding an “area of change” (the former M-1) into what would otherwise be an “area of consistency” (the former R-1).⁴

Not only does the NVAP expressly encourage commercial infill development of this type along I-40 in this location, any interpretation to the contrary would conflict with the principle that the NVAP as a Rank II Plan is a subsidiary Plan which cannot “override” the superior Rank I 2017 Comp. Plan. Any question or ambiguity must be interpreted consistent with the 2017 Comp. Plan, rather than the interpretation of the NVAP urged by Anaya.⁵

Finally, from a policy perspective, the location of new commercial uses along I-40 (as well as I-25), rather than deeper in the north valley, protects the further reaches of the valley from more intense commercial development, which actually serves the core goal of the NVAP.

V. PERMISSIVE USES IN THE C-2 ZONE ARE NOT HARMFUL TO ADJACENT PROPERTY, THE NEIGHBORHOOD OR COMMUNITY

Judge Bacon’s remand order apparently seeks clarification that the City considered each of the specific C-2 permissive uses allowed under former § 14-16-2-17(A) (2017) in making its no harm determination under Res. 270-1980. Each of the C-2 permissive uses is listed in the following Table. Analysis of why each permissive use will not be harmful is provided in the right-hand column in the Table.

Table of C-2 Community Commercial Permissive Uses under (former) § 14-16-2-17(A)

Sub #	Use	Reason Not Harmful
(1)	Antenna (up to 65 feet)	No change; already allowed in R-1 (14-16-2-6(A)(2)(d)) as well as pre-existing M-1; added acreage does not materially impact intensity
(2)	Clinic	Useful neighborhood service; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2; a mix of uses is appropriate and required in “village centers” and “central urban” area under City Plans

⁴ See Bacon Memorandum Opinion at pp. 6-7.

⁵ That the 2017 Comp Plan controls over any possible contrary inference in the NVAP is confirmed by the fact that when the NVAP was rescinded in its entirety with the City’s adoption of IDO via R-17-213 at the end of 2017, the Council recognized that the NVAP was adopted in 1993 and never amended (id. P. 4), despite the fact that the 1989 Comp. Plan on which it was based was amended in 2001 to adopt a “centers and corridors” vision, and that the City intended to update Sector Plans every 10 years but never did so with NVAP.

(3)	Copying, blueprinting	No harmful impact; useful service; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2
(4)	Institution (club, day-care, library, school, museum)	Useful neighborhood services; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2; mix of uses appropriate to and required in “village centers” and “central urban” area under applicable City Plans
(5)	Office	No adverse impact; useful neighborhood services; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2; mix of uses is appropriate under applicable City Plans
(6)	Park-and-ride temporary facilities	Useful neighborhood service; buffered from R-1 by R-2; mix of uses appropriate and required in “village centers” and “central urban” area under applicable City Plans
(7)	Public utility structure	Useful/necessary service; already allowed in R-1 (14-16-2(6)(A)(8))
(8)	Residential uses permissive in R-3 Zone (subject to conditions)	No adverse impact; existing and accepted adjacency
(9)	Sign, off-premise (subject to conditions)	Already existing use in M-1 along freeway; additional acreage does not materially change impact; unlikely use in this village center; buffered from R-1 by R-2; other off-premise sign zoning conditions and regulations protect
(10)	Sign, on-premise (subject to conditions)	Useful/necessary for village center vendors/services/customers; no adverse impact; buffered from R-1 by R-2
(11)	Radio or television studio or station	Unlikely use in village center; no or de minimis impact; buffered from R-1 by R-2; mix of uses appropriate in “central urban” area under City Plans
(12)	Recycling bin (accessory use)	Useful neighborhood service; no adverse impact
(13)	Retailing of consumer products and services	Useful and needed in neighborhood; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2; mix of uses desirable in “village center” and “central urban” area under City Plans
	Excluding:	
	• Adult amusement/adult book stores §14-16-2-17(A)(13)	N/A – Excluded
	• Hospitals for humans §14-16-2-17(A)(13)	N/A – Excluded
	• Transit facilities §14-16-2-17(A)(13)	N/A – Excluded
	• Auto dismantling §14-16-2-17(A)(13)(s)	N/A – Excluded
	• Sheet metal working §14-16-2-17(A)(13)(s)	N/A – Excluded

	<ul style="list-style-type: none"> Tire retreading §14-16-2-17(A)(13)(s) 	N/A – Excluded
	Including, subject to specified conditions:	
(13)-a	<ul style="list-style-type: none"> Alcoholic drink sales for consumption off-premises (subject to conditions) 	Useful/necessary for modern grocery store in village center; zoning conditions and State liquor regulations protect; already allowed in LD-MUD-2 along Rio Grande; buffered from R-1 by R-2
(13)-b	<ul style="list-style-type: none"> Vehicle sales, rental, service, repair and storage (subject to conditions, excluding truck terminal) 	Already allowed in M-1 (including truck terminal in M-1); additional acreage does not materially change impact; buffered from R-1 by R-2; unlikely use in this village center; vehicle repair still a useful and already existing use in this neighborhood
(13)-c	<ul style="list-style-type: none"> Banking, loaning money, including pawn 	Useful neighborhood service; buffered from R-1 by R-2
(13)-d	<ul style="list-style-type: none"> Building materials (subject to conditions) 	Useful neighborhood service; unlikely in this village center; zoning conditions protect; already allowed in M-1 (plus many more intense M-1 uses); additional acreage does not materially change impact
(13)-e	<ul style="list-style-type: none"> Temporary circus or carnival operation (only 7 days per year) 	De minimis (7 days/yr); unlikely use; outdated use; impractical use
(13)-f	<ul style="list-style-type: none"> Drive-in restaurant (subject to conditions) 	Useful neighborhood service; zoning conditions protect; buffered from R-1 by R-2
(13)-g	<ul style="list-style-type: none"> Dry cleaning, laundry, clothes pressing (subject to conditions) 	Useful neighborhood service; zoning conditions protect
(13)-h	<ul style="list-style-type: none"> Flowers and plants 	Useful neighborhood service; no adverse impact
(13)-i	<ul style="list-style-type: none"> Gasoline, oil, and liquefied petroleum gas retailing (excluding truck terminal) 	Useful neighborhood service; already allowed in M-1 (including truck terminal in M-1); additional acreage does not materially change impact; zoning conditions protect; buffered from R-1 by R-2
(13)-j	<ul style="list-style-type: none"> Golf driving range, miniature golf course, baseball batting range (subject to conditions) 	Unlikely use; impractical, uneconomic use; zoning conditions would protect; buffered from R-1 by R-2
(13)-k	<ul style="list-style-type: none"> Hospital for animals (subject to conditions) 	Useful neighborhood service; buffered from R-1 by R-2
(13)-l	<ul style="list-style-type: none"> One mobile home for watchman or caretaker on same lot with otherwise permitted commercial uses (subject to conditions) 	Useful service; unlikely use, except during construction
(13)-m	<ul style="list-style-type: none"> Parking lot, as regulated in O-1 zone 	Useful/necessary service; buffered from R-1 by R-2
(13)-n	<ul style="list-style-type: none"> Pet shop 	Useful neighborhood service; buffered from R-1 by R-2
(13)-o	<ul style="list-style-type: none"> Restaurant, including outdoor seating 	Useful service needed in neighborhood; buffered from R-1 by R-2; already allowed in LD-MUD-2/LD-

		MUD-1 along Rio Grande (e.g. Range Restaurant/Cutbow Coffee)
(13)-p	<ul style="list-style-type: none"> Sample dwelling unit used to sell similar dwelling units 	Useful service; unlikely use; buffered from R-1 by R-2
(13)-q	<ul style="list-style-type: none"> Second-hand store (subject to conditions) 	Useful service; unlikely use; no adverse impact; buffered from R-1 by R-2
(13)-r	<ul style="list-style-type: none"> Stand or vehicle selling fruit, vegetables or nursery stock, up to 90 days per year 	Useful service; de minimis impact; buffered from R-1 by R-2
(14)	Temporary storage incidental to on-site construction	Useful/necessary service during construction; buffered from R-1 by R-2
(15)	Wholesaling of jewelry	No or de minimis impact; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande frontage; buffered from R-1 by R-2
(16)	Otherwise permitted uses but in a tent, temporarily for 7 days twice per year	De minimis impact (7 days/2x per yr.); unlikely use; uneconomic use; buffered from R-1 by R-2
(17)	Wireless telecommunications facility (subject to conditions)	No change because already allowed in R-1 (14-16-2(6)(A)(10)) as well as pre-existing M-1; added acreage does not materially change intensity

Initially, none of these C-2 permissive uses is inherently harmful or hostile to a neighborhood or community. Each such use coexists with adjacent and nearby residential neighborhoods in many areas throughout Albuquerque. These C-2 permissive uses are beneficial rather than harmful to a neighborhood and community because they provide necessary “community commercial” goods and services in proximity to where people live, reducing trips and offering complementary services in a central location.

Community commercial uses are specifically compatible with this neighborhood due to the “village center” and “centers and corridors” objectives expressed in the City’s controlling 2017 Comp. Plan for I-40 at Rio Grande (as well as earlier Plans for the area, as discussed above). The “village center” and “centers and corridors” objectives for this location should be viewed as an express City determination (and finding) that C-2 permissive uses belong in this area and are not harmful to the neighborhood or community, as meant by Res. 270-1980. Moreover, this neighborhood already has such mixed-use commercial zoning along Rio Grande in direct proximity to the neighborhood, e.g. LD-MUD-2 and LD-MUD-1 under the 2012 Los Duranes Neighborhood Plan.⁶

In this case, the additional 6.32 acres of C-2 zoning allows a neighborhood scale infill redevelopment site to be built containing a modern grocery store, something many neighbors told EPC they want. The additional 6.32 acres of C-2 does not materially increase the intensity or impacts on the neighborhood arising from C-2 permissive uses, in comparison to the existing LD-MUD-2, LD-MUD-1 and especially existing M-1 zoning. EPC should expressly so find.

Further, all C-2 permissive uses will be buffered by R-2 from all nearby R-1 property. No property owned by anyone other than the Garcia Entities themselves will adjoin the new C-2 property. The

⁶ In adopting the Los Duranes (Rank III) Neighborhood Plan for the Rio Grande Blvd. frontage, in April, 2012, the City Council found that “the proposed zoning in the LDSDP does not contain uses that would be harmful to adjacent properties, neighbors or the community,” and that “the new mixed use zones broaden rather than intensify the types of land uses that are allowed, and enable cohesive development with a mix and location of uses that are sensitive to adjoining uses and zoning.” See R-11-279 §1(L)(E).

new R-2 buffer will provide an appropriate transition between the new C-2 acreage and all nearby R-1 property.

Other provisions of the Zoning Code and City Ordinances (including IDO) will also give additional protection against impacts to the neighborhoods and community arising from the C-2 permitted uses, such as sign regulations, liquor sales proximity regulations, fire safety regulations, and wall and landscaping requirements, to name a few.

This C-2 rezoning is compatible with, beneficial to, and not harmful to, the neighborhood and community, finally, because it eliminates a previous intensity mismatch between the large 5.29 acre M-1 site along I-40 and the directly adjacent R-1 zoned land. For comparison, the following table shows the much more intense permissive uses allowed in the 5.29 acre M-1 zone, directly adjacent to the R-1, without any buffer:

M-1 permissive uses under § 14-16-2-20(A):

(1)	All C-2 Permissive Uses
(2)	All C-3 Permissive Uses
(3)	All IP (Industrial Park) Permissive Uses PLUS
(4)	Manufacturing
(5)	Adult amusement/adult book stores
(6)	Vehicle dismantling
(7)	Truck terminal
(8)	Commercial agriculture, including poultry and rabbit killing/dressing
(9)	Antenna, unlimited height
(10)	Concrete batch plant
(11)	Storage yard, gravel stockpiling
(12)	Trailer sales
(13)	Bottling plant
(14)	Ice plant
(15)	Cold storage
(16)	Dry cleaning plant
(17)	Construction/farm equipment sales

To head-off a possible red herring argument by Anaya on remand, please note that the 6.32 acres of new C-2 will not be harmful under Res. 270-1980 in reference to traffic. The EPC, LUHO and City have already made such a determination, which is supported by ample substantial evidence in the record. Although a Traffic Impact Study (TIS) was not required for this zone change, the Garcia Entities had a preliminary TIS completed anyway at the suggestion of neighbors and rezone opponents like Anaya. The TIS showed sufficient capacity on Rio Grande to handle the additional trips which would be generated by the additional 6.32 acres of C-2 zoning. The TIS also included engineering recommendations to mitigate traffic impacts. No counter TIS was offered by Anaya or any other opponents.

Among other things, the TIS indicated that 6.32 acres of additional C-2 zoning will yield significantly less relative traffic impact than the worst-case scenarios imagined by Anaya and development opponents, because the proper traffic comparison is with existing zoning, not vacant land. Much of the assumed new commercial development can already be implemented under

existing zoning in the M-1 area along I-40 and the LD-MUD-2 and LD-MUD-1 frontage along Rio Grande Blvd. The marginal or relative traffic impact of the additional 6.32 acres of C-2, coupled with the down-zone 5.29 acres of M-1 to C-2, is the relevant traffic comparison. And an approved site development plan, accompanied by a final and approved TIS containing traffic engineering and mitigation requirements, will be mandatory as part of any subsequent development.

VI. CONCLUSION

The Garcia Entities request that EPC enter supplemental findings containing clarifications sufficient to satisfy Judge Bacon's Memorandum Order and explaining more specifically why the C-2 rezoning is not in conflict with the NVAP, and why the new 6.32 acres of C-2 permissive uses will not cause harm to adjacent property, the neighborhood or the community, pursuant to Res. 270-1980.

Although this zoning case was decided under the old Zoning Code, the new C-2 zoned area will obviously automatically convert to MXM (mixed use moderate intensity) under IDO, given that MXM has replaced C-2 under IDO.

One condition of EPC's rezoning approval was that the property be replatted according to the new zoning boundaries within 6 months, subject to one 6 month extension. This has now been done, since the 12-month period was scheduled to lapse while Anaya's appeal was pending in District Court.

The Garcia Entities reserve any additional procedural arguments for discussion at a hearing.

Thank you.

Respectfully submitted,

JASON KENT, P.C.



Jason W. Kent
For Zoning Applicant Garcia Entities

JWK/sks
Enclosures as stated

cc: COPIES HAND-DELIVERED FOR OTHER EPC MEMBERS:
David Shaffer, Vice Chair, Council District 7
Richard Meadows, Council District 2
Joseph Cruz, Council District 3
Robert Stetson, Council District 4
Derek Bohannon, Council District 5
Gary L. Eyster P.E. (Ret.), Council District 6
Karen Hudson, Council District 8
Bill McCoy III, Council District 9

cc: VIA EMAIL
Brennon Williams, Acting Planning Director, CABQ (bnwilliams@cabq.gov)
Kevin A. Morrow, Deputy City Attorney, CABQ (kmorrow@cabq.gov)
Timothy Flynn-O'Brien (tim@flynnobrien.com)

cc: VIA EMAIL AND REGULAR MAIL
Edward M. Anaya (attorney for Darlene Anaya - edward@anayalawllc.com)
Anaya Law, LLC
1728 Ocean Avenue PMB #240
San Francisco, CA 94112

ATTORNEY
AT LAW

JASON KENT, P.C.

2021 Mountain Rd. NW
Albuquerque, New Mexico 87104-1444
Phone: (505) 345-8400
Fax: (505) 345-9100

Jason W. Kent
jkent@nmlex.com

November 27, 2019

HAND-DELIVERED (with 10 copies)

Dan Serrano, Chair (hand-delivered)
c/o Russell Brito, Division Manager (via email rbrito@cabq.gov and hand delivery)
Environmental Planning Commission
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102

Re: PR-2019-002629; OC-19-31 (Project #1011232); Remand (2nd Hearing) for Supplemental Findings on Two Issues; VA-2019-00270; VA-2019-00274; AC-19-14; AC-19-15; AC-17-7; AC-17-8; 17-EPC- 40011 - AC-17-7; Rio Grande Blvd. NW at I-40, between Alameda Drain and Campbell Ditch

Dear Chair Serrano and Commissioners:

With attorney Tim Flynn-O'Brien, I represent the Applicant "**Garcia Entities**" in this remand from District Court for supplemental findings on two issues.

After an appeal by Darlene Anaya and the North Valley Coalition from the EPC's previous August 8, 2019 decision in this remand, the City's LUHO determined that the previous EPC remand hearing should have been conducted after written notice mailed to adjacent property owners within 100 ft. of the subject property

Therefore, this two issue remand has been re-scheduled for hearing on December 12, 2019, and notice of the upcoming hearing has now been mailed to the adjacent property owners.

I. NOTICE HAS BEEN MAILED

Per the Proof of Mailing which is enclosed with this letter, and per the direction of the Planning Department, written notice of EPC's upcoming December 12, 2019 remand hearing in this case has been mailed by Applicant on November 21, 2019 to the adjacent property owners within 100 ft.

The form of Notice sent is attached to the Proof of Mailing. The form of notice was approved in advance by the Planning Department. The Planning Department provided the mailing list (93 notices mailed). The mailing list is also attached to the Proof of Mailing.

A courtesy copy of the Notice of Hearing was also sent by Applicant to two representatives each of the 7 Neighborhood Associations nearest the subject property.

II. SAME TWO REMAND ISSUES

Another copy of the Garcia Entities' position letter to EPC dated July 29, 2019, which was provided in connection with the previous August 8, 2019 EPC remand hearing, is enclosed with this letter, and is incorporated by reference. Another copy of the Appendix which accompanied the July 29, 2019 position letter is also enclosed.

The two remand issues have not changed. The District Court did not overturn the previous rezoning. The District Court remanded as follows:

"[F]or 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 [North Valley Area Plan] 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."

III. CONCLUSION

Applicants continue to rely upon the analysis contained in their enclosed July 29, 2019 position letter.

Applicants request that after conducting a second remand hearing on December 12, 2019, after mailed notice to adjacent property owners, EPC reaffirm its findings made after the August 8, 2019 remand hearing, including the new supplemental findings made on the above two remand issues.

Thank you.

Respectfully submitted,

JASON KENT, P.C.



Jason W. Kent
For Zoning Applicant Garcia Entities

JWK/sks

Enclosures as stated

cc: COPIES HAND-DELIVERED FOR OTHER EPC MEMBERS:

David Shaffer, Vice Chair, Council District 7
Richard Meadows, Council District 2
Joseph Cruz, Council District 3
Robert Stetson, Council District 4
Derek Bohannon, Council District 5
Gary L. Eyster P.E. (Ret.), Council District 6
Karen Hudson, Council District 8
Johnathan R. Hollinger, Council District 9

cc: VIA EMAIL

Brennon Williams, Planning Director, CABQ (bnwilliams@cabq.gov)
Kevin A. Morrow, Deputy City Attorney, CABQ (kmorrow@cabq.gov)
Timothy Flynn-O'Brien (tim@flynnobrien.com)

cc: VIA EMAIL AND REGULAR MAIL

Edward M. Anaya
Anaya Law, LLC
1728 Ocean Avenue PMB #240
San Francisco, CA 94112

Peggy Norton
North Valley Coalition
P.O. Box 70232
Albuquerque, NM 87197

PR-2019-002629 (Project #1011232); VA-2019-00270; VA-2019-00274; AC-19-14; AC-19-15; AC-17-7; AC-17-8; 17-EPC-40011; Remand to City of Albuquerque Environmental Planning Commission ("EPC") from District Court of Zone Map Amendment (Zone Change); M-1 and R-1 to C-2 and R-1 to R-2. Rio Grande Blvd. NW at I-40, between Alameda Drain and Campbell Ditch

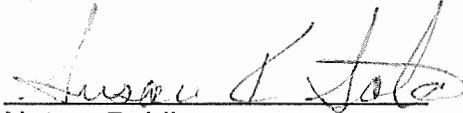
**PROOF OF MAILING
Of Notice to Adjacent Neighbors
Of December 12, 2019 EPC Hearing**

Jason W. Kent states and certifies that the attached Notice of EPC's December 12, 2019 public hearing was mailed on November 21, 2019 via certified mail return receipt requested to the persons/entities identified on the attached mailing list, which was provided by the City of Albuquerque Planning Department, and which was generated according to the Planning Department's "Buffer Map" which is also attached. (The mailing excluded the Applicant Garcia Entities on the list, whose names/addresses have been marked with an "X".)

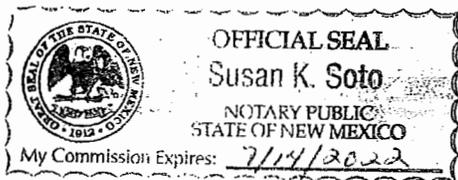


Jason W. Kent
Attorney for Applicant Garcia Entities

Subscribed and sworn to before me on November 27, 2019 by Jason W. Kent.



Notary Public
My commission expires: 7/14/2022



NOTICE OF PUBLIC HEARING
City of Albuquerque
ENVIRONMENTAL PLANNING COMMISSION
(Special Mailed Notice to Adjacent Property Owners)

Pursuant to §14-16-4-1(C)(6)(b) of the Albuquerque Zoning Code (2017), and at the direction of the City Land Use Hearing Officer on October 4, 2019, notice is hereby given that the City of Albuquerque ENVIRONMENTAL PLANNING COMMISSION ("EPC") will hold a **Public hearing on Thursday December 12, 2019 commencing at 8:30 a.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM, 87102, to consider the following item:

Remand from District Court of Zone Map Amendment (Zone Change); M-1 and R-1 to C-2 and R-1 to R-2. PR-2019-002629 (Project #1011232); VA-2019-00270; VA-2019-00274; AC-19-14; AC-19-15; AC-17-7; AC-17-8; 17-EPC-40011.

Applicant: Garcia Real Estate Investments, LLC and other Garcia Entities. **Address:** Multiple, including 1108, 1113, 1120, 1200 and 1308 Saiz Rd. NW, Albuquerque, NM 87104. **Legal Description:** Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A., MRGCD Map #35; also known as Tracts 1, 2, and 3, Rio Grande Crossing East (plat recorded September 27, 2018 as document No. 2018084927). **Located:** North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approx. 20 acres. (H-13) (See attached map.)

Note: Other unrelated items may also be heard at this regularly scheduled EPC hearing.

You may send written comments to (or for further information contact):

Russell D. Brito, Division Manager

Urban Design & Development

Planning Department

City of Albuquerque

600 Second Street, 3rd Floor

Albuquerque, NM 87102

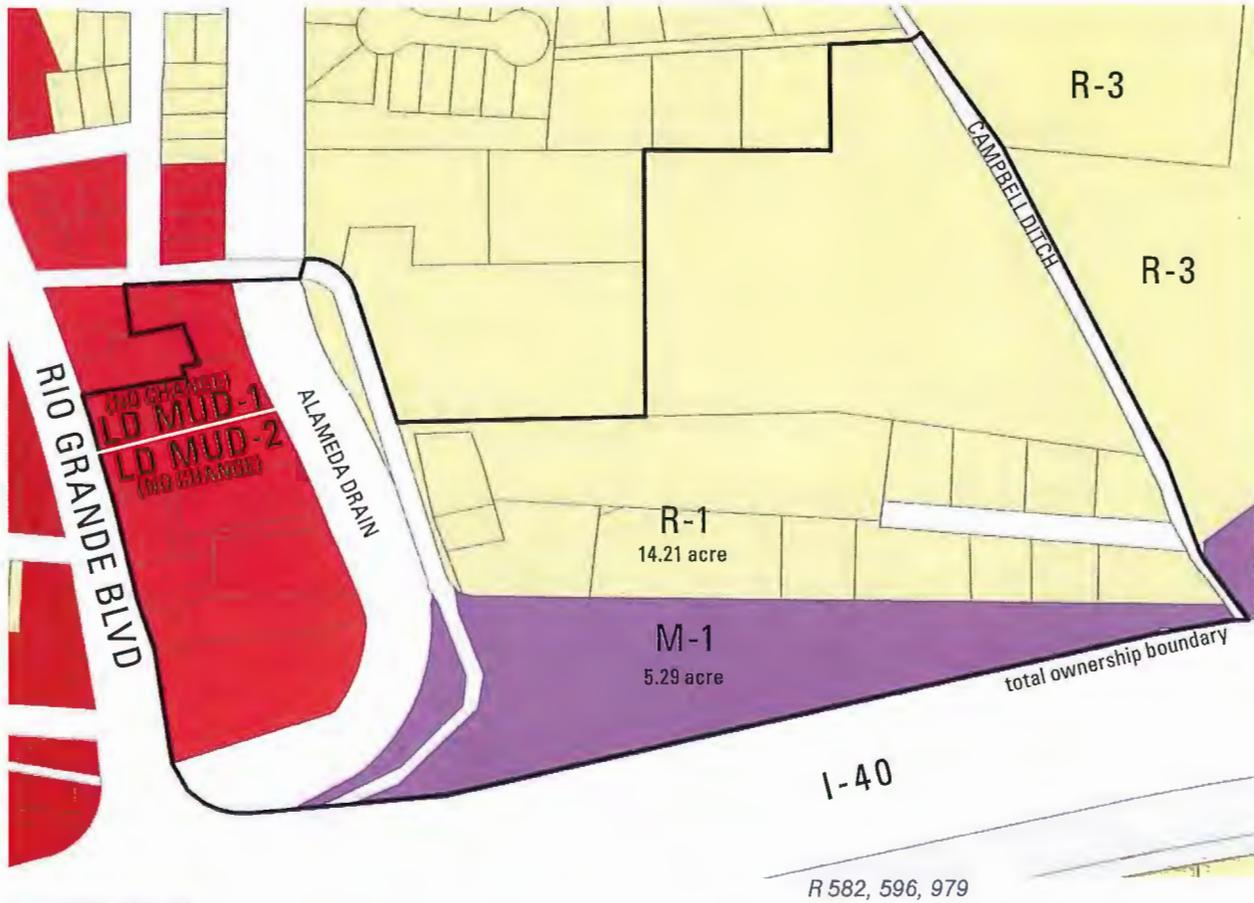
Telephone 505-924-3337

rbrito@cabq.gov

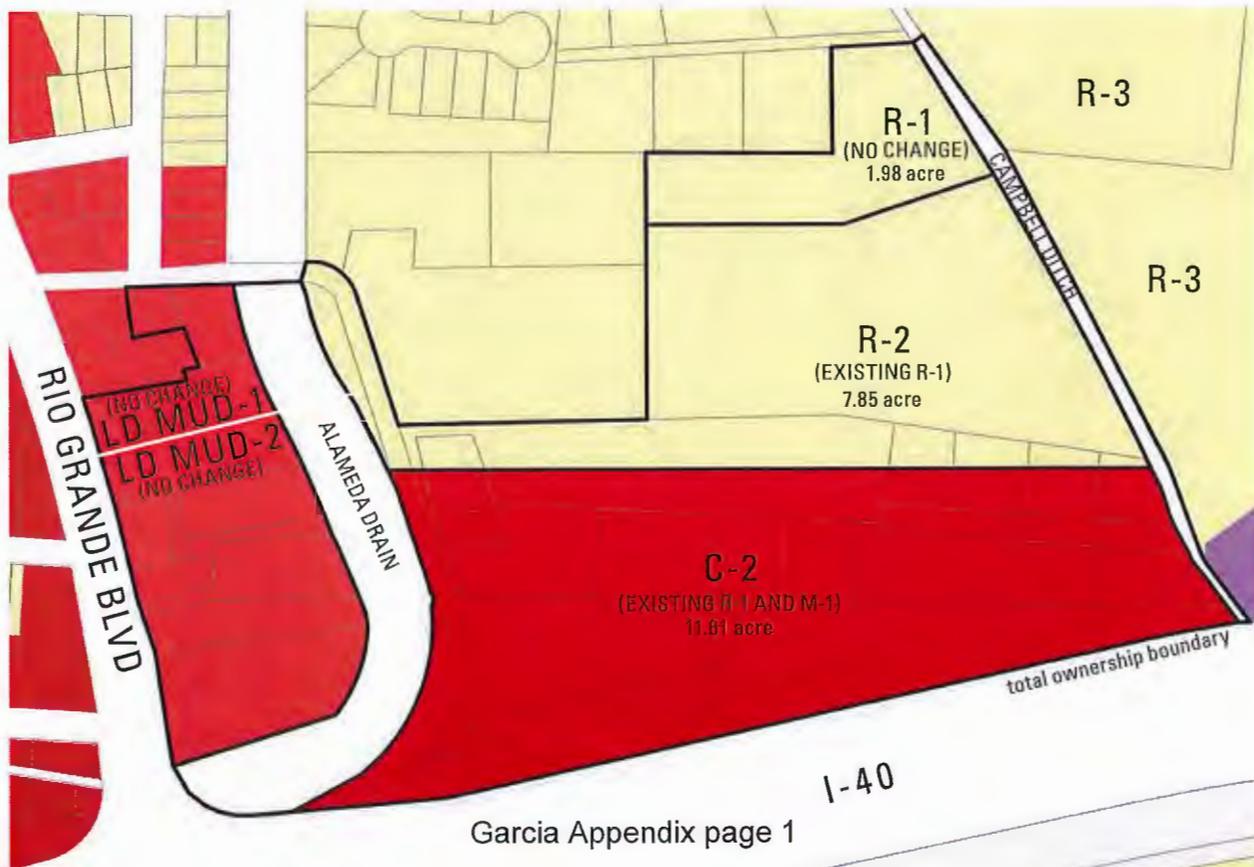
INDIVIDUALS WITH DISABILITIES who need special assistance to participate at the public hearing should call 924-3860.

This notice is being mailed by Jason Kent, PC, 2021 Mountain Rd. NW, Albuquerque, NM 87104 (505-345-8400), attorney for Applicant, on November 21, 2019.

PREVIOUS ZONING



REZONING





MARTINEZ JOSEPH A
1127 18TH ST NW
ALBUQUERQUE NM 87104

GURULE DANIELLE J
1123 18TH ST NW
ALBUQUERQUE NM 87104

GOLDEN ESTHER T
1132 18TH ST NW
ALBUQUERQUE NM 87104

SANDOVAL EMMA J
1128 18TH ST NW
ALBUQUERQUE NM 87104

MAES NATALIE R
1131 MIS ABUELITOS DR NW
ALBUQUERQUE NM 87104

WILLETTO WENDI R
1127 MIS ABUELITOS DR NW
ALBUQUERQUE NM 87104

FLORES ALFRED E & CYNTHIA L
2116 SAN VENITO PL NW
ALBUQUERQUE NM 87104

RIO GRANDE NEW MEXICO PROPERTY
LLC
PO BOX 50620
IDAHO FALLS ID 83405

~~G3 INVESTORS LLC
8301 LOMAS BLVD NE
ALBUQUERQUE NM 87110-7908~~

STATE HIGHWAY DEPT
PO BOX 1149
SANTA FE NM 87504-1149

~~G3 INVESTORS LLC C/O ED GARCIA
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

~~GARCIA REAL ESTATE INVESTMENTS
LLC C/O GARCIA SHELLY P
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

SUNSET NON-PROFIT HOUSING
ASSOCIATION
7700 OURAY RD NW
ALBUQUERQUE NM 87120-5127

PAVLANTOS KIKI
1401 MARCATO LN NW
ALBUQUERQUE NM 87104-2388

HARRIS JUDY B & ROBERT M
1922 INDIAN SCHOOL RD NW
ALBUQUERQUE NM 87104

WHITE STEVEN L & EILEEN H
303 ROMERO ST NW
ALBUQUERQUE NM 87104-1481

SAN FRANCISCO LLC
9025 4TH ST NW
ALBUQUERQUE NM 87114-1650

JONES AMALIA S
2004 LENTO WAY NW
ALBUQUERQUE NM 87104-2393

POWELL-ILLANES JEANIE
1516 PRESTO WAY NW
ALBUQUERQUE NM 87104-2399

SAWMILL COMMUNITY LAND TRUST
990 18TH ST NW FLOOR 2
ALBUQUERQUE NM 87104-2053

GARCIA JAMES P
3305 DON QUIXOTE DR NW
ALBUQUERQUE NM 87104-3025

GARDENER ANN M
2012 LENTO WAY NW
ALBUQUERQUE NM 87104-2392

LAPCIK ZDENEK V & LAPCIK LINDA G
ATKINS TRUSTEES LAPCIK TRUST
1916 INDIAN SCHOOL RD NW
ALBUQUERQUE NM 87104-2314

M & M FUTURES LLC C/O MEDRANO
BELINDA BARRERAS & MEDRANO
ANTHONY
1201 RIO GRANDE BLVD NW
ALBUQUERQUE NM 87104

~~GARCIA REAL ESTATE INVESTMENTS
LLC C/O EDWARD T GARCIA
P O BOX 26207
ALBUQUERQUE NM 87125-6207~~

ANAYA MARGARITA G
683 LONDON ST
SAN FRANCISCO CA 94112

GONZALES CARL L & VERONICA A
2000 LENTO WAY NW
ALBUQUERQUE NM 87104-2392

NCA VENTURE LLC
1306 RIO GRANDE BLVD NW
ALBUQUERQUE NM 87104

~~G3 INVESTORS LLC
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

SMITH TIMOTHY A & ATANASOVA
TEODORA L
1028 21ST ST NW
ALBUQUERQUE NM 87104

(6)

BARELA MARK E & CELENE M
1504 PRESTO WAY NW
ALBUQUERQUE NM 87104-2399

PEDERSON TIMOTHY SCOTT &
SANDRA G
1918 INDIAN SCHOOL RD NW
ALBUQUERQUE NM 87104-2314

FLORES ALFRED E & CYNTHIA L
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ALBUQUERQUE NM 87104

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SANTA FE NM 87504-1149

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ALLEN GENE & CHERYL D
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ALBUQUERQUE NM 87104-2394

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1984-2
1717 LOUISIANA BLVD NE SUITE 111
ALBUQUERQUE NM 87110

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GARCIA EDWARD T
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

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ALBUQUERQUE NM 87104

VICK PATRICIA P
1500 MARCATO LN NW
ALBUQUERQUE NM 87104-2391

ANAYA MARGARITA G
683 LONDON ST
SAN FRANCISCO CA 94112-3411

~~G3 INVESTORS LLC
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

HENRY VINCENT TRADING &
CONSULTING LLC
889 S RAINBOW BLVD NO. 599
LAS VEGAS NV 89145-6238

SALWAY BENINA MARY
6006 ALTAMONTE AVE NE
ALBUQUERQUE NM 87110

CANSINO ROSE V
1306 SAN VENITO RD NW
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ALBUQUERQUE NM 87104-2390

LONG VIRGINIA
2009 LENTO WAY NW
ALBUQUERQUE NM 87104-2393

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DUVAL RVT
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ALBUQUERQUE NM 87104-2399

LINDBERG PAUL W
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ALBUQUERQUE NM 87104-2362

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PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

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SYMPHONY HOMEOWNERS ASSOC
INC C/O CANYON GATE REAL ESTATE
SVCS
PO BOX 93488
ALBUQUERQUE NM 87199-3488

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9609 SUNDORO PL NW
ALBUQUERQUE NM 87120-2988

SALAZAR MONICA T
1032 20TH ST NW
ALBUQUERQUE NM 87104

N M STATE HIGHWAY DEPT
PO BOX 1641
SANTA FE NM 87504-1641

ELIZONDO HENRY & ELIZONDO
ESTHER
417 47TH ST NW
ALBUQUERQUE NM 87105-1613

ANAYA MARGARITA G C/O PATRICIA
ALLEN
710 16TH ST NW
ALBUQUERQUE NM 87104-1306

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ALBUQUERQUE NM 87104-2053

WILSON ANDREW T & CAT L
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ALBUQUERQUE NM 87104-2393

THOMPSON SAMUEL MORRIS &
DOROTHY DAVIS THOMPSON
1508 ALLEGRO WAY NW
ALBUQUERQUE NM 87104-2395

JONES LISA E
2016 LENTO WAY NW
ALBUQUERQUE NM 87104-2392

U S DEPT OF LABOR C/O JOB CORPS
525 GRIFFIN ST 403
DALLAS TX 75202-5002

POTTER HOPE E
1405 MARCATO LN NW
ALBUQUERQUE NM 87104-2388

MONTGOMERY MAUREEN K TRUSTEE
MONTGOMERY LVT
2008 LENTO WAY NW
ALBUQUERQUE NM 87104-2392

4D INVESTMENTS LLC
1225 RIO GRANDE BLVD NW
ALBUQUERQUE NM 87104

BACA THERESA M
1900 ALLEGRETTO TRL NW
ALBUQUERQUE NM 87104

SOLANO ISIDRO & MARY JANE
170 ALAMOS RD
CORRALES NM 87048-7336

CHITCHAKKOL SUVADIT & SUWINEE
1408 MARCATO LN NW
ALBUQUERQUE NM 87104-2390

BURZYNSKI WILLIAM A & SMITH RITA
JANE
1500 PRESTO WAY NW
ALBUQUERQUE NM 87104-2399

SAWMILL COMMUNITY LAND TRUST
990 18TH ST NW FLOOR 2
ALBUQUERQUE NM 87104-2053

SYMPHONY HOMEOWNERS ASSOC
INC C/O CANYON GATE REAL ESTATE
SVCS
PO BOX 93488
ALBUQUERQUE NM 87199-3488

SPOONER PAULA SUSAN
8212 PARROT RUN RD NE
ALBUQUERQUE NM 87109-6126

HIX JULIANNE
1732 VIOLETAS RD NW
ALBUQUERQUE NM 87104

ANAYA MARIANO
3240 DURANES RD NW
ALBUQUERQUE NM 87104-2753

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2305 SAN FRANCISCO RD NW
ALBUQUERQUE NM 87104

RICHARDS URSULA J
1904 ALLEGRETTO TRL NW
ALBUQUERQUE NM 87104

LUDWIG DANA D
1505 PRESTO WAY NW
ALBUQUERQUE NM 87104-2396

PETERSON GARY L TRUSTEE
PETERSON RVT
1512 ALLEGRO WAY NW
ALBUQUERQUE NM 87104-2395

MIDDLE RIO GRANDE CONSERVANCY
DISTRICT
PO BOX 581
ALBUQUERQUE NM 87103-0581

HENRY VINCENT TRADING &
CONSULTING LLC
889 S RAINBOW BLVD 599
LAS VEGAS NV 89145-6238

~~G3 INVESTORS LLC C/O ED GARCIA
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

GARCIA NATHAN M & LORETTA L
1034 20TH ST NW
ALBUQUERQUE NM 87104

GARCIA NATHANIEL M & LORETTA
1036 1/2 20TH ST NW
ALBUQUERQUE NM 87104

~~GARCIA REAL ESTATE INVESTMENTS
LLC C/O EDWARD T GARCIA
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

ANAYA ESTHER & HENRY
417 47TH ST NW
ALBUQUERQUE NM 87105-1613

PADILLA DANIEL C & LINDA K CUTLER-
PADILLA
PO BOX 26911
ALBUQUERQUE NM 87125

VALLEY LTD PARTNERSHIP
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PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

BUSH NATHAN D
1920 INDIAN SCHOOL RD NW
ALBUQUERQUE NM 87104

ALLEN PATRICIA A
710 16TH ST NW
ALBUQUERQUE NM 87104

ALLEN GARY L & PATTERSON CARLENE
TRUSTEES ALLEN/PATTERSON RVT
1501 PRESTO WAY NW
ALBUQUERQUE NM 87104-2396

KANTOR ROBERT J & KATHRYN
TRUSTEES KANTOR RVT
PO BOX 10252
ALBUQUERQUE NM 87184-0252

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990 18TH ST NW FLOOR 2
ALBUQUERQUE NM 87104-2053

SAWMILL COMMUNITY LAND TRUST
990 18TH ST NW FLOOR 2
ALBUQUERQUE NM 87104-2053

PARISH BROOKE
1501 ALLEGRO WAY NW
ALBUQUERQUE NM 87104-2394

BIRDWELL STEPHANIE E
5240 SAINT GENEVIEVE PL
ALEXANDRIA VA 22315-3932

NUZZO SAM J & NANCY W
2104 SAN VENITO PL NW
ALBUQUERQUE NM 87104

INGENIEUX LLC
1301 LOMAS BLVD NW
ALBUQUERQUE NM 87104-1201

SAWMILL COMMUNITY LAND TRUST
990 18TH ST NW FLOOR 2
ALBUQUERQUE NM 87104-2053

FANKAM USA LLC
PO BOX 1204
BELEN NM 87002

~~GARCIA REAL ESTATE INVESTMENTS
LLC C/O EDWARD T GARCIA
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

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LLC C/O EDWARD T GARCIA
PO BOX 26207
ALBUQUERQUE NM 87125-6207~~

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PO BOX 26207
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 Adult Signature Restricted Delivery \$0.00

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Sent To MARTINEZ JOSEPH A
Street and Apt. No. 1127 18TH ST NW
City, State, ZIP+4® ALBUQUERQUE NM 87104

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To GURULU DANIELLE J
Street and Apt. No. 1123 18TH ST NW
City, State, ZIP+4® ALBUQUERQUE NM 87104

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To GOLDEN ESTHER T
Street and Apt. No. or PO 1132 18TH ST NW
City, State, ZIP+4® ALBUQUERQUE NM 87104

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Sent To SANDOVAL EMMA J
Street 1128 18TH ST NW
City, State, ZIP+4® ALBUQUERQUE NM 87104

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To MAES NATALIE R
Street 1131 MIS ABUELITOS DR NW
City, State, ZIP+4® ALBUQUERQUE NM 87104

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To WILLETTO WENDI R
Street 1127 MIS ABUELITOS DR NW
City, State, ZIP+4® ALBUQUERQUE NM 87104

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

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Sent To FLORES ALFRED E & CYNTHIA L
Street and Apt. No. 2116 SAN VENITO PL NW
City, State, ZIP+4® ALBUQUERQUE NM 87104

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To RIO GRANDE NEW MEXICO PROPERTY
Street and Apt. No. LLC
City, State, ZIP+4® PO BOX 50620
IDAH0 FALLS ID 83405

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To STATE HIGHWAY DEPT
Street PO BOX 1149
City, State, ZIP+4® SANTA FE NM 87504-1149

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Sent To SUNSET NON-PROFIT HOUSING
Street and Apt. No. ASSOCIATION
City, State, ZIP+4® 7700 DURAY RD NW
ALBUQUERQUE NM 87120-5127

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To PAVLANTOS KIKI
Street and Apt. No. 1401 MARCATO LN NW
City, State, ZIP+4® ALBUQUERQUE NM 87104-2388

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To HARRIS JUDY B & ROBERT M
Street 1922 INDIAN SCHOOL RD NW
City, State, ZIP+4® ALBUQUERQUE NM 87104

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

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Sent To WHITE STEVEN L & EILEEN H
Street 303 ROMERO ST NW
City, State, ZIP+4® ALBUQUERQUE NM 87104-1481

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To SAN FRANCISCO LLC
Street 9025 4TH ST NW
City, State, ZIP+4® ALBUQUERQUE NM 87114-1650

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

Sent To JONES AMALIA S
Street 2004 LENTO WAY NW
City, State, ZIP+4® ALBUQUERQUE NM 87104-2393

PS Form 3800, April 2015 PSN 7530-02-000-9071 See Reverse for Instructions

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 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

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Sent To: ALLEN GENE & CHERYL D
Street: 1505 ALLEGRO WAY NW
City: ALBUQUERQUE NM 87104-2394

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 Adult Signature Required \$0.00
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Sent To: TROYER NATHAN & MARIBETH
Street: 1926 INDIAN SCHOOL RD NW
City: ALBUQUERQUE NM 87104-2314

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Sent To: ANAYA MARGARITA G
Street: 683 LONDON ST
City: SAN FRANCISCO CA 94112-3411

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Sent To: CANSINO ROSE V
Street: 1306 SAN VENITO RD NW
City: ALBUQUERQUE NM 87104-2547

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 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.55

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11/21/2019

Sent To: SAWMILL COMMUNITY LAND TRUST
Street: 990 18TH ST NW FLOOR 2
City: ALBUQUERQUE NM 87104-2053

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Sent To: ROGER COX LIMITED PARTNERSHIP
Street: 1984-2
City: 1717 LOUISIANA BLVD NE SUITE 111
City: ALBUQUERQUE NM 87110

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Sent To: SLADEK VIRGINIA ANNE
Street: 1026 22ND ST NW
City: ALBUQUERQUE NM 87104

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Sent To: HENRY VINCENT TRADING & CONSULTING LLC
Street: 889 S RAINBOW BLVD NO. 599
City: LAS VEGAS NV 89145-6238

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Sent To: STEPHENS JEFFREY D & CAROLINE R
Street: 1412 MARCATO LN NW
City: ALBUQUERQUE NM 87104-2390

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Sent To: DUVAL RVT
Street: 1508 PRESTO WAY NW
City: ALBUQUERQUE NM 87104-2399

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Postage \$0.55

Total Postage and Fees \$6.85

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Sent To: SAWMILL COMMUNITY LAND GRANT
Street: 990 18TH ST NW FLOOR 2
City: ALBUQUERQUE NM 87104-2053

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Postage \$0.55

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Sent To: VICK PATRICIA P
Street: 1500 MARCATO LN NW
City: ALBUQUERQUE NM 87104-2391

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Sent To: SALWAY BENINA MARY
Street: 6006 ALTAMONTE AVE NE
City: ALBUQUERQUE NM 87110

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11/21/2019

Sent To: LONG VIRGINIA
Street: 2009 LENTO WAY NW
City: ALBUQUERQUE NM 87104-2393

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Sent To: LINDBERG PAUL W
Street: 1736 VIOLETAS RD NW
City: ALBUQUERQUE NM 87104-2362

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Sent to: SAWMILL COMMUNITY LAND TRUST
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Sent to: SYMPHONY HOMEOWNERS ASSOC
 INC C/O CANYON GATE REAL ESTATE
 SVCS
 PO BOX 93488
 ALBUQUERQUE NM 87199-3488

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 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
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Sent to: MARTINEZ CYNTHIA S
 9609 SUNDORO PL NW
 ALBUQUERQUE NM 87120-2988

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 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.55
 Total Postage and Fees \$6.85

11/21/2019

Sent to: SALAZAR MONICA T
 1032 20TH ST NW
 ALBUQUERQUE NM 87104

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SANTA FE NM 87504
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 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.55
 Total Postage and Fees \$6.85

11/21/2019

Sent to: N M STATE HIGHWAY DEPT
 PO BOX 1641
 SANTA FE NM 87504-1641

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 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.55
 Total Postage and Fees \$6.85

11/21/2019

Sent to: ELIZONDO HENRY & ELIZONDO
 ESTHER
 417 47TH ST NW
 ALBUQUERQUE NM 87105-1613

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 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.55
 Total Postage and Fees \$6.85

11/21/2019

Sent to: ANAYA MARGARITA G C/O PATRICIA
 ALLEN
 710 16TH ST NW
 ALBUQUERQUE NM 87104-1306

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 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00
 Postage \$0.55
 Total Postage and Fees \$6.85

11/21/2019

Sent to: SAWMILL COMMUNITY LAND TRUST
 990 18TH ST NW FLOOR 2
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SVCS
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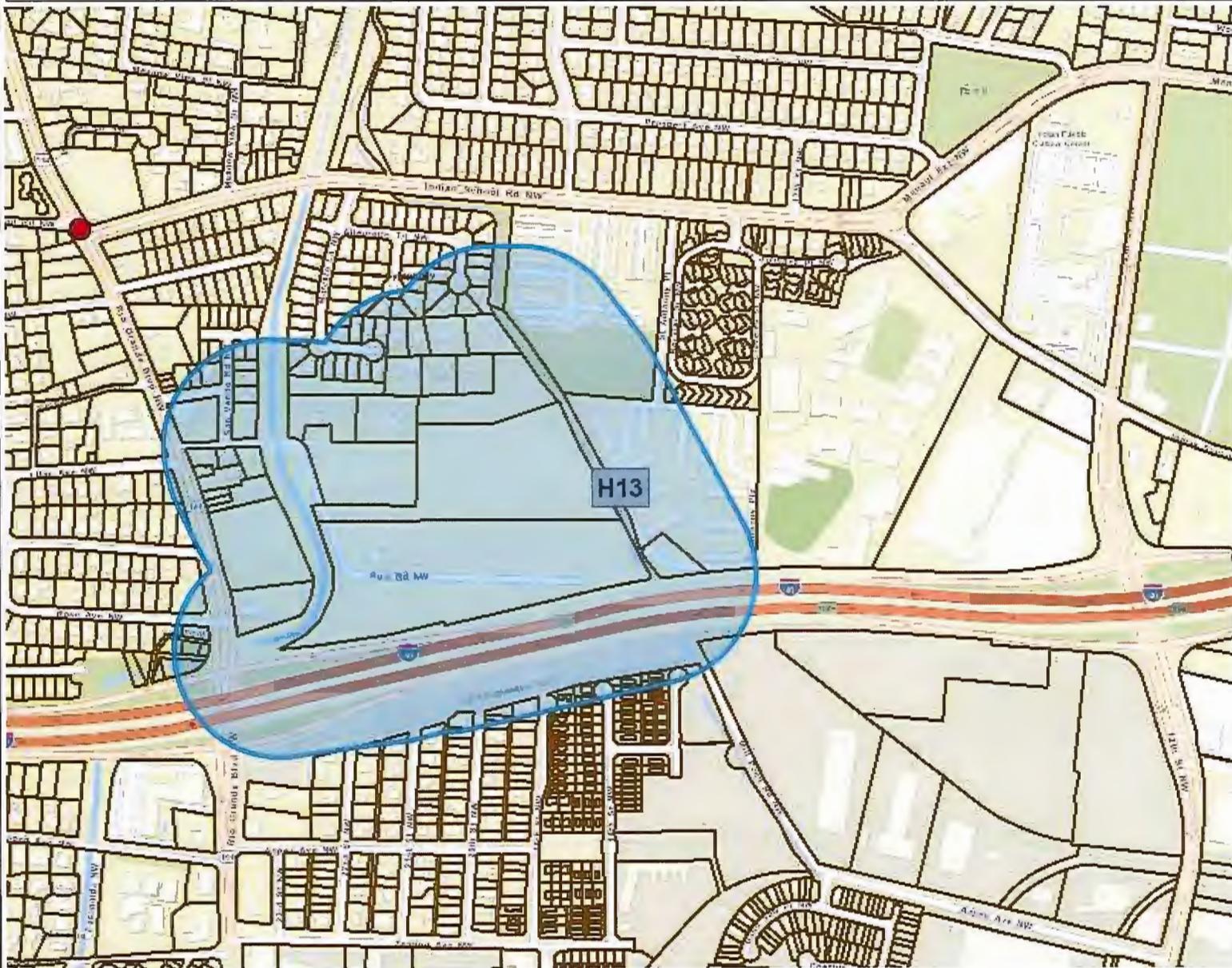
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Rio Grande & I40



Legend

- Zone Grid
- Bernalillo County Parcels

Notes

Buffer: 435 ft.
Row: 235 ft.
Extra: 100 ft.

1,202 0 601 1,202 Feet

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1:7,212

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APPENDIX

to

Garcia Entities' Position Letter – July 29, 2019

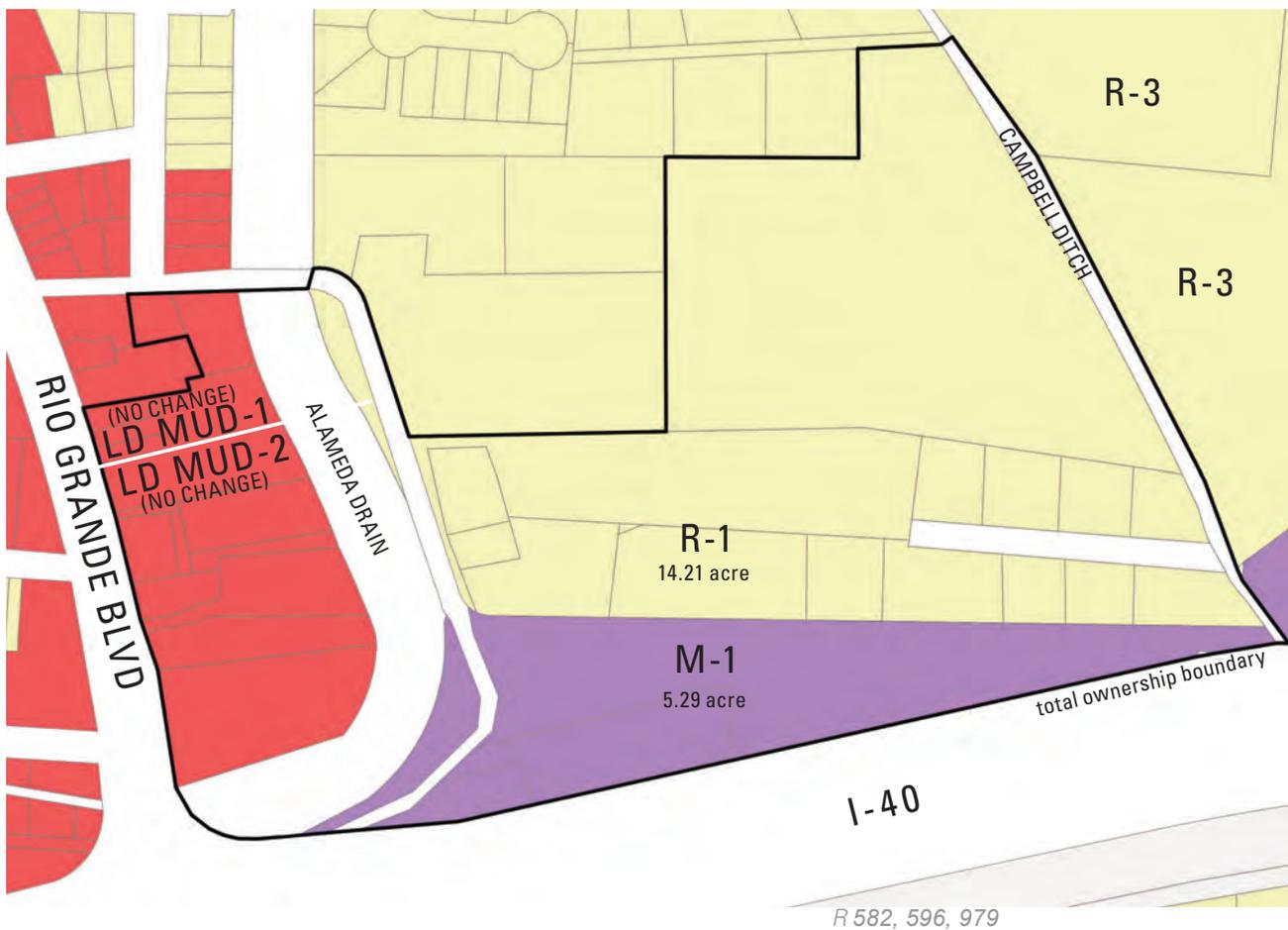
**Re: OC-19-31 - Remand for Supplemental Findings on Two Issues
AC-17-7; Project #1011232; 17EPC-4001
Rio Grande Blvd. NW at I-40, between Alameda Drain and Campbell Ditch**

INDEX

Exhibit No.

1. Before/after map of property
2. NVAP Excerpts
3. 2017 EPC Testimony by Planning Dept. (Vos/Michel)
4. 2017 LUHO Testimony by Vos/Michel

PREVIOUS ZONING



REZONING

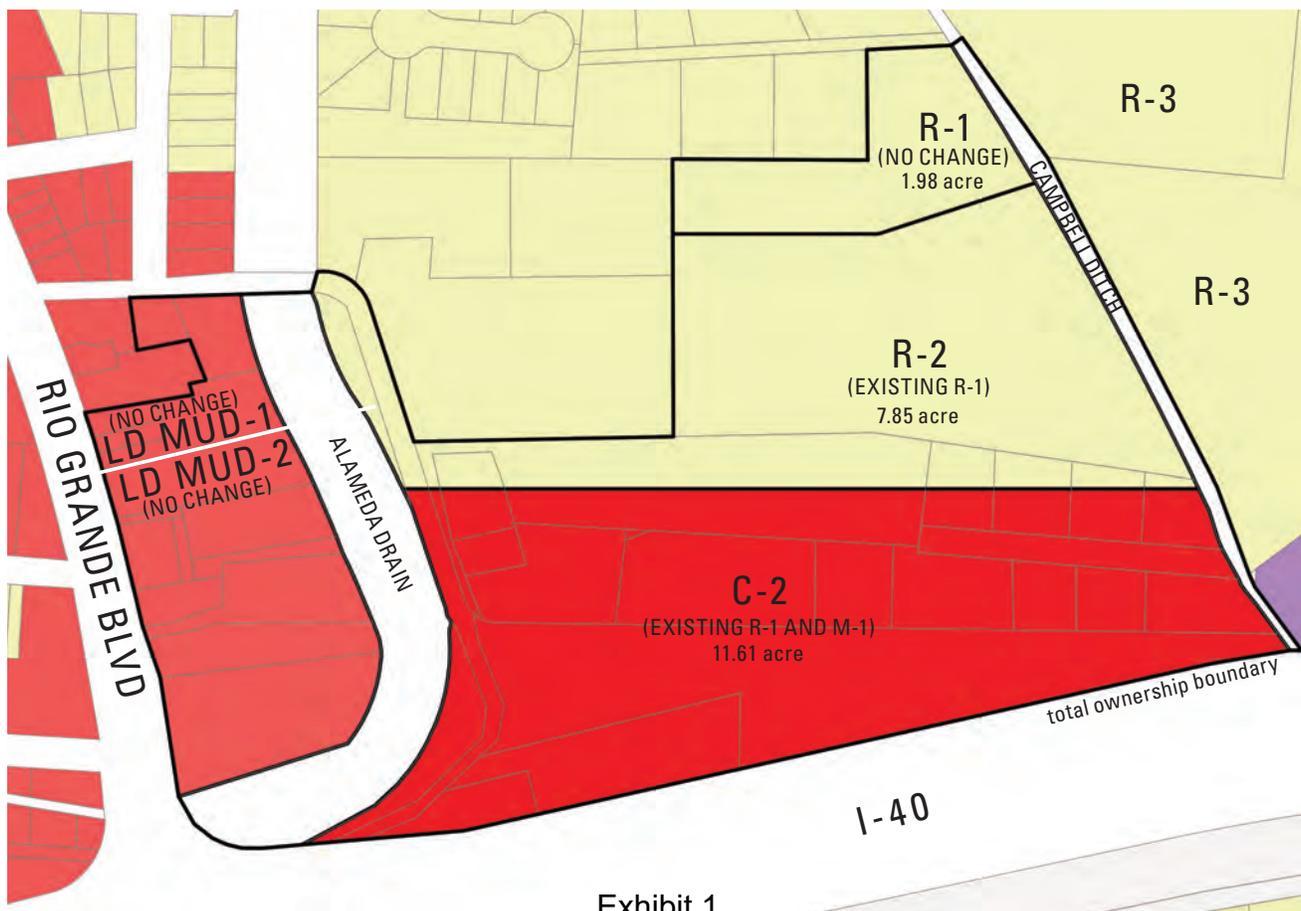


Exhibit 1
Before Map at Top -- After Map at Bottom

NORTH VALLEY AREA PLAN



A P R I L 1 9 9 3

BERNALILLO COUNTY & CITY OF ALBUQUERQUE

North Valley Area Plan Summary

The North Valley is a precious area, cherished in the minds of all. The metropolitan area has a real opportunity to retain a special and unique character, distinct from other cities. The mountains, the volcanoes, and pueblo lands define our limits. The ribbon of valley piercing the city offers a startling possibility of refreshing change within the metropolitan matrix. Few metropolitan areas have a comparable resource. And the forward thinking among those cities have acted to preserve and enhance their assets. This plan attempts to protect and enhance the unique qualities of the valley, simultaneously enriching the metropolitan area as a whole.

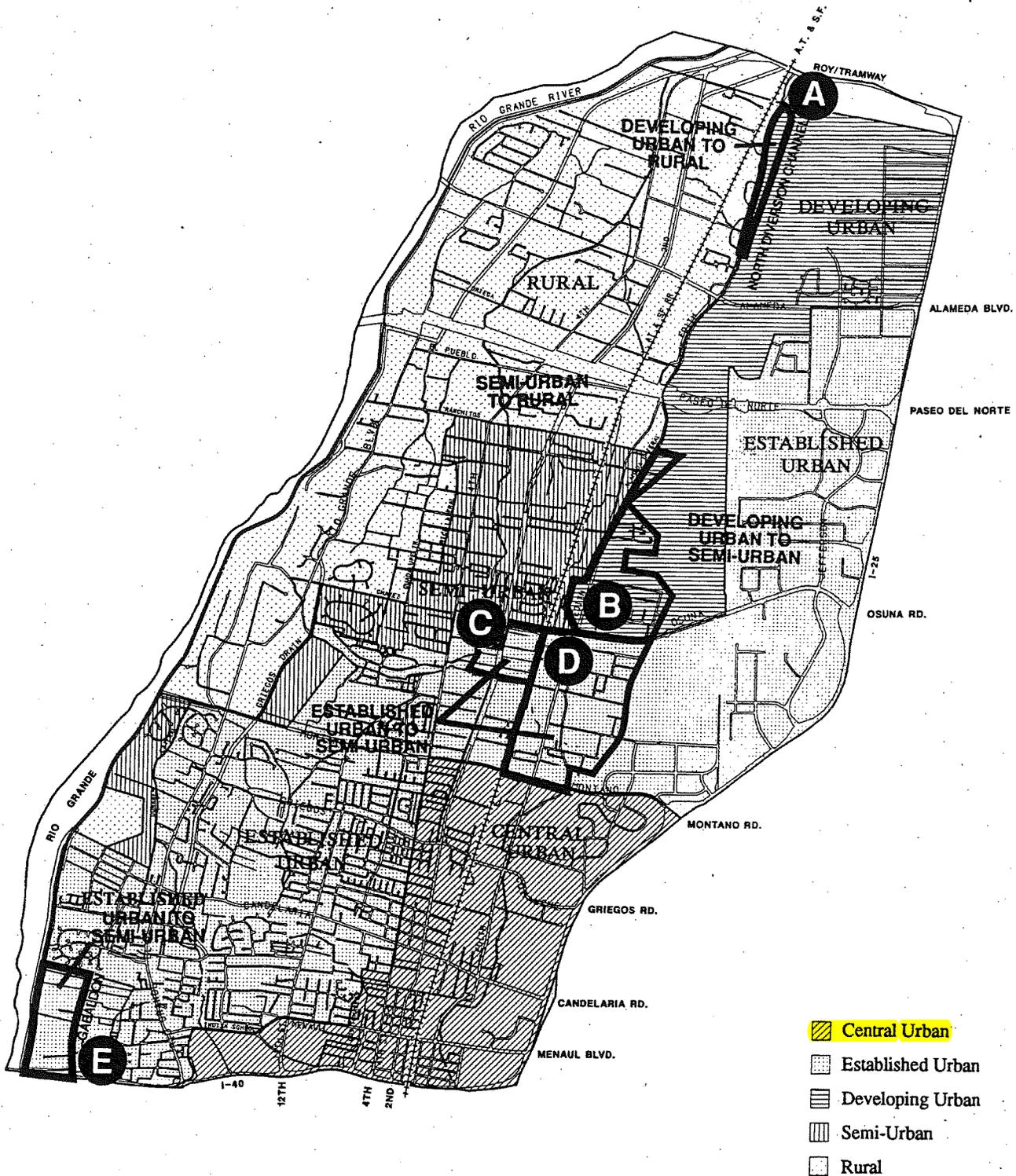
Jonathan Siegel, CATF Member

Goals and Issues

Goals and issues related to the plan area were identified by the North Valley Citizens' Advisory Task Force and technical staff and published in January 1988. The North Valley Area Plan Goals are listed below.

1. To recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the entire metropolitan community.
2. To preserve and enhance the environmental quality of the North Valley Area by:
 - a) maintaining the rural flavor of the North Valley
 - b) controlling growth and maintaining low density development
 - c) providing a variety of housing opportunities and life styles including differing socioeconomic types
 - d) reducing noise level impacts
3. To preserve air, water and soil quality in the North Valley area. To prohibit hazardous waste disposal sites and transfer stations and solid waste disposal sites; and to address problems of individual waste disposal systems on lots of inadequate size.

4. To increase and improve public recreation and open space areas (including MRGCD - maintained ditches) compatible with neighborhood desires.
5. To reduce or eliminate flooding and improve ponding and drainage capacities in the plan area.
6. To encourage quality commercial/industrial development and redevelopment in response to area needs in already developed/ established commercial industrial zones and areas. To discourage future commercial/industrial development on lots not already zoned commercial/industrial.
7. To develop a strategy for arterial roadways that creates a transportation system compatible with a semi-rural lifestyle.
8. To designate and preserve sites of historic and archaeological significance.
9. To establish area beautification standards and designate sites for beautification through community neighborhood input.
10. To incorporate the Rio Grande and its bosque into the North Valley planning process to protect the natural qualities of the river corridor while providing low-impact recreational opportunities.
11. To locate commercial and industrial development within the I-25 corridor, and selected areas along the I-40 corridor, especially as an alternative to extensive lower valley commercial/industrial development.
12. To develop incentives to preserve farmland and open space and to maintain ditches and acequias for agricultural and low-impact recreational purposes.



January 1993

COMPREHENSIVE PLAN AREAS

North Valley Area Plan

- a. Encourage rezoning land in the Edith Boulevard, and Mid-North Valley East subareas for residential and mixed uses.
3. The City and County shall promote lower-income rehabilitation projects in neighborhoods with existing moderately-priced homes and areas vulnerable to speculation, redevelopment, and displacement of lower-income residents.
 - a. Expand efforts to leverage private investment in housing programs for lower-income North Valley residents and target resources to assistance of very low-income renters.
 - b. Study the implications and impacts of accessory apartments in some residential areas.
 - c. Undertake a survey to compile reliable data on incomes and housing cost burdens for North Valley households.
4. The County and City shall remove disincentives, provide incentives, and/or require housing development which meets the Cluster Housing Principles of preserving open land, providing new housing at appropriate densities, lower infrastructure costs, and design flexibility and creativity.
 - a. Amend the City Zoning Ordinance to add cluster principles and reduce the cluster housing district "minimum district size" in RA-2 to two acres.
 - b. Amend the County Zoning Ordinance to add cluster principles and to include Cluster Housing as a Special Use.
 - c. Provide for densities greater than 1 dwelling unit/acre in Rural and Semi-Urban Areas through adoption and promotion of Cluster Housing Principles.
 - d. Adopt standards for homeowner associations, including provisions which would enable the City or County to bill the association for maintenance costs if necessary and requirements for open space in perpetuity.

Village Centers

1. The City and County shall encourage new development and redevelopment that incorporates **Village Center Principles** including: pedestrian attraction and accessibility, mixed use development, and valley scale and character.

Albuquerque/Bernalillo County Comprehensive Plan

Housing

Under the Comprehensive Plan Scenario, new residential growth in the Semi-Urban and Rural portions of the North Valley would be integrated into existing neighborhoods and clustered to retain open land. In suitable areas, such as village centers, higher density townhomes would provide a more affordable housing option.

Commercial Uses

Most commercial development in the valley would be oriented to the local service needs of residents and located at major intersections in Village Centers. Pedestrian and bicycle access and access to mass transit, mixed uses, and smaller scale retail would typify Village Centers. Older storefronts would be preserved as structures which reflect the history and scale of the valley.

Industrial and Heavy Commercial Uses

Large scale industrial development would continue in the North I-25 area under the Comprehensive Plan Scenario. These areas would be appropriately landscaped and linked to residential areas through effective transit, paratransit and trails. A planning effort would result in a mixed use or multipurpose site in the northern portion of the North I-25 area. Smaller scale manufacturing and "cottage industries" would be located in the valley. There would be a compatible mixing of different land uses in the North I-25 area which would reduce the need for motorized travel. Vacant properties unsuitable for heavy commercial and industrial uses would be rezoned to allow residential uses.

Agriculture and Rural Character

In the Comprehensive Plan Scenario a limited amount of agricultural land in the Rural and Semi-Urban areas would be maintained through a combination of methods including transfer of development rights and conservation easements. Remaining agriculture in the Comprehensive Plan Established and Developing Urban Areas, however, would not be specifically addressed. The requirement for clustering housing would retain some land in common ownership for gardens, vineyards, and orchards.

Preferred

Housing

Under the Preferred Scenario, the City and County would assist residents and businesses with efforts to organize and address issues such as buffering between residences and heavy commercial and industrial properties along the mesa edge. The Second Street Corridor would mark the edge of the mixed heavy commercial and housing area between the tracks and Second north of Candelaria with the Alameda Drain and Second Street improvements serving to buffer the housing west of the Drain.

The area of the Mid North Valley East, Second & Fourth Streets, and Edith Subareas with an unstable mix of housing and heavy commercial and industrial uses would be subject to further planning efforts aimed at non-conforming uses, retention and provision of affordable housing and application of Village Center principles. Vacant manufacturing zoned parcels in these areas would be targeted for housing and mixed use projects. Housing should be the predominant use north of Candelaria with the exception of existing business which front the east side of Second Street. In general, the zoning of properties in these areas should be consistent with existing uses. Regulations would be strengthened to provide for buffering between residences.

The east side of the Edith Corridor north from Montaña Road to Osuna Road would be recognized and retained as a residential area with the exception of business which front the roadway. The zoning for these businesses would be consistent with their use (commercial zoning for commercial uses). North of Osuna Road, the Edith Corridor would be retained as residential. Efforts to enhance the appearance of Edith Boulevard and recognize the history of the roadway would be made.

Cluster housing principles would be applied where new housing is proposed. Existing features that distinguish the valley, such as narrow roads and ditches, would be retained in all new development. Features that typify rural character such as mixed lot sizes and setbacks would be replicated in new development. "Common interest communities" would be encouraged to provide for open space and retention of agriculture.

Land adjacent to irrigation ditches would be retained for small scale agriculture through development of cluster housing or retention of A-1 zoning and ditch access. A continued and enhanced mix of neighborhood commercial and higher density residential uses would be encouraged along Fourth Street. Application of Village Center principles would result in a comparable mix and scale of uses, and pedestrian improvements.

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. Existing small scale commercial uses would be revitalized through public/private efforts to provide pedestrian and bicycle amenities, shared parking, promotion, and landscaping. Mixed commercial and residential use patterns would continue to exist along Fourth Street with enhancements to the pedestrian paths and details, especially transit amenities. Present disincentives and barriers to development of Village Centers would be removed. Such disincentives include reliance on automobile use for local neighborhood, commercial, social and civic functions. Providing for alternative modes of travel and safe pedestrian routes and paths will be an incentive to private investment in Village Centers.

Larger scale community or regional commercial development would be located in the available areas within the North I-25 Corridor. This area is also appropriate for heavy commercial and large scale industrial development served with transit and Ridepool alternatives. Improved non-vehicular connections to and from residential areas on the valley floor would also be made to improve the potential for non-vehicular work travel.

Industrial and Heavy Commercial

Large scale uses would be located only on the east mesa and would be served with transit. County SUP's for these purposes would be limited. Businesses would be assisted in efforts to improve and create non-vehicular connections to residential areas on the valley floor and to the east of I-25. Landscaping to control water erosion and dust and to create a visually pleasing environment would be encouraged. The edges between residences and industries would be designed to buffer residences and eliminate traffic from businesses through the neighborhoods.

Public Uses

Village Center principles would be applied with the location and construction of public facilities. The park and ride station for a Santa Fe/Albuquerque rail line would be located so as to foster successful and necessary redevelopment in the Central Urban area. Transit would extend bus service to County areas under a revised joint powers agreement between the City and County. Intracity rail and transit service would be planned to reduce the impacts of cross-valley automobile travel.

CITY OF ALBUQUERQUE
ENVIRONMENTAL PLANNING COMMISSION

M I N U T E S

Agenda Item 1
Project # 1011232
17EPC-40011

July 13, 2017

COMMISSION MEMBERS:

Karen Hudson, Chair
Derek Bohannon, Vice Chair (Recused)
James Peck, Member
Maia Mullen, Member
Moises Gonzalez, Member
Bill McCoy, Member (Absent)
Peter Nicholls, Member
Dan Serrano, Member

STAFF PRESENT:

Michael Vos, Planner
Racquel Michel, Principal Engineer
Dora Henry, Recording Secretary

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CHAIRWOMAN HUDSON: Commissioner Bohannan.

COMMISSIONER BOHANNAN: Yes. I would just like to let everyone know that I need to recuse myself from Cases 1 and 2 due to a conflict of interest for business reasons. So I will remove myself from the chambers and return for Case Number 3.

CHAIRWOMAN HUDSON: Thank you.

All right. So it's obvious that we have a packed room today, and I know a lot of you want to speak. So what I'd like to do first is I want to lay out the rules of conduct for everyone, if I may.

We're going to offer everyone an opportunity to be able to speak. If you know -- if you haven't already, you can sign in with Ms. Henry to speak. And what we will do is we will offer you -- if you're representing yourself, you will have two minutes to speak. If you're representing a neighborhood association, as the president of the association or the designated representative for the neighborhood association, you will have five minutes to speak.

Being that we have so many people in the room, I ask you to please, please be respectful of that time frame. There will be a bell that goes off at the end of your time frame, and I will ask you to be finished by that time. And that's just for -- for mere sake of -- of the fact that we have so many people in here today.

I'm also going to ask you to only speak when you're at the microphone, and I will -- anyone who speaks out of turn from the audience when you're not called upon to speak and it's not your turn to speak will be removed from the room. And I'm going to have zero tolerance for that today, because we're not going to have anyone speaking out of line, speaking out of turn, and they're going to be -- and this is the one and only time I'm going to say it. There's not going to be a second chance.

So you will be removed from the room and then you will be escorted out of the building. So I ask you to please, please be respectful of our process. I really don't want to have to impose that on anyone, but it's very, very important that you understand there will be zero tolerance today. Okay?

All right. With that being said, Commissioner -- Commissioner Gonzalez.

COMMISSIONER GONZALEZ: Could I also add that conversations should be done outside if there's something that you want to discuss with somebody else. We're recording and it gets picked up. So if you need to talk to somebody else in the room, if you can just go outside the chambers and have your conversations there.

CHAIRWOMAN HUDSON: Thank you. And as you can see, the doors are open because we have standing room only. So I'd ask you also if you will silence your telephones and any other conversations, as Commissioner Gonzalez, please take it out of the room.

Commissioners, anyone else have anything else for rules of conduct that you'd like to share?

Mr. Voss, let's begin.

MR. VOS: Good morning, Chair and Commissioners. The first item on the agenda is Project Number 1011232, (inaudible) Number 17EPC 4011, a request for a zone map amendment for 21 contiguous

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parcels of land within MRGCD Map Number 35, totaling approximately 20 acres. This item was deferred from your June 8th hearing.

The subject properties are located northeast of the Rio Grande Boulevard and Interstate 40 interchange between the Alameda Drain and the Campbell Ditch. The applicant has requested a zone change from about five and a half acres of M-1 light industrial, and the remainder of the 20 acres being R-1 to approximately 11.61 acres of C-2 community commercial and 7.85 acres of R-2 residential. A small portion of the site at the northern edge, abutting neighboring single-family homes, will remain R-1.

The requested zones will offer a variety of commercial, retail and service uses and varying densities of residential development.

The EPC is hearing this case and is the final decision-making body, unless the decision is appealed, and it's a quasi-judicial matter.

As the proposed commercial zoning for the site is over five acres in size, it qualifies as a shopping center under the current zoning code, and those regulations would apply to its development, including a return to EPC with a site development plan for future build-out at the site. The R-2 zoning would go straight to building permit, per our regulations.

The existing R-1 zoning of the subject site is the original zoning of the properties, and the M-1 dates nearly that far back to 1957, when it was rezoned to allow for a junkyard. Maps from the 1957 case file show that properties there existed prior to the construction of Interstate 40 and other changes in the area.

The subject site of this zone change request is part of a larger development division by the applicant that includes properties located to the west, along Rio Grande, that are zoned SU-2, MUD 1 and MUD 2 within the Los Duranes sector plan.

Those sites are not a part of this zone change request and will remain zoned as is. The MUD 1 and 2 zones within the plan refer to the C-1 and C-2 zones of the comprehensive zoning code respectively. To the east of the subject site are existing apartment complexes that are zoned R-3 and to the north are existing residences zoned R-1.

The city uses a centers and corridors framework within its comprehensive plan, and the Rio Grande I-40 interchange is the nexus of three different corridor types. North to the interchange on Rio Grande and then turning onto Indian School is a multi-modal corridor. South of the interchange and heading west on I-40 is a major transit corridor. And east on I-40 is a commuter corridor.

There's transit service along Rio Grande as part of a one-directional loop southbound, the buses travel north on 12th Street and loop around at Indian School.

The transit department gave comment generally supportive of additional density along transit routes that can support increased ridership, and that the department has also considered two-way'ing in this route.

The applicant has justified the zone change pursuant to R-270-1980 based on change community conditions and the request being more advantageous to the community, as articulated by the

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comprehensive plan. The site is within both the area of change and the area of consistency in the updated 2017 comp plan.

The applicant's justification letter cited 26 policies or sub-policies of the newly updated comprehensive plan that are furthered by this request as showing in the analysis section of the staff report and the proposed findings.

Those policies furthered by this request include infill development and corridors, mix of uses, increased housing options, convenient access, higher densities and multi-family in appropriate locations, productive use of vacant land, utilizing existing infrastructure, improving community green space, supporting transit, land use compatibility, appropriate transitions, and discouragement of incompatible land uses, among others.

The application also generally furthered the North Valley Area Plan by providing a variety of choices in housing and lifestyles, planning to address land use conflicts between residential and industrial, redevelopment of vacant land, promoting higher density where there is existing infrastructure, encouraging mixed uses and sustainable transportation options.

The proposed development also supports the Alameda Drain and Trail Master Plan as it would enhance the trail experience up to and at the subject site, which is in the southern portion of the trail, while also providing a starting point and destination for trail users.

The justification letter and the numerous comp plan policies furthered by this request substantiate the applicant's claim that it is consistent with the health, safety, morals and general welfare of the city as required by R-270-1980.

The Near North Valley, Sawmill area, Los Duranes and West Old Town Neighborhood Associations, Symphony HOA and the North Valley Coalition were notified of this request, as were properties owners within 100 feet, as required.

A facilitated meeting was recommended and held on May 23, 2017. The meeting report attached to the original June 8 staff report showed the primary concern was with traffic and the impact the proposed development would have on the Rio Grande/I-40 interchange. Other concerns included permissive uses of the requested zones, heights, density, et cetera.

The applicant requested a 30-day deferral from June 8 in order to complete a traffic study that was under way, even though that study was not required for the zone change request by the city's transportation development section. They did this to -- in response to neighbors who wanted that study completed.

That TIS was completed and a second facilitated meeting was held on June 29th to discuss the results of that study. The report from that meeting was attached to the supplemental staff report, along with an executive summary of the TIS. Considerable concern remains over traffic.

Staff has talked to numerous individuals on the phone and in person both in support and opposition to this request. Twelve letters or e-mails of support were received prior to issuance of the supplemental staff report, and approximately 24 letters and e-mails were in option or asked for another deferral. A few letters took a way more neutral tone. And additional input was forwarded to you per the 48-hour rule.

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Generally, concerns remain with regard to traffic, the future of the Campbell Ditch, scale and density, and uses of the proposed development, and the rural character of the North Valley.

Staff is recommending approval of this request based on the updated findings in the supplemental staff report, and one condition of approval, that the applicant replat the properties to align the new zone boundaries prior to the zoning becoming effective.

And I will stand for any questions you have.

CHAIRWOMAN HUDSON: Commissioners, anyone have any questions of Mr. Voss?

Thank you very much.

MR. VOS: And I will note that Racquel Michel from transportation is here if there are questions regarding traffic.

CHAIRWOMAN HUDSON: Okay. Very good. Thank you.

All right. We'd like to hear from the applicant, please.

Good morning.

MR. CULBERTSON: How are you?

CHAIRWOMAN HUDSON: Hi. Hi. Could you if you'd state your name and address for the record.

MR. CULBERTSON: I am -- my name is Kurt Culbertson. I live at 366 Meadow Road, Snowmass Village, Colorado. And I'm the agent for the project from the Garcia family.

(Witness sworn.)

CHAIRWOMAN HUDSON: Very good. Go ahead, sir.

MR. CULBERTSON: Before I get started, the Garcias would like to make a few statements, so if I might, I'll yield the floor to them.

CHAIRWOMAN HUDSON: Sure.

MS. GARCIA: I guess I should start to say I (inaudible) --

CHAIRWOMAN HUDSON: Excuse me. Just a second. I need to swear you in first. So I need your name and address for the record.

MS. GARCIA: Sheila Garcia. 200 Laguna Boulevard, Southwest, Albuquerque, 87104.

(Witness sworn.)

CHAIRWOMAN HUDSON: Is this picking up on the recording?

MS. HENRY: I (inaudible) move the microphone.

CHAIRWOMAN HUDSON: Try that a little bit. We just need to make sure it gets picked up on the --

MS. GARCIA: Thank you very much, Chair Hudson, Commissioners, staff and members of the audience for taking time out from your busy lives to listen to our -- our project.

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MR. BLATCHFORD: Hello. My name is Christina Blatchford Flores. I live at 1009 18th Street.

(Witness sworn.)

CHAIRWOMAN HUDSON: And who are you representing?

MR. BLATCHFORD: I represent myself.

CHAIRWOMAN HUDSON: Okay. You'll have two minutes.

MR. BLATCHFORD: I am the fifth generation in my family to live in the Sawmill, so we have a very long history there. And my grandparents and great grandparents have passed on a beautiful tradition to us.

I care very much about my community and currently I'm living in the Sawmill development. My grandma was here before the freeway was built, and many of them built their homes around their work, which was the sawmill.

And so it's very concerning to me with previous comments saying that neighborhood associations are micromanaging issues. Just to make that very clear, I think that that's very shameful for someone to say something like that. Residents and citizens can and will think critically for themselves and we do have a voice, so I appreciate being able to come up and voice my concerns. Suggesting otherwise is very ignorant and offense is taken.

Now, concerning traffic. Traffic, I personally have had my life literally at risk several times just trying to turn off of Rio Grande onto Zearing to get myself home. This is a daily issue. It's already overburdened on Rio Grande, and I don't think that a larger development would, you know, help that situation at all.

Most importantly, though, I think that we do need to leave behind a beautiful cultural legacy, and we have to think about our children and our grandchildren. And my family does not plan on moving away. We have our roots there, and we're very happy to be, you know, part of Albuquerque's history. We want to make sure and leave the charm and a beautiful legacy for our grandchildren.

So I am in support of a small development, but a large development would not be sustainable or match with the charm of our community.

Thank you very much.

CHAIRWOMAN HUDSON: Thank you very much.

All right. Well, that ends our public comment. I thank everyone for your comment today and coming out and sharing with us your concerns.

I think at this point perhaps we'd like to have -- we'd like to have staff maybe come up for their closing statements.

MR. VOS: Madam Chair, Commissioners, just a few things in closing. And at first, actually I'd actually like Racquel Michel to come up and see -- say about -- more about the traffic concerns that have been talked about extensively.

CHAIRWOMAN HUDSON: Okay. Ms. Michel. This seems to be a big

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topic, so this is appropriate.

MS. MICHEL: I just wanted to address a couple of things that were brought up by the neighbors.

CHAIRWOMAN HUDSON: She needs to -- she's not quite hearing you. If you'll just talk a little bit closer into microphone.

MS. MICHEL: First of all, with reference to the gate on Campbell, again, that's completely hypothetical. We would never hinder someone's existing access. So if there would be a gate required on Campbell, it would be at the beginning of the R-2 section. It would not hinder any of the R-1 that is existing or the small piece that the remaining R-1.

Secondly, I was very careful to call it a draft TIS because, as I mentioned before, we are still in the process of reviewing it. We've already found some things that we need to have addressed.

The DOT has requested additional information because most of the problems are due to the DOT facilities along Rio Grande. It backs up on -- on westbound I-40, as someone mentioned. It backs up Rio Grande because people are trying to get onto I-40. So we're trying to -- we're trying to address DOTs requirements and trying to find the best way to affect -- affect the city's facilities as well as the DOT facilities to best help the ridership on both transportation systems.

Also -- actually, no, I think that was it. I just wanted to correct (inaudible).

CHAIRWOMAN HUDSON: Commissioner Gonzalez.

COMMISSIONER GONZALEZ: Could you tell us in that study, as you've understood it so far, where exactly the access points are?

MS. MICHEL: Sure. So this site plan is very preliminary. But I believe it's the -- you know, the closest we have to what will be coming in with the site plan application. So --

CHAIRWOMAN HUDSON: Do you have a pointer up there or -- there should be a pointer right -- oh, you can do it that way.

MS. MICHEL: Right here is the Range Cafe, where there's two existing accesses in and out the restaurant. Their main access will be off of Floral, right here, and a secondary one off of Lilac.

We're still, again, going through with the requirements. DMD just came in and restricted the access right here at Rose. So we need -- so that was included in the study, however there was a study proposing a diversion diamond under the interstate. We -- they had that in the study, however we're telling them to take it out because it's not a programmed improvement. There's no money for it right now, and it was just in the study. So we need to -- we need to have the study include things that are actually on the system right now.

Again, right here, let's see -- here is all the R-1 that they are -- you know, that is already existing, the R-1 existing, and this is the beginning of the R-2 section. So as I was saying before, any gate would be back here. It would not affect any of the existing residences up here.

CHAIRWOMAN HUDSON: Are all the access roads that you're addressing, are they two-lane?

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MS. MICHEL: Yes. And just point of information, there were more accesses off of Rio Grande today existing, so this would remove a lot of those small driveways along every -- you know, all these little.

CHAIRWOMAN HUDSON: Ms. Michel, when a traffic-impact study is done for this area, what are the boundaries that are taken into account for the traffic-impact study?

Because we're hearing from Old Town, which is south of I-40. So how large an area does the traffic-impact study impact?

MS. MICHEL: So the study -- the properties that the study is prepared for is everything that is under the control of the applicant. So right now, it's everything on this site plan. However, I think what you're asking is what -- the trips -- the area in the city that affects the study.

It depends on the type of development. So for residential, we assume that trips are going and coming from residential throughout the entire city. So the entire city is -- is involved in where those trips are distributed.

For commercial, we chose -- those are -- are a radius from the site. And I believe we chose a two-mile radius from the site, which is very standard. We -- it usually goes between two and three, however there are barriers because there's a river right there. There's -- there's a lot of existing infrastructure, so we chose to do a two-mile for commercial uses.

CHAIRWOMAN HUDSON: And how is NMDOT tied into all of this?

MS. MICHEL: Because it is right around that facility, they are -- they asked that we consult with any infrastructure and any development that's within a half mile of their facility. So we -- they have requested additional information for, I believe, I-40 And 12th Street and I-40 and Coors, how the development affects those two off ramps and intersections as well.

CHAIRWOMAN HUDSON: Commissioner Gonzalez.

COMMISSIONER GONZALEZ: Can you tell me if -- right now, we've heard from a lot of people, you know, about what happens at rush hour at Rio Grande and the highways. Is that considered a failing intersection right now?

MS. MICHEL: Absolutely, yes. And as I was mentioning before, most of it is due to the impact of having the interstate right there. All of -- all of the backup -- the backup all these neighbors were talking about, where you can't get onto Rio Grande from the neighborhoods, is because there is that backup going trying to get onto I-40. And then the backup off of westbound I-40.

Anyone that drives through it in the afternoon sees that you're stuck there for a while. So it's -- it's an existing condition. This development is -- you know, it's just -- it is burdening an overburden area, so why I say that it's still in draft is because we still need to negotiate with the applicant how -- how their development will prepare to mitigate that as much as possible.

So we have not come up with good requirements yet because we still need to look at the fact that the diversion diamond idea is not in place and will not be in place within the near future. We need to look at the fact that the access at Rose, who was just

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changed. So we're still trying to work through that.

That's why I'm cautioning you not to -- that even though it is still in draft form, even though it is being worked through, this is not something that is unique to this situation. This is happening all over the city. All kind of developments have it.

And we, as a city, try to make sure that the safety of the transportation users are paramount when figuring out what kind of infrastructure is required.

CHAIRWOMAN HUDSON: Commissioner Peck.

COMMISSIONER PECK: Thank you, Madam Chair.

So, Ms. Michel, so when the -- should this be approved, when the C-2 portion comes back before us, that traffic mitigation plan will be part of that something else, correct?

MS. MICHEL: Yes. So when the site development plan is approved, we will require a finalized -- or not finalized. We will require a TIS that is --

COMMISSIONER PECK: Specific to C-2?

MS. MICHEL: Yeah, exactly. Specific to the actual request.

COMMISSIONER PECK: Gotcha. Thank you.

CHAIRWOMAN HUDSON: But while we're on that topic, let's talk about the R-2. So, again, we talked about this earlier. The R-2, they just need to go -- the applicant -- if we chose to do this, the applicant just goes to building permit.

But a TIS is still going to be required for the entire site, correct?

MS. MICHEL: The entire site creates over the threshold -- over the 100 trips in and out in the peak hours. The entire site creates that -- or is above that threshold, so we would require the TIS anyway.

CHAIRWOMAN HUDSON: And, again, if we were to -- if this were to be approved, it would just need to go to building permit for the R-2, would you need to know exactly what's going to be placed on the C-2 in order to have an accurate traffic-impact study.

MS. MICHEL: Yes. Absolutely.

CHAIRWOMAN HUDSON: Very good.

Anybody else have any questions for Ms. Michel regarding the traffic-impact study? .

Okay. Thank you very much.

Okay. Mr. Voss.

MR. VOS: From planning, the urban design's development section's review side of the traffic issues, the applicant's traffic engineer in the study, I believe, said that the resulting traffic could be a D level of service, which is considered acceptable in urban areas. And in -- in line with that, the city's updated comprehensive plan, Chapter 6 is transportation, has policies specific to corridor types.

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I mentioned earlier there are three different corridors here, with major transit, multi modal and commuter.

Policy 6.1.6, for major transit, would even be a Level E service, with the acceptable minimum. 6.1.7, multimodal, a Level E minimum, and 6.1.8 from the commuter corridor, a B level of service is an acceptable minimum.

There was some discussion about why didn't the applicant submit for special use zoning or why are we not bringing a site plan at this point in time. Well, first of all, the applicant, they submit for what they choose to submit for and the city reviews it. They're the ones who made their application and provided justification.

If there is some sort of similarity between my staff analysis and the report and the applicant's justification letter, that's because the justification letter, in my opinion, was very strong and the policies cited are furthered by this request. And that would satisfy RR, Policy E, Number 3, that it is more advantageous to the community as articulated by the comprehensive plan. That is the standard by which this request was judged and analyzed by myself.

If uses are able to be accomplished by state zoning, that is the preference of the city. The comprehensive plan has a policy that says we should limit the use of SU-1 zones to where they're absolutely necessary, essentially.

And then with regard to the rural character of the North Valley and concerns with this application being in conflict with the North Valley Area Plan, the North Valley Area Plan did have policies or does have policies to protect rural character. The North Valley is a very large area. And those policies were to protect the existing rural areas and agricultural zoning areas.

Goal Number 11 of the overall goals of the plan states to locate commercial and industrial development within the I-25 corridor and selected areas along the I-40 corridor, especially as an alternative to excessive lower valley commercial or industrial development.

The subject site is in the I-40 corridor, and promoting commercial development here rather than farther north in the more rural part of the valley is appropriate.

Under the zoning and land use section, Policy 1(A), the North Valley Area Plan stated specific areas where the former, not in (inaudible) plan, but the former comp plan development areas should be lowered from established urban to semi urban, or from semi urban to rural.

This subject site was not within any of those areas to be lowered in their development area designation. In fact, it remains as central urban, the most intense central urban core of the city.

In Policy 2(E), was to retain the low density character of rural areas of the North Valley. Again, because this area was central urban, my analysis would be that this is not the rural parts of the valley that were most important to protect, and that this development is appropriate in this location next to interstate highway and an arterial roadway and major corridors of the city.

With that, I'll be happy to answer any other questions you have. And we'll go from there.

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CHAIRWOMAN HUDSON: Commissioners, anybody have any questions? .

Mr. Voss, can you just address for us, it was brought up and I'm curious to know, this area is in both an area of change and area of consistency in the comprehensive plan, so can you address for us justification for this being an area of consistency with your recommendation for approval?

MR. VOS: So there -- in the policy analysis, in the staff report, there are both policies for areas of change and areas of consistency mentioned. The comp plan wants to promote growth in areas of change. The portion of this site, that's an area of change, the existing industrial zoning, so it's an -- already a nonresidential use, and it's in proximity to a major transit corridor at the interchange.

The areas of consistency, the idea of the comprehensive plan is to protect our existing residential neighborhoods and those other lower intensity areas of the city. That doesn't mean we should prevent development from happening in proximity to those.

Policy cited in their -- in the applicant's justification letter and in the staff report, is that we should carefully consider zone changes from residential to nonresidential zones. This application, in my analysis, was carefully considered.

The applicant has placed the nonresidential uses adjacent to the interstate and have set the intensity bounds to multi-family, and has left on -- you can see this map -- the northern portion that is immediately adjacent to the existing homes as R-1.

So I believe they -- that the applicant has carefully considered it. I've carefully analyzed it, and the (inaudible) don't do zone changes or don't allow development in the areas of consistency (inaudible).

CHAIRWOMAN HUDSON: Thank you for that explanation.

Anyone else?

Commissioner Gonzalez.

COMMISSIONER GONZALEZ: So one of the suggestions that was made was -- or one of the questions that was asked was: Why C-2 and not C-1? Why make that jump? So I'm just wondering if you have any comment on that?

MR. VOS: That's probably a better question to ask the applicant for why they've chosen the zone district to apply for that they have.

Generally, I would probably say there are uses within the C-2 zone that they would like that maybe are not allowed in the C-1 neighborhood commercial zone.

COMMISSIONER GONZALEZ: I'll ask them.

CHAIRWOMAN HUDSON: All right.

Anyone else have any questions for Mr. Voss?

Thank you very much.

All right. We'd like to hear from the applicant, closing statements, please.

In Re:

AC-17-7 and AC-17-8

TRANSCRIPT OF PROCEEDINGS

Thursday, September 21st, 2017
9:04 a.m.

CITY OF ALBUQUERQUE
CITY COUNCIL CHAMBERS
One Civic Plaza, Northwest, Ninth Floor
Albuquerque, New Mexico 87102

HELD BEFORE: MR. STEVEN CHAVEZ
LAND USE HEARING OFFICER

COPY

REPORTED BY: MICHELE M. TRUJILLO, CCR No. 226
WILLIAMS & ASSOCIATES, LLC
1608 Fifth Street, Northwest
Albuquerque, New Mexico 87102

Exhibit 4

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1 allowed with conditional for a truck terminal under
 2 M-1, and the R-1, which is not rural.
 3 It is a suburban zoning classification,
 4 like the Northeast Heights, which would allow, if you
 5 had, let's say, six developments units for 14 acres,
 6 which would otherwise be possible -- you'd have 90
 7 new homes in there or more, maybe a hundred. Does
 8 that not create traffic? Does the M-1 not create
 9 traffic? Of course, it does. Does it not create
 10 light? Sound?
 11 One of the EPC commissioners aptly
 12 described I-40, and that's really what we're talking
 13 about when we're talking about traffic, by the way,
 14 which is where I'll end up. He described it as a
 15 river of cars. If there is -- with an allusion to
 16 the Rio Grande River that's so close and so
 17 beautiful, and the contrast that the river of cars
 18 isn't, but it's -- it isn't beautiful, but it's
 19 necessary. The problem we have is that, with I-40,
 20 it's a DOT issue. It's not a City of Albuquerque
 21 issue, per se.
 22 And the key thing about the traffic issue
 23 is that, if it wasn't required for purposes of the
 24 zone change, that the Garcias agreed to provide it,
 25 because it was such a touch point with the neighbors,

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1 especially when there was still some hope that maybe
 2 something could be resolved through a consensus,
 3 including even an SU; and, of course, the Garcias
 4 need to know what the infrastructure on Rio Grande
 5 Boulevard itself will support.
 6 The conclusion that there isn't a
 7 significant adverse impact is critical, and I would
 8 like, without going into those details, simply to say
 9 that one should look at that as though it was an
 10 effort to go beyond the call of duty and that what
 11 will really happen if this zone change becomes final
 12 is that the Garcias will then have to do some very
 13 rigorous site planning and determination of what
 14 actual densities will allow and to work carefully
 15 with the transportation engineering department and
 16 the transportation engineer, Michelle (sic) Michel,
 17 and through the approval process, to make sure that
 18 what actually happens with traffic will work. They
 19 don't want us -- a C-2 or R-2 that doesn't work.
 20 And just for illustration purposes, there's
 21 no desire to put a bunch of high-density apartments
 22 here, but to allow for flexibility in R-2 uses. And
 23 if you're going to have senior housing, where there
 24 aren't as many cars as normally people have, you're
 25 actually reducing traffic loads. But you've got to

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1 have access to it.
 2 MR. CHAVEZ: Mr. Kent, can you wrap it up?
 3 MR. KENT: Yes, I can.
 4 MR. CHAVEZ: Thank you.
 5 MR. KENT: The case law, the Duke City
 6 case, says that opinion about harm, traffic, is not
 7 evidence. There is evidence, and it was not
 8 contradicted with an alternative traffic study. It
 9 was nothing other than opinion, generalized
 10 assertions about harm, that the EPC properly
 11 determined that this would not cause relative harm,
 12 and it's the right thing to do under the plans, and
 13 therefore we ask for a recommendation that the EPC's
 14 decision be upheld.
 15 Thank you.
 16 MR. CHAVEZ: Thank you, Mr. Kent.
 17 Any cross-examination for Mr. Culbertson,
 18 Mr. Ewing?
 19 MR. EWING: No. I'd just like to make
 20 quick comments, if I could.
 21 MR. CHAVEZ: Mr. Anaya, any
 22 cross-examination for Mr. Culbertson?
 23 MR. ANAYA: No, Your Honor.
 24 MR. CHAVEZ: Thank you.
 25 Certainly, you can, but what I'd like to do

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1 is get the City up here, real quick.
 2 MR. EWING: Sure.
 3 MR. CHAVEZ: And then you can have some
 4 time rebuttal -- in your rebuttal.
 5 **Good morning, Mr. Vos.**
 6 **MR. VOS: Good morning.**
 7 MR. CHAVEZ: I'm going to swear you in.
 8 Please raise your right hand. Do you affirm to tell
 9 the truth, the whole truth, and only the truth?
 10 **MR. VOS: I do.**
 11 **MR. CHAVEZ: Ms. Michel?**
 12 **MS. MICHEL: Hi.**
 13 MR. CHAVEZ: Good morning. I'm going to
 14 swear you in. Are you going to testify, as well?
 15 **MS. MICHEL: Yes.**
 16 MR. CHAVEZ: Okay. Do you affirm to tell
 17 the truth, the whole truth, and only the truth?
 18 MS. MICHEL: I do.
 19 MR. CHAVEZ: Thank you so much.
 20 And you saw kind of where I was focusing
 21 with my questioning.
 22 MS. MICHEL: Yes.
 23 MR. CHAVEZ: If you could address those
 24 points, I'd appreciate it.
 25 Mr. Vos.

Exhibit 4

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1 MR. VOS: Yeah, I can begin. I'll keep
 2 this fairly brief. I believe the parties have
 3 addressed the issues of changed conditions in the
 4 staff analysis and in the EPC's findings, that they
 5 agreed with the Applicant that there were changed
 6 conditions that justified the zoning change.
 7 MR. CHAVEZ: And the analysis for the
 8 changed conditions is regarding the enactment of the
 9 zoning for that particular site, correct?
 10 MR. VOS: Correct. The changed conditions
 11 are -- go from when the zoning was first established
 12 for the site. So, in this instance, the R-1 is the
 13 original zoning, when zoning was very first
 14 established in Albuquerque, and the M-1 from 1957,
 15 prior to the interstate.
 16 MR. CHAVEZ: The M-1 from 1957, yes. Thank
 17 you. I was starting to doubt myself. Mr. Ewing had
 18 me concerned that I'm getting a little senile. I was
 19 starting to believe he was correct.
 20 I'm sorry. Go ahead.
 21 MR. VOS: Yeah, and I believe there's been
 22 lots of discussion about the areas of change and
 23 areas of consistency. The areas of consistency do
 24 not prohibit zone changes from occurring. As you
 25 mentioned, it's more of a test of compatibility,

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1 carefully considered based on the surrounding
 2 context.
 3 MR. CHAVEZ: And I think you mentioned that
 4 in your report, and you even used the language, that
 5 you "carefully considered," and then you had all of
 6 the policy reasons.
 7 MR. VOS: Yes. The areas of consistency in
 8 the Comp Plan was established to protect established
 9 neighborhoods. Those neighborhoods in this area
 10 primarily exist to the north of this site, and the
 11 Applicant made an application where they stepped down
 12 their zoning and created buffers to the adjacent R-1
 13 properties to the north.
 14 But in terms of the carefully considered
 15 and the surrounding context, you don't just consider
 16 the adjacent R-1 properties, that the surrounding
 17 context includes the R-3 high-density residential to
 18 the east and the existing commercial zoning to the
 19 west, along Rio Grande Boulevard.
 20 So, taking the entire context of the
 21 subject site, the analysis and the EPC's findings
 22 found that it satisfied the policies of the Comp Plan
 23 for areas of consistency.
 24 MR. CHAVEZ: Why did you use the language
 25 that this significantly satisfies the Comp Plan, but

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1 then you used the language that it generally
 2 satisfies the NVAP? I'm curious why you used the
 3 "general." Is there aspects that weren't satisfied?
 4 MR. VOS: I believe there -- the
 5 North Valley Area Plan, most policies within it
 6 are -- speak generally to the North Valley, as a
 7 whole. The North Valley is a very large area.
 8 I believe they're more -- the analysis is
 9 more generalized, as parts of the Valley are more
 10 rural. Others are more urban. Some policies -- the
 11 Appellants listed policies that they don't believe
 12 were satisfied. There's wording in the finding made
 13 by the EPC of mixed uses, encouraging development in
 14 appropriate locations that are satisfied. I think
 15 there's some give-and-take there.
 16 MR. CHAVEZ: There are policies that are
 17 inapplicable to this site, and there are policies
 18 that are applicable.
 19 MR. VOS: Correct.
 20 MR. CHAVEZ: Did the -- in your opinion and
 21 in your review, did the proposal -- does the proposal
 22 satisfy, substantially satisfy, the applicable
 23 policies to this site?
 24 MR. VOS: I believe it does. In my review,
 25 I reviewed the North Valley Area Plan policies

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1 against what was being proposed and believe that it
 2 does substantially comply with the applicable ones.
 3 MR. CHAVEZ: And how much did the central
 4 urban designation play into your analysis?
 5 MR. VOS: I believe that was a significant
 6 part of it. Its location along the interstate
 7 corridor as well as that central urban designation
 8 were important factors in my review in making a
 9 recommendation to the EPC.
 10 The North Valley Area Plan recognizes that
 11 development may occur and wants to encourage those to
 12 not spread into the lower Valley. It was made
 13 mention of, I believe, page seven of the plan,
 14 earlier, that stated the semi-urban area and
 15 established urban area was downgraded to semi-urban.
 16 That is located west of this subject site, between
 17 Gabaldon Road and the river.
 18 So the plan specifically recognized areas
 19 that needed more of the rural protection and made
 20 those changes, and that change did not occur for this
 21 subject site area.
 22 MR. CHAVEZ: Is there a conflict in the
 23 Comprehensive Plan with the North Valley Area Plan,
 24 in terms of the area of consistency, and, if so, I
 25 mean, how did you reconcile that?

Exhibit 4

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1 MR. VOS: The --
 2 MR. CHAVEZ: The Comprehensive Plan
 3 designates this generally as an area of consistency,
 4 while the NVAP specifically says this is an urban --
 5 central urban area.
 6 MR. VOS: Correct. The previous
 7 Comprehensive Plan, prior to March 2017, used the
 8 central urban, established urban, designations. That
 9 is a policy change that the City Council has made,
 10 and so, this North Valley Area Plan being from 1993,
 11 that's a remnant.
 12 The idea of changing is that the
 13 established urban or central urban areas sometimes
 14 would allow inappropriate development. So putting an
 15 area of consistency in areas of change can offer a
 16 little more guidance in where we need to more
 17 carefully consider things. So I don't believe that
 18 there's a conflict, per se. It's -- because we are
 19 able to look at the context, and it allows more of
 20 that analysis, I believe, to occur than maybe would
 21 have occurred before.
 22 MR. CHAVEZ: So this entire site for the
 23 zone change is designated as a shopping center site?
 24 MR. VOS: The five -- or the 11 acres of
 25 proposed C-2 would be designated as a shopping center

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1 site. The R-2 uses would just be -- move forward
 2 with a building permit plan.
 3 MR. CHAVEZ: Okay. So, on the city zoning
 4 map, it will have that designation just for that 11
 5 acres?
 6 MR. VOS: Correct.
 7 MR. CHAVEZ: Okay. And it -- you'll -- the
 8 Planning Department would never allow a large retail
 9 facility at this site, correct?
 10 MR. VOS: I do not believe it --
 11 MR. CHAVEZ: I guess that's a question for
 12 Ms. Michel.
 13 MR. VOS: And I don't believe it has
 14 access.
 15 MR. CHAVEZ: Because, if there's not a
 16 collector that has an -- it's not adjacent to a
 17 collector, and it does not have direct access to a
 18 collector.
 19 MS. MICHEL: That's exactly correct.
 20 MR. CHAVEZ: So it's not the intent of the
 21 City to allow a large retail facility?
 22 MS. MICHEL: Correct.
 23 MR. CHAVEZ: Okay. Thank you.
 24 I'm sorry. Go ahead, Mr. Vos.
 25 MR. VOS: I'll continue a little bit more

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1 with the changed conditions.
 2 In addition to when the zoning was first
 3 established, the North Valley Area Plan was dated
 4 in 1993. The City's Comprehensive Plan, I believe
 5 the year is 2002 is when the centers and corridors
 6 concept was first introduced, even though we do see
 7 village centers as a concept in the North Valley Area
 8 Plan, and then the new Comprehensive Plan offering
 9 more of a focus on infill development, as opposed to
 10 development on the edges of our developed urban area.
 11 So there has, over the years, been more of
 12 a shift toward seeing these sort of center-type
 13 developments that are within the city that
 14 potentially offer more benefits than
 15 automobile-oriented sprawl.
 16 MR. CHAVEZ: Was the LD-MUD designation,
 17 for those properties along the Rio Grande -- those
 18 were done through the Los Duranes Sector Development
 19 Plan, correct?
 20 MR. VOS: Correct. Those designations are
 21 with -- are because of the Los Duranes Sector
 22 Development Plan, that -- a change that occurred near
 23 to the site.
 24 MR. CHAVEZ: What was the zoning before
 25 that at those sites?

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1 MR. VOS: I do not recall, off the top of
 2 my head.
 3 MR. CHAVEZ: Okay.
 4 MR. VOS: The Los Duranes Sector
 5 Development Plan, there's been some mention that --
 6 of whether or not it applies or why weren't policies
 7 cited. This specific subject site is straight zoned.
 8 It is actually -- it is not within the boundaries of
 9 the sector development plan.
 10 So, insofar as changed conditions, the
 11 sector development plan, as the EPC found, applies to
 12 changes in the area, but those policies were not
 13 analyzed, in terms of the "more advantageous"
 14 argument, because the site is not within the plan
 15 area.
 16 MR. CHAVEZ: Right. The policies of the
 17 plan don't apply, because the boundaries don't reach
 18 the site.
 19 MR. VOS: Correct.
 20 MR. CHAVEZ: But the actual installment or
 21 the actual approval of the plan that changed the
 22 zoning for the -- for those lots, those parcels,
 23 certainly apply to the "changed conditions"
 24 analysis --
 25 MR. VOS: That's correct.

Exhibit 4

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1 MR. CHAVEZ: -- under R270-1980.
 2 MR. VOS: My last point may be regarding
 3 the adoption of the new Comp Plan and whether or not
 4 that reaffirms the R-1 and M-1 zoning argument that
 5 was made. The Comp Plan is just a policy document.
 6 It is not the zoning. Zoning may still change in
 7 accordance with R270-1980 and the policies that get
 8 analyzed.
 9 So the Comp Plan, the area of consistency,
 10 area of change, policies guide us in our analysis and
 11 guided the EPC in making their decision, but they do
 12 not necessarily affirm or -- the existing zoning
 13 that's on the ground.
 14 MR. CHAVEZ: Ms. Michel.
 15 MS. MICHEL: I just had a couple of
 16 clarifications from things that came up earlier. One
 17 was regarding the level of service allowable in the
 18 city. I just want to make it clear that the level of
 19 service shown in the DPM today is for the level of
 20 service for automobiles.
 21 MR. CHAVEZ: Right, right.
 22 MS. MICHEL: So, for any roads controlled
 23 by traffic-control devices, a level of service D is
 24 acceptable. Anything else, a level of service C is
 25 acceptable. And just as a matter of point, most

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1 local roads are A and B.
 2 MR. CHAVEZ: Oh, are they?
 3 MS. MICHEL: Yeah.
 4 MR. CHAVEZ: How come I have never seen A's
 5 and B's?
 6 MS. MICHEL: Because most analysis is done
 7 on the major roads.
 8 MR. CHAVEZ: You know, I should -- I
 9 apologize for wrongly assuming. It's just that I
 10 don't think I've ever seen an A or a B.
 11 MS. MICHEL: Well, in -- within the city,
 12 most major roads are a C or worse.
 13 MR. CHAVEZ: Right.
 14 MS. MICHEL: And then I do want to, I
 15 guess, just explain that since that's the level of
 16 service for automobiles, that means that the level of
 17 service for pedestrians and bikes is also -- the
 18 higher the level of service for autos, the worse the
 19 level of service for bikes and pedestrians.
 20 MR. CHAVEZ: Sure. It makes it more
 21 dangerous.
 22 MS. MICHEL: So it's a balancing process.
 23 MR. CHAVEZ: Of course.
 24 MS. MICHEL: One question was whether -- or
 25 why the TIS was not required for a zone change, and

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1 that is a typical process our group does. If we know
 2 that a site plan will be forthcoming, which we know
 3 in this instance there will be, we think it's more
 4 prudent to get the finer details of the site when a
 5 zone change has already occurred to be able to have a
 6 better analysis for the TIS.
 7 MR. CHAVEZ: Mr. Vos, I have a -- I'm sorry
 8 to jump around.
 9 MS. MICHEL: That's all right.
 10 MR. CHAVEZ: Are you finished, Ms. Michel?
 11 MS. MICHEL: No, I have a couple things,
 12 but we can come back.
 13 MR. CHAVEZ: Let's finish. I need to write
 14 my question, because I will forget. Go ahead.
 15 MS. MICHEL: One thing that was mentioned
 16 was, no matter if the -- if the zone change does not
 17 go through, the road conditions, the failed
 18 conditions on the road, they will persist, and it's a
 19 system-wide condition. It's not -- it's not a
 20 situation that is being introduced by this
 21 development. It's just -- as I mentioned at the EPC
 22 hearing, it's just getting worse.
 23 So we have had meetings with DOT to try to
 24 alleviate those system-wide problems, and since it's
 25 a system-wide situation, this is something, again, we

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1 do with all developers. It's not a special
 2 circumstance. If it is an existing condition and a
 3 system-wide situation, then we try to work with DOT
 4 or with the City, with DMD, to try to find --
 5 MR. CHAVEZ: Mitigation.
 6 MS. MICHEL: Remediation, yeah, that can
 7 apply to the whole system and not just for this one
 8 development.
 9 And then, also, you did ask that the TIS be
 10 entered into the record. I do want to mention that I
 11 am wary to issue that, unless the -- unless the --
 12 MR. CHAVEZ: Was it considered by the EPC?
 13 MS. MICHEL: No, and the reason why is it's
 14 not -- it's not a finalized document. And this has
 15 come up in other cases.
 16 MR. CHAVEZ: Was the Executive Summary
 17 based on the transportation study?
 18 MS. MICHEL: Yes.
 19 MR. CHAVEZ: Then, it -- I'm sorry. Over
 20 your objection, I want it in the record. And I'll
 21 note that it's not a final version.
 22 MS. MICHEL: Exactly.
 23 MR. CHAVEZ: But I think it's necessary. I
 24 mean, I'm curious to see the actual numbers.
 25 MS. MICHEL: Yeah, and the reason I'm wary

Exhibit 4

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1 is we are still waiting on additional analysis that
 2 was required by the DOT. So it's not a full picture
 3 yet. It's not something that even I'm ready to
 4 approve.
 5 MR. CHAVEZ: Right, and I understand that.
 6 But because the Executive Summary is based on that,
 7 it really should be in the record --
 8 MS. MICHEL: Okay.
 9 MR. CHAVEZ: -- whether it's final or not.
 10 And I want to make sure the City Council has the
 11 ability to review it, if necessary. I certainly want
 12 to review it.
 13 MS. MICHEL: Okay.
 14 MR. CHAVEZ: So if you could get that in
 15 the record. Send it to Mandy Hinojos, and I will --
 16 and she will send it to me.
 17 MR. TEBO: Mr. Chavez, if I might just
 18 interject something here at this point, with regard
 19 to the --
 20 MR. CHAVEZ: Mr. Tebo.
 21 MR. TEBO: Yes. Thank you, sir.
 22 With regard to the TIS, I think what was
 23 trying to be conveyed by our traffic engineer is the
 24 fact that she doesn't have a final TIS. There was an
 25 Executive Summary provided and considered by the EPC.

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1 It would be helpful, though, for purposes
 2 of the record, to understand -- I understand what
 3 you're saying about an Executive Summary was
 4 reviewed, but is there actually the basis for the
 5 EPC's approval of the zone change that incorporates
 6 the traffic study? Because I don't believe that,
 7 from the perspective of the traffic study and the
 8 traffic analysis, that the EPC's basis for approval
 9 of the zone under R270-1980 incorporated that.
 10 And so I just want to make sure, for
 11 purposes of the record, we're adding a fairly
 12 substantive piece of material that may not actually
 13 be relevant to the zone change. It may be very
 14 relevant to the site plan for site development that
 15 may arise at some point in time in the future, if the
 16 zone change is upheld.
 17 MR. ANAYA: Mr. Chavez, if I may speak to
 18 this?
 19 MR. CHAVEZ: Yes, please, Mr. Anaya.
 20 MR. ANAYA: I certainly agree with you
 21 that, because the Executive Summary is a part of the
 22 EPC's considerations and findings, that the draft
 23 traffic study should be in there. I think that's
 24 really important. So I would ask that it be included
 25 in the record.

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1 MR. CHAVEZ: Thank you, Mr. Anaya.
 2 Mr. Ewing?
 3 MR. EWING: I would like it as part of the
 4 record, too. Thank you.
 5 MR. CHAVEZ: Mr. Kent?
 6 MR. KENT: Well, I don't want to be the odd
 7 man out, but I think I -- from an analytical and
 8 legal standpoint, I agree with the City Attorney's
 9 Office, and I'm wondering if maybe there are other
 10 issues, policy-wise, that we don't understand that
 11 have to do with that.
 12 But if you want to see it, then we don't
 13 want you not to see it. I would say, though, that
 14 this irony, which is kind of like a catch-22, which
 15 is you're -- it's almost saying, it would have been
 16 better in this case if the Applicant had not tried to
 17 sort of help the community get a handle on things,
 18 and so it's ironic.
 19 MR. CHAVEZ: It was referenced in the
 20 decision of the EPC, under Findings 16 and 17, and so
 21 it needs to be in the record. And I understand it's
 22 a draft study. I just want to look at the actual
 23 counts. And, I mean, it's necessary that it's in the
 24 record. It was considered through the Executive
 25 Summary.

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1 MS. MICHEL: If I may, I did not prepare
 2 that study, obviously.
 3 MR. CHAVEZ: Right.
 4 MS. MICHEL: So I would -- because of our
 5 ethics that --
 6 MR. CHAVEZ: Do you have it in your file?
 7 MS. MICHEL: I do have it in my possession.
 8 However, I would -- I would recommend that you get
 9 permission from the engineer that prepared it to --
 10 MR. CHAVEZ: I don't need permission from
 11 the engineer. It's not a confidentiality issue.
 12 I mean, I don't see it as a confidentiality
 13 issue. It's not a -- it's not his work product that
 14 can't be disclosed. It's part of the analysis for
 15 this decision that the EPC made, and it may be
 16 indirectly part of the analysis, but it -- I believe
 17 that it's necessary to be in the record. It should
 18 be in the record. I don't see a reason why it
 19 shouldn't. I -- please help me.
 20 Mr. Tebo, is there a reason why it
 21 shouldn't be in the record, other than the fact that
 22 it's a draft study?
 23 MR. TEBO: Well, we're -- to come to that
 24 specific point, you're reviewing the record that's
 25 been created thus far. You're adding an additional

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1 document. And I don't know what's in the additional
 2 document. I know what's in the Executive Summary. I
 3 know that the Executive Summary was included in the
 4 EPC's consideration.
 5 I also know, as has been pointed out, no
 6 traffic-related issue needed to be presented to the
 7 EPC for the basis of a zone change.
 8 MR. CHAVEZ: That's true.
 9 MR. TEBO: And so I'm cautious about
 10 opening up an ancillary issue that actually doesn't
 11 have a basis in what's before the LUHO, nor what
 12 should be before counsel.
 13 Did the EPC, in approving the zone
 14 changes -- did they act arbitrary and capricious?
 15 Was there an error of the law or ordinance? That's
 16 what's before the LUHO. I think including a draft
 17 collection of traffic studies, notwithstanding the
 18 Executive Summary -- but I think including that
 19 material, it's ancillary, it's confusing, and
 20 frankly, sir, I do believe it's irrelevant to your
 21 consideration.
 22 MR. CHAVEZ: Okay. Thank you.
 23 Mr. Ewing?
 24 MR. EWING: I understand that it was
 25 presented at the second facilitated meeting. It was

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1 presented to the public. There is no reason for
 2 confidentiality. There is no reason to keep it
 3 secret. It should be part of the record.
 4 MR. CHAVEZ: I agree. I mean, now I'm just
 5 even more curious. It sounds -- there is an aura of
 6 secrecy. I mean, that's what it sounds like. And
 7 certainly I can get admonished by the City Council,
 8 if they so choose, but I think it needs to be in the
 9 record, because it wasn't relevant to their decision,
 10 but they considered the Executive Summary. And the
 11 Executive Summary is based on the analysis, and so I
 12 believe it needs to be in the record, and so I'm not
 13 going to hear any more argument.
 14 MS. MICHEL: Okay. I --
 15 MR. CHAVEZ: Thank you.
 16 MS. MICHEL: Okay.
 17 MR. CHAVEZ: Did you have more to add?
 18 MS. MICHEL: No, I was just going to say,
 19 it's two studies. It's not just one. It's not just
 20 one, and it's fairly thick.
 21 MR. CHAVEZ: And the EPC referred to both
 22 of them in their findings.
 23 MS. MICHEL: Okay.
 24 MR. CHAVEZ: So -- and I know it's a lot of
 25 it stuff to read, but wait until you see the next

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1 appeal. Have you seen that?
 2 MS. MICHEL: Yeah.
 3 MR. CHAVEZ: Okay.
 4 So anything else, Ms. Michel?
 5 MS. MICHEL: I don't have anything else.
 6 MR. CHAVEZ: And I'm just warning you,
 7 Mr. Vos, that the next one is just huge, and so --
 8 okay. Mr. Vos, I have a question for you. Regarding
 9 the straight zoning that was approved by the EPC,
 10 because it's straight zoning, when they re-plat, are
 11 they going to plat individual lots, having C-2 and
 12 R-2?
 13 MR. VOS: So the EPC made one condition of
 14 approval, that a re-plat occur to finalize the zone
 15 change. The re-plat, at a minimum, would create
 16 an 11-acre C-2 tract, a tract for the R-2 and a tract
 17 for the R-1. Should the Applicant choose and --
 18 to -- and if they have more of a plan, later down the
 19 road, they could do -- they could split those tracts
 20 into smaller development pads. But they could do --
 21 MR. CHAVEZ: That's my concern.
 22 MR. VOS: They could do a bulk plat and
 23 then come back, once they have their site plan. The
 24 timing of it is on the Applicant to consider. And as
 25 the 11 acres is being approved and the findings are

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1 that it's a shopping center, I believe, and counsel
 2 can --
 3 MR. CHAVEZ: There has to be a site plan
 4 with that shopping center.
 5 MR. VOS: There has to be a shopping center
 6 site plan, even if they were to put the C-2 into
 7 multiple tracts.
 8 MR. CHAVEZ: Okay. Good.
 9 MR. VOS: That would be my interpretation.
 10 MR. CHAVEZ: That answers my -- that was
 11 the next question, because the straight zoning would
 12 theoretically allow certain parcels to be done
 13 without site planning, and I want to make sure that
 14 you're not allowing this to be done without site
 15 planning.
 16 MR. VOS: I believe, with the findings
 17 saying that that commercial is a shopping center
 18 site, regardless of how they plat it, they would have
 19 to go through the shopping center site plan process
 20 for the whole C-2.
 21 MR. CHAVEZ: Okay. Thank you. Great.
 22 Cross-examination, Mr. Anaya?
 23 MR. ANAYA: Nothing.
 24 MR. CHAVEZ: Thank you.
 25 Mr. Ewing?

Exhibit 4



November 27, 2019

Mr. Russell D. Brito, Division Manager
Urban Design & Development
Planning Department
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102

Dear Mr. Brito,

I own the property located at 1306 Riiro Grande Blvd. NW bounded by San Francisco Road on the North and Lilac Avenue on the South, and San Venito Road on the East.

I am in full support of the proposed zoning changes from R1 and M1 to C2 referenced on the enclosed exhibits.

If you have any questions, don't hesitate to call.

Sincerely,

A handwritten signature in black ink that reads "Bob Calvani". The signature is fluid and cursive.

Bob Calvani, FAIA
Principal NCA Architects

NOTICE OF PUBLIC HEARING
City of Albuquerque
ENVIRONMENTAL PLANNING COMMISSION
(Special Mailed Notice to Adjacent Property Owners)

Pursuant to §14-16-4-1(C)(6)(b) of the Albuquerque Zoning Code (2017), and at the direction of the City Land Use Hearing Officer on October 4, 2019, notice is hereby given that the City of Albuquerque ENVIRONMENTAL PLANNING COMMISSION ("EPC") will hold a **Public hearing on Thursday December 12, 2019 commencing at 8:30 a.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM, 87102, to consider the following item:

Remand from District Court of Zone Map Amendment (Zone Change); M-1 and R-1 to C-2 and R-1 to R-2. PR-2019-002629 (Project #1011232); VA-2019-00270; VA-2019-00274; AC-19-14; AC-19-15; AC-17-7; AC-17-8; 17-EPC-40011.

Applicant: Garcia Real Estate Investments, LLC and other Garcia Entities. **Address:** Multiple, including 1108, 1113, 1120, 1200 and 1308 Saiz Rd. NW, Albuquerque, NM 87104. **Legal Description:** Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A., MRGCD Map #35; also known as Tracts 1, 2, and 3, Rio Grande Crossing East (plat recorded September 27, 2018 as document No. 2018084927). **Located:** North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approx. 20 acres. (H-13) (See attached map.)

Note: Other unrelated items may also be heard at this regularly scheduled EPC hearing.

You may send written comments to (or for further information contact):

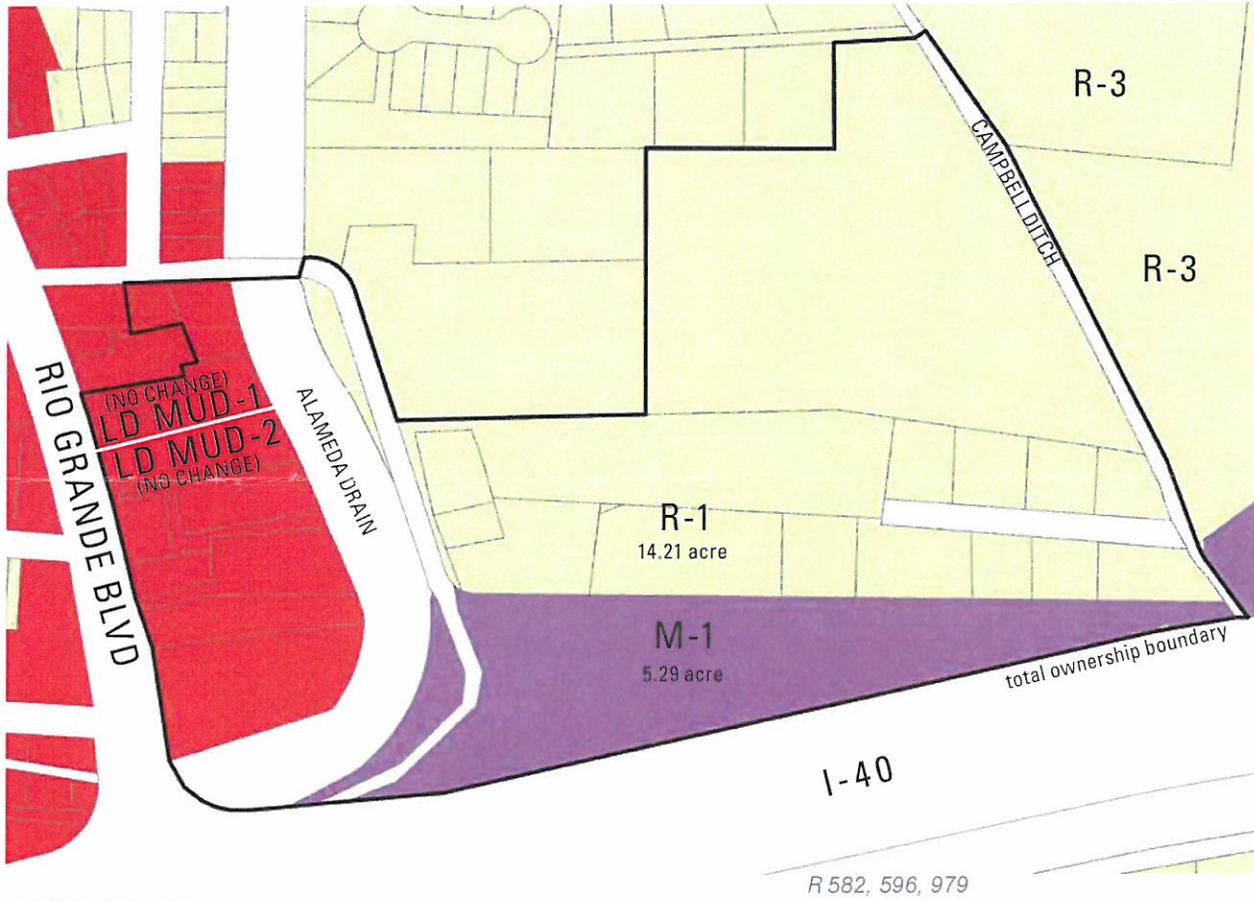
Russell D. Brito, Division Manager

Urban Design & Development
Planning Department
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102
Telephone 505-924-3337
rbrito@cabq.gov

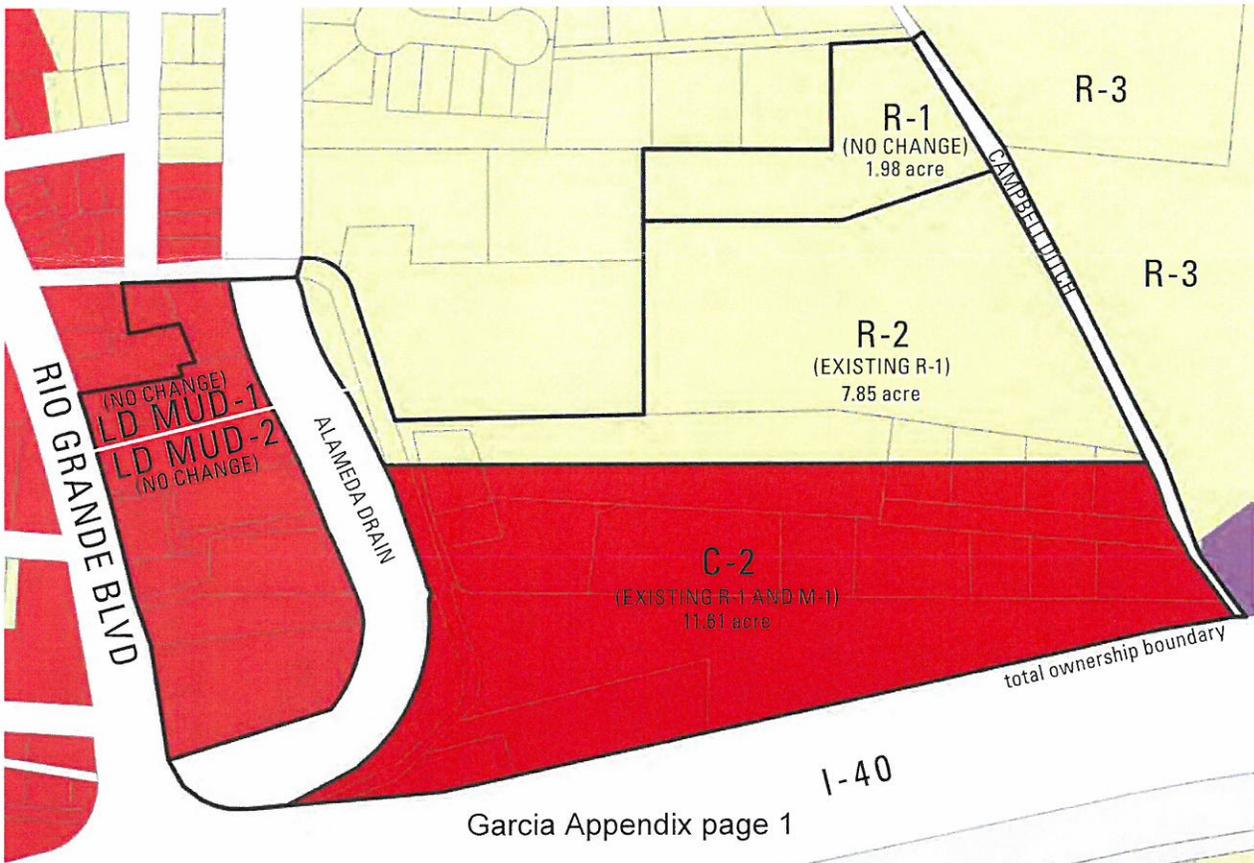
INDIVIDUALS WITH DISABILITIES who need special assistance to participate at the public hearing should call 924-3860.

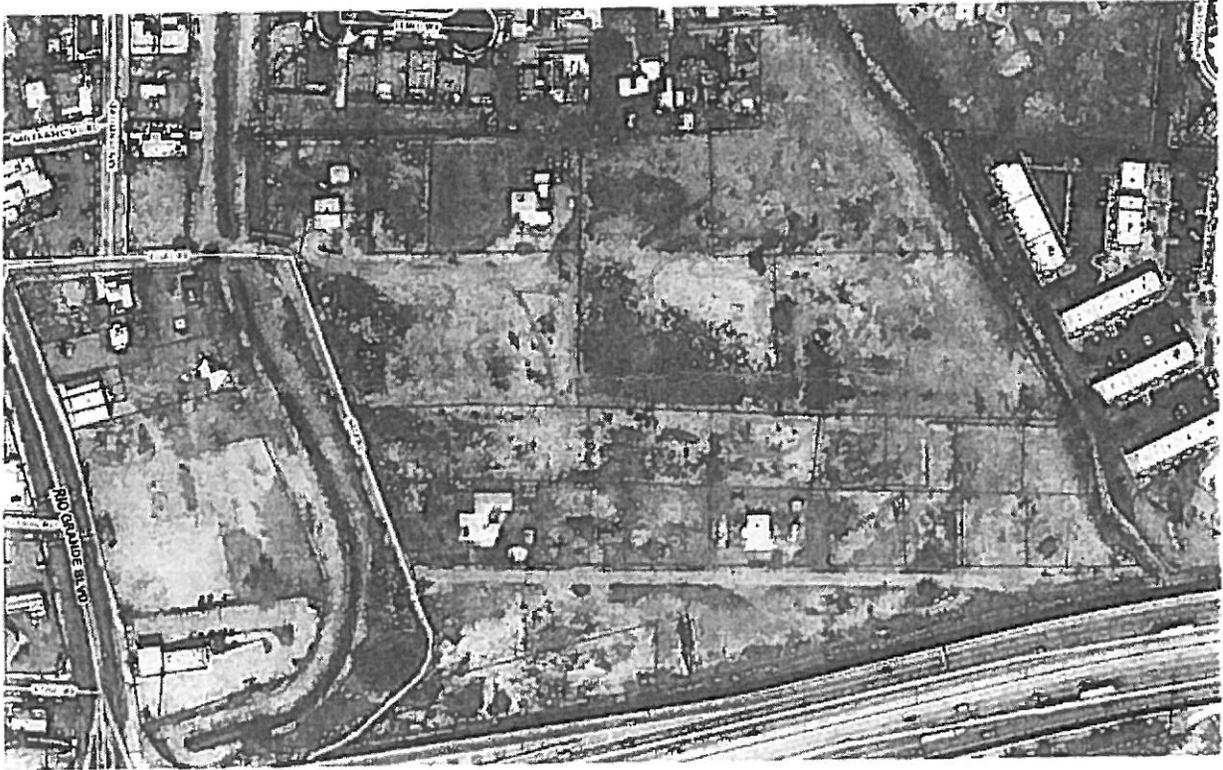
This notice is being mailed by Jason Kent, PC, 2021 Mountain Rd. NW, Albuquerque, NM 87104 (505-345-8400), attorney for Applicant, on November 21, 2019.

PREVIOUS ZONING



REZONING





November 27, 2019

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

Re: **December 12, 2019, EPC Hearing**
OC-19-31 / AC-17-7 / Project #1011232 / 17EPC-40011

Dear Commissioners,

Introduction

This matter concerns the development of approximately 20 acres located near Interstate-40 and Rio Grande, between the Alameda Drain and Campbell Ditch. This matter has been set for hearing before the EPC on December 12, 2019.

Procedural History

This office successfully challenged, in Bernalillo County District Court, the previous zoning. Upon remand, the EPC voted, without notice, to re-approve the zoning at an August 8, 2019, hearing. This office appealed, along with the North Valley Coalition. The LUHO, citing the lack of notice, recommended remand back to the EPC. The City Council approved the recommended remand back to the EPC for hearing.

Our Position

Our position is clear: (1) We have not objected to residential use; (2) we have not objected to the commercial re-zoning of the original industrial (M-1) area, (3) we oppose the expansion of the commercial zoning beyond the original industrial area. As noted in the District Court's Order, "The proposed C-2 zone is nearly double the size of the existing M-1 zone." (Order, pg. 1)

North Valley Area Plan (NVAP)

The first remanded issue is whether the proposed zoning is inconsistent with "purported limitations on future commercial development" in the NVAP. (Order, pg. 8.) The commercial development is inconsistent with the NVAP for three reasons. First, commercial development along Interstate-40 is clearly restricted to the I-40 and I-25 juncture. (NVAP, pg. 37.) Second, the NVAP favors lower intensity commercial development, which it refers to as "village centers." (NVAP, pgs. 2, 15, 35, 55, 136, 147.) Third, the NVAP is clear regarding the "stabilizing" of residential uses and the intrusion of commercial uses into a residential zone violates this principle. (NVAP, 7, 14, 58, 61, 113, 130 (emphasis added).)

Harm

The second remanded issue is harm. There is abundant evidence of harm.

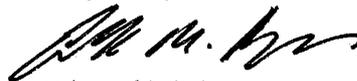
- Although the City suggests buffering will protect nearby residents, the buffering will not adequately protect nearby residents, the neighborhood, or community, from traffic harm. The traffic study estimates 7,531 commercial trips, daily.
- This area was previously characterized as a traffic “nightmare.” (July 12, 2017, EPC Hearing, pg. 63.)
- The city's traffic engineer testified that the Interstate-40 and Rio Grande intersection is a “failing intersection.” (July 12, 2017, EPC Hearing, pg. 52.)
- Some of the permissive uses would cause harm, including a drive-in restaurant and gasoline retail. A drive-in restaurant would increase noise, congestion, and air pollution, as would gasoline retail.
- Numerous residents have testified regarding harm in the form of noise, congestion, light pollution and air quality.
- The enlargement of the commercial area will increase the harm.

Conclusion

In light of the foregoing, please limit commercial uses to the original industrial (M-1) area. The expansion of commercial uses beyond the original industrial M-1 violates the North Valley Area Plan and will result in harm to nearby residents, the neighborhood and the greater community.

Please contact me with any questions.

Very Truly Yours,



Edward M. Anaya

EMA:

[2019.11.27.Letter.to.EPC.re.Position.doc]

cc. Via e-mail only
Mr. Jason Kent, Esq.
Co-counsel for Garcia entities
jkent@nmlx.com

cc. Via e-mail only
Mr. Russel Brito
Planning Department
600 2nd Street NW, 3rd Floor
Albuquerque, NM 87102
RBrito@cabq.gov

cc. Via e-mail only
Mr. Tim Flynn-O'Brien, Esq.
Co-counsel for Garcia entities
tim@flynnobrien.com

cc. Via e-mail only
Ms. Peggy Norton, President
North Valley Coalition
peggynorton@yahoo.com

Garcia Property Zoning Change Comments

The potential impacts to the near North Valley area due to a zoning change proposed by the Garcia Auto Group remain a serious concern to many residents of the North Valley. The Environmental Planning Commission is not carefully considering those potential damages to the neighborhood character by allowing a large commercial development in a residential area, the potential effects of increased traffic congestion on the health of residents and the likely disruption of traffic flow causing increased commute time for not only the immediate neighborhood but also most people travelling out of the North Valley to access I-40 or other areas.

The early decisions of the Environmental Planning Commission were not based on adequate or accurate data. No information on potential air quality effects of the development was presented even though clearly there will be an increase in emissions due to added congestion. Studies have shown that increased congestion can lead to an over 50 percent increase in CO₂ emissions and other harmful gasses such as methane and nitrous oxide, and hydrofluorocarbon emissions from leaking auto air conditioners--gasses which have a higher global warming potential than CO₂.

A report from the Central New Mexico Climate Change Senario Planning Project, a federal and state Interagency effort in 2014, identified managing congestion, minimizing the footprint of new development and improving air quality as key objectives. While the report recognizes the need for zoning changes to "allow for greater densities and a mix of land use types" it qualifies that goal by stating this should occur in "appropriate locations." This is not an appropriate location for encouraging higher densities and more traffic.

Information from the City Planning staff clearly exaggerates the positive aspects of the proposal. Statements such as the development will add a "much needed grocery store" to the neighborhood have no factual basis. There are already three neighborhood grocery stores either planned, under construction or existing within a one mile radius of that area. The proposed large scale grocery store which would attract drivers from many parts of the city beyond the neighborhood increasing congestion in an already congested area. A large, community scale grocery store does not encourage walking despite the claims of the developer.

The traffic study paid for by the developer should not be considered as a reliable source of information for this zoning decision because it was paid for by the developer and can be easily judged as biased in his favor. The public is entitled to an objective evaluation of the traffic situation.

Because of the various potential harmful impacts of traffic congestion, air quality and loss of the neighborhood character, the C-2 zoning change should not be approved.

NORTH VALLEY COALITION, INC.

Individuals, Neighborhood Associations, Businesses & Community Groups Working Together

December 1, 2019

Russell Brito, Division Manager
Urban Design and Development
Planning Department
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102

EPC PR2019-002629, Garcia zone map amendment, I-40/Rio Grande Blvd.

The LUHO remand only addressed notification and required that property owners within 100 feet of the affected property be notified. I received a copy of this notice from one of the property owners and I checked with Mr. Brito as to why it wasn't sent by the Planning Director on official City letterhead, as required in Section 14-16-4-1(c)(6)(b). He stated that Planning had no budget for this and it was customary for the applicant to send out notice. There was no requirement in the remand to notify neighborhood associations. The North Valley Coalition did not receive a courtesy notice.

I understand that our appeal submittal is included for the Commissioners to study. There was much detail in our appeal. There are two issues I would like to clarify.

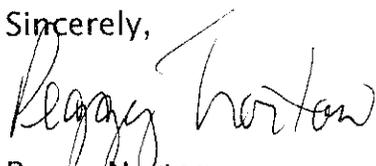
1. The property being rezoned to C-2 (from R-1 and M-1) is **more than** double the acreage currently zoned M-1. The entire C-2 acreage needs to be considered for having negative impacts on adjacent property, neighborhood, community.
2. The primary negative impact from increasing the acreage and rezoning to community (vs. neighborhood) commercial development is traffic. In the LUHO, Mr. Brito could not confirm that a traffic impact study would be required for development of this property.

We submitted comments at the August EPC hearing, thorough comments for our appeal application and for the LUHO hearing. Numerous citations from the North Valley Area Plan were given limiting community commercial development. Note that the Court eliminated consideration of the argument using the term "central urban" since it is not terminology in the current Comprehensive Plan. Although the property owner has presented project ideas, none of these are guaranteed to be a result of this zone change, since a site plan is not a part of the application, nor is ownership of the property guaranteed. Therefore, the zone change has to stand on its own merits.

We cited negative impacts from C-2 uses, and particularly noting the fact that more than doubling the commercial acreage allows for more intensive C-2 uses. A few of the uses having particularly negative impacts include gas stations, drive-in restaurants, vehicle sales. While we cited the impacts of vehicle sales, one consideration we did not state is the light pollution. At a small car lot on Candelaria near Rio Grande, bright lights are on all night, probably for security reasons. Drive-in restaurants (and there could be more than one drive-up business) result in quicker traffic turnover than a sit-down restaurant, resulting in a larger increase in traffic as well as car emission from idling vehicles.

Traffic has been a major negative concern in the public's comments, and that has not been addressed. Many larger retail uses would create more intense traffic impacts than smaller, neighborhood size uses. It would seem that a site plan and traffic impact study should be completed to fully address the negative impacts of large scale C-2 uses allowed by this zone change.

Sincerely,

A handwritten signature in cursive script that reads "Peggy Norton". The signature is written in black ink and is positioned above the typed name.

Peggy Norton
President

ATTORNEY
AT LAW

JASON KENT, P.C.

2021 Mountain Rd. NW
Albuquerque, New Mexico 87104-1444
Phone: (505) 345-8400
Fax: (505) 345-9100

Jason W. Kent
jkent@nmlex.com

December 2, 2019

Via Email c/o: rbrito@cabq.gov

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

Re: PR-2019-002629; OC-19-31 (Project #1011232); Remand for Supplemental Findings on Two Issues; VA-2019-00270; VA-2019-00274; AC-19-14; AC-19-15; AC-17-7; AC-17-8; 17-EPC- 40011 - AC-17-7; Rio Grande Blvd. NW at I-40, between Alameda Drain and Campbell Ditch – **Supplemental 10-day Information Regarding Los Duranes Sector Plan Grandfather Provisions**

Dear Chair Serrano, Commissioners, and Mr. Brito:

Please treat this as supplemental 10-day information for the December 12, 2019 EPC hearing in the above case, to be delivered to all Commissioners.

In their recent position letters, Darlene Anaya and Peggy Norton describe this rezoning as newly permitting a fueling station and drive-thru restaurant in the area.

This is incorrect. The Range Café now located at the NEC of Rio Grande and I-40 was formerly a Burger King drive-thru restaurant and fueling station, both of which were allowed at this location under the **NVAP**. Moreover, one drive-thru restaurant and one fueling station were **grandfathered under the Los Duranes Sector Development Plan** within the contiguous premises fronting Rio Grande Blvd. See the attached highlighted excerpt from **R-11-279**, the City Ordinance which created the Los Duranes Sector Development Plan.

A drive-thru restaurant and a fueling station are also permitted by the existing M-1 zoning in the M-1 area east of the Alameda Drain.

It is incorrect to suggest a drive-thru or fueling station would be newly permitted uses in the area.

Thank you.

JASON KENT, P.C.



Jason W. Kent
For Zoning Applicant Garcia Entities

JWK/sks
Enclosure as stated

cc: VIA EMAIL
Brennon Williams, Planning Director, CABQ (bnwilliams@cabq.gov)
Kevin A. Morrow, Deputy City Attorney, CABQ (kmorrow@cabq.gov)
Timothy Flynn-O'Brien (tim@flynnobrien.com)

cc: VIA EMAIL AND REGULAR MAIL

Edward M. Anaya	Peggy Norton
Anaya Law, LLC	North Valley Coalition
1728 Ocean Avenue PMB #240	P.O. Box 70232
San Francisco, CA 94112	Albuquerque, NM 87197

**CITY OF ALBUQUERQUE
NINETEENTH COUNCIL**

COUNCIL BILL NO. **R-11-279**

ENACTMENT NO.

R. 2012. 033

SPONSORED BY: **Debbie O'Malley**

RESOLUTION

FOR AN AREA OF APPROXIMATELY 443 ACRES (INCLUDING 290 ACRES IN THE CITY AND THE REMAINDER IN BERNALILLO COUNTY) AND BORDERED GENERALLY BY PARCELS ON LOS ANAYAS ROAD ON THE NORTH, RIO GRANDE BLVD. , INDIAN SCHOOL RD. AND THE ALAMEDA DRAIN ON THE EAST, INTERSTATE 40 ON THE SOUTH AND THE ALBUQUERQUE DRAIN ON THE WEST, AND, ADOPTING THE LOS DURANES SECTOR DEVELOPMENT PLAN AS A RANK 3 PLAN; CHANGING EXISTING ZONING FROM RA-1, RA-2, R-1, R-LT, R-T, R-2, O-1, C-1, C-2, P, P-R, M-1, AND SU-1 TO SU-2/RA-2, SU-2/RA-1, SU-2/R-1, SU-2/R-LT, SU-2/R-T, SU-2/R-2, SU-2/MUD 1, SU-2/MUD 2, AND SU-1.

WHEREAS, the City Council, the governing body of the City of Albuquerque, has the authority to adopt and amend plans for the physical development of areas within the planning and platting jurisdiction of the City authorized by Statute, Section 3-19-1 et. seq., NMSA 1978, and by its home rule powers; and

WHEREAS, on July 07, 2011, the Environmental Planning Commission, in its advisory role on land use and planning matters, recommended that City Council adopt the Los Duranes Sector Development Plan; and

WHEREAS, the Environmental Planning Commission found approval of the Los Duranes Sector Development Plan consistent with applicable goals and policies of the Albuquerque / Bernalillo County Comprehensive Plan, the North Valley Area Plan, the Rio Grande Blvd. Corridor Plan, the Comprehensive City Zoning Code and R-270-1980.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. The City Council adopts the following findings:

1 Comprehensive Plan that this plan supports. This area is distinct from other
2 areas in the City of Albuquerque because of its history and rural legacy, which
3 persist in the modest scale of its buildings, functional acequias and narrow
4 winding streets. An assessment of existing land use was conducted for the area
5 and was used in the drafting of the LDSDP. The proposed change from existing
6 C-2, M-1 and R-1 to SU-2 MUD 2 mixed use zoning in the southeast area of the
7 plan does not constitute a down-zoning, because the decrease in land use
8 intensity of the existing M-1 is compensated for by an increase in land use
9 intensity of the existing larger R-1 zone, while the existing C-2 is maintained. In
10 addition, the existing zone lines are floating lines, that split individual parcels into
11 two zones, which discourages development. The conclusion of the analysis is
12 that maintaining the existing conventional zoning discourages development and
13 destabilizes the neighborhood. The zoning proposed is not a taking nor are
14 property owners denied “substantial beneficial use of their property”. Property
15 owners still have entitlements.

16 N. The context-sensitive regulations for frontages and setbacks in the
17 LDSDP, including in the SU-2/R-1 and SU-2/R-2 zones, are similar to regulations
18 in adopted city plans, such as the North 4th Street Corridor Plan (adopted 2010,
19 see NMFID Infill District p. 48) and the Fourth Ward HOZ (adopted 2002, see D p.
20 20). They are appropriate for infill development in this historic neighborhood
21 characterized by modestly scaled buildings.

22 O. A building height of 36 feet in the SU-2/MUD 2 zone is appropriate in the
23 area within 450 ft of Interstate 40, including the off-ramp, because the area is
24 appropriate for somewhat higher buildings than the rest of Los Duranes: the
25 adjacent I-40 freeway is elevated; the area does not abut other zones where
26 houses are allowed; and the 450 ft distance demarcates an area level with the
27 existing signalized intersection at Floral Rd and Rio Grande Blvd., which can
28 provide orderly and safer access for the intensity of use that may be associated
29 with a larger building.

30 P. An existing or previously approved use for gasoline, oil and liquefied
31 petroleum gas retailing in an SU-2/MUD 1 or MUD 2 zone may be moved from its
32 previous location to another location within the same premises. This facilitates
33 comprehensive site design of future development, including the most appropriate

1 **location of the use for access and circulation and relative to adjacent land uses.**

2 **Premises are as defined in the Zoning Code.**

3 **Q. A previously approved restaurant with a drive-up service window**

4 **located in an SU-2/MUD 2 zone may be moved from its previous location to**

5 **another location within the same premises zoned SU-2/MUD 2. This facilitates**

6 **comprehensive site design of future development including the most appropriate**

7 **location of the use for access and circulation, and relative to adjacent land uses.**

8 **Premises are as defined in the Zoning Code.**

9 **R. The prohibition on commercial parking facilities in the SU-2/MUD 1 and**
10 **SU-2/MUD 2 zones does not apply to parking structures, as long as their primary**
11 **function is to provide parking for specific uses on the same site. A parking**
12 **structure has the potential to reduce the potential negative impacts of an**
13 **equivalent amount of surface parking on the appearance of the site and the**
14 **pedestrian environment.**

15 **S. Unlike the majority of Established Urban Areas of the city, the residential**
16 **neighborhood of Los Duranes has developed over a two-century period to create**
17 **a variety of lot sizes and configurations, and a unique network of narrow, winding**
18 **streets, alleys, cul-de-sacs and pathways. These streets are one of the defining**
19 **features of the development pattern in the sector development plan area. They**
20 **are also considered to slow down traffic and contribute to improved road safety**
21 **within the neighborhood. Protection of existing narrow streets is therefore**
22 **warranted, and new residential streets will be built to specifications tailored to the**
23 **character of the neighborhood, per street standards in the Plan.**

24 **T. City Planning Department Staff is coordinating finalization of the joint**
25 **LDSDP with Bernalillo County Planning Staff.**

26 **U. The Environmental Planning Commission has treated this application in**
27 **a quasi-judicial manner, including but not limited to the absence of ex parte**
28 **communication and the swearing in of staff, interested parties and the public to**
29 **speak at the hearings. Prior the hearings, registered neighborhood associations**
30 **(NAs), coalitions, property-owners in and within 200 ft of the plan area (both city**
31 **and county portions) and residents of a mobile park were duly notified, and a**
32 **legal ad was published, per requirements of the Zoning Code.**