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November 5, 2018

To: Environmental Planning Commission, City of Albuquerque
600 Second Street NW
Albuquerque, New Mexico 87102

Re: Project Number 1007648, 18EPC-40019, 18EPC-40021

Proposed Rezoning: 1416 6th Street NW, Albuquerque, New Mexico 87102 Lots 22, 23 and 24, Block 20, Albright-Moore Addition, SE Corner of 6th St. and Constitution Ave, Property Owner Eric Kilmer

Response to Supplemental Staff Report IV for Hearing Date November 8, 2018

Dear Chair Bohannon and Commissioners:

As indicated in prior communications, including the Applicant's October 25, 2018 submission (October 25th Submission), this firm represents Eric Kilmer pursuant to a letter of agency dated August 16, 2018. Mr. Kilmer ("Applicant"), the owner of a .2967 acre parcel¹ of property located at 1416 6th Street NW ("Property"). The Applicant seeks under SU-2/SU-1 a combined permissive use of Office with Beauty Salon and/or Barber Shop ("Application"). The Applicant submitted the Application on March 29, 2018 along with a site development plan showing off-street parking. The Application was for a broader number of uses at that time but the Application has been narrowed to the uses stated herein. (We note that the terms defined in the October 25th Submission mean the same thing in this rebuttal as indicated in the October 25th Submission and we will not seek to repeat the definitions of such terms herein.)

Applicant, through this firm, seeks to respond in writing with clarifications to the Supplemental Staff Report IV (Staff Report IV), although because of time constraints there will be additional issues addressed at the hearing scheduled for Thursday, November 8, 2018.

The first general clarification is that Staff Report IV cites and refers to pages and language not in the October 25th Submission but in a prior October 10, 2018 draft ("October 10, 2018 Draft") provided as a draft "for discussion purposes" requested by City planning staff before the final October 25th Submission. There was in fact another draft to City planning staff on

¹ The size of the lot is not .5 acres as set forth on Page 1 of Staff Report IV but, as set forth in the October 25, 2018 Submission and the factual support, is .2967 acre parcel. See **Attachment 1** to the October 25th Submission, Kilmer Affidavit; **Attachment 12G** to the October 25th Submission, City Address Report for 1416 6th Street SW (reflecting .3 acres); **Attachment 15** to the October 25th Submission, Bernalillo County Assessor's Records for 1416 6th Street NW (reflecting .2967 acres).

October 24, 2018 and then the final on October 25, 2018. It is not clear why City planning staff would be referring to the October 10, 2018 Draft that did not have this firm's letterhead, did not have any signature, and was marked **DRAFT** across each page of the document. See pertinent portions of October 10, 2018 Draft, **Attachment 27** hereto.

Likewise, City planning staff misstates in Staff Report IV on Page 9 that "The applicant hired an agent, who submitted a revised justification letter dated October 10, 2018." The October 10, 2018 Draft was provided pursuant to City planning staff's request as a draft, was always represented as a draft, and always had **DRAFT** marked across each page of the document. The October 20, 2018 Draft was not a revised justification letter and was never intended as formal submission by the Applicant.

This firm notes that City planning staff indicated that the Applicant did not discuss with City planning staff the proposed zoning. This firm met with City planning staff on August 21, 2018 and discussed narrowing the proposed request to uses within the application but that come within the IDO zone MX-T because City planning staff indicated that the neighborhood expected a submittal that would convert to MX-T. This firm further provided City planning staff, as requested, with a draft on October 10, 2018 to obtain input from City planning staff regarding the proposed zoning. This firm believed that this procedure was meeting City planning staff's request for a discussion of the proposed zoning. It is unclear what City planning staff wanted as additional discussion.

This firm has sought to work with City planning staff and, in fact, narrowed the request from the original application pursuant to discussions with City planning staff.

This rebuttal is not intended to address the matters that the October 25th Submission already addresses but only those major matters raised anew by City planning staff. Because of time constraints in analyzing Staff Report IV (posted at the end of the day on Thursday, November 1, 2018), some matters raised by City planning staff will be addressed orally at the hearing.

1. The Zoning Request is for a Combined Use that City Planning Staff Indicated Automatically Includes Off-Street Parking, Making an Off-Street Parking Request Surplusage:

- As stated on Pages 1 and 4 of the October 25th Submission, the request is SU-2/SU-1 for the combined permissive use of Office with Beauty Salon and/or Barber Shop and approval of a site development plan showing off-street parking.
- In the comments received from City planning staff on October 12, 2018 in response to the October 10, 2018 Draft and then again in Staff Report IV, City planning staff pointed out that a letter to City Code Enforcement (which the firm submitted before receipt of the October 12, 2018 comments) indicated that the Applicant seeks the permissive accessory use of off-street parking, which request the City planning staff indicated was surplusage, that is, unnecessary because a granting of the requested zoning would allow for off-street parking.
- Contrary to Page 4 of Staff Report IV, Page 4 of the October 25th Submission does not refer to off-street parking at all but only states that the zoning request is for "SU-2/SU-1 combined use of the Property for Office and Beauty Salon/Barber Shop." Although purportedly referring to Page 4 of the October 25th Submission, City planning staff is actually referring to Page 4 of the

October 10, 2018 Draft. See pertinent portions of October 10, 2018 Draft, **Attachment 27** hereto.²

- City planning staff does not state how there is a substantive difference from approval of a site development plan showing off-street parking as stated on Page 1 of the October 25th Submission and a request for off-street parking as a permissive use and there appears to be no difference. (The Applicant notes that the original SU-1 zoning of the Property specified off-street parking and the Applicant wants to maintain such use.)
- In any event, although merely surplusage, this clarification is to address the issue. As well, this firm has communicated with City Code Enforcement that the request is SU-2/SU-1 for the combined permissive use of Office with Beauty Salon and/or Barber Shop and approval of a site development plan showing off-street parking, although City Code Enforcement indicated by email that it has nothing to do with this zoning request to the EPC. See **Attachment 28** hereto, October 24, 2018 email from City Code Enforcement and November 5, 2018 email of clarification to City Code Enforcement.

2. The Zoning Request is not for a Bail Bonds Business:

- Although there is significant discussion in Staff Report IV about a prior bail bonds business rezoning request, this is not a request for a bail bonds business, which is a personal-service shop or personal-service establishment under the 2016 Zoning Code. Therefore, the discussion in Staff Report IV regarding a prior bail bonds business rezoning application is not germane to the discussion of this Application.³
- We note that the phrase in the 2016 Zoning Code “personal service” is not defined in the 2016 Zoning Code, but the IDO includes a bail bonds business within the category of personal service. See IDO, Section 14-16-4-3(D)(26), **Attachment 3** to the October 25th Submission. Further, a bail bonds business could not be on the Property under the IDO as the “lot shall not be accessed from a street designated as a local street in the LRTS Guide.” See *id.* at Section 14-16-4-3(D)(26)(a).
- As City planning staff notes on Page 19 of the first Staff Report (for hearing date May 15, 2018), the Property is accessed from Constitution NW, which is a local street at that location as shown on the Long Range Road System Map. See Long Range Road System Map, **Attachment 8** to the October 25th Submission.

Further, Mr. Kilmer does not have an access easement across the lot to the south, that is, Lot 21, and therefore City planning staff’s statement (also on Page 19 of the First Staff Report) that “Though access is currently possible from 6th St. by driving across Lot 21, a plaza area is

²Page 10 of the October 25th Submission does still refer inadvertently to permissive off-street parking and is hereby changed to state “SU-2/SU-1 for the combined permissive use of Office with Beauty Salon and/or Barber Shop” with a deletion of the reference to off-street parking.

³Use of the term not germane is meant to convey in this rebuttal a legal objection that the matter is not relevant.

proposed on the eastern side of the existing building to prevent vehicular access” is incorrect. Access is not possible from 6th St. by driving across Lot 21. That would be trespass. See Supplemental Affidavit of Eric Kilmer (“Supplemental Kilmer Affidavit”). **Attachment 26** hereto.

- In short, the request in the Application is markedly different from the application for bail bonds business requested in 2009. With the 2009 request, there was neighborhood concern regarding the introduction of a criminal element into the neighborhood. There is no such concern regarding the request for a combined use of Office and Beauty Salon/Barber Shop.

3. The Zoning Request is Consistent with SU-1 and Inconsistent with O-1:

- The zoning request is under SU-2/SU-1 because (a) the original application was for SU-2/SU-1 and the October 25th Submission merely seeks to narrow the original application and (b) it is a combination of uses that meets SU-1. The zoning request should not be a request for O-1 zoning, as the City planning staff appears to suggest on Page 4 of Staff Report IV.
- The SU-1 zone provides for “Use combinations not adequately allowed and controlled in other zones, relative to a specific site.” 2016 Zoning Code, Section 14-16-2-22(B)(35) SU-1 Special Use Zone, **Attachment 2A** to the October 25th Submission.
- O-1 does not allow for a combined use of Office and Beauty Salon/Barber Shop. Unless the zoning specifies that there can be a combination of primary permissive uses for the Property, there cannot be a combination of primary permissive uses for the Property. See, e.g., *Del Vecchio v. Lalla*, 136 A.D.2d 820, 523 N.Y.S.2d 654 (App. Div. 1988) (allowing two primary uses under a zone defeats the provision regarding permissive accessory uses). In the 2016 Zoning Code, the SU-1 zone is the mechanism for combining primary uses. Consequently, the New Mexico Court of Appeals found SU-1 zoning appropriate for a combination of uses instead of a permissive use in another zone because the permissive use in the other zone did not specifically allow for a combination of uses. See *Siesta Hills Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-028, 954 P.2d 102.
- In contrast to the 2016 Zoning Code, which does not contain a provision for combining an office use with a beauty salon/barber shop use, the IDO does, stating that “A development may include multiple primary uses ... provided that each use is listed as an allowable Permissive Primary use or a Conditional Primary use in that zone district ...” IDO, Section 14-16-4-1(D), **Attachment 3** to the October 25th Submission.
- City planning staff points out that the uses of Office and Beauty Salon/Barber Shop are permissive uses in the O-1 zone. This is also true in the C-1 zone, which City planning staff does not mention. See 2016 Zoning Code, Section 14-16-2-16 C-1 Neighborhood Commercial Zone, **Attachment 2A** to October 25th Submission. However, it is true for both zones only if such permissive uses are used singly, meaning either for the use of Office or for the use of Beauty Salon/Barber Shop (which is treated as a single use).
- City planning staff does not state why it would make a difference if the Application were for O-1 as opposed to SU-2/SU-1 but the fact is that the Application has been submitted under SU-2/SU-1, not O-1.

4. The Applicant has Properly Characterized the Current Zoning and Zoning Includes More than a "Zoning Descriptor":

- City planning staff misstates this firm's characterization of the current zoning of the Property, and refers to pages in the October 10th Draft and language thereon, not to the pages of the October 25th Submission. Staff Report IV on Page 8 misstates that Page 4 of the October 25th Submission states that the Property is currently zoned "Su-2/SU-1, in the S-R Area, for the use of Flower Shop/Nursery." The reference to Page 4, however, is not to page 4 of the October 25th Submission but, instead, to Page 4 of the October 10th Draft. See pertinent portions of October 10, 2018 Draft, **Attachment 27** hereto.
- Instead, the October 25th Submission indicates on Page 1 of the October 25th Submission that "The Property is currently zoned SU-2/SU-1 as a permissive use under the S-R zone of the 1996 Sawmill Wells Park Sector Development Plan ("1996 Sector Plan") for use of Flower Shop/Nursery with off-street parking." The characterization by the Applicant of the current zoning was meant to shorthand Page 99 of the 1996 Sector Plan and the historical facts that establish that the Property is in the SU-2/S-R zone with the permissive use of SU-1 for Flower Shop/Nursery. As stated on Page 5 of the October 25th Submission, the 1996 Sector Plan provides that the following is a permissive use in the S-R zone:

A.5 Nonresidential uses that ... were zoned SU-1 for specific uses ... and that exist when the S-R Zone is established with the adoption of the Sector Plan, shall be considered permissive uses and may remain at the locations where they exist provided they comply with the following conditions [which conditions are not relevant to this discussion] ... If a nonresidential use changes to a residential use, a nonresidential use at that location may not be resumed or re-established.

Attachment 6 to the October 25th Submission, 1996 Sector Plan at p. 99. As set forth in Pages 4 through 6 of the October 25th Submission, the Property was zoned SU-1 for the specific use of Flower Shop/Nursery with off-street parking when the S-R Zone was established with the adoption of the Sector Plan.

- In fact, the 1996 Sector Plan calls out the prior SU-1 zoning on p. 80 of the 1996 Sector Plan, showing the SU-1 zoning for use of Flower Shop/Nursery and also states on p. 79 of the 1996 Sector Plan that "SU-1 zoning can be researched through official files in the Planning Department." See **Attachment 6** to the October 25th Submission, 1996 Sector Plan (1996 and amended in 2000 and 2002) at pp. 80, 99 and Appendix A (reflecting Gray's Flower Shop on 6th Street and the SU-1 zoning of the Property).
- It is axiomatic that the permissive use (as opposed to actual use) is a part of the zoning and it is useful in this case to include it in the discussion. In other words, this firm has not misidentified the zoning although it may have not used the zoning descriptor that the City uses.
- In sum, simply referring to the zoning with the zoning descriptor as SU-2/S-R does not inform the reader as to the importation of the permissive use of Flower Shop/Nursery from the prior SU-1 zoning. Neither would simply reading the language of the S-R zone as it takes knowledge

of historical facts to understand the uses allowed on the Property not just a review of the S-R zone.

- City planning staff mentions that, as of the IDO, the Property was rezoned to R-1A and also mentions the IDO provisions regarding R-1A. See Staff Report IV at pp. 5-6. The discussion is not germane to the current Application as this is not an Application under the IDO. Moreover, if this Application is denied, then as discussed in the October 25 Submission, the current actual use by Applicant will continue as a nonconforming use under the IDO.

5. The Actual Use of the Property is Commercial as is the Use of the “Sister” Property to the South:

- Regarding the actual use, City planning staff ultimately states that the actual use of the Property of Flower Shop/Nursery is “not that important” (see Staff Report IV at p. 11). This is because City planning staff cannot refute that the actual use of the Property is commercial.
- Despite the fact that City planning staff states that the actual use of the Property is “not that important,” it is important to establish that there is no support for certain statements made by City planning staff regarding the actual use of the Property.
- For example, there is no support for the statement in Page 2 of Staff Report IV (and a similar statements made on Page 11 of Staff Report IV) that the “nursery use had ceased decades prior and the flower shop closed in approximately October 2002.” In contrast, the Applicant has provided the City’s own documents that indicate that there was a license for the flower shop/nursery on the Property in 2007. See **Attachment 13** to the October 25th Submission, Facility List from City of Albuquerque regarding Business Permitting; **Attachment 1** to the October 25th Submission, Kilmer Affidavit.
- There is further no support for the statement by City planning staff that a majority of the “subject site,” meaning the Property, is vacant as stated by City planning staff on Page 11 of Staff Report IV. Either the Property is vacant or it is not, and it clearly is not as City planning staff states that “the building on the subject site has existed for many years.” This is not an instance where one lot of the three lots comprising the Property does not contain a use. All of the three lots run east and west and each of the three lots either contain the building or parking for the building, which is why the Land Use Map proffered by City planning staff shows the use for the whole Property as “Commercial” and “Parking.” See Land Use Map, **Attachment 12D** to the October 25th Submission.
- Page 15 of Staff Report IV states that the “request needs to reflect the zoning” of surrounding properties “prior to adoption of the IDO, since the application was submitted before the effective date of the IDO.” It is true that the Applicant is governed by the rezoning procedures in place at the time of the Application. *Miller v. City of Albuquerque*, 1976-NMSC-052, 89 N.M. 503, 554 P.2d 665. The Applicant has cited both the pre-IDO and IDO zoning of the surrounding properties. However, there is nothing that stayed the effect of the IDO on the surrounding properties, and City planning staff cites to no case law that indicates that the City can ignore facts regarding the neighborhood.

- In any event, contrary to the statement on Page 14 of Staff Report IV, the “sister” property to the south does allow for commercial use, as Office use is a commercial use. Office is not only found in O-1, Office is as well a permissive use in the Neighborhood Commercial Zone. See 2016 Zoning Code, Section 14-16-2-16 C-1 Neighborhood Commercial Zone, **Attachment 2A** to the October 25th Submission.
 - The definition of “Office” in the 2016 Zoning Code clearly encompasses commercial use. Office is a “place where consulting, record keeping, the work of a professional person such as a physician or lawyer is done, or headquarters of an enterprise or organization...” **Attachment 2** to the October 25th Submission, 2016 Zoning Code Section 14-16-1-5(B) (definition of “Office”). The commercial use that the definition of “Office” does exclude is “the sale of on-premises goods.” *Id.* While there is no definition of “commercial” in the 2016 Zoning Code, the definition of “commercial” includes the meaning “making or intended to make a profit.” See **Attachment 29** hereto, Definition of “Commercial.”
6. **The City has Made the 2005 MRA Plan Regulatory, the Applicant Addresses in the October 25th Submission All of the Applicable Plans, not just a Portion, and the 1996 Sector Plan Does not Bar a Rezoning:**
- Contrary to Page 6 of Staff Report IV, the City has made the 2005 MRA Plan regulatory by enacting a general ordinance allowing for application of metropolitan development plans to properties specified in the plans, enacting specific ordinances designating the Sawmill/Wells Park Community a Metropolitan Redevelopment Area and then providing in the 2017 Comprehensive Plan that the metropolitan redevelopment plans must be followed.⁴
 - As stated on Page 9 of the October 25th Submission, the 2017 Comprehensive Plan requires adherence to the 2005 MRA Plan for development in Wells Park:

Metropolitan Development Areas are distressed or blighted areas that have been designated as appropriate for a metropolitan redevelopment project by the local planning commission and governing body. Development within a Metropolitan Redevelopment Area is overseen by the Metropolitan Redevelopment Agency and **must follow an established Metropolitan Redevelopment Plan** (emphasis supplied).

Attachment 4, at p.14, to the October 25th Submission, 2017 Comprehensive Plan, Appendix J (p. A-72).

⁴ **Attachment 4, at p. 14**, to the October 25th Submission, 2017 Comprehensive Plan, Appendix J (p. A-72); **Attachment 2B** to the October 25th Submission, City Code Section 14-8-4 (Metropolitan Redevelopment Ordinance); 2005 MRA Plan, **Attachment 7** to the October 25th Submission; **Attachment 30** hereto, the ordinances designating the Sawmill/Wells Park Community a Metropolitan Redevelopment Area. See *also* NMSA 1978, Sections 3-60A-1 through 3-60A-15 (Metropolitan Redevelopment Code).

- There is a suggestion on Page 11 of Staff Report IV that the Applicant does not address the goals and policies of the 1996 Sector Plan. This is not accurate. The Applicant discusses at great length all of the applicable policies. On Pages 8 through 10 of the October 25th Submission, the Applicant discusses how the proposed zoning clearly facilitates the 2017 Comprehensive Plan and the 2005 MRA Plan; on Pages 10 through 12, the Applicant sets forth how the proposed zoning clearly facilitates the 1996 Sector Plan.
- Contrary to Page 11 of Staff Report IV, the 1996 Sector Plan does not state that it does not allow new commercial uses once the former commercial uses ceased operation unless they can be demonstrated to conform to 1996 Sector Plan Regulation A-5. Instead, the 1996 Sector Plan does not allow new commercial uses without EPC approval unless they can be demonstrated to conform to 1996 Sector Plan Regulation A-5.
- As set forth on Page 10 of the October 25th Submission, the 1996 Sector Plan does not prohibit a change in the use of the Property with the proper approval from the EPC and seeks to “Allow new uses that will contribute to community cohesiveness.” *Id.* at p. 76. The 1996 Sector Plan further states, “Only the few properties with existing SU-1 zoning require hearings by the Environmental Planning Commission when new development or changes are requested.” *Id.* at p. 78.
- Contrary to Page 3 of Staff Report IV, the 1996 Sector Plan does not direct that “properties zoned SU-2/S-R return to residential use.” If that were the case, then the 1996 Sector Plan would have made the Flower Shop/Nursery Use a non-conforming use, not a permissive use.
- In fact, the 1996 Sector Plan even allows new uses **without EPC approval** provided such uses conform to 1996 Sector Plan Regulation A-5, showing that it is wholly contrary to the intent of the 1996 Sector Plan to eliminate commercial uses in Wells Park.
- The sole restriction that the 1996 Sector Plan places on those commercial properties existing in Wells Park under the S-R zone is if the property owner uses the property as residential. “If a nonresidential use changes to a residential use, a nonresidential use at that location may not be resumed or re-established.” **Attachment 6** to the October 25th Submission, 1996 Sector Plan at p. 99.
- In fact, the building on the Property is not a residential building. When it was rezoned in 1969 to SU-1 for the use of Flower Shop/Nursery, the Property was already being used for commercial use. See **Attachment 11** to the October 25th Submission, September 15, 1969 Planning Department Comments for 1416 6th Street NW. Regarding the issue, the Applicant revises Page 7 of the October 25, 2018 Submission to state that the Property has been commercial “at least” since 1969 because it was commercial before such time. Moreover, the building had when Mr. Kilmer purchased the Property and still has a commercial configuration with a large display window in the front of the building, with a front area for customers, a conference room, and bathroom and an office, with no kitchen. There are no bedrooms and the building is not conducive to residential use and is not a candidate for residential redevelopment given its location, the change in the surrounding zonings and uses, and the expense. See Supplemental Kilmer Affidavit. **Attachment 26** hereto.

- Under the law, there needs to be a specific bar to the proposed use under the 1996 Sector Plan to give notice that such use is prohibited and that there can never be a rezoning to such use. Further, all ambiguities must be resolved in favor of the Applicant. Since zoning is in derogation of the common law, zoning provisions are to be strictly construed. *Nesbit v. City of Albuquerque*, 1977-NMSC-107, ¶ 3, 91 N.M. 455, 457, 575 P.2d 1340, 1342.
- In fact, as stated on Pages 2 and 11 in the October 25th Submission, the City has already rezoned properties from SU-2/S-R, such as the “sister” property to the south that was never a commercial property to a commercial property. If the goal of the 1996 Sector Plan was to return everything to residential, which it was not, then there would not have been a rezoning of the “sister” property.

7. Resolution 270-1980 Does Not Require Any Particular Format Regarding Citation to the Applicable Plans but Applicant Clarifies Here the Citations to the 2017 Comprehensive Zoning Plan:

- As state above, the Applicant addressed on Pages 8 through 10 in the October 25th Submission the fact that the proposed change meets Section C of Resolution 270-1980, which provides that “a proposed change shall not be in significant conflict with the adopted elements of the Comprehensive Plan or other City master plans and amendments thereto, including privately developed area plans which have been adopted by the City.”
- City planning staff states on Page 6 of Staff Report IV regarding the 2017 Comprehensive Plan that “the applicant did not include complete or sufficient citations of applicable goals and policies in the justification letter, followed by an explanation of how the request furthers each. Rather, the applicant refers to policies and text citations by referencing the page number and quoting select portions.
- Applicant notes that Section C of Resolution 200-1980 does not require any specific citation. See **Attachment 31 hereto**. Attaching the applicable portions of the 2017 Comprehensive Plan along with a page reference and an explanation of what portions clearly further the 2017 Comprehensive Plan is a coherent method of addressing the 2017 Comprehensive Plan. The citations to the 2017 Comprehensive Plan are clear as there are specific quotations from the elements of the 2017 Comprehensive Plan and page numbers supporting the quotations. Moreover, there was an explanation of how the request furthers each as shown by Pages 8 through 10 in the October 25th Submission.
- At the risk of being repetitive, however, the Applicant has interdelineated specific references to the 2017 Comprehensive Plan in the text of Pages 8 through 10 of the October 25, 2018 Submission. Applicant has highlighted such references in bold and capital letters:

**GUIDING PRINCIPLES (the six principals that underlie the goals, policies, and actions in each element of the 2017 Comprehensive Plan):
Strong Neighborhoods: New development creates desirable places to live and encourages diverse housing an amenities, while respecting the unique history and character of each neighborhood; Economic Vitality: The Local**

Economy supports a mix of market activities and promotes financial security for all residents; Equity: All residents have access to ... healthy places to live, work, learn and play; Community Health: Everyone has convenient access to healthy food, parks and open space and a wide range of amenities and services: *The rezoning meets the guiding principles of the 2017 Comprehensive Plan, supporting the local economy of Wells Park, and provides health-related services in the form of personal grooming services. See 2017 Comprehensive Plan at 3-8. Granting the Application would enhance the neighborhood, not detract from it. It is important to have small economic enterprises in the neighborhood to allow for neighborhood employment and interaction at a local level, "creating desirable places to live" and encouraging diverse housing and amenities." Id.*

PLAN ELEMENT: COMMUNITY IDENTITY: Context and Analysis of the Community Identity Goal: 4.1.2. Protecting and Enhancing the Neighborhood Character: Comprehensive Plan policies can address the following elements of the built environment that contribute to the character of an area: Development scale and intensity of commercial and office uses: *The current building, which will remain, is of the "development scale and intensity of commercial" use that fits in with the neighborhood, meeting the Community Identity Goal of 4.1.2.1 of the Comprehensive Plan. Id. at 4-4. In fact, the current building has been a fixture in the Wells Park area and the redevelopment use of the existing building preserves the nature of the community by providing new services requested by the community. Id.*

PLAN ELEMENT: COMMUNITY IDENTITY: 4.1.2.1: Context and Analysis of the Community Identity Goal: Protecting and Enhancing the Neighborhood Character: the City and County need to address the strategy of "directing higher density and intensity of development in the City to Areas of Change: *The new uses also move away from the "higher density and intensity development" by changing the intensity of the development from the higher intensity of a nursery to a use of lower intensity. See id. at 4-5.*

PLAN ELEMENT: COMMUNITY IDENTITY: 4.1.2.2: Guiding Future Growth: Mixed-Use Neighborhoods: 2000-Present: *As well, the 2017 Comprehensive Plan also acknowledges the advent and value of more compact development styles that "put many daily needs within walking distance of residences," and the City has encouraged mixes of residential and other uses, which would be fulfilled by the granting of the Application. Id. at 4-12.*

PLAN ELEMENT: COMMUNITY IDENTITY: Policy 4.1.2: Identity and Design: Protect the identity and cohesiveness of neighborhoods by ensuring the appropriate scale and location of development, mix of uses, and character of building design; Policy 4.2.2: Community Engagement: Facilitate meaningful engagement opportunities and respectful interactions in order to identify and address the needs of all residents: *Obtaining neighborhood input in the process, which was done in connection with*

a neighborhood facilitation meeting also meets the goal of the 2017 Comprehensive Plan regarding Community Identity by “ensuring the appropriate scale and location of development, mix of uses, and character of building design” as the planned uses are compatible in scale and character with the surrounding area and by facilitating “meaningful engagement and respectful interactions” to identify the needs of the residents. See Id. at 4-30, Policy 4.1.2 and Policy 4.2.2 at 4-33; Attachment 19, April 26, 2018 email from Doreen McKnight; Attachment 20, April 28, 2018 email from Catherine Mexal.

PLAN ELEMENT: LAND USE: Goal 5.2: Complete Communities: Foster communities where residents can live, work, shop, and play together: *As well, the proposed uses “[f]oster communities where residents can live, learn, shop, and play together” as set forth in the 2017 Comprehensive Plan for Land Use goals. See id. at 5-26.*

DIRECTIVE BY THE 2017 COMPREHENSIVE PLAN TO ABIDE BY THE 2005 MRA PLAN: Appendix J (p. A-72): *While the Applicant appreciates that the concentration of economic enterprises is more likely in the core of downtown, the 2005 MRA Plan specifically addresses the need for local businesses in the area where the Property is located and the 2017 Comprehensive Plan directs developers to the 2005 MRA Plan when contemplating redevelopment in the Wells Park area. The 2017 Comprehensive Plan, the Rank 1 plan, is the “master plan” for the City’s orderly planning and development of Albuquerque. See Attachment 2, 2016 Zoning Code, Section 14-16-1-3. In addressing areas within redevelopment areas, the 2017 Comprehensive Plan requires adherence to the 2005 MRA Plan for development in Wells Park:*

*Metropolitan Development Areas are distressed or blighted areas that have been designated as appropriate for a metropolitan redevelopment project by the local planning commission and governing body. Development within a Metropolitan Redevelopment Area is overseen by the Metropolitan Redevelopment Agency and **must follow an established Metropolitan Redevelopment Plan** (emphasis supplied).*

Attachment 4, at p.14, *2017 Comprehensive Plan, Appendix J (p. A-72). The 2017 Comprehensive Plan elevates the 2005 MRA Plan above the 1996 Sector Plan by requiring that development “must” follow the 2005 MRA. See also Attachment 2A, 2016 Zoning Code Section 14-16-1-5(B) (definition of “Sector Development Plan”) (requiring all sector plans to be consistent with the general elements of the Comprehensive Plan) and City Code Section 14-8-4 (Metropolitan Redevelopment Ordinance).*

Conclusion:

As stated above, the clarifications herein are not meant to address the full Staff Report IV but constitute a response by the Applicant within the short time from receipt of Staff Report IV to today’s deadline of providing written materials (other than demonstrative) to the EPC for the hearing on

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Thursday, November 8, 2018. Applicant and this firm remain ready to respond to questions by the EPC at the upcoming hearing.

Sincerely,

LANDRY & LUDEWIG, L.L.P.

By: 
Stephanie Landry

cc w/ attachments: Catalina Lehner

NOVEMBER 5, 2018 SUPPLEMENTAL AFFIDAVIT OF ERIC KILMER

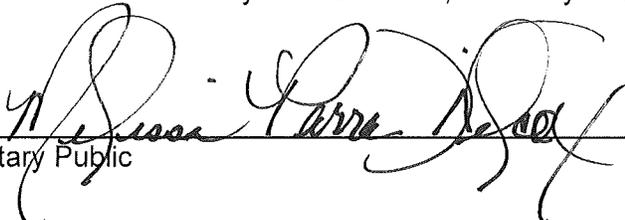
Eric Kilmer, being duly sworn on his oath, states:

1. I have personal knowledge of the facts that I am setting forth in this affidavit.
2. This affidavit supports the November 5, 2018 Response to Supplemental Staff Report IV for Hearing Date November 8, 2018 by Landry & Ludewig, LLP ("Response") in case nos. 18EPC-40019 and 18EPC-40021.
3. I am the owner of the property (the "Property") at 1416 6th Street NW, Albuquerque, New Mexico 87102, Lots 22, 23 and 24, Block 20, Albright-Moore Addition, SE Corner of 6th St. and Constitution Ave.
4. City planner staff, in Staff Report IV, states that "Goal of the SWPSDP (1996) was to return the area that the Plan had zoned SU-2/S-R to residential use . . ." The building on the Property is not a residence and there is no evidence to contrary. In fact, when it was rezoned in 1969 to SU-1 for the use of Flower Shop/Nursery, the Property was already being used for commercial use. See **Attachment 11** to the October 25th Submission, September 15, 1969 Planning Department Comments for 1416 6th Street NW. When I purchased the Property, and still today, the building has a commercial configuration (only four rooms), a large retail space in the front with a large display window, an office/conference room with an adjoining bathroom (toilet and sink only) and a storage room. There is no kitchen or bedrooms and the building is not conducive to residential use and is not a candidate for residential redevelopment given its location, the change in the surrounding zonings and uses, and the expense. I also note that there is a driveway to the law offices on the adjoining property that is a couple of feet from the building, another factor not conducive to residential use.
5. Additionally, contrary to City planning staff's statement, I do not have an easement across the lot to the south, that is, Lot 21, and therefore City planning staff's statement that

"Though access is currently possible from 6th St. by driving across Lot 21, a plaza area is proposed on the eastern side of the existing building to prevent vehicular access" is incorrect. Access is not possible from 6th Street by driving across Lot 21. I do not own Lot 21, there is no easement and no access has been granted to me by the owner of Lot 21. It would be trespass.


Eric Kilmer

SUBSCRIBED AND SWORN TO before me this 5th day of November, 2018 by Eric Kilmer.


Notary Public

My Commission expires June 27, 2020



DRAFT FOR DISCUSSION PURPOSES

To: Environmental Planning Commission
City of Albuquerque
600 Second Street NW
Albuquerque, New Mexico 87102

**Re: Proposed Rezoning: 1416 6th Street NW, Albuquerque, New Mexico 87102
Lots 22, 23 and 24, Block 20, Albright-Moore Addition
SE Corner of 6th St. and Constitution Ave.**

October ____, 2018

Respectfully submitted,

I. INTRODUCTION

We are making this submittal on behalf of our client Mr. Kilmer pursuant to a letter of agency dated August 16, 2018. Mr. Kilmer (“Applicant”), the owner of a .2967 acre parcel of property located at 1416 6th Street NW (“Property”), seeks under SU-2/SU-1 a combined permissive use of Office with Beauty Salon and/or Barber Shop and then Off-Street Parking as a permissive accessory use (“Application”). The Applicant submitted the Application on March 29, 2018. The Application was for a broader number of uses at that time but the Application has been narrowed to the uses stated herein and as set forth in the attached October ____, 2018 letter from the Applicant’s agent Landry & Ludewig, LLP.

The Property is located in the Wells Park area on Constitution NW and 6th Street NW, which is designated as a minor arterial street under the Long Range Roadway System in the Long Range Transportation System Guide (“LRTS Guide”). See **Attachment 8**, Long Range Roadway System.

The Property is currently zoned SU-2/SU-1, in the S-R Area, for the use of Flower Shop/Nursery. The SU-1 zoning (and then later the SU-2/SU-1 zoning) is reflected in (1) the 1978 Sawmill Sector Development Plan (“1978 Sector Plan”), (2) the 1979 and 1980 Albuquerque Zoning Maps, (3) the 1996 Sawmill Wells Park Sector Development Plan (“1996 Sector Plan”), and (4) the district court opinion in *Kilmer v. City of Albuquerque and City Council of the City of Albuquerque*, CV-2009-07499 (Slip. Op. October 3, 2010 (“2010 District Court/Kilmer/City Opinion”).¹

Such zoning has been in place since September 1969 when the owners of Gray’s Flower Shop first obtained the zoning. See **Attachment 10**, Ordinance No. 148-1969, R-1 to SU-1 for 1416 6th Street NW. The last known activity of Gray’s Flower Shop is 2007. See **Attachment 13**, Facility List from City of Albuquerque regarding Business Permitting; **Attachment 1**, Affidavit of Eric Kilmer (“Kilmer Affidavit”). The Applicant purchased the Property in April 2008 for commercial use pursuant to a commercial real estate listing and based on a zoning letter from the City indicating the Property may be used for nonresidential purposes, and Bernalillo County property records show the property assessed for “retail single occupancy.” See **Attachment 1**, Kilmer Affidavit; **Attachment 14**, December 21, 2006 City Zoning Letter; **Attachment 15**, Bernalillo County Property Assessor’s Record for 1416 6th Street NW.

A change in the use of the Property corresponds with the changing needs of the community, the change in the zoning of the surrounding area, and the need for revitalization of the blighted area as mandated by the metropolitan redevelopment plan governing Wells Park. As discussed further in **Section III** herein, the 2017 Albuquerque Bernalillo Comprehensive Plan (“2017 Comprehensive Plan”) directs adherence to the Sawmill/Wells Park Community Metropolitan Redevelopment Area Plan (2005) (“2005 MRA Plan”) in connection with issues pertaining to Wells Park. See **Attachment 10**, pertinent portions of 2017 Comprehensive Plan.

One of the 2005 MRA Plan’s stated goals is to “Create community-scale work, business, and wealth-building activities.” **Attachment 7** hereto, 2005 MRA Plan at p. 6. The MRA Plan, and the

¹ See **Attachment 5**, 1978 Sector Plan at Maps 2 and 3; **Attachment 12**, 1979 and 1980 Albuquerque Zoning Maps; **Attachment 6**, 1996 Sector Plan (1996 and amended in 2000 and 2002) at pp. 80, 99 and Appendix A (reflecting Gray’s Flower Shop on 6th Street and the SU-1 zoning of the Property); and **Attachment 9**, 2010 District Court/Kilmer/City Opinion.

- A.5 Nonresidential uses that ... were zoned SU-1 for specific uses ... and that exist when the S-R Zone is established with the adoption of the Sector Plan, shall be considered permissive uses and may remain at the locations where they exist provided they comply with the following conditions [which conditions are not relevant to this discussion] ... If a nonresidential use changes to a residential use, a nonresidential use at that location may not be resumed or re-established.

Attachment 6, 1996 Sector Plan at p. 99.

There has been no residential use of the Property since it was zoned SU-1 and, therefore, there is still a permissive use of Flower Shop/Nursery.

It is true that the 1996 Sector Plan does not allow an automatic change in the use of the Property. However, the 1996 Sector Plan does not prohibit a change in the use of the Property with the proper approval from the EPC. The 1996 Sector Plan indicates that it seeks to "Allow new uses that will contribute to community cohesiveness." *Id.* at p. 76. The 1996 Sector Plan further states, "Only the few properties with existing SU-1 zoning require hearings by the Environmental Planning Commission when new development or changes are requested." *Id.* at p. 78.

Regarding commercial use of the Property, the 1996 Sector Plan reflects that 6th Street along with 5th Street to the west are made up of a mix of commercial and office uses, and states that "Success depends on community commitment to creating and sustaining a health integration of businesses, housing and regional attractions." **Attachment 6**, 1996 Sector Plan at p. 2. Further, the 1996 Sector Plan identified as a community issue, "Insufficient neighborhood commercial services" and states that "Overall area residential income is low, and few businesses cater to or provide services to residents." *Id.* at pp. 15, 33.

The concern of the 1996 Sector Plan was not the few businesses interspersed in the residential area; instead, the community sought to restrict the impact of pollution from intense uses such as the industrial sector in the area. *See id.* at pp. 3, 75. The 1996 Sector Plan sought to "Control negative impacts from industries and other businesses and ensure health co-existence between closely located businesses and homes." *Id.* at p. 76.

In fact, the Application in this case is more consistent with the 1996 Sector Plan than the application for Lots 19 and 20 of the "sister" property at 1412 6th Street SW, just south of the Property, that met with EPC approval in 2006. With respect to the "sister" property, the July 5, 2006 letter providing justification for a change from residential to SU-2/SU-1 for Residential, and/or Law Office, Court Reporter, Accountant, Architect, Engineer, or Doctor Office, acknowledged that the building on the property at 1412 6th Street NW was a single-family home, had a history of residential use, the only office use being a "home office." **Attachment 22**, July 5, 2006 Justification Letter for 1412 6th Street NW (Lots 19 and 20).

The application for 1412 6th Street NW was met with approval and the EPC rezoned the property from single-family residential to SU-2/SU-1. **Attachment 23**, August 17, 2006 EPC Decision regarding 1412 6th Street NW (Lots 19 and 20). In so holding, the EPC found that it was a request "for approval of a Sector Development Plan Zone Map Amendment from SU2 SR to SU-2 for SU-1," that the request:

Melissa Parra Wilcox

From: Melissa Parra Wilcox <mpwilcox@lanlud.com>
Sent: Monday, November 05, 2018 4:19 PM
To: 'Small, Carina E.'; 'Planning Code Enforcement'
Subject: RE: Letter of Today's Date Regarding 18EPC-40019 and 18EPC-40021

Dear All,

Just for clarification, as you know, our firm Landry & Ludewig, LLP is the agent for Mr. Kilmer in connection with EPC cases, 18EPC-40019 and 18EPC-40021.

In reference to our letter of October 12, 2018 regarding the property at 1416 6th Street NW (inadvertently referred to as SW), we have a clarification regarding the proposed zoning requested in the EPC cases. In our October 12, 2018 letter, we stated that the request is under SU-2/SU-1 for a combined permissive use of Office with Beauty Salon and/or Barber Shop and then Off-Street Parking as a permissive accessory use. We understand from City planning staff that the request for "Off-Street Parking as a permissive accessory use" is surplusage as off-street parking for the primary uses is allowed without a specific request. Therefore, consistent with the submission dated October 25, 2018 on Mr. Kilmer's behalf, the request is under SU-2SU-1 for a combined permissive use of Office with Beauty Salon and/or Barber Shop along with approval of a site development plan showing off-street parking.

If you have any questions, please contact me.

Melissa Parra Wilcox

Paralegal to Stephanie Landry, Margaret Ludewig
and Glenn R. Smith
Landry & Ludewig, L.L.P.
300 10th Street SW
Albuquerque, New Mexico 87102
505/243-6100
mpwilcox@lanlud.com

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From: Small, Carina E. [mailto:cesmall@cabq.gov]
Sent: Wednesday, October 24, 2018 11:19 AM
To: Melissa Parra Wilcox; Planning Code Enforcement
Cc: Lehner, Catalina L.
Subject: RE: Letter of Today's Date Regarding 18EPC-40019 and 18EPC-40021

Thank you for contacting our department, but unfortunately this is the wrong department for this issue. All zone changes need to go through the EPC Board which I have been told that you have already contacted them about this matter.

Kilmer - Attachment 28

For all inquiries about the situation please reach out to them for more information and further assistance.

Thank you,
Code Enforcement

From: Melissa Parra Wilcox [mailto:mpwilcox@lanlud.com]
Sent: Wednesday, October 24, 2018 11:03 AM
To: Planning Code Enforcement <codeenforcement@cabq.gov>
Cc: Lehner, Catalina L. <CLehner@cabq.gov>
Subject: Letter of Today's Date Regarding 18EPC-40019 and 18EPC-40021

To Whom It May Concern:

It has come to our attention that in the Re line of the attached letter it has the address as being SW when in fact it is NW. Our apologies for any confusion.

Melissa Parra Wilcox

Paralegal to Stephanie Landry, Margaret Ludewig
and Glenn R. Smith
Landry & Ludewig, L.L.P.
300 10th Street SW
Albuquerque, New Mexico 87102
505/243-6100
mpwilcox@lanlud.com

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From: Melissa Parra Wilcox [mailto:mpwilcox@lanlud.com]
Sent: Friday, October 12, 2018 11:24 AM
To: 'codeenforcement@cabq.gov'
Cc: clehner@cabq.gov
Subject: Letter of Today's Date Regarding 18EPC-40019 and 18EPC-40021

To Whom It May Concern:

Please see the attached letter of today's date, from Ms. Landry, on behalf of our client Mr. Kilmer.

Melissa Parra Wilcox

Paralegal to Stephanie Landry, Margaret Ludewig
and Glenn R. Smith
Landry & Ludewig, L.L.P.
300 10th Street SW
Albuquerque, New Mexico 87102
505/243-6100

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=====
This message has been analyzed by Deep Discovery Email Inspector.

commercial

[*kuh-mur-shuh*]

[Examples](#) [Word Origin](#)

See more synonyms for *commercial* on [Thesaurus.com](#)

adjective

1. of, relating to, or characteristic of commerce.
2. engaged in commerce.
3. prepared, done, or acting with sole or chief emphasis on salability, profit, or success:
a commercial product; His attitude toward the theater is very commercial.

[Explore Dictionary.com](#)



[Weather Words You Need to Know](#)



[Can You Translate These Famous Phrases From Emoji?](#)



[These Are the Longest Words in English](#)



[These Are the Saddest Phrases in English](#)

4. able to yield or make a profit:
We decided that the small oil well was not commercial.
5. suitable or fit for a wide, popular market:
Communications satellites are gradually finding a commercial use.
6. suitable for or catering to business rather than private use:
commercial kitchen design; commercial refrigeration.
7. (of a vehicle or its use)
 - a. engaged in transporting passengers or goods for profit.
 - b. civilian and public, as distinguished from military or private.
8. not entirely or chemically pure:
commercial soda.
9. catering especially to traveling salespeople by offering reduced rates, space for exhibiting products, etc.:
a commercial hotel.
10. (in U.S. government grading of beef) graded between standard and utility.
11. paid for by advertisers:
commercial television.

noun

12. *Radio and Television* . a paid advertisement or promotional announcement.
13. (in U.S. government grading of beef)
 - a. a low-quality grade of beef between standard and utility.
 - b. a cut of beef of this grade.
14. *British Informal* . a traveling salesperson.

Kilmer - Attachment 29

Origin of commercial

First recorded in 1680–90; commerce + -ial

Related forms

com·mer·cial·ly , adverb
an·ti·com·mer·cial , adjective
an·ti·com·mer·cial·ly , adverb
an·ti·com·mer·cial·ness , noun
coun·ter·com·mer·cial , adjective
non·com·mer·cial , adjective, noun
non·com·mer·cial·ly , adverb
pre·com·mer·cial , adjective
pro·com·mer·cial , adjective
qua·si·com·mer·cial , adjective
qua·si·com·mer·cial·ly , adverb
sem·i·com·mer·cial , adjective
sem·i·com·mer·cial·ly , adverb
su·per·com·mer·cial , adjective
su·per·com·mer·cial·ly , adverb
ul·tra·com·mer·cial , adjective

Synonym study

1. **COMMERCIAL**, **MERCANTILE** refer to the activities of business, industry, and trade. **COMMERCIAL** is the broader term, covering all the activities and relationships of industry and trade. In a derogatory sense it may mean such a preoccupation with the affairs of commerce as results in indifference to considerations other than wealth: *commercial treaties; a merely commercial viewpoint*. **MERCANTILE** applies to the purchase and sale of goods, or to the transactions of business: *a mercantile house or class*.

Dictionary.com Unabridged

Based on the Random House Unabridged Dictionary, © Random House, Inc. 2018

Related Words for commercial

profitable, financial, wholesale, monetary, economic, exchange, trade, trading, market, retail, commissary, merchandising, sales, supplying, mercenary, investment, fiscal, marketable, pecuniary

Examples from the Web for commercial

Contemporary Examples of commercial

These days weather should never cause a *commercial* airliner to crash.



Annoying Airport Delays Might Prevent You From Becoming the Next AirAsia 8501

Clive Irving

January 6, 2015

Both high fashion and the fast, *commercial* fashion of Target are supposed to be about aspiration.



One Vogue Cover Doesn't Solve Fashion's Big Race Problem

Danielle Belton

January 2, 2015

Then the *commercial* weight loss behemoths Weight Watchers and Jenny Craig joined this crowded field.



Why Your New Year's Diet Will Fail

Carrie Arnold

December 30, 2014

Nor should we ever assume that weather alone, however extreme, should be fatal to a *commercial* flight.



Did Bad Weather Bring Down AirAsia 8501?

Clive Irving

December 29, 2014

The technology exists to keep us from ever losing a *commercial* airliner over open seas ever again.

Nearby words for commercial

commentate
 commentative
 commentator
 commerce
 commerce city

commercial

commercial agency
 commercial art
 commercial attaché
 commercial bank
 commercial break

**CITY of ALBUQUERQUE
TENTH COUNCIL**

COUNCIL BILL NO. R-371 ENACTMENT NO. 164,1993

SPONSORED BY: Vincent E. Griego

RESOLUTION

1
2 MAKING CERTAIN FINDINGS AND DETERMINATIONS PURSUANT TO THE
3 METROPOLITAN REDEVELOPMENT CODE, DECLARING THE SAWMILL AREA
4 TO BE SUFFERING FROM SLUM AND BLIGHT, AND DESIGNATING THE
5 "SAWMILL METROPOLITAN REDEVELOPMENT AREA."

6 WHEREAS, the State of New Mexico has adopted 3-60A-1 to 3-360A-48
7 NMSA 1978, the "Metropolitan Redevelopment Code", which grants
8 municipalities certain powers; and

9 WHEREAS, the City of Albuquerque (the "City") and the Metropolitan
10 Redevelopment Agency of the City (the "Agency"), and their employees and
11 agents, have engaged in a study of slum and blighted conditions within the
12 Sawmill area (bounded by Interstate 40, Rio Grande Boulevard NW, Mountain
13 Road NW, and the eastern properties on Fifth Street NW), and have submitted
14 their findings and recommendations concerning the proposed Sawmill
15 Metropolitan Redevelopment Area to the City Council (the "Council"), which
16 findings and recommendations are set forth in Exhibit A, attached hereto and
17 incorporated herein by reference; and

18 WHEREAS, the Albuquerque Development Commission held a public
19 hearing on August 17, 1993, took testimony from the public, and recommended
20 to the Council the designation of the Sawmill Metropolitan Redevelopment Area
21 as set forth in Exhibit B; and

22 WHEREAS, pursuant to Section 8 of the Metropolitan Redevelopment
23 Code, the Council has caused to be published on September 25 and October 3,
24 1993 in the Albuquerque Journal, a newspaper of general circulation in the
25 proposed Metropolitan Redevelopment Area, a notice containing a general
26 description of the area and the date, time, and place where the Council will hold

Kilmer - Attachment 30

000345

a public hearing to consider the adoption of this resolution and announcing that any interested party may appear and speak to the issue of the adoption of this resolution. The Council has also caused to be mailed a notice of this hearing to all property owners in the proposed Metropolitan Redevelopment Area; and

WHEREAS, the Council met on this 1st day of November, 1993 at the time and place designated in the notice, to hear and consider all comments of all interested parties on the issue of the adoption of this resolution; and

WHEREAS, the Council has considered the findings and determinations set forth in Exhibit A, attached hereto, and all comments made at the public hearing concerning the conditions which exist in the Sawmill Metropolitan Redevelopment Area, identified on Exhibit B, attached hereto.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. The Council hereby finds and determines that the Sawmill Redevelopment Area, as described above and as shown on the map which is Exhibit C of this resolution, is an area, by reason of the presence of a substantial number of deteriorated and deteriorating structures, unsafe conditions, deterioration of site and other improvements, lack of adequate housing facilities, obsolete and impractical planning and platting, low levels of commercial and industrial activity and redevelopment which substantially impairs and arrests the sound growth and economic health and well-being of the City and the Sawmill Metropolitan Redevelopment Area, constitutes an economic and social burden, is a menace to the public health, safety and welfare in its present condition and use, is a blighted area and is appropriate for one or more Metropolitan Redevelopment Projects.

Section 2. The Council hereby finds that the rehabilitation, conservation, development and redevelopment of and in the Sawmill Metropolitan Redevelopment Area is necessary in the interest of the public health, safety, and welfare of the residents of the City.

+ B

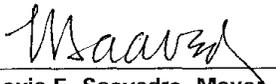
RESOLVED AND ADOPTED THIS 1st DAY OF November, 1993.

A VOTE OF 9 FOR AND 0 AGAINST.


Vincent E. Griego, President
City Council

APPROVED THIS 15th DAY OF November, 1993.

st B


Louis E. Saavedra, Mayor
City of Albuquerque

TEST:

City Clerk

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**CITY of ALBUQUERQUE
SEVENTEENTH COUNCIL**

COUNCIL BILL NO. R-06-100 ENACTMENT NO. R-2006-076

SPONSORED BY: Debbie O'Malley

RESOLUTION

1
2 ADOPTING THE SAWMILL/WELLS PARK METROPOLITAN REDEVELOPMENT
3 AREA (MRA) PLAN; AND SPECIFICALLY INCLUDING THE ENTIRE
4 SAWMILL/WELLS PARK FOR PURPOSES OF TAX INCREMENT FINANCING.

5 WHEREAS, the New Mexico Legislature has passed the Metropolitan
6 Redevelopment Code (herein "Code"), Sections 3-60A-1 to 3-60A-48 NMSA
7 1978, which authorizes the City of Albuquerque, New Mexico ("City") to
8 prepare metropolitan redevelopment plans and to undertake and carry out
9 metropolitan redevelopment projects; and

10 WHEREAS, the City Council, the governing body of the City ("City
11 Council"), after notice and a public hearing as required by Code, has duly
12 passed and adopted Council Resolution No. F/S R-72, Enactment 82-2002,
13 finding, among other things, that one or more slum areas or blighted areas
14 exist in the City and that the rehabilitation, conservation, development, and
15 redevelopment of the area designated as the Sawmill/Wells Park MRA is
16 necessary in the interest of the public health, safety, morals and welfare of the
17 residents of the City; and

18 WHEREAS, the Albuquerque Development Commission ("Commission"),
19 which acts as the Metropolitan Redevelopment Commission under provisions
20 of Section 14-8-4 R.O.A. 1994 at their meeting on September 28th, 2005, after
21 notice, conducted a public hearing on the Sawmill/Wells Park MRA Plan and
22 after the public hearing recommended approval of the Plan; and

23 WHEREAS, the following findings were presented to the Albuquerque
24 Development Commission for the Sawmill/Wells Park MRA Plan; and

25 WHEREAS, the Plan will promote the local health, general welfare, safety,
26 convenience and prosperity of the inhabitants of the City.

[+ Bracketed/Underscored Material +] - New
[- Bracketed/Strikethrough Material -] - Deletion

[+ Bracketed/Underscored Material +] - New
[-Bracketed/Strikethrough-Material-] - Deletion

1 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
2 ALBUQUERQUE:

3 SECTION 1: The City Council, after having conducted a public hearing
4 pursuant to the Code, adopts the Sawmill/Wells Park MRA Plan, as attached
5 hereto and incorporated herein.

6 SECTION 2: The entire Sawmill/Wells Park MRA is specifically included for
7 purposes of Tax Increment Financing. This area encompasses 504 acres and
8 is bounded by I-40 to the north, Rio Grande Blvd. to the west, Mountain Rd. to
9 the south and 4th and 5th Streets to the east.

10 SECTION 3: The City Council, after having conducted a public hearing
11 pursuant to the Code, finds that:

- 12 A. The Plan proposes activities for the redevelopment of the
13 Sawmill/Wells Park MRA that will aid in the elimination and
14 prevention of slum and blight; and
- 15 B. The Plan does not require the relocation of any families and
16 individuals from their dwellings and a method for providing
17 relocation assistance is not needed; and
- 18 C. The Plan conforms to and complements the Albuquerque/Bernalillo
19 County Comprehensive Plan; and
- 20 D. The Plan affords maximum opportunity consistent with the needs of
21 the community for the rehabilitation for redevelopment of the
22 Sawmill/Wells Park MRA by private enterprise or persons, and the
23 objectives of the Plan justify the proposed activities as public
24 purposes and needs.

25 SECTION 4: The City shall support efforts to establish development
26 projects such as land banking activities and transit-related development
27 programs intended to make the area more pedestrian friendly and mixed in
28 income and use, thus affording the opportunity for locally-owned small
29 businesses to establish themselves; the City shall also support community
30 education activities that broaden the local knowledge base and invite
31 members from outside the immediate area to take part in these community
32 education activities.

1 SECTION 5: The City shall support these programs: in providing technical
2 assistance to local committees interested in developing mixed-use, mixed-
3 income housing programs, and by providing technical assistance to
4 businesses within the Sawmill/Wells Park MRA for the purpose of obtaining
5 funding for redevelopment activities, and providing guidance and technical
6 assistance to businesses wishing to open, operate and/or expand with the
7 Sawmill/Wells Park MRA.

8 SECTION 6: All resolutions, or parts thereof, in conflict with this
9 Resolution are hereby repealed; this repealer shall not be construed to revive
10 any resolution, or part thereof, heretofore repealed.

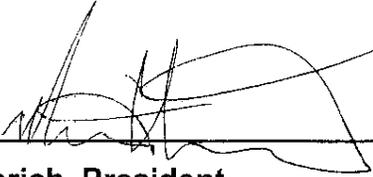
11 SECTION 7: SEVERABILITY CLAUSE. If any section paragraph, sentence,
12 clause, word, or phrase of this resolution is for any reason held to be invalid
13 or unenforceable by any court of competent jurisdiction, such decision shall
14 not affect the validity of the remaining provisions of this resolution. The
15 Council hereby declares that it would have passed this resolution and each
16 section, paragraph, sentence, clause, word or phrase thereof irrespective of
17 any provisions being declared unconstitutional or otherwise invalid.

[+ Bracketed/Underscored Material +] - New
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1 PASSED AND ADOPTED THIS 7th DAY OF August, 2006
2 BY A VOTE OF: 7 FOR 0 AGAINST.

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4 Excused: Harris, Mayer

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9 Martin Heinrich, President
10 City Council

11
12 APPROVED THIS 2nd DAY OF August, 2006

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16 Bill No. R-06-100

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20 Martin J. Chavez, Mayor
21 City of Albuquerque

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26 ATTEST:

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29 City Clerk

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APPENDIX B

ENACTMENT 270-1980

ADOPTING POLICIES FOR ZONE MAP CHANGE APPLICATIONS AND APPEALS OF ENVIRONMENTAL PLANNING COMMISSION DECISIONS; SUPERSEDING CITY COUNCIL RESOLUTIONS 217-1975 AND 182-1978 RELATING TO ZONE CHANGE APPLICATIONS AND APPEALS.

WHEREAS, the usefulness of the Comprehensive City Zoning Code in implementing the City's Comprehensive Plan and promoting health, safety, morals, and general welfare is enhanced by a reasonable flexibility in order to deal reasonably with changes in the physical, economic, and sociological aspects of the city; and

WHEREAS, certain general policies for consideration of zone map changes and other zoning regulation changes should be recognized as determinative.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. The following policies for deciding zone map change applications pursuant to the Comprehensive City Zoning Code are hereby adopted:

A. A proposed zone change must be found to be consistent with the health, safety, morals, and general welfare of the City.

B. Stability of land use and zoning is desirable; therefore, the applicant must provide a sound justification for the change. The burden is on the applicant to show why the change should be made, not on the City to show why the change should not be made.

C. A proposed change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other City master plans and amendments thereto including privately developed area plans which have been adopted by the City.

D. The applicant must demonstrate that the existing zoning is inappropriate because;

(1) there was an error when the existing zone map pattern was created, or

(2) changed neighborhood or community conditions justify the change, or

(3) a different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other City master plan, even though (1) or (2) above do not apply.

E. 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.

F. A proposed zone change which, to be utilized through land development, requires major and un-programmed capital expenditures by the City may be;

(1) denied due to lack of capital funds, or

(2) granted with the implicit understanding that the City is not bound to provide the capital improvements on any special schedule.

G. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a change of zone.

H. Location on a collector or major street is not in itself sufficient justification of apartment, office, or commercial zoning.

I. A zone change request which would give a zone different from surrounding zoning to one small area, especially when only one premise is involved, is generally called a "spot zone." Such a change of zone may be approved only when;

(1) the change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan, or

(2) the area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises make the site unsuitable for the uses allowed in any adjacent zone.

J. A zone change request which would give a zone different from surrounding zoning to a strip of land along a street is generally called "strip zoning." Strip commercial zoning will be approved only where;

(1) the change will clearly facilitate realization of the Comprehensive Plan and any adopted sector development plan or area development plan, and

(2) the area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones or because the site is not suitable for the uses allowed in any adjacent zone due to traffic or special adverse land uses nearby.

Section 2. City Council Resolutions 217-1975 and 182-1978 adopting policies for zone map change applications and appeals of (the) Environmental Planning Commission are hereby superseded.