



**Landmarks & Urban
Conservation Commission**



**Agenda Number: 8
Case No.: 16-LUCC-50013
Project # 1010796
August 10, 2016**

Supplemental Staff Report #3

Agent		Staff Recommendation <i>APPROVAL of Case # 16-LUCC-50013, Project #1010796, a request for a Certificate of Appropriateness based on the Findings beginning on page 6 and subject to the Conditions of Approval on page 6 of the July 13, 2016 staff report.</i>
Applicant	City of Albuquerque Transit Department	
Request	Certificate of Appropriateness	
Legal Description	Public Right-of-way	
Address/Location	Central Ave. between Union Square St. (formerly John St.) and Locust St. SE	
Zoning	Huning Highland-East	
Historic Location	Downtown Urban Conservation Overlay Zone	Maryellen Hennessy, Senior Planner Staff Planner

Summary of Analysis

This application was first considered by the LUCC on April 13, 2016 when it was deferred with direction to the applicant. It was subsequently deferred again from the May 11, 2016 LUCC hearing to allow time to consider new material submitted by the applicant. An appeal of the LUCC's decision to defer action until the June hearing was filed.

The June 8, 2016 LUCC agenda was rescheduled for July 13, 2016 due to the lack of a quorum. The LUCC was precluded from considering the application again at its' hearing on July 13, 2016 due to a court order associated with the appeal. The order has since been dismissed. The City Council remanded the matter back to the LUCC and did not take any further action with regard to the appeal.

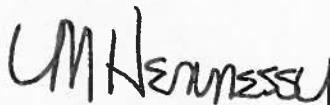
There is no additional information from the applicant since the May supplemental material. Additional public comment has been received subsequent to the July 13 hearing and is included with this report.

There are no revisions to the original proposal as submitted in April 2016. As discussed in the analysis contained in the April, May and June staff reports, given the general nature of the direction provided by the Regulatory Plan, this proposal to make changes to the public right-of-way in the HH-Edo UCOZ in the implementation of the ART project can be approved. In general, the project provides for "Street design that contributes to safety, convenience and walkability" as provided for in the Regulatory Plan. When considered against the criteria for approval of a Certificate of Appropriateness, the project comports with the applicable criteria.

PRIMARY REFERENCES: Landmarks and Urban Conservation Ordinance; Regulatory Plan for the Huning Highland-East Downtown Urban Conservation Overlay Zone; Albuquerque Bernalillo County Comprehensive Plan.

Attachments:

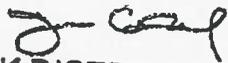
- 1) Emergency Peremptory Writ of Mandamus dated 7/12/16
- 2) Court Order setting aside Emergency Peremptory Writ of Mandamus 8/1/2016.
- 3) Letter from M. Bautista dated 7/13/16
- 4) email and video recording from E. Vencil dated 7/14/16
- 5) email from Donald Clayton dated 8/4/16



**Maryellen Hennessy
Senior Planner**

ENDORSED
FILED IN MY OFFICE THIS

JUL 12 2016


CLERK DISTRICT COURT

CHRIS PECK

SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

PETERSON PROPERTIES, LLC
Petitioner,

v.

No. D-202-CV-2016-04164

DAN LEWIS, in his official capacity
as President of the Albuquerque City Council;
KLARISSA PENA, in her official capacity as
Vice President of the Albuquerque City Council;
KEN SANCHEZ, in his official capacity as
A Member of the Albuquerque City Council;
ISAAC BENTON, in his official capacity as
A Member of the Albuquerque City Council;
BRAD WINTER, in his official capacity as
A Member of the Albuquerque City Council;
PATRICK DAVIS, in his official capacity as
A Member of the Albuquerque City Council;
DIANE G. GIBSON, in her official capacity as
A Member of the Albuquerque City Council;
TRUDY E. JONES, in her official capacity as
A Member of the Albuquerque City Council;
DON HARRIS, in his official capacity as
A Member of the Albuquerque City Council

And

JAMES CLARK, in his official capacity as Chair of
the City of Albuquerque Landmark & Urban Conservation
Commission;
LAUREN AUSTIN, in her official capacity as Vice Chair of
the City of Albuquerque Landmark & Urban Conservation
Commission;
J. MATT MYERS, in his official capacity as Member of
the City of Albuquerque Landmark & Urban Conservation
Commission;
AMY HOROWITZ, in her official capacity as Member of
the City of Albuquerque Landmark & Urban Conservation
Commission;
DANIEL SOLARES, in his official capacity as Member of
the City of Albuquerque Landmark & Urban Conservation
Commission;
ROBERT BELLO, in his official capacity as Member of
the City of Albuquerque Landmark & Urban Conservation

A-1

**Commission; and
PETRA MORRIS, in her official capacity as Member of
the City of Albuquerque Landmark & Urban Conservation
Commission,**

Respondents.

EMERGENCY PEREMPTORY WRIT OF MANDAMUS

To Albuquerque City Councilors:

Dan Lewis
Klarissa Pena
Ken Sanchez
Isaac Benton
Brad Winter
Patrick Davis
Diane G. Gibson
Trudy E. Jones
Don Harris

Albuquerque City Council
One Civic Plaza NW
9th Floor, Suite 9087
Albuquerque NM 87102
P.O. Box 1293
Albuquerque NM 87103

AND

To City of Albuquerque Landmark & Urban Conservation Commissioners:

James Clark
Chair

Lauren Austin
Vice Chair

J. Matt Myers
Commissioner

Amy Horowitz
Commissioner

Daniel Solares

Commissioner

Robert Bello
Commissioner

Petra Morris
Commissioner

Landmark and Urban Conservation Commission
600 2nd Street NW
Albuquerque NM 87102

**NAMED ALBUQUERQUE CITY COUNCILORS:
YOU ARE HEREBY COMMANDED FORTHWITH TO:**

1. Comply with your mandatory, non-discretionary duty established by Albuquerque Code of Ordinance (ACO) § 14-12-11C to schedule an appropriate amount of time on the agenda of the August 1, 2016 City Council meeting to hear Petitioner Peterson Properties, LLC's appeal of the May 11, 2016 decision of the Landmark & Urban Conservation Commission (LUCC) to defer a decision on City of Albuquerque's ("the City") application for a Certificate of Appropriateness ("COA") in Project # 1010796 (16-LUCC-50013).

2. Reimburse Petitioner for costs for bringing this action.

**NAMED LUCC COMMISSIONERS:
YOU ARE HEREBY COMMANDED FORTHWITH TO:**

3. Comply with your mandatory, non-discretionary duty established by Landmark and Urban Conservation Commission (LUCC) Rules of Procedure and Conduct, Section 10(c) and Albuquerque Code of Ordinance (ACO) § 14-12-11C and ACO § 14-16-4-4(A)(3) to withhold a hearing on the City of Albuquerque Transit Department's (ATD) application for a certificate of appropriateness until the Albuquerque City Council hears the appeal of Petitioner Peterson Properties, LLC of the

May 11, 2016 decision of LUCC to defer a decision on ATD's application for Project # 1010796 (16-LUCC-50013).

4. Reimburse Petitioner for costs for bringing this action.

VICTOR S. LOPEZ

VICTOR S. LOPEZ, JUDGE
Second Judicial District, Div. XXVII

Submitted by:

Yolanda R. Gallegos
GALLEGOS LEGAL GROUP
315 Eighth Street, SW
Albuquerque, NM 87102
(505) 242-8900
Counsel for Petitioner

I hereby certify that an endorsed copy of the foregoing was served via email to all parties listed below on the date of filing.

THERESA R. POMERLEAU
TCAA to Judge Victor S. Lopez

Yolanda R. Gallegos
GALLEGOS LEGAL GROUP
315 Eighth Street, SW
Albuquerque, NM 87102
(505) 242-8900
Counsel for Petitioner
ygallegos8300@msn.com

Jessica Hernandez and Christopher Tebo
Albuquerque City Attorney's Office
1 Civic Plaza NW, Room 4015
Albuquerque, NM 87102
jmhernandez@cabq.gov
ctebo@cabq.gov

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

PETERSON PROPERTIES, LLC

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A-2

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PETRA MORRIS, in her official capacity as Member of the City of Albuquerque Landmark & Urban Conservation Commission,

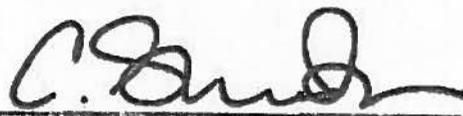
Respondents.

ORDER

THIS MATTER having come before the Court on Respondents' Motion for an Emergency Order to Quash or Set-Aside Emergency Peremptory Writ of Mandamus, by and through Assistant City Attorneys Christopher J. Tebo and Jeffrey B. Driggers, and on Petitioner's Response in opposition by and through Yolanda Gallegos, Esq., and the Court, having reviewed the pleadings, heard the arguments of counsel and being otherwise fully advised in the premises FINDS:

That Respondents' Motion for an Emergency Order to Quash or Set-Aside Emergency Peremptory Writ of Mandamus is well taken and is hereby GRANTED

IT IS HEREBY ORDERED that Respondents' Motion for an Emergency Order to Quash or Set-Aside Emergency Peremptory Writ of Mandamus is granted. The parties will each bear their own fees and costs.


C. SHANNON BACON
DISTRICT COURT JUDGE

Submitted by:

/s/ Christopher Tebo

Christopher J. Tebo, Esq.

Jeffrey B. Driggers, Esq.

Assistant City Attorneys

City of Albuquerque

PO Box 2248

Albuquerque, NM 8710

Attorneys for Respondents

Approved as to form by:

/s/Yolanda R. Gallegos

Yolanda R. Gallegos, Esq.

Gallegos Legal Group

315 Eighth Street SW

Albuquerque, NM 87102

Attorney for Petitioner

Maria Bautista
3411 Aspen NE
ABQ NM 87106

renewed 7/13/11

07/13/11

Dear Commissioners -

I am requesting that Petra Morris
recuse herself from any A.R.T.
decisions.

Petra Morris is a city employee
who has already testified that she
supports A.R.T.

Based on that she should refuse the
political appointment, and realize that
opponents of the project would not get
a fair presentation on any issues that
could potentially impact our historic
landmarks, including RT66 itself -

A.R.T. is a vanity project for the Mayor.
We are under a Federal Consent Decree
UNM is being investigated by DOJ.
Our resources are limited and the
LUCC should not be complicit in the
illegal maneuverings to dismantle
400 years of history! A.R.T. is a
cultural catastrophe.

M. Bautista

A-3

Hennessy, Maryellen

From: Elizabeth Vencill <e@esvlawfirm.com>
Sent: Thursday, July 14, 2016 1:50 PM
To: Salas, Alfredo E.; Hennessy, Maryellen
Subject: Petra Morris of Landmark Commission
Attachments: Petra Morris at A.R.T. meeting.m4v

Hello,

I am very concerned that a newly appointed member of this Commission has a clear bias in favor of the A.R.T. project -- i.e. Ms. Petra Morris.

Attached is a recording of her testimony at the KIVA meeting on March 8, 2016.

At the very least, Ms. Morris should not be allowed to vote on the proposed A.R.T. station in the Huning Highland district.

Thank you,
Elizabeth Stacy Vencill

Elizabeth Stacy Vencill Law Office
115 Quincy Street NE
Albuquerque, NM 87108
505.243.6191 505.243.6191 fax
info@esvlawfirm.com

A-4

Hennessy, Maryellen

From: Donald Clayton <cityofnikko@gmail.com>
Sent: Thursday, August 04, 2016 10:11 AM
To: Hennessy, Maryellen; Tebo, Christopher J.; Hoffman, Lou D.; Rizzieri, Bruce; Crawford, Dayna G.; Yolanda Gallegos; Douglas Peterson; Melendrez, Chris P.
Subject: AUGUST 3, 2016 MEETING

August 4, 2016

Maryellen Hennessy
Senior Planner
Landmarks and Urban Conservation
Current Planning Division
Planning Department
City of Albuquerque
600 2nd Street - 3rd Floor
Albuquerque, NM 87102

Project Number: 1010796
Case Number: 16-LUCC 5013

THIS IS A PUBLIC RECORD

Ms Hennessy:

Inclusion in file:

I request that you enclose a hard-copy copy of this communication in the official publicly accessible hearing file for this project and case.

Reference is made:

To numerous previous written communications from me, as contained in the file, and partial LUCC corrective action in regards to selected complaints.

This letter is to document and otherwise memorialize our meeting, held in the Small Conference Room at the above stated address, on the afternoon of August 3, 2016.

In that meeting we established and agreed to the following facts:

In regard to the July 12, 2016 Court Order:

1. That the LUCC file for Case Number: 16-LUCC 5013 contained a copy of the July 12, 2016, Court Order requiring that the Albuquerque City Council put the Peterson Properties appeal on the August 1, 2016, City Council agenda for a public hearing.
2. That the LUCC file for Case Number: 16-LUCC 5013 contained no communication whatsoever regarding the outcome of the Albuquerque City Council hearing, or any determination regarding the matter from the City Council.
3. That the LUCC file for Case Number: 16-LUCC 5013 did not contain any other court order, or any communication whatsoever regarding any other court order from the Albuquerque City attorney, nor anyone associated with that office.

4. That there is no written public record whatsoever that publicly documents any communication to the LUCC between August 1, 2016, and the date of the meeting, by the Albuquerque City attorney, nor anyone associated with that office.
5. That despite the existence of the Court Order of July 12, 2016, that you published legal notice putting the subject of the Peterson Properties appeal on the August meeting agenda of the LUCC.

In regard to the Land Use Hearing Officer:

1. That the LUCC file for Case Number: 16-LUCC 5013 contained no information whatsoever that showed any involvement by the Land Use Hearing Officer in response to the filed appeal by Peterson Properties, for which an application was made, and for which fees were properly paid.
2. That the LUCC file for Case Number: 16-LUCC 5013 contained a copy of the Peterson Properties appeal, made pursuant to laws, rules, and regulations contained in the Albuquerque Zoning Code and/or other locations.
3. That despite of no word, no documentation, or any communication whatsoever, from, or regarding, the Land Use Hearing Officer, that you published legal notice putting the subject of the Peterson Properties appeal on the August meeting agenda of the LUCC.

In regard to the Albuquerque Transit Department application generally:

1. That no buildable plans were submitted at the time of the application, contrary to specific LUCC rules.
2. That no buildable plans have ever been submitted regarding the proposed ART bus-loading platform signage.
3. That no buildable plans have been submitted for the bus-loading platform itself.
4. That I orally repeated my often repeated written request that in the interests of costs, time, staff time, and proper due process, that the Transit Department abandon the current controversial application (and wrongful application process) and submit a new application that comports with written LUCC rules.

In light of the above stated facts I believe that it is clear that:

1. If there were a lawful order regarding rescinding the July 12, 2016, court order, that both the order was untimely and that there was no timely, or proper communication, regarding the order.
2. Barring a proper and timely communication as required by LUCC rules, there is, once again, the clear appearance of an ongoing flagrant disregard for observing LUCC rules by LUCC staff.
3. If the LUCC were to hold a hearing of the Transit Department application at the August 2016 hearing, it would be in flagrant, and unlawful disregard of New Mexico public meeting laws, of professional and ethical behavior, and of other laws, rules, and statutes, apparently including criminal offense.
4. Administrative appeals, and/or court appeals, regarding this unfortunate and convoluted situation, would be unreasonably costly, an unnecessary waste of public time and resources, and contrary to the public interest, when a simple administrative remedy (as stated above) is obvious.

Please respond by August 8, 2016, if you decide to exercise your administrative discretion to enforce LUCC rules.

Sincerely,
Donald Clayton