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Licensed to practice Law in California  
and New Mexico.

November 17, 2017

**VIA CERTIFIED MAIL**  
**[# 7016 0750 0000 6249 0759]**  
City of Albuquerque  
Office of the City Clerk  
Attn: Ms. Trina Casados  
600 2nd Street, NW  
Albuquerque, NM 87102

**Re: File-Endorsed Notice of Appeal**  
2<sup>nd</sup> Judicial District Court, D-202-CV-2017-08276

Dear Ms. Casados,

Please find enclosed a file-endorsed Notice of Appeal filed yesterday in the Second Judicial District Court and relating to the above-referenced matter.

Please contact the undersigned with any questions. Thank you.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Ed M. Anaya'.

Edward M. Anaya

EMA:  
[2017.11.17.Letter.re.File.Endorsed.Notice.of.Appeal.doc]

Encl: As stated.

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

DARLENE M. ANAYA,

Plaintiff,

v.

Case No. D-202-CV-2017-08276

CITY OF ALBUQUERQUE,

Defendant.

**NOTICE OF APPEAL**

DARLENE M. ANAYA ("Appellant"), by and through her undersigned counsel, ANAYA LAW, LLC (Edward Marcelino Anaya), hereby files this Notice of Appeal pursuant to the provisions of NMSA § 3-21-9, NMSA § 39-3-1.1 and NMRA Rule 1-074:

**JURISDICTION, VENUE AND STANDING**

1. This is an appeal of a zoning decision by the City of Albuquerque in AC-17-7, Project No. 1011232, 17EPC-40011. A copy of the final agency decision (hereinafter, the "Zoning Decision") is attached hereto as **Exhibit A**.
2. Appellant has standing to bring this appeal because she is the owner of residential property in the immediate vicinity of the Zoning Decision.
3. This court has jurisdiction pursuant to NMSA § 3-21-9, which provides that a person aggrieved by a decision of a zoning authority may appeal the decision pursuant to NMSA § 39-3-1.1, which governs the appeal of final agency decisions to district court.
4. This appeal is procedurally governed by NMRA Rule 1-074, which governs the appeal of final agency decisions to district court.
5. This court has venue because the property at issue is situated in Bernalillo County and the agency proceedings occurred in Bernalillo County.

**INTRODUCTION**

6. The Anaya family, of which Appellant Darlene M. Anaya is a member, has its roots in old Albuquerque since the early to middle 1800's.

7. Since the arrival of Interstate-40 in the 1950's, residents and neighborhood associations have worked hard to maintain the irreplaceable character of the area, which includes ancient acequias used by the community as recreational corridors and for irrigation.
8. One of the residential properties owned by Ms. Anaya, and in the immediate vicinity of the Zoning Decision, is an over 100+ year old residence constructed of terrones, bricks cut from the Rio Grande river bed, in a construction technique that predates the use of adobe bricks.
9. Neighborhood plans, with the force of law, have been enacted to protect residents' quality of life.
10. However, in the instant Zoning Decision, the City of Albuquerque has given short-shrift to neighborhood plans, neighborhood associations, residents, and even its own zoning regulations.
11. This appeal raises three main issues, as follows, which will be briefed in accordance with the provisions of Rule 1-074:

#### **ISSUE NO. 1**

(Inappropriate use of C-2 commercial zoning)

12. The Zoning Decision establishes a C-2 commercial zoning that is inappropriate in character, scope and intensity.
13. The C-2 commercial zoning is inappropriate in character because the area in question is residential and because applicable neighborhood plans expressly limit commercial uses in the area to C-1 commercial uses.
14. The C-2 commercial zoning is inappropriate in scope because the C-2 commercial zoning infringes into an area designated as an "Area of Consistency."
15. The C-2 commercial zoning is inappropriate in intensity because it is set within two acequias, the Alameda Drain and the Campbell Ditch, and in the immediate vicinity of the Alameda Drain & Trail Master Plan intended to be used as a recreational corridor for the community.

#### **ISSUE NO. 2**

(Violation of Resolution 270-1980)

16. The Zoning Decision violates Resolution 270-1980 because it, among other things:
  - i. Was motivated by improper economic motive (Resolution 270-1980, subd. "f")
  - ii. Is not justified by changed conditions (Resolution 270-1980, subd. "d")
  - iii. Is in significant conflict with other neighborhood plans and the Comprehensive Plan (Resolution 270-1980, subd. "a")

- iv. Is harmful to adjacent property, residents, and the community (Resolution 270-1980, subd. "e")
- v. Will require capital improvements, which the developer has not expressly agreed to fund (Resolution 270-1980, subd. "f")

**ISSUE NO. 3**

(Spot Zoning)

17. The Zoning Decision constitutes a spot zone because its zoning is inconsistent with surrounding zoning and it stands to primarily benefit only the owner.

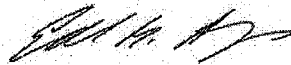
**PRAYER FOR RELIEF**

Appellant therefore prays that this Court grant it the following relief:

- 1. That the Zoning Decision be reversed;
- 2. That this matter be remanded to the City of Albuquerque for proceedings not inconsistent with this Court's ruling; and
- 3. Grant such other and further relief as this Court deems just and proper.

DATED: November 16, 2017

Anaya Law, LLC



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Edward M. Anaya  
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San Francisco, CA 94112  
Phone: (505) 333-9529  
Email: [edward@anayalawllc.com](mailto:edward@anayalawllc.com)

**Attorney for Appellant,  
Darlene M. Anaya**

**CERTIFICATE OF SERVICE**

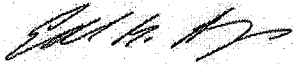
I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appeal was sent on this 16th day of November, 2017, via first class mail, postage pre-paid to:

City of Albuquerque  
Office of the City Clerk  
Attn: Ms. Trina Casados  
600 2nd Street, NW  
Albuquerque, NM 87102

Mr. Jason W. Kent, Esq.  
Jason Kent, P.C.  
2021 Mountain Rd NW  
Albuquerque, NM 87104-1444

I HEREBY FURTHER CERTIFY, pursuant to Rule 1-074(F)(2) that satisfactory arrangements have been made with the Albuquerque City Counsel for the preparation and payment of the record of these proceedings.

By: Anaya Law, LLC



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Edward M. Anaya



**Notice of Decision for Consolidated Appeals  
City Council  
City of Albuquerque  
October 17, 2017**

**AC-17-7** (Project #1011232/17EPC-40011) Anaya Law LLC, agent for Darlene M. Anaya, appeals the decision of the Environmental Planning Commission (EPC) to Approve a Zone Map Amendment (Zone Change) 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

**Decision**

On October 16, 2017, by a vote of 7 FOR, 2 AGAINST, the City Council voted to deny the appeal and affirm the decision of the Environmental Planning Commission by accepting and adopting the recommendation and findings of the Land Use Hearing Officer.

Against: Benton, Sanchez

**IT IS THEREFORE ORDERED THAT THE APPEAL IS DENIED, THE EPC'S  
DECISION IS AFFIRMED, AND THE ZONE MAP AMENDMENT IS APPROVED**

**AC-17-8** (Project #1011232/17EPC-40011) North Valley Coalition, appeals the decision of the Environmental Planning Commission (EPC) to Approve a Zone Map Amendment (Zone Change) 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

**Decision**

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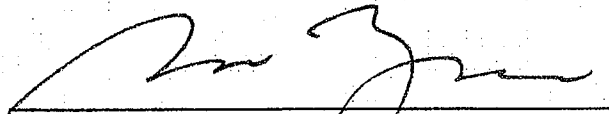
Against: Benton, Sanchez

IT IS THEREFORE ORDERED THAT THE APPEAL IS DENIED, THE EPC'S  
DECISION IS AFFIRMED, AND THE ZONE MAP AMENDMENT IS APPROVED

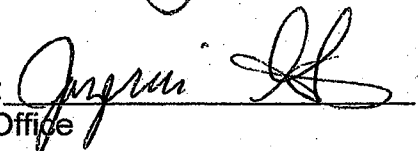
**Attachments**

1. Land Use Hearing Officer's Recommendation
2. Action Summary from the October 16, 2017 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.

  
Isaac Benton, President  
City Council

Date: 10-23-17

Received by:   
City Clerk's Office

Date: 10/23/17

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

**APPEAL NO. AC-17-7 and AC-17-8  
Project No. 1011232; 17-EPC-40011**

**North Valley Coalition, Inc.,  
Darlene M. Anaya,**

**Appellants,**

**Garcia Real Estate Investments, LLC,  
G3 Investors, LLC, Dos Vientos, LLC,  
Sinclair Properties, LLC,**

**Party Opponents.**

**I. BACKGROUND**

This matter concerns two separate appeals from a decision of the Environmental Planning Commission (EPC) approving a zone map amendment, changing existing zones from M-1 and R-1 to C-2 and R-2, on approximately 20-acres of adjoining land in the North Valley (zone-change site). The two appeals were consolidated because they each concern the same EPC decision and the same facts.

The following are undisputed facts. The zone-change site is located immediately North of the Interstate-40 freeway, and just East of Rio Grande Boulevard between the Alameda irrigation drain and the Campbell irrigation ditch [R. 337]. The zone-change site is platted in

20 individual contiguous tracts [R. 24].<sup>1</sup> On April 4, 2017, on behalf of the zone-change applicants, Kurt Culbertson of Design Workshop, Inc. submitted a zone-change application to the City [R. 333]. A scoping meeting with City Planning Staff, the City Traffic Engineer, the applicants and their traffic engineer was held on May 2, 2017 to discuss the methodology and parameters of a traffic impact study regarding the affected areas, and site planning access issues [R. 62-63].<sup>2</sup> A second TIS to evaluate access to Indian School Road was performed [R. 64].

The applicant's zone-change proposal was scheduled to be heard by the EPC on June 8, 2017. However, the applicant sought a deferral of the EPC hearing, of which was rescheduled to July 13, 2017. A City facilitated meeting with the applicants, the neighbors, and the affected neighborhood associations was held on May 23, 2017 [R. 290]. Apparently, at the facilitated meeting, several issues were discussed, but the predominate issue which rose to the surface was the existing automobile traffic and the traffic the zone-change would bring to the area [R. 52-59]. The results of the two traffic impact studies were disclosed and discussed at the facilitated meeting [R. 53].

The record demonstrates that, of the 20-acres which comprises the zone-change site, 14.21 acres is currently zoned R-1 and 5.29 acres is currently zoned M-1 [R. 291-294].<sup>3</sup> The 5.29 acres of M-1 lands abut I-40 to the South and SU-2 for LDMUD zoned lands to the West [R. 291-294]. The current 14.21 acres of R-1 land in the site is sandwiched by the M-

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1 As a condition of approval, the EPC required that the zone-change site be replatted to align the boundaries with new property lines created by the zone-change site.

2 City Traffic Engineer, Raquel Michael testified at the LUHO hearing that a TIS was not necessary for the zone change but would be necessary for the site planning phase of development of the subject site.

3 The applicant characterizes the M-1 zoned land as encompassing 5.5-acres, however, the City Zone Map shows it as 5.29-acres.

1 zoned land on the South side, R-3 zoned lands on the East side, R-1 zoned lands on the North side, and the SU-2 for LDMUD zoned lands on the West side. [R. 291-294]. Notably, although not included in the zone-change, the LDMUD zoned lands directly West of the zone-change site, abut Rio Grande Blvd. and are owned by one of the zone-change land owners (Garcia family)<sup>4</sup> [R. 291-294]. The entire 20-acre site was originally zoned R-1 but in 1957, before I-40 was constructed, the 5.29 acres currently abutting I-40 was rezoned to M-1, and was part of a larger M-1 zoned area [R. 298]. Apparently, when I-40 was constructed the larger M-1 zone was split by I-40 leaving only 5.29-acres of the M-1 zone North of I-40 [R. 338]. The 5.29-acres of M-1 zoned land within the site is identified in the City's Comprehensive Plan as part of an "Area of Change" which will be discussed below [Comp. Plan, p. 5-25]. In addition, portions of the existing R-1 zoned lands within the zone-change site are also identified in the City Comprehensive Plan as part of a larger "Area of Consistency" which will also be discussed in more detail below [Comp. Plan, p. 5-25]. Most of the 20-acre zone-change site remains vacant land, including all the M-1 zoned lands [R. 338].

At the July 13, 2017, EPC public hearing on the zone-change application, the EPC heard testimony from City Staff, the applicant and their agents, several area residents, including from Appellants, Darlene Anaya (Anaya) and representatives from the North Valley Coalition, Inc. (NVC). At the hearing, the EPC voted to approve the zone-changes and memorialized their findings in an Official Notification of Decision, dated July 14, 2017

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<sup>4</sup> The relevance of this fact is two-fold: 1) the consolidated ownership allows the applicant to create an additional access route to the zone-change site by potentially extending Floral Rd. East of Rio Grande Blvd., and 2) the SU-2 for LDMUD zoned land is part of the study area for an evaluation of R-270-1980 criteria to justify the zone change.

[R. 24-33]. The Appellants, the North Valley Coalition, Inc. and Darlene Anaya (a neighboring resident landowner) filed their separate timely appeals thereafter. The City Council, pursuant to § 14-16-4-4 of the Comprehensive Zoning Ordinance, referred the appeals to this Hearing Officer and, on September 21, 2017, both appeals were heard in an extended Land Use appeal hearing.<sup>5</sup> The two draft traffic impact studies were included in the record at the Land Use appeal hearing. Without objection, Appellant Anaya's power-point argument was also included in the record. A demonstrative exhibit of which included Appellant Anaya's rendering of the Comprehensive Plan's designations of portions of the zone-change site was not included in the official record because I found it was not an accurate rendering of the Comprehensive Plan site designations.

## II. STANDARD OF REVIEW

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

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

At the appeal level of review, the decision and record must be supported by a preponderance of the evidence to be upheld. The Land Use Hearing Officer is advisory to the City Council.

If a remand is necessary to clarify or supplement the record, or if the remand would

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<sup>5</sup> The consolidation of these appeals did not affect the time allowed in a Land Use appeal hearing allotted for individual appeals. Each Appellant was granted more time individually than what is provided for in the Rules for Land Use appeal hearings.

expeditiously dispose of the matter, the Land Use Hearing Officer has authority to recommend that the matter be remanded for reconsideration by the EPC. The City Council may grant the appeal in whole or in part, deny it, or remand it to the Land Use Hearing Officer or to the EPC."<sup>6</sup>

### III. DISCUSSION

In this appeal, the Appellants make numerous claims of error. I have carefully reviewed the record, the applicable provisions of City law, the applicable Rank plans, the testimony of the parties and City Staff. I find that the EPC did not err. The decision of the EPC is well supported by substantial evidence in the record. Accordingly, I recommend that the City Council deny both appeals, and uphold the decision of the EPC granting the zone changes. Similarly, I find that the Appellants did not meet their burdens of proof to demonstrate error.

As stated above, the Appellants allege several points of error. Some of the allegations of error overlap between the parties. Appellant, Darlene Anaya claims that the automobile traffic, which will be generated by the addition of commercial uses from the C-2 zone granted by the EPC, will harm the adjacent residential communities [R.7]. About harm, Anaya also alleges that the secondary effects of noise, light, and air pollution were not addressed by the EPC [R.10]. Anaya further claims that the zone-change applicants failed to justify the zone-change under R-270-1980 [R. 7]. Finally, Anaya claims that the zone-change amounts to an impermissible spot-zone under R-270-1980 [R. 10].<sup>7</sup>

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6. 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.

7 I note that the spot zone allegation was not argued in the Land Use appeal hearing, suggesting it was abandoned. In any event, it will be briefly discussed below.

89 The NVCI separately claims that the EPC misapplied facts and misinterpreted  
90 applicable policies in Rank plans [R. 15-21]. Specifically, the NVCI alleges that EPC  
91 Findings 6 and 7 are erroneous [R.15-18]. The NVCI and Anaya contend that the EPC  
92 misapplied the changed conditions justification of R-270-1980 to the zone-change proposal  
93 [R.19-20].  
94

95 **A. R-270-1980 Policy Criteria as Justification for the Zone-Change**

96 City Resolution R-270-1980 establishes the principal policy standards for judging  
97 zone-changes in the City. The following policy rules in R-270-1980 are applicable to this  
98 appeal in terms of justifying the zone-change. First, a “proposed zone change must be found  
99 to be consistent with the health, safety, morals, and general welfare of the City” [R-270-  
100 1980, Sec. 1.A]. Second, because stability of land uses and zoning is the overriding policy  
101 goal of R-270-1980, zone-changes must be justified by the applicant. That means the  
102 applicant proposing a zone-change carries the burdens of proof. [R-270-1980, Sec. 1.B].  
103 Third, the “proposed change shall not be in significant conflict with adopted elements of the  
104 Comprehensive Plan or other City master plans and amendments thereto including privately  
105 developed area plans which have been adopted by the City” [R-270-1980, Sec. 1.C]. Fourth,  
106 the applicant to a zone-change has the burden to show with substantial evidence that the  
107 existing zoning of the zone-change site is “inappropriate” because there was a mistake in the  
108 existing zoning; or that “changed neighborhood or community conditions justify” the zone-  
109 change; or that a “different use category is more advantageous to the community” as  
110 supported by one of the Rank City plans [R-270-1980, Sec. 1.D]. These three foundations

for justifying the zone-change are disjunctive—only one need be shown.

Because the analyses focuses on the applicants' burdens, I start the analysis here with the evidence proffered to the EPC supporting the zone-change. In their zone-change application to the City Planning Staff and to the EPC, the applicant submitted a 14-page analysis supporting their proposed zone-change as well as two Traffic Studies [R. 337-343]. After reviewing the application, City Planning Staff submitted to the EPC their analysis, in a Staff Report, of the proposed zone-change [R. 290-331]. In that Staff Report, Staff City Planner Michael Vos recommended that the EPC approve the zone-change. In addition, the two traffic studies were reviewed by City Traffic Engineer, Raquel Michael.<sup>8</sup>

**i. There is Substantial Evidence in the Record Supporting the EPC Finding that the Existing Zoning is Inappropriate.**

The applicants' zone-change proposal was supported by an analysis of changed conditions in the area and at the site as well as their assessment that the zone-change will be "more advantages" to the community. R-270-1980 requires only that one of the these justifications be shown [R-270-1980, Sec. 1.D]. Because there is substantial evidence in the record of changed conditions to justify the zone-change, I focused my review on it. However, in terms of the applicability of the Comp. Plan and the NVAP to evaluate if the zone-changes are more advantageous to the community, I find that there is substantial evidence in the record as articulated therein (the applicable Rank plans), supporting the zone-

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<sup>8</sup> The two TISs were submitted to the City Traffic Engineer in draft forms because the trips analyses and mitigation measures will be recalculated and reassessed at the site-planning phase [R. 179-181].

change. As such, the evidence, therefore, supports a finding of the “more advantageous” requirement as well.

As for “changed conditions,” the required analyses under R-270-1980 is a focus on how the changes in conditions of the neighborhood and community, including the site, make the existing zoning inappropriate. Thus, the analysis necessarily requires an evaluation of the time-period, and changes that have occurred, commencing from when the existing zone(s) of the subject site were first established and ending with the current conditions at the site and in the area. I take notice that this analysis has been the long-standing administrative construction of R-270-1980 for evaluating changed conditions. Appellant, Anaya takes the position, however, that the investigation is a shorter time-period, commencing from the adoption of the applicable Rank Plans. I find there is no support in R-270-1980 or in any City policy for the arbitrary benchmark. I find that it has been the policy of the City to apply R-270-1980 in the manner the EPC did in this case.

The EPC made several significant findings regarding the inappropriateness of the existing R-1 and M-1 zoning [R. 30-31]. These findings are well supported by the facts in the record. It is undisputed that the existing R-1 zoning of the site abuts the M-1 zoning on the site [R. 297]. Buffering and establishing transitions between such differing zones is preferred in zoning. [Comp. Plan, p 5-26, Policy 5.1.1.11, p. 5-28]. Furthermore, in the applicant’s overview of the existing conditions within the proposed zone-change site, the applicant demonstrated that the existing M-1 zoning directly abutting the R-1 zoned lands is inappropriate and is likely one of the reasons for the vacancies of both zones [R. 338-339]. This evidence was not disputed by the Appellants. The applicant further demonstrated that



the inappropriateness of the zoning is further complicated by the advent of I-40 of which was constructed after the 1957 zone-change from R-1 to M-1—another fact in the record that was not disputed by Appellants. The construction of I-40 is a significant changed neighborhood condition which lends support for the EPC's finding that the existing zoning is inappropriate. The applicant also demonstrated that the 5.29-acres of M-1 land at the site is itself a "remnant" of the I-40 construction because prior to I-40's construction, the M-1 zoned land was much larger. The Interstate essentially split the M-1 land leaving the owner with an irregular, triangle-shaped parcel, further limited by the Campbell ditch on the East and the Alameda drain on the West. The applicant demonstrated that these conditions are additional reasons why the M-1 parcel remains vacant [R. 339]. Again, Appellants did not dispute this evidence.

Moreover, the R-1 and the M-1 zoned lands within the site is, and has been, primarily vacant for a long period [R. 338]. The applicant showed that "[f]or decades, only four of the subject parcels have been developed as private homes while the remaining parcels remain vacant" [R. 338]. This evidence was not rebutted by Appellants.

Finally, changes that occurred in the area surrounding the zone-change site were addressed by the applicant and the EPC. The evidence in the record demonstrates that in 1969, the City rezoned a large parcel of land directly East of the zone-change site, separated only by the Campbell ditch, to high density, R-3, for apartments [R. 291-293, 297]. The applicant argued that the R-3 zone and the existing adjacent R-1 zones, are less compatible than the newly proposed R-2 zone. This evidence remained undisputed. Although, Appellants generally argue that these are not changed conditions, they offered no evidence

rebutting the above facts nor supported their general contention with new facts. Nor did the Appellants demonstrate that the existing zones, proposed to be changed, are not inappropriate.<sup>9</sup>

I find that the applicant demonstrated with substantial evidence, and the EPC's findings are well-supported with substantial evidence, that the existing zoning of R-1 and M-1 on the 20-acre site are inappropriate because of changed neighborhood conditions. I further find that the inappropriate zoning justifies a zone-change.

**ii. The Proposed Zoning is Not in Significant Conflict with Adopted Elements of the Comprehensive Plan or the Applicable North Valley Area Plan.**

Having shown that there is substantial evidence in the record to affirm the EPC findings that the existing zoning is inappropriate, justifying a zone-change, I turn to whether there is substantial evidence in the record to support the zone-changes to C-2 and R-2. Under R-270-1980, Section 1.A and C, in addition to demonstrating the inappropriateness of the existing zoning, a zone-change applicant must also demonstrate that the proposed new zone districts are consistent with the health, safety, morals, and general welfare of the City, and that the new zone districts do not significantly conflict with City policies in applicable Rank Plans. The two applicable Rank plans in this zone-change are the Comprehensive Plan and the North Valley Area Plan (NVAP). Unless the EPC's interpretation of the applicable policies in the Rank Plans is irrational, arbitrary or capricious, it is generally accorded deference.

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<sup>9</sup> I note that the Appellants contend that increased traffic from development of the proposed zones is harmful, but this issue does not directly address the inappropriateness of the existing zones and, as discussed in more detail below, it is not supported by the two TIS's in the record.

199 The applicant demonstrated to the EPC that the zone-change site is surrounded by  
200 similarly intense land use zone districts as what is proposed at the site. The EPC and City  
201 Planning Staff agreed, and I find that there is substantial evidence in the record to support it.

202 Directly to the West of the site and East of Rio Grande Boulevard, are 16-parcels of  
203 land that are zoned SU-2 for LD MUD1 and 2 uses.<sup>10</sup> These parcels abut the applicants' site,  
204 separated only by the Alameda drain. The SU-2 for LD MUD designations of these parcels  
205 arose from a 2012 designation produced by the adoption by the City of the Los Duranes  
206 Sector Development Plan (LDSDP). Notably though, the LDSDP is inapplicable to the  
207 zone-change site because the LDSDP boundary does not encompass it. Appellant, Anaya  
208 contends that the EPC should not have included the SU-2/LD MUD parcels to justify the  
209 zone-change since those parcels belong to an inapplicable sector plan. Appellant's theory is  
210 misplaced because, regardless of the applicable sector plan boundary, the EPC still must  
211 evaluate the surrounding zones and uses to determine if the proposed zone(s) conflicts with  
212 them. Therefore, it was appropriate that the existing zones in the surrounding area, which  
213 includes the LDMUD zones, were compared with the proposed new zones to evaluate harm  
214 and/or incompatibility. The applicant demonstrated that these lands to the West of the zone-  
215 change site are compatible with the proposed C-2 and R-2 zones because the allowed uses in  
216 each are similar in intensities. City Planning Staff and the EPC agreed [R. 298 and 30,  
217 respectively]. Although, Appellants disagree that the zoning districts have similar intensities  
218 allowed, Appellants failed to put forth any alternative evidence, other than argument,  
219 supporting their contentions. I find that the EPC did not abuse its discretion, nor did it

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10 Under the Los Duranes Sector Development Plan, LDMUD is attributed to Mixed Use Districts which encompasses C-1, O-1 and, or C-2 uses.

220 misapply the facts.

221 To the North of the zone-change site is more nuanced because there is R-1 zoned land,  
222 some of which is owned by the applicant. The evidence demonstrates that the applicant  
223 recognized that City policies encourages transitions between differing zones to avoid the  
224 harm that may be caused by placing higher intensity C-2 uses next to lower intensity  
225 residential zones [R. 343]. The proposed C-2 zone (of which is a down-zone from the existing  
226 M-1 zone) replaces the M-1 zoning and is proposed to be separated from the existing R-1 to  
227 the North by an R-2 zone—a moderate intensity residential zone. The proposed R-2 zone is  
228 proposed to replace a large section of the existing R-1 zone, however, the applicant, City  
229 Planning Staff, and the EPC, determined that the proposed R-2 zone serves a valuable  
230 function—a buffer between existing commercial uses (to the Northwest) and the proposed  
231 commercial C-2 zone to the South.

232 In addition, the evidence further demonstrates that the proposed R-2 zoning will not  
233 harm either the existing R-1 zones to the South or the more intense exiting R-3 zone to the  
234 East. Although, at the EPC hearing some neighboring residents alleged that placing R-2 uses  
235 next to the exiting R-1 uses will harm their neighborhood, the evidence shows that the  
236 existing R-3 zone and uses are already perched adjacent to the R-1 zones separated only by  
237 the Campbell ditch [R. 292-293]. Thus, there is substantial evidence in which supports the  
238 EPC's finding that the proposed R-2 and C-2 proposed zones are consistent with the existing  
239 intensities of the existing zoning in the area. It is rational that the R-2 zone is a buffer to  
240 transition the R-1 zone from the more intensive zones in the area, including the existing R-3  
241 zone and the proposed C-2 zone.

242 The applicant similarly demonstrated that the proposed zoning does not significantly  
243 conflict with the applicable policies of the Comp. Plan and the NVAP. This analysis also  
244 demonstrates the “more advantageous” assessment to justify the zone-change. The City  
245 Planning Staff and the EPC agreed [R. 300-305 and 25-29, respectively]. However, the NVCI  
246 contends that “numerous provisions of the NVAP were not addressed...” by the EPC [R.  
247 17]. They allege that the EPC failed to address eleven, alleged applicable, policies of the  
248 NVAP [R. 18]. However, after reviewing the policies, I find that ten of the eleven policies  
249 they contend were not addressed by the applicant or the EPC either concern site planning  
250 (not zoning) or are inapplicable visionary policies for maintaining rural areas. As shown  
251 below, the site is not a designated rural or semi-rural area. Of the eleven, two concern zoning  
252 but relate generally to protection of residential zoning. One of these zoning policies raised  
253 by the NVCI discourages “radical rezoning of low density residential lands” [R. 18, citing to  
254 Page 46 of the NVAP]. There is no evidence in the record that the proposed rezoning from  
255 R-1 and M-1 to C-2 and R-2 is a “radical rezoning.” Certainly, Appellants may characterize  
256 it as such, but unless the EPC abused its discretion, and the findings and decision are  
257 rationally supported, the EPC will be afforded deference in exercising the discretionary  
258 authorities granted to it by the City Council. The EPC’s policy rationales cited in its findings  
259 for the zone-changes [R. 25-29] are not arbitrary or capricious and they are supported with  
260 substantial evidence.

261 As referenced above, the other zoning policy in the NVAP Appellants claim was not  
262 addressed concerns protection of low density residential areas from encroaching commercial  
263 uses or zones [R. 18, citing to page 14 of the NVAP]. I note again that the facts demonstrate

264 that the proposed R-2 zone is the buffer to the R-1 zone, providing separation from the  
265 proposed C-2 zone of which replaces the M-1 zone, whereas previously, the M-1 zone had  
266 no separation to the R-1 zones. It is clear from the record that a rationale for the decision,  
267 was that the existing condition, not the proposed zoning, represents the type of encroachment  
268 of low density residential zones the policy seeks to avoid. The existing condition of a M-1  
269 zone abutting a R-1 zone was not lost on the EPC---they found that the M-1 zone is harmful  
270 in its place [R. 30]. The evidence supports this finding and Appellants have not brought forth  
271 evidence that the EPC abused its discretion.

272 The NVCI and Anaya also allege that the general intent of the NVAP is to protect the  
273 rural and semi-rural lands within the boundaries of the NVAP. I agree. However, the NVAP  
274 designates the entire zone-change site as "Central Urban," the "most intense urban core of  
275 the City" [NVAP, page 42; EPC Minutes, R. 182]. This evidence was not disputed rebutted.  
276 Thus, Appellants' theories that the EPC ignored the rural character of the area and the  
277 protections for rural areas outlined in the NVAP or in the Comp. Plan, is mislaid by the fact  
278 that the site is not designated as rural or semi-rural.

279 I note for the City Council that there are designated areas in the NVAP which rural  
280 policies are aptly applied. However, the zone-change site in this matter, is clearly not one of  
281 those areas. Additionally, the fact that the NVAP designates the entire zone-change site as  
282 "Central Urban" further supports the EPC decision. Designated "urban" areas defined in the  
283 NVAP are encouraged for infill development [NVAP, p. 43]. Infill is a meaningful policy  
284 objective in the Comp. Plan and acknowledged by the EPC [Comp. Plan, 5-27 and R. 27-  
285 29]. I further note that the NVAP's "Central Urban" designation of the zone-change site

qualifies as a changed condition under R-270-1980.

The Comp. Plan designates the existing M-1 lands in the zone-change site as an “Area of Change” and the existing R-1 zoned land as an “Area of Consistency” [Comp. Plan, 5-25]. The parties do not dispute these designations. An Area of Change is defined as a:

City Development Area category where growth is desired and can be supported by multi-modal transportation, that includes designated Centers, most Corridors, Metropolitan Redevelopment Areas, and master planned areas such as industrial parks and planned communities. Development of higher density and intensity, typically with a mix of uses, is encouraged within Areas of Change [Comp. Plan, A-2].

An Area of Consistency is defined as a:

City Development Area category that includes single-family residential neighborhoods, parks, Open Space, and parcels where further development is not desired, such as airport runways. In Areas of Consistency, the focus is on protecting and enhancing the character of single-family neighborhoods and green spaces. Revitalization and development that do occur should be at a scale and density (or intensity) similar to immediately surrounding development in order to reinforce the existing character of established neighborhoods [Comp. Plan, A-3].

These dual designations of “Areas of Change” and “Area of Consistency” are designed to complement each other [Comp. Plan, 5-23]. They’re also designed “to protect the scale and character of distinctive neighborhoods while accommodating new residents and jobs in areas already well served by infrastructure and transit” [Comp. Plan, 5-23]. Although the EPC did not expressly touch on this point in its decision, it expressly made findings that the proposed zone-change will accommodate new employment that can be served by the multiple area transits [R. 29]. These findings are supported by the evidence in the record. The evidence reveals that there are three different, yet significant Comprehensive Plan designated corridors at the I-40 and Rio Grande Blvd. intersection—Major transit, multi-modal, and commuter

transits [R. 182, 25]. Anaya contends that the zone-change site is not a multi-modal corridor, and therefore the EPC erred in considering the corridors. However, the EPC did not find that the zone-change site is a corridor. It did find that the three corridors are near to the zone-change site [R. 25]. Again, I note for Appellant, that because the corridors are at close-quarters to the zone-change site, the EPC must consider them in its planning function and in its evaluations under R-270-1980. Zoning decisions and land-use planning cannot occur in isolation of the surrounding area.

Appellants further contend that because the existing R-1 lands are designated Areas of Consistency, the EPC erred in changing the zoning. Their argument is essentially that zoning districts in Areas of Consistency must remain in a state of moratorium. However, the definition of an Area of Consistency incorporates the potential for change, if the change is “at a scale and density (or intensity) similar to immediately surrounding development.” This presupposes that change may occur under certain conditions. There is substantial evidence of those conditions in the record. The evidence in the record demonstrates that the EPC and City Planning Staff did not misinterpret or misapply this defining language to the facts of the zone-change. In fact, the evidence establishes that the City Planning Staff and the EPC gave considerable attention in dealing with the zone-change because of the Area of Consistency designation. [R. 28]. The EPC expressly found that the zone-changes will enhance the area with a mixed density pattern of housing and commercial uses that mirrors much of the surrounding zoning and development [R. 25-26, 28]. Moreover, the EPC made findings comparing the intensity of the aggregate existing R-1 and M-1 zones with the proposed new R-2 and C-2 zones, and concluded that the proposed resulting intensities will



338 be similar [R. 28]. As shown above, the EPC findings of intensity are supported by the facts  
339 in the record and supported by the testimony of the City Planning Staff regarding their  
340 analysis of existing intensities and proposed intensities. The evidence was not rebutted.

341 The NVC next claims that the EPC acted arbitrarily and or capriciously because it did  
342 not “enter any findings acknowledging the testimony and evidence of almost 40 speakers”  
343 opposing the zone-change [R. 20]. The NVC does not explain why or how this is error. I  
344 find that there is no evidence in the record supporting the argument and I find that the EPC  
345 did not disregard the concerns of those opposing the zone-changes. Specifically, there is no  
346 evidence that those opposing the zone-change were prevented from getting their opposition  
347 into the record, nor is there evidence that the letters and testimony was not accepted in the  
348 record.

349 Conversely, the EPC made four findings regarding the testimony and letters from area  
350 speakers [R. 31-32]. In addition, the evidence demonstrates that the EPC deferred the first  
351 hearing scheduled for June 8, 2017 so that “continued discussion” with residents, the  
352 applicants, and City Staff could take place. Moreover, the purpose of the City sponsored  
353 facilitated meeting was so that the neighborhood concerns could be voiced directly to the  
354 applicant. Minutes of those discussions were included in the record for the EPC to review  
355 [R. 52-59].

356  
357 **B. Traffic and the Traffic Impact Studies**

358 Under R-270-1980, a zone-change “shall not be approved where some of the permissive  
359 uses in the zone would be harmful to adjacent property, the neighborhood or the community”

360 [R-270-1980, Sec. 1.E]. Appellants contend that this rezoning will be harmful to the area  
361 residents because it will lead to an increase in the already heavy traffic in the area. The EPC  
362 specifically found that the TIS "shows there is sufficient capacity on Rio Grande Blvd. to  
363 handle the additional trips generated by the proposed development" [R. 32]. Although, the  
364 finding is poorly worded (exact proposed development is not disclosed at this phase) I find  
365 that the evidence in the record, and specifically in the TIS, supports the finding to the extent  
366 that the TIS traffic engineer evaluated potential uses allowed in the R-2 and C-2 zones. In  
367 addition, there is substantial evidence in the record that the exiting transportation system has  
368 sufficient capacity to support the zone-change.

369 It is important to note that at this stage of development (zone-change), because the  
370 proposed zones are what is colloquially called "straight-zoning" of R-2 and C-2 zones, there  
371 is no requirement that the applicants identify specific uses or submit a site plan with their  
372 application. Under the City Zoning Ordinance, changes to Special Use (SU) zones require site  
373 planning simultaneously with the zone-change application. SU zoning is not proposed by the  
374 zone-change applicants in this matter, nor was it granted by the EPC. Site-planning is not  
375 required for a zone-change of this kind [§ 14-16-4-1]. In addition, although a TIS was  
376 submitted with the application, a TIS is not required for a zone change that does not include  
377 SU zones or site-planning. Notwithstanding, because part of the zone-change includes a  
378 large-tract of C-2 zoning, prior to development, when the applicants proposes uses at the site,  
379 the City Planning Staff will appropriately require the site-planning of it to be evaluated as a  
380 "shopping center site." Shopping center sites are subject to the additional regulations of the  
381 Zoning Code, § 14-16-3-2. In addition, because the proposed C-2 zone encompasses an area

382 of larger than five-acres, the C-2 zoning regulation of the Zoning Code also requires site-  
383 planning at the site planning stage---not the zoning stage [§ 14-16-2-17(A)(7)]. I also note that,  
384 although not raised at the appeal hearing, the record reflects that there is a fear the C-2 zone  
385 will be developed with a Large Retail Facility (LRF). However, because the C-2 zone does not  
386 have primary access from a collector street, an LRF cannot be developed at this site [See § 14-  
387 16-3-2(D)].

388 Because the applicants performed a TIS and a supplemental TIS, it was reviewed, and  
389 was utilized by the City Planning Staff, the City Traffic Engineer and the EPC as part of the  
390 basis for approval, [Finding 17 and 18, R. 32]. The findings, partly addresses the alleged traffic  
391 harm argued by Appellants.

392 Traffic Engineer, Terry Brown performed the two TIS's for the applicants.<sup>11</sup> Nine  
393 nearby intersections, using actual count data taken in May 2016, were evaluated. The actual  
394 count data was adjusted with the most recent Mid-Region Council of Governments' (MRCOG)  
395 data on growth. Trip assignments were factored in based on approved trip generation  
396 calculations for growth rates [TIS, p. 1-2]. The background traffic growth rates were factored  
397 into the analysis [TIS, p. 5-6]. The studies isolated the effects of the anticipated new traffic.  
398 The anticipated new traffic is based on the allowed uses in a C-2 zone which are cross-  
399 referenced with established and accepted criteria from the Institute of Traffic Engineers (ITE).

400 Although the two TIS's are draft studies and will not be finalized until site planning is  
401 complete, some significant conclusions therein support the zone-change. For example, Mr.  
402 Brown concluded that there is sufficient capacity in the existing transportation system for the

---

11 I take notice that Terry Brown is a qualified, certified expert traffic engineer in the State of New Mexico.

403 change of zones to C-2 and R-2 uses [R. 64-65]. In addition, the Traffic Impact Study showed  
404 a moderate increase in traffic volumes to the adjacent transportation network based on 100%  
405 buildout of the potential uses in the zone-change site [TIS, p. 25], resulting in an acceptable  
406 level of service (LOS) for all intersections studied [R.64-65]. And, highly relevant to this  
407 matter, one of the key findings in the two TIS's is that:

408 "The impact of the zone amendment, however, would yield a lesser impact  
409 [from existing conditions] since much of the project could be constructed  
410 under existing zoning. For example, all of the commercial uses along the  
411 east side of Rio Grande Blvd. and much of the M-1 zoned land along the  
412 north side of I-40 could be implemented with retail uses without the zone  
413 amendment. Therefore, the actual impact of the zone amendment itself  
414 would be much less than the impact indicated in the two Traffic Impact  
415 Studies" [R. 65].

416  
417 This finding is not insignificant. It is substantial evidence supporting the EPC's finding that  
418 the zone-change will not cause harm, at least with traffic (any more than development of the  
419 existing allowed uses in the R-1 and M-1 zones will), to the area residents. The Appellants did  
420 not offer any expert evidence to rebut the findings.

421 Appellants also argue that City Traffic Engineer Michael testified to the EPC that Rio  
422 Grande Blvd. is a failing intersection and the EPC ignored her. Appellants' characterization of  
423 Ms. Michael's testimony is not supported by the record. Ms. Michael, however, did testify that  
424 the I-40 exist at Rio-Grande Blvd. backs up and is over-burdened [R. 180]. There is no  
425 evidence offered by Appellants that demonstrates that the EPC ignored her testimony. Nor did  
426 Appellants offer evidence that this single condition is substantial evidence supporting a denial  
427 of the application. The EPC is charged with weighing all the evidence in the record, of which  
428 it did in this case.

429

430           **C. Noise, Light, and Air Pollution Caused by the Allowed Uses Under the Zone-**  
431           **Change**  
432

433           Appellants also contend that the proposed zone-change will harm the area residents in  
434   other ways. They allege generalized harm from secondary effects of development such as,  
435   added noise, light, and air pollution. Appellant, Anaya specifically argues that these harms as  
436   expressed by the area residents who testified at the EPC in opposition to the zone-change “were  
437   not seriously analyzed.” This conclusion is not supported by the record. Moreover, Anaya did  
438   not point to any specific parts of the record, or lack thereof, which might support his broad  
439   conclusion. Nor did Appellants tender any studies of the area which might support their  
440   theories.

441           However, the record demonstrates that the EPC heard the testimony, and queried some  
442   residents and City Staff regarding the content of these general issues [R. 142-178]. Prior to the  
443   EPC hearing, a City facilitated meeting took place at which area residents, the applicants and  
444   their planning team attended and discussed the concerns of the residents in the area [R. 52-59].  
445   After the EPC hearing, the EPC made express findings regarding the issues of harm and  
446   regarding the opposition to the proposed zone-changes [R. 31-32]. In addition, City Planner  
447   Vos, addressed the issues Appellants contends were not “seriously analyzed” [R. 290-326].  
448   Planning Staff addressed the issues from a planning and policy perspective, which is how  
449   zoning issues are handled under the Rank Plans and the Zoning Code. The fact that the site is  
450   in a designated “Central Urban” area has much to do with how the secondary effects of zoning  
451   are considered.

452           I also note that Anaya’s conclusions appear to be based on the existing conditions of

vacancies in the 20-acre site. The draft traffic study is substantial evidence in the record that the traffic harms caused by development of the proposed zoning will have a “less[oned] impact” compared to the development of the existing zones lands—specifically the M-1 zoned land. [R. 65]. Appellants did not dispute this evidence with their own expert analysis. Appellants have not met their burden of proof that the potential harms of the proposed zoning were not considered. The evidence in the record demonstrates that these issues were well-analyzed.

#### **D. Spot Zone.**

In her appeal, Appellant, Anaya claimed that the proposed zone-change creates a spot zone and that R-270-1980 prohibits spot zones. First, the evidence in the record clearly demonstrates that the proposed C-2 and R-2 zones are not spot zones. A spot zone “give[s] a zone different from surrounding zoning to one *small area*” (emphasis added) [R-270-1980, Sec. 1.I]. The R-2 and C-2 zones created are 7.85-acres and 11.61-acres respectively and are not considered small areas. Second, although inapplicable because no spot zones were created, spot zones are not *per se* impermissible as Appellant claims.

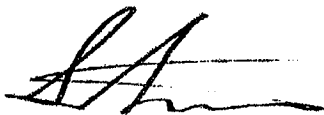
#### **E. The Alameda Drain and Campbell Ditch**

Appellants also believe that R-2 and C-2 development will adversely affect recreational use of the trails on the banks of the Alameda drain and the Campbell ditch. They claim this is unaccounted harm in which the EPC failed to address. The Appellants’ seem to suggest that development of private land will somehow block access to the drain and ditch banks. However,

not only is there no evidence that the drain and ditch will be impeded in any manner by development, but the evidence shows that development cannot occur on either banks of the drain or the ditch because they are not owned by the applicants. In short, the drain and ditch banks are not part of the zone-change lands [R. 344]. There is just no evidence in the record that the zone-change or development therein will impede or otherwise adversely affect the trials on the drain and ditch banks.

### III. CONCLUSION

For all the reasons described above, I respectfully recommend that Appellants' appeals should be denied in full. Both Appellants have not met their burdens of proof to sustain the appeals on any of the issues presented in their appeals. Conversely, I find that there is substantial evidence in the record supporting the zone-changes granted by the EPC.



Steven M. Chavez, Esq.  
Land Use Hearing Officer

October 2, 2017



# City of Albuquerque

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

## Action Summary

### City Council

*Council President, Isaac Benton, District 2*  
*Vice-President, Brad Winter, District 4*

*Ken Sanchez, District 1; Klarissa J. Peña, District 3*  
*Dan Lewis, District 5; Patrick Davis, District 6*  
*Diane G. Gibson, District 7; Trudy E. Jones, District 8*  
*Don Harris, District 9*

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Monday, October 16, 2017

5:00 PM

Vincent E. Griego Chambers  
One Civic Plaza NW

Albuquerque/Bernalillo County Government Center

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### TWENTY-SECOND COUNCIL - FORTY-THIRD MEETING

#### 1. ROLL CALL

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

#### 2. MOMENT OF SILENCE

Pledge of Allegiance - Don Harris, Councilor, District 9

#### 3. PROCLAMATIONS & PRESENTATIONS

#### 4. ECONOMIC DEVELOPMENT DISCUSSION

#### 5. ADMINISTRATION QUESTION & ANSWER PERIOD

#### 6. APPROVAL OF JOURNAL

October 4, 2017

#### 7. COMMUNICATIONS AND INTRODUCTIONS

#### 8. REPORTS OF COMMITTEES

Internal Operations Committee - October 4, 2017

Finance & Government Operations Committee - October 9, 2017



**Land Use, Planning & Zoning Committee - October 11, 2017****Deferrals/Withdrawals**

- g. R-17-177 F/S Directing The City Administration To Evaluate The Performance Of The Albuquerque Rapid Transit (A.R.T.) Project As It Impacts Traffic Along Central Avenue, Changes In Transit Ridership, And Changes In Traffic On Specified Alternative Routes After It Has Been In Operation For The Sixty-Day Period Starting Two Years, Per FTA Standards, After Project Completion Compared With The Same Sixty-Day Period In 2015, The Same Sixty-Day Period In 2013, And The Same Sixty-Day Period In 2010; And To Work With Adjacent Communities To Mitigate Any Negative Impacts Identified By Those Assessments, To Include An Option To Re-Open Dedicated Transit Lanes To General Traffic. The Results Of The Assessments Outlined Below Are To Be Evaluated By A Third Party That Is Independent Of Both The City Transit Department And MRCOG (Harris)

A motion was made by Councilor Harris that this matter be Postponed to November 20, 2017. The motion carried by the following vote:

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

Excused: 1 - Lewis

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

*President Benton pulled EC-17-443 off the Consent agenda.*

- \*a. EC-17-420 Declaring Parcel 3-QCD-1 at the I-25 and Rio Bravo Interchange, Not-Essential for Municipal Purposes

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

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

Excused: 1 - Lewis

- c. EC-17-445 Mayor's Appointment of Mr. Adriano Lujan to the ABQ Volunteers Advisory Board

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

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

Excused: 1 - Lewis

- d. EC-17-446 Mayor's Appointment of Mrs. Kathryn Perea to the Balloon Fiesta Park Commission
- A motion was made by Vice-President Winter that this matter be Confirmed.  
The motion carried by the following vote:
- For: 8 - Benton, Winter, Sanchez, Peña, Davis, Gibson, Jones, and Harris
- Excused: 1 - Lewis
- e. EC-17-447 Mayor's Appointment of Mr. Roger L Ebner to the Balloon Fiesta Park Commission
- A motion was made by Vice-President Winter that this matter be Confirmed.  
The motion carried by the following vote:
- For: 8 - Benton, Winter, Sanchez, Peña, Davis, Gibson, Jones, and Harris
- Excused: 1 - Lewis
- f. EC-17-448 Mayor's Appointment of Mr. Edward Gerety to the Greater Albuquerque Bicycling Advisory Committee
- A motion was made by Vice-President Winter that this matter be Confirmed.  
The motion carried by the following vote:
- For: 8 - Benton, Winter, Sanchez, Peña, Davis, Gibson, Jones, and Harris
- Excused: 1 - Lewis
- g. EC-17-449 Mayor's Appointment of Mr. Neil Katzman to the Youth Advisory Council
- A motion was made by Vice-President Winter that this matter be Confirmed.  
The motion carried by the following vote:
- For: 8 - Benton, Winter, Sanchez, Peña, Davis, Gibson, Jones, and Harris
- Excused: 1 - Lewis
- h. EC-17-450 Mayor's Appointment of Ms. Julia Youngs to the Urban Enhancement Trust Fund
- A motion was made by Vice-President Winter that this matter be Confirmed.  
The motion carried by the following vote:
- For: 8 - Benton, Winter, Sanchez, Peña, Davis, Gibson, Jones, and Harris
- Excused: 1 - Lewis
- i. EC-17-451 Mayor's Appointment of Ms. Nancy Zastudil to the Urban Enhancement Trust Fund
- A motion was made by Vice-President Winter that this matter be Confirmed.  
The motion carried by the following vote:
- For: 8 - Benton, Winter, Sanchez, Peña, Davis, Gibson, Jones, and Harris

Excused: 1 - Lewis

**J. EC-17-452**

Mayor's Appointment of Mr. Michael L. Mitchell to the Veterans and Military Affairs Advisory Board

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

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

Excused: 1 - Lewis

**\*K. R-17-235**

Approving And Authorizing The Filing Of A Grant Agreement For The Montañito Levee Drainage Project With The New Mexico Department Of Homeland Security & Emergency Management; And Providing For An Appropriation To The Municipal Development Department (Sanchez)

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

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

Excused: 1 - Lewis

**I. O-17-57**

Creating A Gross Receipts Investment Policy (GRIP) (Jones, by request)

A motion was made by Vice-President Winter that this matter be Withdrawn by Sponsor. The motion carried by the following vote:

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

Excused: 1 - Lewis

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

**b. EC-17-443**

Mayor's Recommendation of Wilson & Company, Inc., Engineers & Architects for On-Call Traffic Operations Engineering and NTMP

A motion was made by President Benton that this matter be Postponed to November 6, 2017. The motion carried by the following vote:

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

**10. GENERAL PUBLIC COMMENTS**

**11. ANNOUNCEMENTS**

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

**a. AC-17-7**

(Project #1011232/17EPC-40011) Anaya Law LLC, agent for Darlene M. Anaya, appeals the decision of the Environmental Planning Commission (EPC) to Approve a Zone Map Amendment (Zone Change)

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

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

For: 7 - Winter, Peña, Lewis, Davis, Gibson, Jones, and Harris

Against: 2 - Benton, and Sanchez

b. AC-17-8

(Project #1011232/17EPC-40011) North Valley Coalition, appeals the decision of the Environmental Planning Commission (EPC) to Approve a Zone Map Amendment (Zone Change) 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

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

For: 7 - Winter, Peña, Lewis, Davis, Gibson, Jones, and Harris

Against: 2 - Benton, and Sanchez

## 14. FINAL ACTIONS

\*a. O-17-49

C/S Adopting The Integrated Development Ordinance (IDO) And IDO Zoning Conversion Map And Repealing The Comprehensive City Zoning Code (§14-16 et seq.) And Existing Zoning Map; Repealing The Landmarks And Urban Conservation Ordinance (§14-12 et seq.), The Subdivision Ordinance (§14-14 et seq.), And The Airport Zoning Ordinance (§14-15 et seq.), Whose Regulatory Purposes And Content Have Been Incorporated Into The IDO; Replacing References To The Repealed Ordinances In Various Locations Of Revised Ordinances Of Albuquerque, New Mexico, 1994 (ROA 1994) With References To The IDO In Order To Maintain Internal Consistency In ROA 1994; And Amending Various Ordinances To Compile Relevant Sections Of The Code Of Ordinances And To Maintain Internal Consistency With The IDO (Jones, Benton)

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

**For:** 8 - Benton, Winter, Sanchez, Lewis, Davis, Gibson, Jones, and Harris

**Against:** 1 - Peña

**A motion was made by Councilor Jones that this matter be Postponed as Substituted to November 6, 2017. The motion carried by the following vote:**

**For:** 8 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Jones, and Harris

**Excused:** 1 - Gibson

**f. O-17-52**

**Repealing The Safety In Public Places Ordinance (Jones)**

**A motion was made by Councilor Jones that this matter be Postponed to November 6, 2017. The motion carried by the following vote:**

**For:** 8 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Jones, and Harris

**Excused:** 1 - Gibson

**\*h. R-17-216**

**Approving The Application And Petition Of Eastside Development Inc., For Formation Of The Juan Tabo Hills Estates Public Improvement District Pursuant To The Public Improvement District Act, NMSA 1978, § 5-11-1 To -27 (2001, As Amended) And City Ordinance Enactment No. 0-2003-12, Council Bill No. F/S 0-03-84 (Harris)**

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

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

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

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

**Excused:** 2 - Lewis, and Jones

**\*i. R-17-248**

**Concerning The Municipal Runoff Election To Be Held In The City Of Albuquerque, New Mexico, On Tuesday, The Fourteenth Day Of November 2017 (Benton, by request)**

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

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

**Excused:** 1 - Lewis

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

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

**Excused:** 1 - Lewis