

TO: EPC Chairperson and Members
FROM: Dan Regan
DATE: 11/6/20
SUBJECT: Role of EPC in Ongoing Quality of IDO Implementation

My purpose in writing this memo is to present to the EPC some serious matters for consideration of the 2020 IDO Revision content. And, I fully understand if you would rather not deal with any of that at this time, but “fun flies, when ya doin’ time” as some would say. I do think that these are critical issues if the City (Council, Administration, Planning Dept. and decision-making bodies) wants to maintain &/or possibly regain the confidence of the residents of our city when it comes to Zoning matters.

Agenda item 5 for your November 12, 2020 meeting is Project #2019-002920, SI-2020-00996; a zone change for the NW corner of Montgomery NE and Carlisle NE. It is appropriate that this zone change is being decided at this time. As this zone change is being considered, I ask that you also consider the declared use for which this property clearly intended.

I would like to also bring to your attention that this project went before the ZHE on November 19, 2019 for a Conditional Use Variance. The application for this Conditional Variance (VA-2019-00326) contains a serious misstatement of material facts in this matter. The NOD for this matter, issued December 4, 2019, simply copied this misstatement of material facts in its findings and gave approval for this Conditional Use. That NOD is not in compliance with the plain language or regulations of the IDO.

A quick capture of the salient points to substantiate my statements immediately above:

- The project site has residences (condos & apartments) within 65 feet to the north & 100 feet to the east. Some of these residences are subsidized housing (Section 8). English is the second language for many residents none of whom are not members of any ONC/City recognized Neighborhood Association and, hence, have had limited to no voice in this matter.
- These residential properties have been designated with Residential zoning since at least the 1970s.
- IDO Section 14-16-6-6(A)(3)(e) states in plain language that *“It (a Light Fueling Station) will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am;”*
- Since the 1970s this project site has been occupied by a religious institution and has had NO commercial activity on it between the hours of 8:00 pm and 6:00 am.
- The purpose of the zoning being sought for this project site from EPC (and for the Conditional Use Variance with ZHE) is the commercial operation of a 24 hour a day, 7 day a week, 365 days a year, Light Fueling Station as stated by the owner and agent for this property.
- Commercial activity is *“non-residential activity”*. But the statements of the Agent for this project in their ZHE application were:
 - “ 2) It [the Application] complies with all applicable provisions of the IDO, including but not limited to any Use specific Standards applicable to the use in Section 14-16-4-3;” (page 51)
 - “ 5) It will not increase non-residential activity within 300 feet of a lot in any Residential zone district between the ours of 8:00 p.m. and 6:00 a.m.
 - The proposed site will not increase non-residential activity between the hours of 8:00 pm and 6:00 am. The anticipated customers who will visit the site during these hours are residents of the area, requiring fuel service

or goods from the convenience store. Non-residential activity of a prohibited manner will not be increased with the approval of the Conditional Use Permit. The proposed site access points shall remain as currently established for the property with a right-in, left in and right-out shared driveway entrance on Montgomery Boulevard and a full access driveway off Carlisle Boulevard. The residential zone district begins north of the Carlisle driveway access point and therefore no additional non-residential activity is expected beyond this driveway entrance. In addition, all commercial activity and business density is along the major transit corridor on Montgomery Boulevard and Carlisle Boulevard.” (page 52 – of Application as provided by ZHE)

- Regardless of which major transit routes this project sits upon, the commercial activity will still be happening on a site within 65 & 100 feet of residences every night between 8 PM & 6 AM.....and this project does NOT comply with IDO Section 14-16-6-6(A)(3)(e).
- YET, the NOD for VA-2019-00326 contains the same language as the application, e.g., “It will not increase non-residential activity within 300 feet of a lot in any Residential zone district between the hours of 8:00 p.m. and 6:00 a.m.”
- Prior to and during the ZHE Hearing for this case, the ZHE & his staff were made aware 4 times of this discrepancy between the agent’s statements and the reality on the ground.
- The Director of the Planning Department, Brennon Williams, said that I seemed to have a factual basis for an Appeal of the ZHE’s NOD. My reply to him was that if the Planners & the Planning Dept. had done their jobs, the misstatement of material fact would have been corrected before ZHE received it.
- Mr. Brennon also acknowledged that, after two months of investigation, he was unable to find a single application used by the Planning Department that requested or required an applicant to attest to the truthfulness of the information contained in the application being made. In January 2020, Mr. Brennon stated to the District 4 Coalition that he could/would look into getting such an attestation added to the Planning Department’s applications. That’s the last I have heard about this effort since that time.
- In July 2020, I supplied Mr. Brennon with the language of attestation of truth used in an US EPA form; still no word from him on any progress in this matter.
A note: I have reasonably complete documentation of all of the above if any of you would like to delve into these matters in more detail.

When I shared the same above information with the DRB Hearing on 3/4/20, City Planner Maggie Gould asked if an Appeal had been filed in the ZHE NOD matter. I replied that I didn’t think it was a good idea to become part of a “financial shakedown racket” being run by the City.....that if the City was not going to require truthful applications and were not going to call out the lack of truth in the Application reviews and Hearing processes but would then require ONC recognized Neighborhood Associations, HOAs & District Coalitions to spend their private funds on an Appeal (and eventually incur legal/attorney fees) ----- in any non-governmental business arrangement, this operational mode would be a “shakedown”.

I am not an attorney, but somewhere along the line, I picked up the following understandings:

- If I am engaging in a business transaction and I become aware that one party to the transaction is acting in bad faith and another is relying upon untrue statements for the conduct of the transaction.....and I agree to go along with the transaction knowing the bad faith & lack of truth, then I am, by active participation, as guilty as any of the other parties to this potentially illegal & unethical business transaction.
- When I found my city administration, especially when zoning matters are at stake, acting in bad faith & relying on untrue statements, I choose not to go along with the chicanery of the City's internal Planning Dept.'s processes.

The initial cost of an Appeal of the ZHE's NOD would have been \$130, but some of the current attorney bills for some current Appeals have grown to more than \$10K & 20K. Based on the 'facts on the ground' and the legal/ethical issues in this matter, I chose not to "play the game".

I am also painfully aware that your group, as the EPC, may not be any more able to deal directly with the ZHE's NOD than the DRB could back in March 2020.....and that creates a MAJOR problem, because there are many such issues & problems with zoning over the past two years (the IDO went into effect 5/17/18) that NO ONE could or wanted to touch, deal with or even be aware of. The new IDO has been so structured that no one has to be accountable for new developments being approved when they do actual damage to the surrounding residential areas and, hence, are directly contrary to the stated policies of the Comprehensive Plan and, many times, contrary to IDO regulations, if they are taken at face value.

I started this memo with: "My purpose in writing this memo is to present to the EPC some serious matters for the 2020 IDO Revision content." So let me get to my purpose.

I suggest to the EPC that there are some choices to be made going forward regarding the issues deeply embedded in the information supplied above:

Shall the City of Albuquerque (& the EPC by implication & participation) continue to allow developers and agents to file Applications which contain verifiably false content and unsubstantiated, gratuitous statements?

OR

Shall someone in the City's functioning (& the EPC could be an impetus in this) cause the Planning Dept. to add to its Applications an attestation to the truthfulness of the information provided in every Application?

Shall developers and agents be allowed to walk past the Planning Dept. and the Hearing bodies/persons bold face untruths and come out with NODs that are not compliant with the IDO's own regulations?

OR

Shall the Planning Dept. become responsible for flagging the untruths of and games being played by developers & agents without neighborhood communities having to fork out substantial amounts of private monies because the Planning Dept. and the City hasn't done its job?

Shall someone cause the zoning & IDO based decisions being made going forward to be tied directly to the stated policies of the Comprehensive Plan?

OR

Shall it still be possible to build a four story apartment complex within 100 feet of the boundary line of single family homes & thereby removing all site plains of the western sky & horizon from a long & well-established residential community? (The EPC could begin by reading your own NOD that you used to send Batch 2 the of Voluntary Conversions to the City Council....in that NOD you captured 13 statements from the Comp. Plan about preserving, protecting and enhancing / valuing residential communities.)

Shall the City of Albuquerque act as if the 2+ million dollars spent on the development of the Comprehensive Plan and the IDO was money well spent because it gave us an approach and documentation that could be relied upon to protect the unique cultural, environmental and ethnic diversity of our city?

OR

Shall developers and agents be allowed to interpret, bend, twist and propose that the plain language of the IDO wasn't REALLY meant to keep "market forces" from doing whatever in the heck they want to do.....even it that is to turn our city into every other city in the USofA with the pabulum of chain stores, fast food/quick-rip joints, coffee shops and cookie cutter apartment buildings that aren't compatible with their surroundings? As a CITY, we used to be a unique, southwestern mix of all of us.....we are fast becoming run of the milland that "mill" was never that attractive any other place either.

I thank you for all of the hours and pain that the 2019 IDO Revision caused you as members of the EPC. It was as much "fun" for all who participated in that process, I can assure you.

I ask that you reflect on the choices spelled out above, because

- We have the next piece of the never-ending journey facing us....the 2020 IDO Revision;
- And we are NOT at a place yet where there is any real balance between the abilities of the local development industry to develop and the abilities of the city residents (who own 75 to 80% of the private property in our city) to protect their own neighborhoods and sense of self about our city's identity;
- And trudging up the 2020 Revision hill in the midst of the remainder of this global / state wide / city wide pandemic will not be for the faint hearted (and that is not meant as a pun of any sort)...;
- And we are going to have to stay on task.

I look forward to working with you and others in the City to form a more vibrant Albuquerque which is grounded in our unique geography / landscapes; our multicultural, diverse population and our healthy residential communities.

Dan Regan

Knapp Heights Neighborhood Association, President
District 4 Coalition, Zoning / Development Committee, Chair