



CITY OF ALBUQUERQUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

CITY OF ALBUQUERQUE / JESS R MARTINEZ (TINA M REAMES, AGENT) requests a special exception to Section 14-16-2-6(B)(10) : a CONDITIONAL USE to allow a community center in an R-1 zone for all or a portion of Lot A, Singing Arrow Park zoned R-1, located on 13001 SINGING ARROW AV SE (L-22)

Special Exception No:..... **16ZHE-80328**  
Project No: ..... **Project# 1011083**  
Hearing Date: ..... 10-17-17  
Closing of Public Record: ..... 10-17-17  
Date of Decision: ..... 11-01-17

On the 17th day of October, 2017, TINA M REAMES (“Agent”) acting as agent on behalf of the property owner CITY OF ALBUQUERQUE/JESS R MARTINEZ (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a community center in an R-1 zone (“Application”) upon the real property located at 13001 SINGING ARROW AV SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

**The Proposal**

1. Applicant is requesting a conditional use to allow a community center in an R-1 zone.
2. The proposed center will be a replacement for the existing Singing Arrow Community Center.
3. The proposed center is projected to be approximately 15,000 square feet. It will include a reception area, multi-purpose room, classroom, computer lab, game room, meeting room, fitness room and a warming kitchen.
4. The project will include improvements to the adjacent parking lot including repaving and striping, installing lighting and cameras and landscaping.

**The Planning Process**

5. Section 8.3 of the East Gateway Sector Development Plan (October 2010) recommended: To function as a vibrant community hub, Singing Arrow Community Center must be enlarged. The Plan recommends a study of community needs to determine how they might be addressed at an expanded Singing Arrow facility. The study should consider: classes and programs for local children and adults, indoor and outdoor recreation, a commodities distribution program, and transportation services for children. The needs assessment should consider building expansion, modular building retention and long-term replacement of the existing structures.

6. The City of Albuquerque subsequently commissioned the Singing Arrow Community Center Needs Assessment (October 2013), completed by Sites Southwest.
7. The needs assessment determined that “The facility is old and in need of repair or replacement, the roof sometimes leaks. Its facilities are substandard compared to newer site built community and senior centers such as Holiday Park and Manzano Mesa.”
8. An area of approximately two-mile radius around the existing center was analyzed, which encompassed a demographic analysis including numbers, ages, incomes and household characteristics.
9. The analysis relied on both data including the US Census, MRCOG and both telephone and in person interviews and included a demographic analysis of population characteristics and an inventory of public and private facilities and programs.
10. The assessment determined existing service gaps for various sectors of the population.
11. The assessment considered the benefits and impacts of variously sized community centers in the context of the range of services and amenities offered.
12. The criteria that were evaluated in the Needs Assessment, in accordance with the Long-Range Plan for Community Facilities were:
  - Visible site (located adjacent to principal or minor arterial)
  - Access to transit
  - Access to trails
  - Co-located with other facilities (existing library, school, pool)
  - Proximity to parks
  - Proximity to private service providers
  - Surrounded by public schools, multi-family residential, single-family residential, commercial/office land uses, in order of preference.
  - Potential for expansion
  - Potential for reuse of existing facility
13. Three separate locations were identified and each was analyzed in accordance with these criteria, with the proposed location being recommended as the “most promising location” with the specification that it would work best if the adjacent parking lot could be acquired (it has subsequently been acquired).
14. After having determined the preferred location and needs, and securing financing, the Application was submitted.

### **Procedural Posture and Code Requirements**

15. This Application comes before me on remand from the Board of Appeals.
16. I initially heard the Application on January 17, 2017 and issued my notice of decision on February 1, 2017, which was subsequently appealed.
17. The Board of Appeals heard the appeal on April 25, 2017, issuing its order remanding for a rehearing, requesting findings of fact.
18. I reheard the Application on October 17, 2017.
19. Under Section 14-16-4-2(C)(1), “A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:

- (a) Will not be injurious to the adjacent property, the neighborhood, or the community; [and] (b) Will not be significantly damaged by surrounding structures or activities.”
20. The Application may only be approved if the evidence in the record demonstrates that these criteria are met, and “it is the burden of the applicant to ensure that there is such evidence in the record.” 14-16-4-2(C).
  21. As a practical matter a lack of injury can only be determined with reference to potential injuries and an analysis of those potential injuries.
  22. In analyzing whether the Applicant has met its burden, I must necessarily consider the evidence of injury offered by other parties and determine whether the Applicant has adequately rebutted that evidence.
  23. The Applicant’s burden is an evidentiary one, and the Applicant cannot reasonably or practically be held to a burden of disproving all possible scenarios in which that injury could potentially occur.
  24. Our Court of Appeals has addressed this challenge before:  
The effect of this second requirement of § 74-2-8, supra, is to impose the duty of proving a negative on the applicant for a variance. The courts have recognized the difficulty of such a task and ruled accordingly. A party is not required to make plenary proof of a negative averment. It is enough that he introduces such evidence as, in the absence of counter testimony, will afford reasonable ground for presuming the allegation is true; and when this is done the *onus probandi* will be thrown on his adversary. *Duke City Lumber v. NMEID*, 1980-NMCA-160, 15 (internal citations and punctuation omitted).
  25. Simply identifying a potential injury, without evidentiary support, does not automatically make the Applicant responsible for disproving it.
  26. Therefore, I find that the Applicant’s obligation is to ensure that the record contains evidence affording a reasonable ground for presuming the lack of injury.
  27. I am required to make my decision based on substantial evidence in the record. NMSA 1978, Section 39-3-1.1.
  28. Some parties expressed concerns about procedural as well as substantive matters, such as the use of bond funds for new construction vs. rehabilitation of the old center, consultation with state agencies, inadequate notice and limited time for investigation.
  29. I do note that by the rehearing opposing parties had over nine months to investigate and prepare, and all required noticing was completed by the Applicant. In addition, there were facilitated meetings about the project on February 7, 2017 and August 9, 2017.
  30. Setting aside the technicalities of the burden of proof and jurisdiction, my focus is simply on whether the proposed community center will be injurious to adjacent property, the neighborhood or the community.

#### **Applicant’s Evidence that the Use will not be Injurious**

31. At the initial hearing the Applicant addressed the potential for injury, and on rehearing the Applicant addressed the concerns raised at the ZHE and BOA hearings, filling in the detail lacking at the initial hearing.

32. In response to the BOA's indication that a preliminary site development plan may have been helpful, the Applicant developed and offered such a plan.
33. The plan includes the location and size of the proposed center, signage, lighting, parking lot improvements, provision and location of security cameras, gated parking lot, provision of street trees, removal and location of shrubbery to reduce security risks, a building designed to minimize niches and dark corners and limiting electrical outlets on the outside of the building.
34. The building itself is designed with safety and security view corridors in mind, both in the context of views to the park and parking lot, and the ability for staff to see who is approaching or using various parts of the center, including restrooms. Access to showers will be restricted.
35. No outdoor uses are proposed, such as athletic courts or patios/picnic areas, limiting the potential for excessive noise.
36. The Applicant addressed several of the specific aspects of the Application that prompted concern initially, including the location and size of the proposed building and access to the facilities.
37. The Applicant does not propose a use that will produce excessive noise, light, dust, fumes or odors.
38. I find that there are reasonable grounds for presuming the lack of injury.
39. I then turn to the arguments and evidence presented in opposition to the Application, and a determination of whether they demonstrate that the proposed use will in fact be injurious, contrary to the Applicant's position.

#### **Alleged Deficiencies in Needs Assessment**

40. Some parties assert that the Needs Assessment was deficient, primarily in the conclusion that the proposed community center is needed at all.
41. My required analysis is whether the proposed use will be injurious, not whether there is a demonstrated need for the proposed center.
42. Therefore, in large part any alleged deficiency of the Needs Assessment is irrelevant to my analysis.
43. I am also loathe to attempt to substitute my judgment for that of the professional analysts who made the determination in both the Sector Development Plan and the Needs Assessment.
44. No logical argument was presented as to why there would be a benefit to the City in building an unnecessary center and wasting precious public funds.
45. That said, one aspect that may be relevant is the potential that the new center is entirely unnecessary and will go unused, ultimately being closed and contributing to blight caused by vacant buildings.
46. I find this scenario, that the project is not viable in the long term, highly unlikely.
47. The needs assessment did demonstrate a need for the center, after what appears to be a good faith consideration of relevant factors.
48. The Applicant also surveyed the Manzano Mesa Multigenerational Center and determined that it is at capacity in several program and facility areas, including the gym, spray park and classrooms in the evening.

49. Reviewing the locations of other community centers in the City, the Singing Arrow area has a lower density of community centers than many other areas of the City. Given the intent to facilitate walking access to the center, forcing people to go up to two miles away does not seem reasonable.
50. Concomitant with opening the new Center the old Singing Arrow Community Center will be converted entirely to early childhood uses. Therefore, all existing users and uses will be transferred to the new Center, forming a built-in need and client base immediately.
51. Both the Family and Community Services Department and the Parks and Recreation Department fully support the proposed location.
52. Applicant offered assurances that the project had been planned with consideration of operating funds taken into account.
53. Beyond criticism of the needs assessment or concerns of inadequate funding no party offered a contrary analysis to show that the center is not needed or will not be funded.
54. I find that the risk of the building becoming vacant and blighted is minimal to nonexistent.

#### **Exacerbation of Crime and Homelessness**

55. Large portions of the testimony and submittals in opposition to the proposal focus on the existing crime problems and asserted problems with homelessness in the area.
56. There was testimony that there is “already high crime and break-ins and vagrancy and vandalism,” that there is “already negative activity happening” in the area and that burglars have used the park as an escape route after breaking into homes.
57. There was also testimony that homeless individuals are using the existing park to camp in, and urinating/defecating on private property.
58. I do not expect the proposed community center to solve problems, nor do I assign the burden of ameliorating them onto the community center, although that would be a worthy outcome.
59. Rather, my focus is whether approval of the proposed center will cause further injury.
60. The focus of the opposing comments seemed to be on the potential that the new community center would attract additional crime and additional homeless individuals.
61. The record does not reflect any substantial evidence supporting this concern. Rather, there is a small amount of anecdotal testimony regarding other community/multi-generational centers.
62. Applicant, for its part, suggests two interrelated themes: “good activity inhibits bad activity” and “eyes on the park” that will limit criminal or undesirable activity.
63. The Center will be designed to have sight lines facing the parking lot, in front of the building, and the park, behind the building.
64. The idea is that individuals working in and using the Center will also be monitoring the parking lot and park, which will discourage such activity.
65. The needs assessment’s conclusion also included reference to the benefits of the “eyes on the park” aspect of the proposal.
66. The Applicant suggested that the City is working on fencing the parking lot and that it can be gated after hours.



67. There was mixed testimony on the gating option from parties, and the Applicant remains open to either option.
68. Commander Fernando Aragon, Area Commander for the Foothills Area Command, testified regarding the association of crime and community centers.
69. Commander Aragon explained that the proposed Center and parking lot improvements would include lighting and cameras linked to APD's Real Time Crime Center.
70. Commander Aragon described his research of the connection between public amenities such as community centers and crime. He had not been able to find an analysis that definitely answered the question one way or the other.
71. However, his opinion (as a law enforcement professional) is that "more legitimate users push the illegitimate users out."
72. The proposed Center is expected to draw additional, legitimate users.
73. Commander Aragon also addressed the issue of homelessness, explaining that it was a growing community concern and that the City and APD was working to connect homeless individuals with the needed resources, and that would be their approach going forward.
74. Commander Aragon did state that there were relatively few homeless individuals currently occupying the area in question.
75. Given the larger size of the proposed new center and additional parking it can be expected to attract more users than the current center.
76. In the absence of any type of substantial, quantitative evidence that the projected users of the Center will exhibit a higher degree of criminality than users of the current center or park, however, I am unwilling to find that their mere presence in the vicinity is injurious.
77. Even if there were compelling and substantial evidence that the proposed Center is likely to attract more homeless individuals than currently occupy the area, there is no evidence in the record that those individuals would present any heightened security risk.
78. Moreover, the availability of public restrooms might alleviate one of the expressed concerns.
79. In short, while I am sympathetic to the existing problems with crime, and would not want to exacerbate those problems, none of the opponents were able to connect the dots between construction of the new center and increased criminal activity with anything approaching substantial evidence.

### **Traffic Impacts**

80. Parties raised several aspects of the potential traffic impacts of the proposed use.
81. The Applicant explained that the project did not meet the level of activity necessary to require a traffic impact analysis.
82. The determination of whether an analysis is required and, if so, whether improvements to mitigate the impacts will be required, is the province of the City Traffic Engineer, not the ZHE.

83. Applicant did confirm that the level of service at the intersection of Wenonah Ave SE and Tramway Blvd SE was currently adequate and was not expected to be unacceptably degraded.
84. This is confirmed by the East Gateway SDP, 4-26: "In general, other than Juan Tabo and Eubank Boulevard intersections with Central Avenue, major East Gateway thoroughfares carry traffic below their capacity."
85. In the context of an Application that does not meet the threshold requirements for a traffic impact analysis, and an SDP that indicates that traffic congestion is not a concern, I have no basis to find that the proposed community center would be injurious on that basis.
86. Moreover, testimony that the current community center is under-utilized, that the needs assessment was deficient and there will be little use of the proposed center and that there is a small population to draw on all serves to negate concerns about excessive traffic.

### **Parking Impacts**

87. The redesigned parking lot will have 114 parking spaces.
88. The Board of Appeals found that that parking should be calculated using Section 14-16-3-1(A)(22), the standard for public assembly spaces, at one space per four seats, and therefore a seating plan would be required.
89. The Applicant asserts that the proper standard should be one space per 200 square feet, using the standards for offices, §14-16-3-1(A)(21), and recreation, 14-16-3-1(A)(23), yielding a requirement of 75 spaces (30 spaces under the IDO).
90. With the benefit of a more complete design of the building at the rehearing it is apparent that a seating-based standard would not be appropriate given the lack of any significant public assembly seating.
91. The Applicant also identifies the site as having excellent pedestrian, bicycle and transit access.
92. Therefore, it appears that the Applicant is proposing a significant excess of parking and with the option of convenient and secure parking at the community center there should be no problems with overflow parking to the neighborhoods. This is my primary concern with respect to injuriousness, and it has been satisfied.
93. In any event, the parking requirement must be addressed by the Applicant before receipt of a building permit. §14-16-3-1.
94. The zoning classification of the parking lot, SU-2, permits parking lots for required on-site parking. EGSDP 5-12.

### **Open/Green Space Retention**

95. Parties suggested that construction of the proposed center would significantly reduce available open space or green space.
96. The Applicant clarified that, after having the property surveyed, the grass and landscaped "greenspace" is approximately six acres and the archeological site is approximately six acres.
97. The proposed Center will occupy approximately 10.4% of the existing greenspace.

98. I find that this is a nominal impact on the available open space and green space and does not conflict with the goals of the East Gateway Sector Development Plan to maintain open space (noting that parks, major open space and golf courses form the second largest component of land uses in the sector, at 491 acres or 14.1% of the total). EGSDP at 4-7.
99. New landscaping will be planted, including trees on the east and south of the building and in the parking lot.

### **Damage to Archeological Sites**

100. Various opinions were offered as to the potential for impacts to the adjacent archeological site and to cultural remains on the proposed community center site itself.
101. The Applicant's site plan shows that the proposed community center will be well separated from the designated and fenced archeological site at Singing Arrow Park.
102. A June, 2016 archeological testing report prepared by SWCA Environmental Consultants, using surface survey, 100 auger probes and two 1x1 m test units determined that "the proposed park development would have no effect on cultural resources."
103. The best evidence in the record indicates that the proposed Center will not cause injury to the adjacent archeological site, and there are no cultural resources within the proposed construction area.
104. Moreover, the increased usage of the park related to the proposed community center may help protect the archeological site by avoiding the opportunity for individuals to enter and damage the site undetected.
105. The proposed use does not conflict with the East Gateway Sector Development Plans' goals of appropriate treatment and public understanding and appreciation. EGSDP at 2-6.
106. City Archeologist Matthew Schmader issued a certificate of approval on October 5, 2017.
107. I find that the proposed Center will not be likely to cause injury to archeological sites.

### **Impact on Property Values**

108. Letters from two real estate brokers were introduced in opposition, one of which that concluded that construction of the Center would reduce real estate values in the area by 15-20%.
109. The letters offered no supporting evidence, such as a matched-pair sales analysis, that would back up a conclusion of such a drastic reduction.
110. In the absence of evidence of an analysis conforming to generally accepted appraisal techniques and the opportunity to question the broker I do not assign the proffered opinion any substantial weight.
111. There was no other competent evidence of the potential effect of the proposal on real estate values, either positive or negative.



112. I find that the proposed Center will not be likely to cause injury to real estate values, particularly in the context of the need to determine the offsetting positive effect on values associated with the new amenity.

### **Grading and Runoff**

113. Concern was expressed about the impacts from grading for the project and increased storm water runoff.

114. All construction must comply with Sections 14-5-2-1 *et. seq.* (Drainage Control) and 14-5-1-1 *et. seq.* (Flood Hazard Control).

115. There is no basis to conclude that there will be injuries from the proposed project constructed in accordance with these requirements.

### **Design of Project**

116. The proposed design, conceptual in nature, is understood not to be a final design but rather a good faith representation of the proposed building's appearance, size, massing and design elements.

117. The building will feature a low profile, variation in massing and height, quality materials, appropriate windows, and will be oriented with narrow end toward residential neighborhood.

118. In general my task does not extend to analyzing and passing judgment on the architectural design of the proposed building. Rather, I am tasked with determining whether the use will be injurious.

119. That said, there is overlap between use and the design and improvements, and a limited review of the design of the proposed Center may be warranted.

120. The building maintains a lower profile where higher ceiling heights are not required.

121. It strikes a balance between architecturally pleasing massing of the structure and limiting niches and blind corners for security reasons.

122. The building will be oriented with its short side toward the immediately adjacent residential neighborhood to further reduce visual impacts.

123. The Applicant has taken steps to reduce existing dense landscape cover which facilitated camping out of sight. The proposed approach to landscaping is similarly to use lower, sparser vegetation to increase visibility and limit cover.

124. Mature trees will be removed for construction, and Applicant will replace them with new plantings.

125. While any building will have its detractors, and to a real extent good architecture is designed to challenge, my sole task is to determine whether the proposed building will be injurious to the community, neighborhood or adjacent properties.

126. I find no substantial evidence in the record that the proposed Singing Arrow Community Center building will be injurious, and I find no basis on which to find that it will be injurious.

### **Damage to the Proposed Use**

127. In addition to confirming a lack of injury to adjacent property, the neighborhood, or the community from the proposed use, I must confirm that the proposed use will not be significantly damaged by surrounding structures or activities.
128. The surrounding structures and activities include Singing Arrow Park and the adjacent archeological site and open space; single, multi-family and senior housing; retail/shopping center; and pedestrian, bicycle and transit uses.
129. These uses inform the need for the community center and complement its amenities. A sufficient user base, adequate access and complementary activities and structures such as retail will help ensure the success of the center.
130. Two potential sources of damage to the community center were identified.
131. The first is the assertion that it will draw homeless individuals attracted to the availability of bathrooms and showers and that their use of the center will be injurious.
132. I can see no reason why individuals that happen to be homeless would use a bathroom or shower in a different manner than any other user of the center, nor is there any evidence of that in the record.
133. Using the bathrooms and showers for their intended purposes cannot be seen as damage to the community center.
134. The second potential source of damage is found in the parties' focus on the nearby smoke shop located at the intersection of Wenonah Ave. SE and Tramway Blvd. SE.
135. The assertion was made that the smoke shop sells synthetic marijuana ("spice"), and some documentation of the effects of synthetic marijuana use was entered into the record.
136. Parties asserted that individuals under the influence of synthetic marijuana may cause damage to the proposed Center.
137. I find this assertion to be speculative at best.
138. At a minimum there is no substantial evidence of any sort of imminent threat of damage to the community center associated with the sale of synthetic marijuana in the neighborhood, or any indication of that form that damage may take.
139. I find that the use will not be damaged by surrounding activities or structures.

### **Conclusions**

1. I find that the proposed use will not be injurious to adjacent property, the neighborhood, or the community.
2. I find that the proposed use will not be significantly damaged by surrounding structures or activities."
3. I find that the evidence in the record demonstrates that these criteria are met.
4. The Applicant has met its burden to ensure that there is such evidence in the record.
5. To the extent that testimony regarding potential injury is not addressed specifically herein, I have found that testimony to be unsupported by substantial evidence or irrelevant
6. I do not find any impacts associated with the approval that require imposition of conditions of approval.
7. I hereby adopt the Notice of Decision issued February 1, 2017 into this Notice of Decision.

## DECISION:

APPROVAL of a conditional use to allow a community center in an R-1 zone.

If you wish to appeal this decision, you must do so by November 16th, 2017, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14.16.4.4.(B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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