

City of Albuquerque
Planning Department
Current Planning Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Date: December 18, 2009

OFFICIAL NOTIFICATION OF DECISION

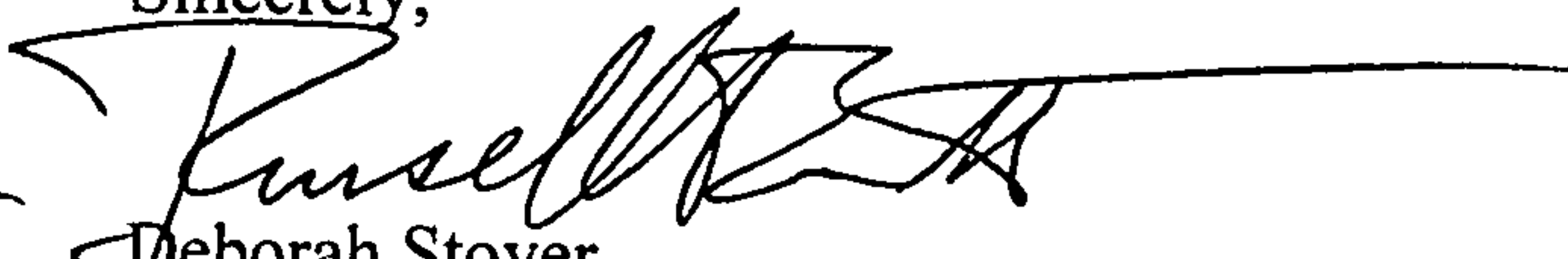
FILE: **Project # Project# 1004831**
09EPC-40060 TEXT AMENDMENT TO
SUBDIVISION REGULATIONS

City of Albuquerque, City Council
P.O. Box 1293
Albuquerque, NM 87103

LEGAL DESCRIPTION: CITY OF
ALBUQUERQUE CITY COUNCIL request(s)
recommendation on the referenced/ above
action(s) for amendment to §14-14-7 ROA 1994
(the Subdivision Ordinance), requiring approval of
Vacation of Public Rights of Way and Public
Easements to be by the City Council. Jack Cloud,
Staff Planner

On December 17, 2009 the Environmental Planning Commission voted that NO RECOMMENDATION be forwarded to City Council in the matter of Project 1004831 / 09EPC-40060, a text amendment to Subdivision Ordinance.

Sincerely,


For Deborah Stover
Planning Director

DS/JC/ma

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102
Lynne Anderson, 504 Camino Espanol NW, Albuquerque, NM 87107
Katherine Martinez, 722 Marquette NW, Albuquerque, NM 87102
Daniel Hernandez, 4333 Pan American Freeway, Albuquerque, NM 87107
Jean Moore, P.O. Box 1945, Albuquerque, NM 87103
Keli Krueger, 5571 Midway Park Place NE, Albuquerque, NM 87109

AGENDA # 2

EPC PUBLIC HEARING SIGN IN SHEET

CASE NUMBER: 1004831

DATE: 12/17/09

PLEASE PRINT CLEARLY

1. Name: Lynne Andersen
Address: (501) 564 Camino Espanol NW Zip: 87107
2. Name: Katherine Martinez
Address: 722 Markle NW (Marquette) Zip: 87108
3. Name: DANIEL O HERNANDEZ
Address: 4333 PAN AMERICAN FROW Zip: 87107
4. Name: Jean Moore
Address: P.O. Box 1945 Zip: 87103
5. Name: ~~Blanche~~, NM
Address: _____ Zip: _____
6. Name: Keli Krueger - Tierra West
Address: 5571 Midway Park Place NE Zip: 87109
7. Name: Keli Krueger - Agent for Argus Dev.
Address: 5571 Midway Park Place NE Zip: 87109
8. Name: _____
Address: _____ Zip: _____
9. Name: _____
Address: _____ Zip: _____
10. Name: _____
Address: _____ Zip: _____
11. Name: _____
Address: _____ Zip: _____
12. Name: _____
Address: _____ Zip: _____
13. Name: _____
Address: _____ Zip: _____
14. Name: _____
Address: _____ Zip: _____



ENVIRONMENTAL PLANNING COMMISSION

A G E N D A

Thursday December 17, 2009
8:30 a.m.

Plaza Del Sol Hearing Room
Lower Level
600 2nd Street NW

MEMBERS

Laurie Moye, Chair

Doug Peterson, Vice Chair

Jonathan Siegel
Ron Garcia
Richard Shine
Len Malry

Jamie Jett-Walker
Joe Yardumian
Michael Dickson

NOTE: A LUNCH BREAK AND DINNER BREAK WILL BE ANNOUNCED AS NECESSARY

Agenda items will be heard in the order specified unless changes are approved by the EPC at the beginning of the hearing; deferral and withdrawal requests (by applicants) are generally reviewed at this time (see item 1A and 1B below). Applications with no known opposition that are supported by the Planning Department are scheduled at the beginning of the agenda; these cases are noted with an asterisk (*). Applications deferred from a previous hearing are normally scheduled at the end of the agenda.

There is no set time for cases to be heard. However, interested parties can monitor the progress of the hearing by calling the Planning Department at 924-3860. All parties wishing to address the Commission must sign-in with the Commission Secretary at the front table prior to the case being heard. Please be prepared to provide brief and concise testimony to the Commission if you intend to speak. **In the interest of time, presentation times are limited as follows, unless otherwise granted by the Commission Chair: Staff - 5 minutes; Applicant - 10 minutes; Public speakers - 2 minutes each. An authorized representative of a recognized neighborhood association or other organization may be granted additional time if requested.**

All written materials - including petitions, legal analysis and other documents - should ordinarily be submitted at least 10 days prior to the public hearing, ensuring presentation at the EPC Study Session. The EPC strongly discourages submission of written material at the public hearing. Except in extraordinary circumstances, the EPC will not consider written materials submitted at the hearing. In the event the EPC believes that newly submitted material may influence its final decision, the application may be deferred to a subsequent hearing.

NOTE: ANY AGENDA ITEMS NOT HEARD BY 8:30 P.M. MAY BE DEFERRED TO ANOTHER HEARING DATE AS DETERMINED BY THE PLANNING COMMISSION.

1. Call to Order

- A. Announcement of Changes and/or Additions to the Agenda
- B. Approval of the Amended Agenda
- C. Approval of Minutes for November 12, 2009 and November 19, 2009

2. Project# 1004831

09EPC-40060 TEXT AMENDMENT TO
SUBDIVISION REGULATIONS

CITY OF ALBUQUERQUE CITY COUNCIL request(s) recommendation on the referenced/ above action(s) for amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council. Jack Cloud, Staff Planner

3. Project# 1002125*

09EPC-40062 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)

BERGER BRIGGS agents for SANTA FE ARCHDIOCESAN request the above action for all or a portion of lot 20A, block 44, RAYNOLDS ADDITION zoned SU-2 FOR SU-1 FURNITURE / RETAIL to SU-2 for SU-1 FURNITURE / RETAIL AND O-1 USES located on IRON AVE SW BETWEEN 13TH ST SW AND 14TH ST SW containing approximately .489 acre(s). (K-13) Carol Toffaleti, Staff Planner

4. Project# 1008059*

09EPC-40061 SITE DEVELOPMENT -
BUILDG PRMT

SLAGLEHERR ARCHITECTS agents for MECHENBIER CONSTRUCTION INC request the above action for all or a portion of lots 4-6, block 4, tract A, Unit B, NORTH ALBUQUERQUE ACRES, zoned IP located on 5300 VENICE NE BETWEEN SAN MATEO NE AND I-25 containing approximately 2.66 acres. (B-18) Randall Falkner, Staff Planner

5. Project# 1008069*

09EPC-40063 SITE DEVELOPMENT -
BUILDG PRMT
09EPC-40064 SITE DEVELOPMENT -
SUBDIVISION

JOSHUA SKARSGARD agent for RESOLUTION EQUITIES LLC requests the above actions for all or a portion of lot(s) 13, 20 & 21, block 10, tract 2, NORTH ALBUQUERQUE ACRES Unit 3 zoned SU-2 / MU located on HOLLY AND PASEO DEL NORTE WEST OF WYOMING containing approximately 2 acres. (C-19) Carol Toffaleti, Staff Planner

6. Project# 1007674

09EPC-40059 SITE DEV PL/WAIVER -
WIRELES TELECOM FAC

VERIZON WIRELESS, agents for PACIFIC REALTY CO request the above action for all or a PORTION OF THE WEST 1/2 OF LOT 1, SECTION 19, T10N, R4E, N.M.P.M, zoned C-2 (SC) located at 7220 LOMAS BLVD NE, BETWEEN CHAMA ST. NE AND LOUISIANA BLVD. NE, containing approximately 1.21 acres. (K-19) Catalina Lehner, Staff Planner

7. Project# 1004870

09EPC-40051 SITE DEVELOPMENT -
BUILDG PRMT
09EPC-40052 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)

DAC ENTERPRISES, INC agents for TAFAZZUL HUSSAIN, AIA request the above actions for all or a portion of tract B, HUGH B WOODWARD ADDN zoned C-1 to SU-1 for C-1 USES & HOTEL/MOTEL located on GIBSON BLVD SE BETWEEN MULBERRY ST SE AND UNIVERSITY BLVD SE containing approximately 1.6 acres. (L-15) Randall Falkner, Staff Planner **(DEFERRED FROM NOVEMBER 19, 2009)**

8. Project# 1000264

AC-09-07 REMAND FROM CITY COUNCIL
07EPC-40097 AMEND SITE
DEVELOPMENT PLAN - BLD PRMT

TIM FLYNN-O'BRIEN, ESQUIRE agents for WEST BLUFF CENTER LLC requests the above actions for all or a portion of tracts 10-12, WEST BLUFF zoned C-2 located on COORS BLVD NW NORTH OF OURAY containing approximately 6 acres. (H-11) Carol Toffaleti, Staff Planner **(REMANDED FROM CITY COUNCIL) (DEFERRED FROM OCTOBER 15, 2009)**

9. Project# 1000029

08EPC-40033 TEXT AMNDT TO SECTOR
DEV. PLAN (Sawmill/Wells Park)

City of Albuquerque Planning Department, agents for City of Albuquerque City Council, requests the above action for Amending the Sawmill/Wells Park Sector Development Plan to address changed conditions, establish policies and design standards for streets, re-establishment of a reach of the Acequia Madre to Tiguex Park, new requirements for walking and biking trails, program of sidewalk improvements of Solar Street lighting zone, establishment of a tax increment for development district (TIDD), identifying funding sources to implement programs and improvements in the Plan area and to include community garden and/or nursery as a permissive use in the S-MI zone. Carol Toffaleti, Staff Planner **(DEFERRED FROM SEPTEMBER 17, 2009, JULY 16, 2009, JUNE 18, 2009, APRIL 16, 2009 AND JANUARY 22, 2009)**

10. Project# 1007959
09EPC-40054 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)
09EPC-40055 SITE DEVELOPMENT -
BUILDG PRMT

INTEGRATED DESIGN & ARCHITECTURE agent for
GREATER ALBUQUERQUE HOUSING PARTNERSHIP
request the above actions for all or a portion of lots 1-12,
block 2, PARIS ADDITION zoned C-2 to SU-1 FOR PRD
located on 4TH ST NW BETWEEN SUMMER NW AND
KINLEY NW containing approximately 1.2 acres.
(J-12) Carol Toffaleti, Staff Planner (**DEFERRED FROM
OCTOBER 15, 2009**)

11. OTHER MATTERS

prior to the public hearing (Rules, A. Organization and Meetings: 2.)

3. The EPC will consider a motion to create a subcommittee for the purpose of drafting and refining language for the Rules (moved and then tabled at the 3:30 pm, 12 November 2009 public hearing).

Notice is hereby given that the City of Albuquerque Environmental Planning Commission will hold a **Public Hearing on Thursday, December 17, 2009, 8:30 a.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM to consider the following items: [Note: these items are not in the order they will be heard]

Project# 1002125
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(ESTB ZONING/ZONE CHG)

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Carol Toffaleti, Staff Planner

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CONSTRUCTION INC request the above action for all or a
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ALBUQUERQUE ACRES, zoned IP located on 5300
VENICE NE BETWEEN SAN MATEO NE AND I-25
containing approximately 2.66 acres. (B-18) Randall
Falkner, Staff Planner

Details of these applications may be examined at the Current Planning Division of the Planning Department,
3rd Level, Plaza Del Sol Building, 600 Second Street NW, between 8:00 a.m. and 5:00 p.m., Monday through
Friday, or you may call Mona Andrade at 924-3889. INDIVIDUALS WITH DISABILITIES who need special
assistance to participate at the public hearing should contact Mona Andrade 924-3889.

Laurie Moyer, Chair
Environmental Planning Commission

TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL NOVEMBER 25, 2009.

APPROVED




Russell Brito, Manager

Planning Department

M E M O

Date: Nov. 3, 2009

To: Sandra Handley, Land Development Coordination, COA Planning Department

From: Carol Toffaleti, Planner 
Current Planning Division, City of Albuquerque Planning Department
Tel 924-3345, cgtoffaleti@cabq.gov

Re: Application from City Council (O-09-91)

This is to clarify that the request is a text amendment to the Subdivision Ordinance, rather than to the Zoning Code as stated in the applicant's cover memo.



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LEGAL COUNSEL

Vogel Campbell & Blueher, P.C.

Received 12.17.09

December 17, 2009

Re: Text Amendment to §14-14-7 ROA 1994 (Case # 09EPC 40060)

To the Environmental Planning Commission:

The Home Builders Association of Central New Mexico (HBA of CNM) opposes the proposed text Amendment to §14-14-7 ROA 1994 (Case # 09EPC 40060). Vacations of easements currently require administrative action and the Amendment requiring Council action would change the process to an unnecessary, and unpredictable, political one.

Changing the existing process to require Council approval will add time and cost to an already lengthy and costly entitlement process. All design work up must be completed up front in order to determine what will need to be vacated. In the current process, the vacation is negotiated during the preliminary plat process. In the new process, one would be required to spend all the money up front (at least \$1500 a lot for a large residential subdivision and possibly 40 or 50 thousand for a five acre commercial development) and left to rely on a political outcome.

A recent example provided by a member displays how a change to the procedure could have cost a much needed infill development:

The new CVS at the northeast corner of Central and Louisiana required a public alley vacation in order to make the site plan and vehicular movements work correctly. This alley was legally City controlled public right-of-way but it was not used for such for years. Nevertheless, under the proposed changes the new procedure would have required vacation of this alley to be approved by City Council action. The new store removed an eyesore and potential hazard on an infill site (an old gas station previously occupied the site) and replaced it with a job and tax generating business in this down economy. Clearly this is something that the City should be encouraging, rather than placing additional roadblocks in front of infill development.

The HBA of CNM's members have expressed the existing process works well; vacation actions require public notification and the public then has the opportunity to respond in writing and in person with questions comments, and disagreements; and they have the right to appeal. Changing the process to a political one will add time, money and unpredictability. Most importantly, potentially adding another 4 - 6 months to any entitlement process could easily deter a company, not just home builders, from investing in our city. This could have a serious impact on economic development efforts.

Sincerely,

Katherine Martinez
Director Of Government Affairs
Home Builders Association of Central New Mexico

BUILDERS OF THE AMERICAN DREAM

Affiliated with the National Association of Home Builders since 1947

4100 Wolcott Ave. NE, Suite B • Albuquerque, NM 87109

(505) 344-3294 • Fax: (505) 345-3795

mailbox@hbacnm.com • www.hbacnm.com





CITY OF ALBUQUERQUE

City Council

P.O. Box 1293
Albuquerque, NM 87103
Tel: (505) 768-3100
Fax: (505) 768-3227
www.cabq.gov/council

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District 7

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District 9

Laura Mason
Council Director

December 17, 2009

Dear Commissioners:

I regret that due to business in Santa Fe I am unable to attend your hearing today when you will be considering a Text Amendment to the Zoning Code that I am sponsoring (O-09-91). Bruce Thompson is familiar with the legal issues involved, and I have seen the technical comments from Planning staff. I want to convey the policy reasons behind the proposed legislation. These have to do with long-range planning of land use, transportation, and storm drainage.

I first discussed the vacation concern with Mr. Thompson after two vacations were approved in Council District 3.

One was an alley vacation in the southwest part of the Downtown 2010 Plan area. Surrounded by surface parking lots, this alley was apparently vacated for the convenience of those parking lot owners. The problem is, future redevelopment of the block, a goal of the sector plan, may be impeded by the lack of an alley. Rear access for automobile traffic and parking is the preferred scheme in all our modern urban corridor and sector plans in Downtown, Nob Hill and elsewhere. As you know, this is in order to maintain a safe and vibrant pedestrian environment on the street/sidewalk side of the development. A consistent system of alleys is beneficial for this and other service purposes and should not be interrupted as a simple administrative matter without approval from the City's policy-making body, the City Council.

The second example was the vacation of an innocuous-looking stub street in the Old Town area. Shortly after its approval, a Council transportation consultant was working on proposed improvements to the Central Ave./Rio Grande Blvd. intersection and associated corridors. The consultants inquired about the possibility of utilizing the stub street to create a new connector/reliever street parallel to the Central corridor. Unfortunately, that option had been precluded and/or made too expensive by the recent vacation.

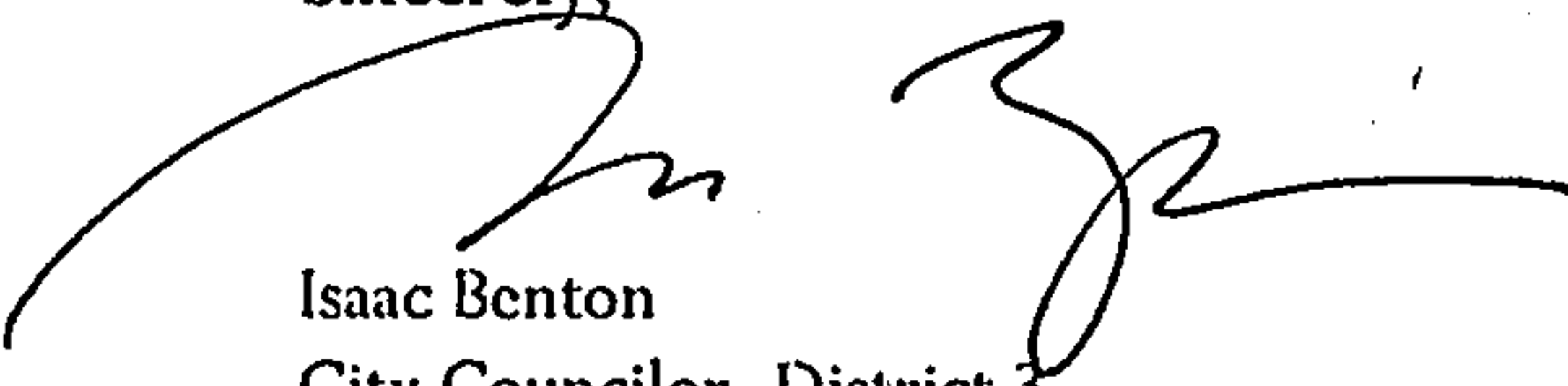
Additionally, drainage is an area-wide issue that affects individual localities, the Martineztown and Barelas flooding being prime examples. What may seem like a simple vacation of a locally-unnecessary drainage or storm sewer easement may preclude future planning and improvements to area-wide drainage issues.

In most vacation cases, after DRB technical approval, Council staff would simply review DRB findings and the item would end up going on the Council consent agenda. However, Councilors and their staff are there to hear constituent concerns and have a unique understanding of their districts' long-range goals and needs. The legislation would provide a final check and opportunity to vet any planning concerns that might not be in the forefront of technical staff's considerations when they review a vacation application.

"Best practices" whether in complete streets, sustainable drainage schemes or land use, are evolving. Our technical standards will also evolve accordingly. Thus it is good government policy to look more carefully at vacations of public easements and rights-of-way.

I am open to your suggestions for amended language on the technical front, but I believe that the essence of this legislation is sound planning and good public policy.

Sincerely,


Isaac Benton
City Councilor, District 3

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

NEW MEXICO CHAPTER

Revised 12.17.09

December 16, 2009

Ms Laurie Moye, Chair
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico

**RE: TEST AMENDMENT TO §14-14-7 ROA 1994
VACATION ACTIONS**

Dear Chairman Moye:

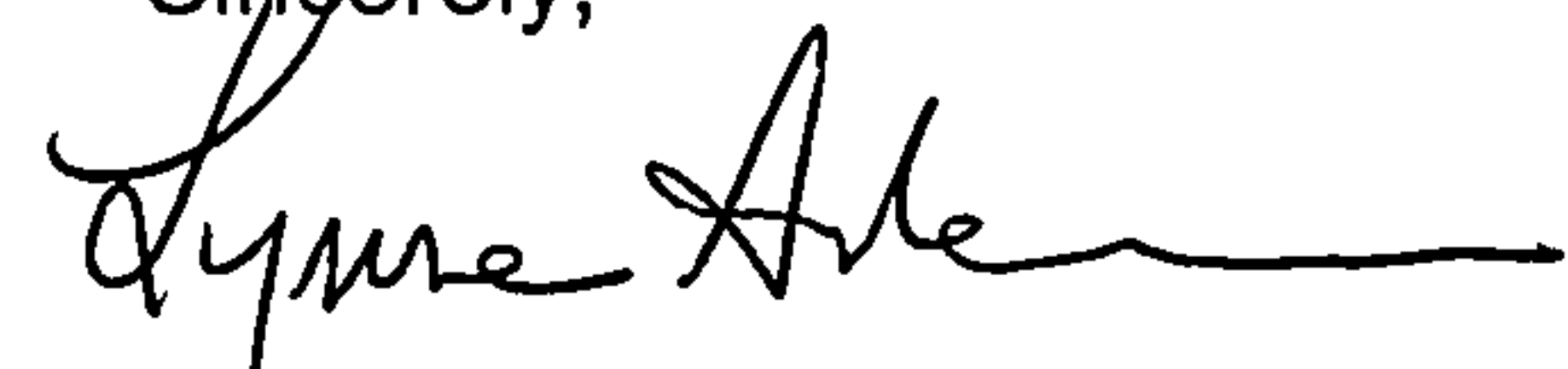
NAIOP, the Commercial Real Estate Development Association, respectfully requests that the EPC recommend denial of the referenced text change to the Subdivision Ordinance. A number of our members have also sent letters requesting denial, and have argued that the change is unwarranted and unnecessary based on existing means of remedy and on the additional approval time and costs that the change would engender. It is clear, from the staff report, that the vast majority of these submissions are pro forma and are not appealed.

NAIOP would like to add that, in the current economy, when commercial building permits are at an historic low, this type of legislation further complicates the permitting process. The additional time and money that this change would add to a development project could easily "kill the deal". It would not appear to be in the interests of the City or its citizens to hamper projects that create jobs and revenue, particularly when the existing system works for the majority of the submissions and a simple appeals process is available to the general public.

Finally, in light of the existing City policy of encouraging infill development as part of the Planned Growth Strategy, I would note that virtually all redevelopment projects require vacation actions since they usually have existing easements which conflict with the new use. So this bill would have an especially large impact to cost and schedule for redevelopment projects.

NAIOP urges your recommendation of denial, and our representatives are available for questions or discussion concerning this text revision.

Sincerely,



Lynne Andersen, President
NAIOP Commercial Real Estate Development Association

**NEW MEXICO CHAPTER 2009
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Enterprise Builders Corporation

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Charter Commercial Mortgage

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Lynne Andersen

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December 16, 2009

Ms. Laurie Moye, Chairperson
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico 87102

RE: VACATION ACTIONS PROPOSED TEXT CHANGE

Dear Ms. Moye:

We have been informed that a text change is being proposed as referenced above and we ask the EPC to recommend denial on this proposal. As developers of properties in Albuquerque, we frequently request and process vacation requests and this proposed amendment is unwarranted. Any City Council action will greatly increase the cost for both the applicant and City Council as well as extend the process for the vacation actions adding an additional 4 to 5 months. We note that the staff report clearly outlines the deficiencies with this proposed change and encourage the Commission to review these comments carefully. Finally, any appeal is sent to the City Council anyway as the final administrative authority.

The current process does not warrant this change and we urge the EPC to recommend that this Text Amendment not be passed.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt Browning", is written over a horizontal line.

Kurt Browning, PE
Director of Development/Const.
Argus-Titan Development



December 16, 2009

Ms. Laurie Moye, Chairperson
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico 87102

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Kurt Browning, PE
Director of Development/Const.
Argus-Titan Development



December 16, 2009

Ms. Laurie Moyer, Chairperson
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico 87102

RE: VACATION ACTIONS PROPOSED TEXT CHANGE

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Kurt Browning, PE
Director of Development/Const.
Argus-Titan Development



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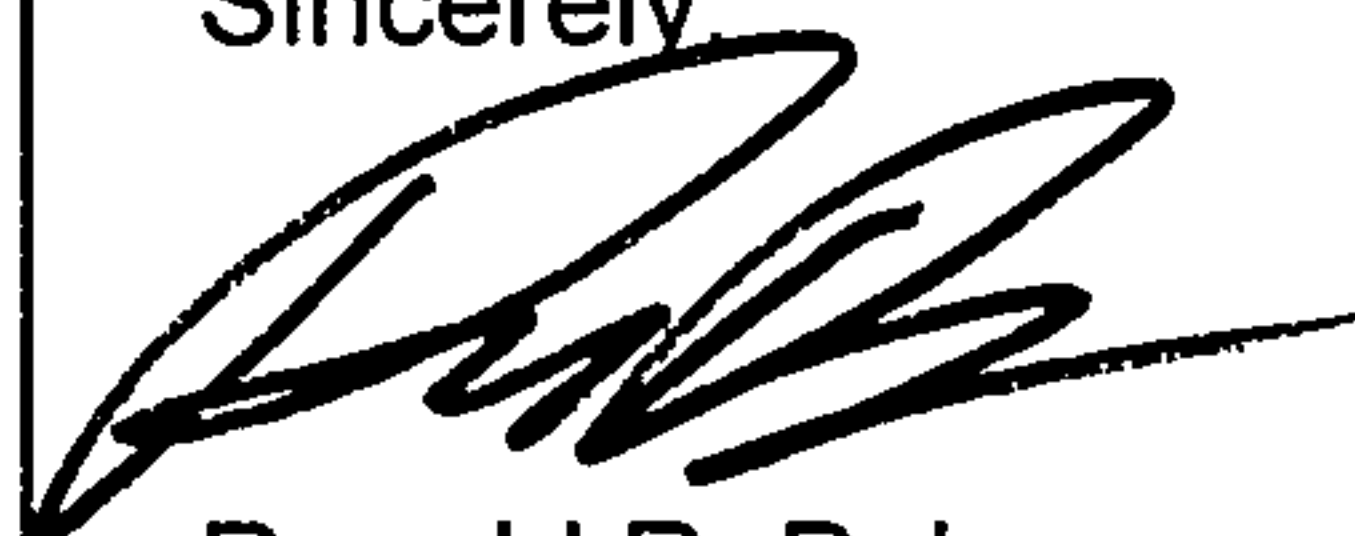
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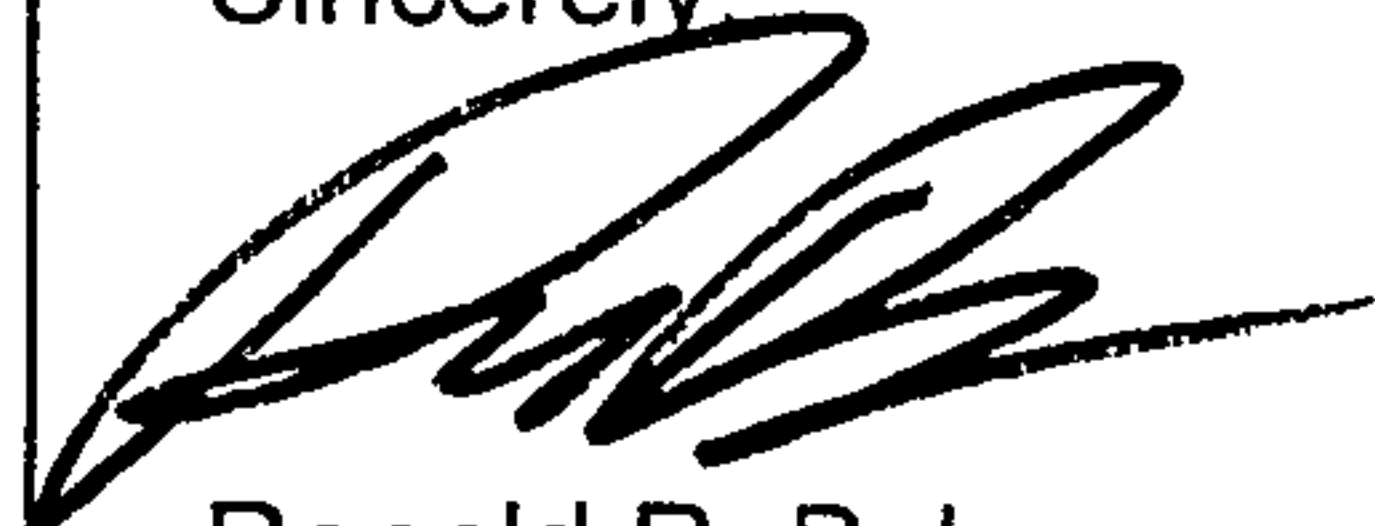
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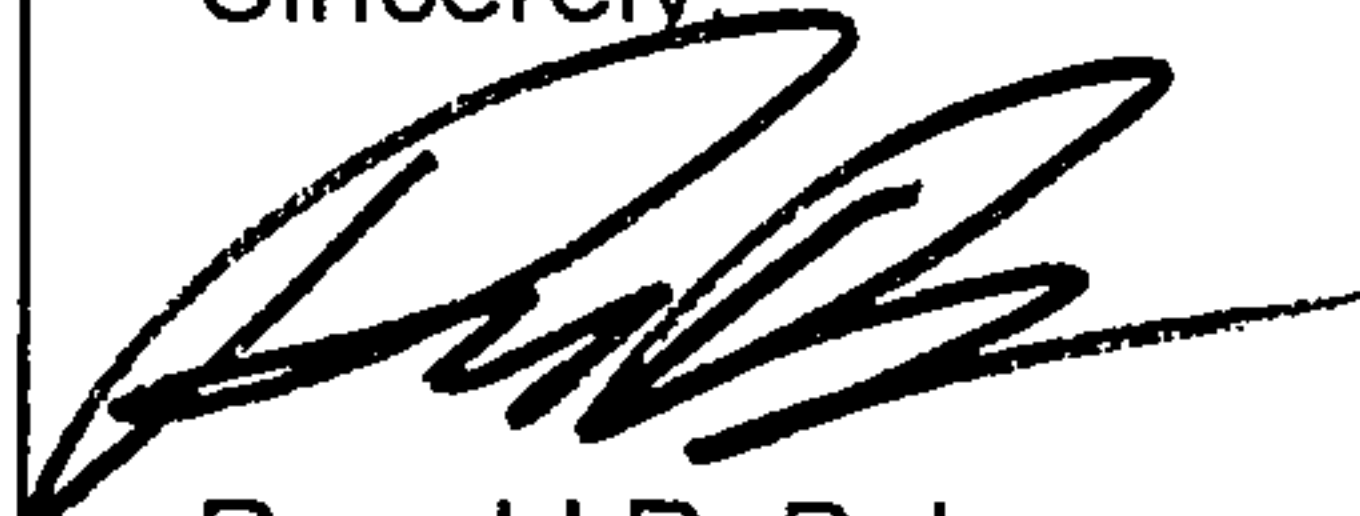
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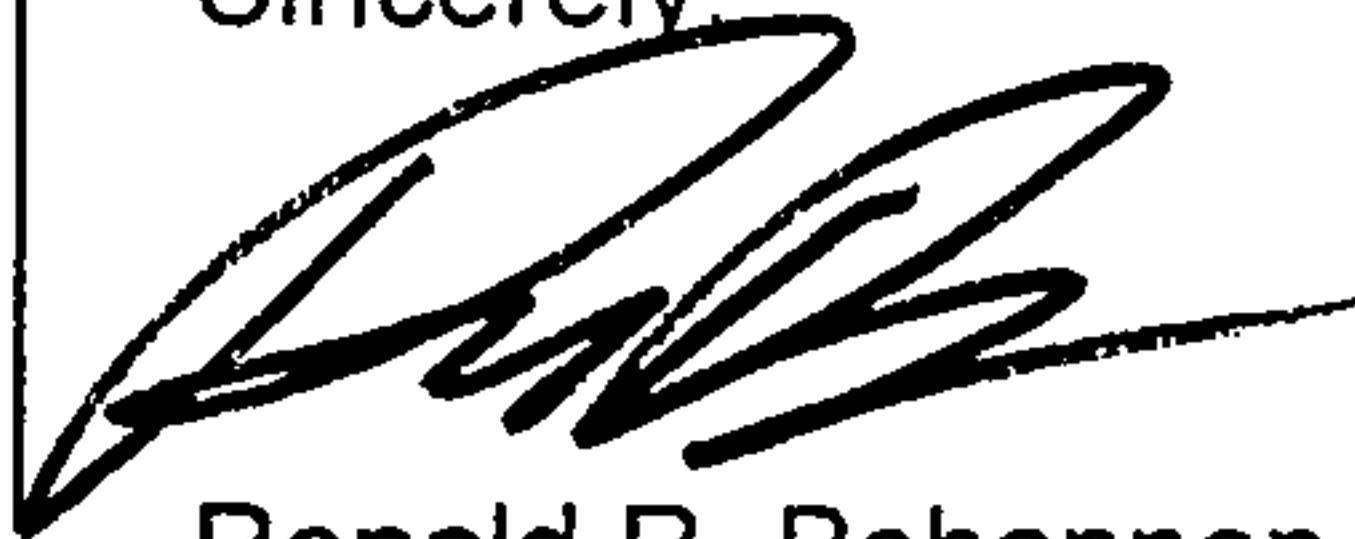
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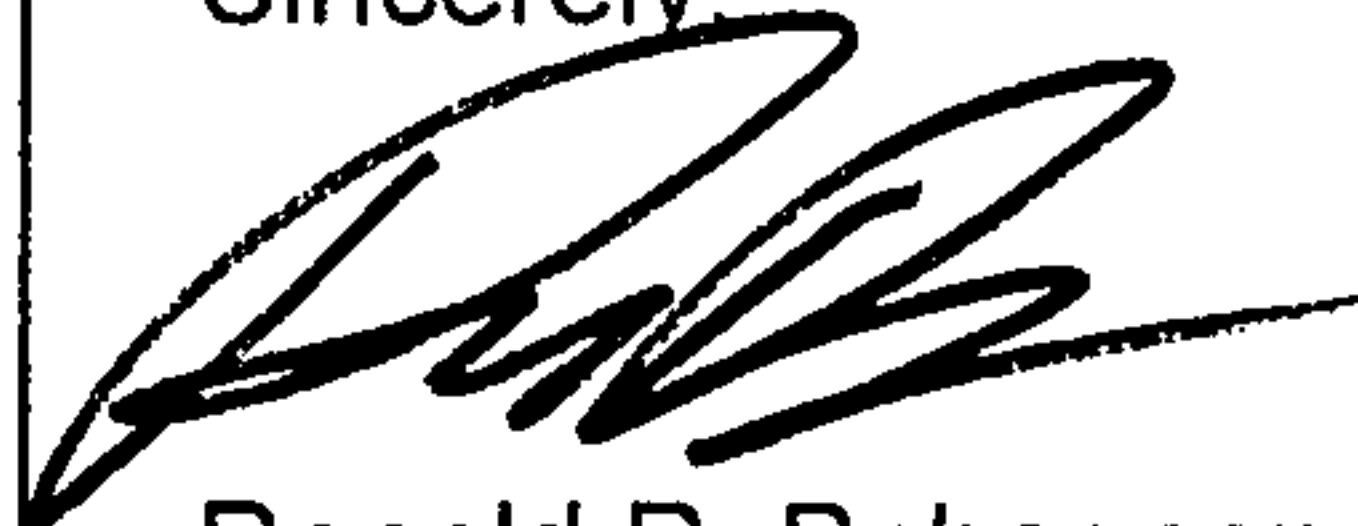
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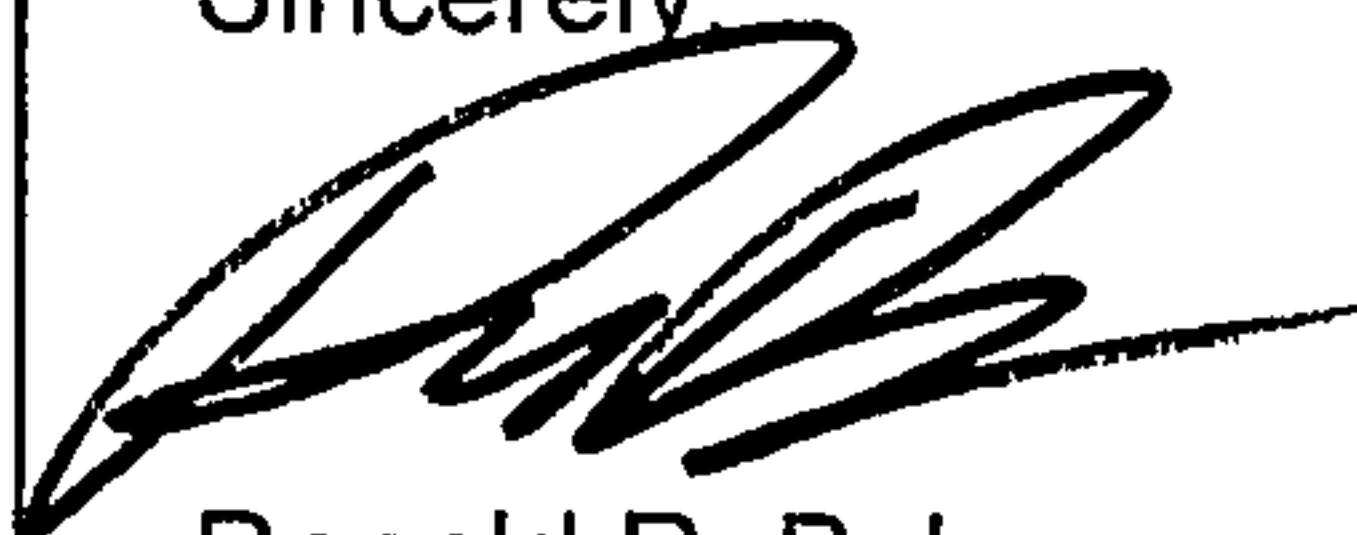
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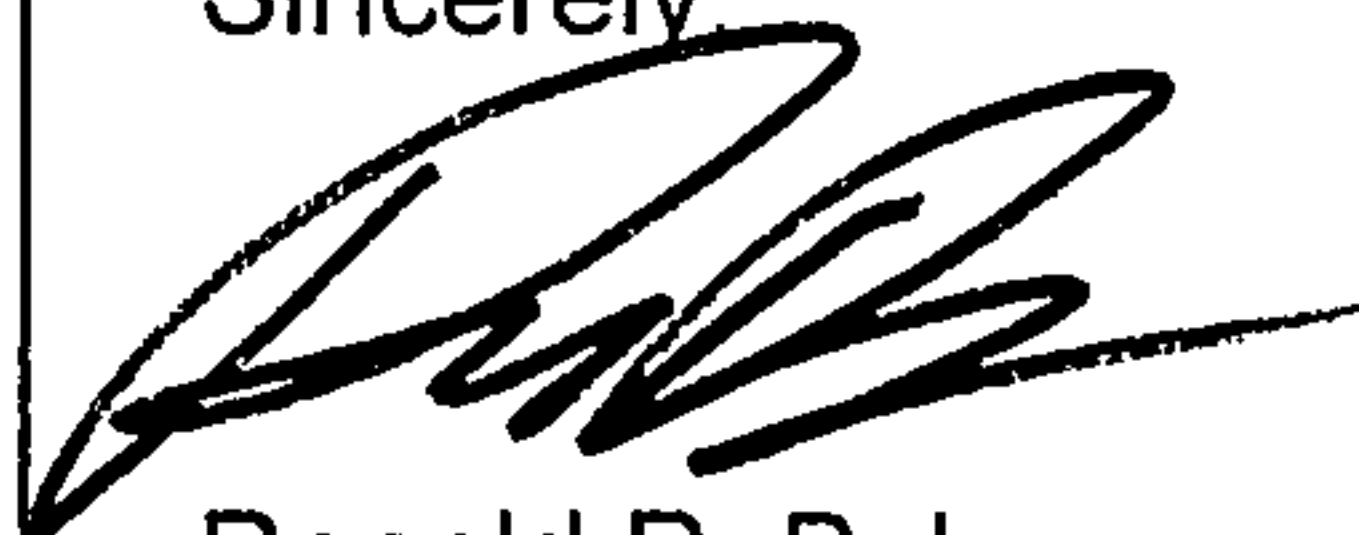
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RRB/djb

5571 Midway Park Place NE
(505) 858-3100
Albuquerque, NM 87109
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1-800-245-3102
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gwr

TIERRA WEST, LLC

December 16, 2009

Ms Laurie Moye, Chair
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico

**RE: TEST AMENDMENT TO §14-14-7 ROA 1994
VACATION ACTIONS**

Dear Ms. Moye:

I am writing to you to ask the EPC to recommend denial on the referenced text change to the Subdivision Ordinance. Our firm processes vacation requests on a regular basis and we do not see where the DRB violates any current procedure or policy with the current protocol and process for vacations has occurred. Requiring this process to be approved by City Council action will greatly increase the cost for both the applicant and City Council as well as extend the process for the vacation actions adding an additional 4 to 5 months. Further, in this era of budget considerations it will take an inordinate amount of time for the City Council and City Council staff to address this issue. As outlined in the Staff's comments, the general public (if aggrieved or if they feel as if their rights are violated) has the simple appeal process through the hearing officer and then to City Council. In the 23 years that we have been processing vacation actions we have yet to have a vacation action appealed.

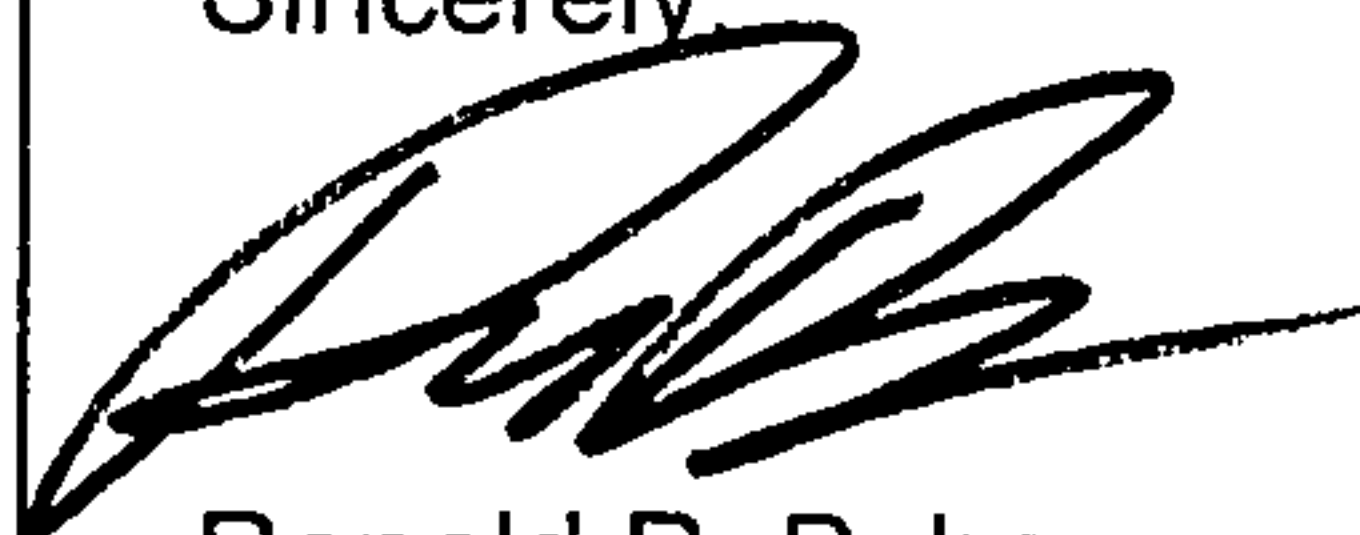
I would like to quote the Staff report that shows the number of cases that would be involved. If the City Council has to process this many cases it will take away from other Council business and stretch City Council staff even further. The following is from the staff report:

"As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process."

Further, a vacation action may be required as a precursor to a preliminary plat thereby holding the entire project up until City Council acts on the vacation. So while the vacation action may be extended up to 4 to 6 months it could drastically lengthen a subdivision process as well. We believe that in those rare instances where an appeal is warranted the City has followed the normal protocol and has provided adequate due process in those cases. We feel that the current process does not need to modify and would urge the EPC to recommend that this Text Amendment not be passed.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely



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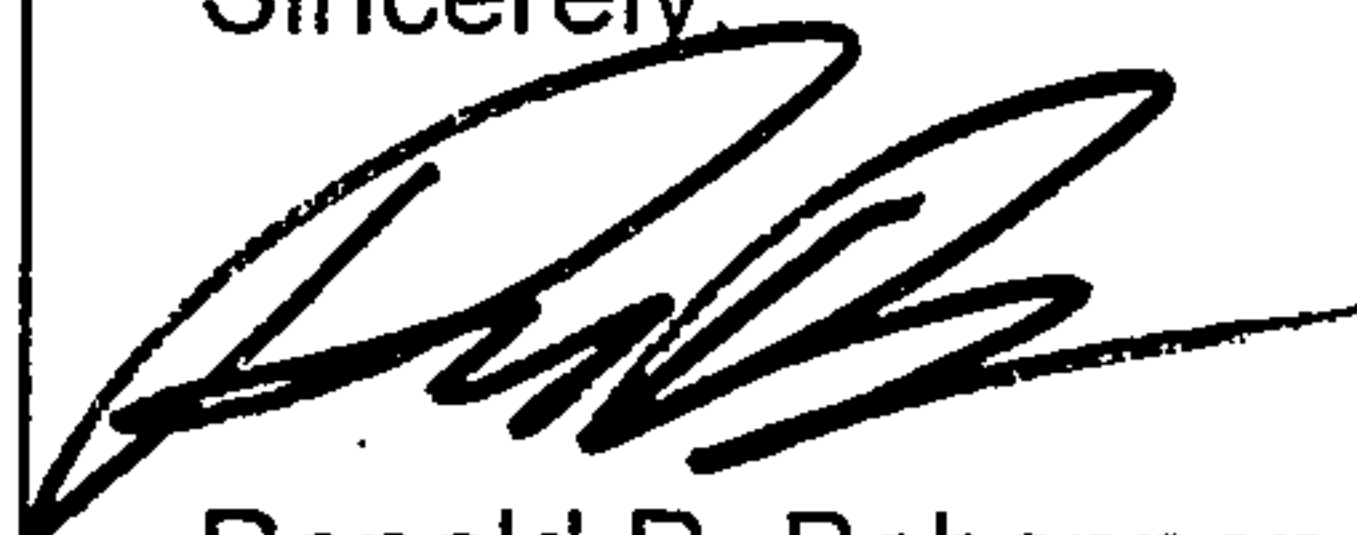
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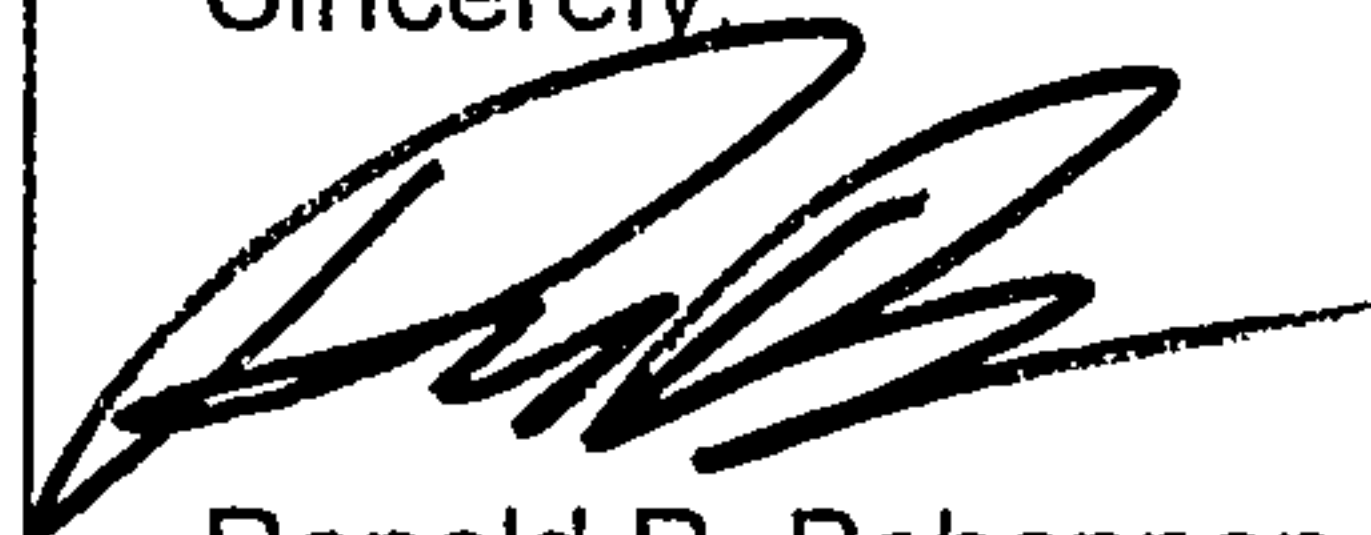
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ENVIRONMENTAL PLANNING COMMISSION

A G E N D A

Thursday December 17, 2009
8:30 a.m.

Plaza Del Sol Hearing Room
Lower Level
600 2nd Street NW

MEMBERS

Laurie Moye, Chair

Doug Peterson, Vice Chair

Jonathan Siegel
Ron Garcia
Richard Shine
Len Malry

Jamie Jett-Walker
Joe Yardumian
Michael Dickson

NOTE: A LUNCH BREAK AND DINNER BREAK WILL BE ANNOUNCED AS NECESSARY

Agenda items will be heard in the order specified unless changes are approved by the EPC at the beginning of the hearing; deferral and withdrawal requests (by applicants) are generally reviewed at this time (see item 1A and 1B below). Applications with no known opposition that are supported by the Planning Department are scheduled at the beginning of the agenda; these cases are noted with an asterisk (*). Applications deferred from a previous hearing are normally scheduled at the end of the agenda.

There is no set time for cases to be heard. However, interested parties can monitor the progress of the hearing by calling the Planning Department at 924-3860. All parties wishing to address the Commission must sign-in with the Commission Secretary at the front table prior to the case being heard. Please be prepared to provide brief and concise testimony to the Commission if you intend to speak. **In the interest of time, presentation times are limited as follows, unless otherwise granted by the Commission Chair: Staff - 5 minutes; Applicant – 10 minutes; Public speakers – 2 minutes each. An authorized representative of a recognized neighborhood association or other organization may be granted additional time if requested.**

All written materials – including petitions, legal analysis and other documents – should ordinarily be submitted at least 10 days prior to the public hearing, ensuring presentation at the EPC Study Session. The EPC strongly discourages submission of written material at the public hearing. Except in extraordinary circumstances, the EPC will not consider written materials submitted at the hearing. In the event the EPC believes that newly submitted material may influence its final decision, the application may be deferred to a subsequent hearing.

NOTE: ANY AGENDA ITEMS NOT HEARD BY 8:30 P.M. MAY BE DEFERRED TO ANOTHER HEARING DATE AS DETERMINED BY THE PLANNING COMMISSION.

1. Call to Order

- A. Announcement of Changes and/or Additions to the Agenda
- B. Approval of the Amended Agenda
- C. Approval of Minutes for November 12, 2009 and November 19, 2009

2. Project# 1004831

09EPC-40060 TEXT AMENDMENT TO
SUBDIVISION REGULATIONS

CITY OF ALBUQUERQUE CITY COUNCIL request(s) recommendation on the referenced/ above action(s) for amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council. Jack Cloud, Staff Planner

3. Project# 1002125*

09EPC-40062 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)

BERGER BRIGGS agents for SANTA FE ARCHDIOCESAN request the above action for all or a portion of lot 20A, block 44, RAYNOLDS ADDITION zoned SU-2 FOR SU-1 FURNITURE / RETAIL to SU-2 for SU-1 FURNITURE / RETAIL AND O-1 USES located on IRON AVE SW BETWEEN 13TH ST SW AND 14TH ST SW containing approximately .489 acre(s). (K-13) Carol Toffaleti, Staff Planner

4. Project# 1008059*

09EPC-40061 SITE DEVELOPMENT -
BUILDG PRMT

SLAGLEHERR ARCHITECTS agents for MECHENBIER CONSTRUCTION INC request the above action for all or a portion of lots 4-6, block 4, tract A, Unit B, NORTH ALBUQUERQUE ACRES, zoned IP located on 5300 VENICE NE BETWEEN SAN MATEO NE AND I-25 containing approximately 2.66 acres. (B-18) Randall Falkner, Staff Planner

5. Project# 1008069*

09EPC-40063 SITE DEVELOPMENT -
BUILDG PRMT
09EPC-40064 SITE DEVELOPMENT -
SUBDIVISION

JOSHUA SKARSGARD agent for RESOLUTION EQUITIES LLC requests the above actions for all or a portion of lot(s) 13, 20 & 21, block 10, tract 2, NORTH ALBUQUERQUE ACRES Unit 3 zoned SU-2 / MU located on HOLLY AND PASEO DEL NORTE WEST OF WYOMING containing approximately 2 acres. (C-19) Carol Toffaleti, Staff Planner

6. Project# 1007674
09EPC-40059 SITE DEV PL/WAIVER -
WIRELES TELECOM FAC

VERIZON WIRELESS, agents for PACIFIC REALTY CO request the above action for all or a PORTION OF THE WEST 1/2 OF LOT 1, SECTION 19, T10N, R4E, N.M.P.M, zoned C-2 (SC) located at 7220 LOMAS BLVD NE, BETWEEN CHAMA ST. NE AND LOUISIANA BLVD. NE, containing approximately 1.21 acres. (K-19) Catalina Lehner, Staff Planner

7. Project# 1004870
09EPC-40051 SITE DEVELOPMENT -
BUILDG PRMT
09EPC-40052 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)

DAC ENTERPRISES, INC agents for TAFAZZUL HUSSAIN, AIA request the above actions for all or a portion of tract B, HUGH B WOODWARD ADDN zoned C-1 to SU-1 for C-1 USES & HOTEL/MOTEL located on GIBSON BLVD SE BETWEEN MULBERRY ST SE AND UNIVERSITY BLVD SE containing approximately 1.6 acres. (L-15) Randall Falkner, Staff Planner **(DEFERRED FROM NOVEMBER 19, 2009)**

8. Project# 1000264
AC-09-07 REMAND FROM CITY COUNCIL
07EPC-40097 AMEND SITE
DEVELOPMENT PLAN - BLD PRMT

TIM FLYNN-O'BRIEN, ESQUIRE agents for WEST BLUFF CENTER LLC requests the above actions for all or a portion of tracts 10-12, WEST BLUFF zoned C-2 located on COORS BLVD NW NORTH OF OURAY containing approximately 6 acres. (H-11) Carol Toffaleti, Staff Planner **(REMANDED FROM CITY COUNCIL) (DEFERRED FROM OCTOBER 15, 2009)**

9. Project# 1000029
08EPC-40033 TEXT AMNDT TO SECTOR
DEV. PLAN (Sawmill/Wells Park)

City of Albuquerque Planning Department, agents for City of Albuquerque City Council, requests the above action for Amending the Sawmill/Wells Park Sector Development Plan to address changed conditions, establish policies and design standards for streets, re-establishment of a reach of the Acequia Madre to Tiguex Park, new requirements for walking and biking trails, program of sidewalk improvements of Solar Street lighting zone, establishment of a tax increment for development district (TIDD), identifying funding sources to implement programs and improvements in the Plan area and to include community garden and/or nursery as a permissive use in the S-MI zone. Carol Toffaleti, Staff Planner **(DEFERRED FROM SEPTEMBER 17, 2009, JULY 16, 2009, JUNE 18, 2009, APRIL 16, 2009 AND JANUARY 22, 2009)**

10. Project# 1007959
09EPC-40054 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)
09EPC-40055 SITE DEVELOPMENT -
BUILDG PRMT

INTEGRATED DESIGN & ARCHITECTURE agent for
GREATER ALBUQUERQUE HOUSING PARTNERSHIP
request the above actions for all or a portion of lots 1-12,
block 2, PARIS ADDITION zoned C-2 to SU-1 FOR PRD
located on 4TH ST NW BETWEEN SUMMER NW AND
KINLEY NW containing approximately 1.2 acres.
(J-12) Carol Toffaleti, Staff Planner (**DEFERRED FROM
OCTOBER 15, 2009**)

11. OTHER MATTERS



**Environmental
Planning
Commission**

**Agenda Number: 2
Project Number: 1004831
Case #'s: 09EPC 40060
December 17, 2009**

Staff Report

Applicant City of Albuquerque City Council
Request Text Amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council
Location City-wide
Zoning NA

Staff Recommendation

*That a recommendation of **CONDITIONAL APPROVAL** of a Text Amendment to Part §14-14-7 of the Subdivision Ordinance, 09EPC 40060, be forwarded to the City Council based on the Findings beginning on Page 5*

Staff Planner

**Jack Cloud, AICP
Chair, Development Review Board**

Summary of Analysis

This proposal consists of a text amendment to Part §14-14-7 ROA 1994, the 'Subdivision Ordinance,' regarding the process for vacation, or closing, of public rights of way and easements; the proposed text amendment would require City Council approval for all such vacation requests.

Staff finds the requirement for City Council approval to be extraordinary change in procedure, given that the Council has an opportunity for review of such vacations via appeals/ due process under existing ordinances and regulations.

City-wide

City Departments and other interested agencies reviewed this application from 11/09/2009 to 11/20/2009; agency comments begin on Page 7.

I. INTRODUCTION

Proposal

This proposal is for a text amendment to §14-14-7 ROA 1994, the portion of the Subdivision Ordinance that pertains to the vacation, or closing, of public rights of way and public easements. All vacations currently may be approved by the Development Review Board (DRB) subject to a public hearing; however all decisions of the DRB are subject to appeal, which go to the City Council after a hearing and recommendation by the Land Use Hearing Officer (LUHO). The proposed text amendment would require City Council approval for all vacation of public right of way or vacation of a public easement, so that the DRB could only make a recommendation from its public hearing.

Environmental Planning Commission (EPC) Role

The EPC's task is to make a recommendation to the City Council regarding the proposed changes to the Subdivision Ordinance. The City Council is the City's legislative body with the authority to change and adopt ordinances, and the EPC is a recommending body on certain changes that affect Chapter 14 of the City Code [ZONING, PLANNING, AND BUILDING].

Background and Context

The stated purpose of the amendment is to ensure that the City Council has the final discretionary authority for approval of these vacations. Following are comments from the City Council staff regarding the proposed text amendment:

'When the City agrees to vacate a right-of-way or easement it is determining that it should give up a potentially valuable interest in real property. In other cases where the City releases an interest in real property the City Council approves such actions as a matter of policy. State law that allows for the vacation of rights of way provides that if a roadway is not needed for public purposes, there is then a decision as to whether to vacate -- that decision is a policy decision.

The City Council has, by ordinance, elected to transfer its authority to make the determination of when to vacate property to the DRB. There is no legal problem with that delegation. The problem is that the determination to vacate a right-of-way has become a legal issue as to whether the ordinance has been complied with and the policy concerns have arguably dropped out. As you are aware, the City ordinance provides in relevant part:

"The vacation of public rights of way, private ways, or easements, whether by new plat, plat amendment, or request to vacate, shall be approved only when it is determined that:

- (1) The public welfare is in no way served by retaining the way or easement; or
- (2) There is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation; and in addition to divisions (1) or (2) of this division (B):

(3) There is no convincing evidence that any substantial property right is being abridged against the will of the owner of the right."

The DRB considers whether the ordinance terms are met and approves the vacation if they are complied with. The ordinance, however, does not say that rights-of-way or easements shall be vacated if the ordinance terms are met. It says that rights-of-way or easements shall not be vacated if the ordinance terms are not met. The current language of the ordinance recognizes that there may be more to the determination than simply looking at whether the ordinance language has been met. Admittedly, the DRB is charged with considering certain policy issues as it is to weigh "public welfare." But that term is not defined and if the ordinance is adopted it will be a recognition that the City Council should ultimately decide what will benefit "public welfare" along with any other policy considerations.

The DRB is a technical board with expertise in a wide range of specialized areas. It is not a policy making body. If the ordinance is adopted it will be a determination that the application of policy is best left with the Council. The technical determination of compliance with the ordinance requirements will remain with the DRB.

[In] at least one case where the City Council reversed a DRB decision to approve the vacation of an alley[, t]he party seeking the vacation filed an appeal in District Court taking the position that if the ordinance terms were met that the vacation was mandatory. Given the DRB's interpretation of the ordinance there is legal support for such an argument. That appeal was abandoned so the issue was never resolved. The ordinance amendment clarifies the fact that the City is never required to vacate a right-of-way or easement no matter what the factual determination. The final decision is always a policy call and the City Council is the appropriate body to make that call.'

II. ISSUES

Section 3, Minor changes to Section 1

There are three sections to Part §14-14-7 of the Subdivision Ordinance. The last section, §14-14-7-3 TECHNICAL CORRECTIONS, would not be changed by the proposed amendment. The first section, §14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT, has only one change by the proposed amendment, on page 2, Lines 16 and 17. This change would delete a reference to the paragraph at the top of page 2 (B) and add a new reference to section 2 of Part 7, VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS AND EASEMENTS. This section 2 generally provides the requirements and procedures for review of vacation requests, and the addition of the reference for this section 2 into section 1 could be appropriate. However, this would not necessarily need to have the existing reference to the preceding paragraph (B) deleted. That paragraph (B) requires the DRB to evaluate whether the "vacation action will adversely affect contiguous land, any owner of land within the subdivision being vacated, or the interests of the City." [this is also consistent with the New Mexico State Subdivision Statute]. It is recommended that the additional reference language in section 1 be included in the text amendment, but that none of the existing language of this section 1 be deleted.

Section 2 – Vacation not a right

Comments from the City Council staff reference a vacation that was approved by DRB, reversed by City Council such that the vacation was denied, and that action was then appealed to District Court. The appeal took the position that if the existing ordinance terms requiring certain determinations are met (that the public welfare is not served or there is a net benefit to the public welfare, and that no substantial property right is abridged), then the approval of a vacation request should be mandatory. Council staff argues that there may be legal support for this position, so the text amendment proposes an additional paragraph (D) to section 2 to counter this interpretation on page 3, lines 17 - 21:

[(D) The vacation of public rights of way or public easements, whether by new plat, plat amendment, or request to vacate, is a discretionary act by the City and a determination that the requirements of subdivision (B) have been met is a precondition to a vacation but does not create a right to a vacation.]

Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Mailed Notice to Neighborhood Associations

Additional language to the Subdivision Ordinance is proposed with this text amendment regarding vacation procedures, and specifically mailed notice to neighborhood associations on page 4, lines 16 - 18. This is already standard practice for these vacation requests in accordance with the Neighborhood Recognition Ordinance. [§14-14-7 ROA 1994] Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Required approval by City Council

The major staff concern with the proposed text amendment is the requirement for City Council approval for all vacations of public right of way or public easements. Clearly the City Council has the authority to amend City ordinances, and to require City Council approval of these vacations if the Council determines these are to be 'policy' decisions. However, when the DRB was established almost 30 years ago, the City Council at that time determined that these were more of a technical decision, consistent with the subdivision process. For instance, most vacation requests for public easements are either Public Utility Easements or Public Drainage Easements. Through the planning/ vacation process the affected agencies determine what kind and size of easements are needed to serve both the function (i.e. utility or drainage) of the easement as well as to adequately serve the adjacent property. Likewise with public right of way, most vacation requests involve the size of the right of way and whether it is needed to serve adjacent property; these decisions are generally technical decisions. Regarding what would be a 'policy' decision would be something like the Long Range Roadway System, where City Council members help decide what and where the major roadways are to be, while the DRB considers the technical design such as whether the minimum right of way is maintained.

Comments from the City Council staff reference the release of interest in real property as requiring City Council approval, as a matter of policy. However this only applies to real property having a value of more than \$10,000; real property having a value less than that may be determined to be unessential for a municipal purpose by the administration, and this is generally the case with the vast majority of vacations.

As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process.

III. APPLICABLE ORDINANCES, PLANS AND POLICIES

The applicable ordinance (Article 14 – Subdivision Regulations of Chapter 14 –Zoning, Planning and Building) is the subject of this proposed text amendment.

IV. CONCLUSION

The proposed text amendments regarding additional references and findings for DRB public hearings on vacations of public right of way and public easements could help clarify the vacation process, particularly to note that the City is not required to approve a vacation even if certain pre-conditions of the existing Subdivision Ordinance have been met.

The proposed amendment to require City Council approval for vacation of public rights of way and public easements, however, would put approximately 60 or more such applications each year into a category of process more complex than a major subdivision request, as well as most site development plans and zone map amendments.

FINDINGS- 09EPC 40060, December 17, 2009-Text Amendment

1. Part §14-14-7 ROA 1994 of the Subdivision Ordinance provides regulations and procedures for the vacation, or closing, of public rights of way, private ways, and easements.
2. The purpose of the proposed text amendment is to change the process for vacating public rights of way and public easements to ensure City Council approval.
3. Other portions of the proposed text amendment would codify that the approval of a vacation request is a discretionary action by the City, no matter if the existing Subdivision Ordinance pre-conditions for approval are met, plus the amendment would add references for [existing] procedures including notification of neighborhood associations.
4. The vacations of public right of way and public easements are generally technical decisions to determine if minimum subdivision standards are maintained, and thus that the public welfare is served.
5. The Development Review Board holds public hearings for vacations of public right of way and public easements consistent with public hearings for subdivisions, site development plans, and zone map amendments; this includes requiring neighborhood association notification, printing a legal advertisement in the local newspaper, posting of signs, and mailed notice, along with distribution to other City departments for review and comment.
6. The City of Albuquerque processed 77 applications for such vacations in 2007, 64 applications in 2008, and 47 applications to-date in 2009.
7. Requiring City Council approval for vacations of public right of way and public easements would put 50 - 70 such applications each year into a category of process more complex than a subdivision request as well as most site development plans and zone map amendments.

RECOMMENDATION

That a recommendation of **CONDITIONAL APPROVAL of O-09-91/ Text Amendments to the Subdivision Ordinance Part §14-14-7 be forwarded to the City Council based on the preceding Findings and subject to the following Conditions of Approval.**

CONDITIONS OF APPROVAL- 09EPC 40060, December 17, 2009-Zoning Code Text Amendments

1. That the existing language in Section 1 of Part §14-14-7 of the Subdivision Ordinance be retained [not deleted] and that the proposed new language in Section 1 [page 2, line 17] be included in the text amendment.
 2. That new paragraph (C) in Section 2 of Part §14-14-7 of the Subdivision Ordinance [page 3, lines 12 -16] not be included not be included in the text amendment, and that new paragraph (D) in Section 2 [page 3, lines 17 -21] be included in the text amendment and re-lettered as paragraph (C).
 3. That all other changes on page 3 not be included in the text amendment.
 4. That all other changes on pages 5 and 6 not be included in the text amendment.
-



**Jack Cloud, AICP
Chair, Development Review Board**

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Code Services

No comment.

Office of Neighborhood Coordination

City Wide

11/19/09 – was published in the “Neighborhood News” newsletter and is online in the Newsletter
11/30/09 - will be e-mail to Neighborhood Representatives - siw

Long Range Planning

CITY ENGINEER

Transportation Development Services

Findings

- Currently, the process for Vacation of Public Rights of Way, Private Ways and Easements is clearly defined in 14-14-7 of the Subdivision Regulations.
- Currently, City Council has final discretionary authority to approve the vacation of public rights-of-way as outlined in the Subdivision Regulations but has delegated the administration of this action to the Development Review Board (DRB). However, a DRB determination can be appealed to City Council who ultimately would make a final decision regarding the DRB determination.

Recommendation

- Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

Traffic Engineering Operations

Hydrology

- The Hydrology Section objects to the ordinance revision as written based on the following reasons:
 1. Public drainage easements and public utility easements should be established or vacated for technical reasons. The DRB is the technical review board.
 2. The appeal process is not clearly addressed.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance Operations (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

Conditions of approval for the proposed Text Amendment to the Subdivision Ordinance shall include:

- a. Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

WATER UTILITY AUTHORITY

Utility Services

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

PARKS AND RECREATION

Planning and Design

Open Space Division

Open Space has no adverse comments

City Forester

POLICE DEPARTMENT/Planning

No crime prevention of CPTED comment to the proposed text amendment at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

NO ADVERSE COMMENTS

FIRE DEPARTMENT/Planning

TRANSIT DEPARTMENT

Adjacent and nearby routes	N/A
Adjacent bus stops	N/A
Site plan requirements	None
Large site TDM suggestions	N/A
Other information	None.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

This amendment will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

No comments.

City of Albuquerque



DEVELOPMENT/ PLAN REVIEW APPLICATION

SUBDIVISION

- Major Subdivision action
- Minor Subdivision action
- Vacation
- Variance (Non-Zoning)

SITE DEVELOPMENT PLAN

- for Subdivision
- for Building Permit
- Administrative Amendment (AA)
- IP Master Development Plan
- Cert. of Appropriateness (LUCC)

STORM DRAINAGE (Form D)

- Storm Drainage Cost Allocation Plan

Supplemental form

S Z ZONING & PLANNING

- Annexation
- County Submittal
- EPC Submittal
- Zone Map Amendment (Establish or Change Zoning)
- Sector Plan (Phase I, II, III)
- Amendment to Sector, Area, Facility or Comprehensive Plan
- Text Amendment (Zoning Code/Sub Regs)
- Street Name Change (Local & Collector)
- L A APPEAL / PROTEST of...**
 - Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any): COA Planning Department PHONE: 424-3260
 ADDRESS: 90 Current Planning Div. 600 2nd St NW FAX: 424-3339
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

APPLICANT: COA City Council PHONE: 768-3100
 ADDRESS: One Civic Plaza NW FAX: 768-3227
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

Proprietary interest in site: _____ List all owners: _____

DESCRIPTION OF REQUEST: Text amendment to Subdivision Ord. per U-09-91

Is the applicant seeking incentives pursuant to the Family Housing Development Program? Yes No.

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. city-wide Block: _____ Unit: _____
 Subdiv/Addn/TBKA: _____
 Existing Zoning: _____ Proposed zoning: _____ MRGCD Map No _____
 Zone Atlas page(s): _____ UPC Code: _____

CASE HISTORY:

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_, Z_, V_, S_, etc.): _____

CASE INFORMATION:

Within city limits? Yes Within 1000FT of a landfill? _____
 No. of existing lots: _____ No. of proposed lots: _____ Total area of site (acres): _____

LOCATION OF PROPERTY BY STREETS: On or Near: city wide
 Between: _____ and _____

Check-off if project was previously reviewed by Sketch Plat/Plan or Pre-application Review Team . Date of review: _____

SIGNATURE Carol Tuffaleti DATE 11/3/09
 (Print) Carol Tuffaleti Applicant: Agent:

FOR OFFICIAL USE ONLY

- INTERNAL ROUTING
- All checklists are complete
- All fees have been collected
- All case #s are assigned
- AGIS copy has been sent
- Case history #s are listed
- Site is within 1000ft of a landfill
- F.H.D.P. density bonus
- F.H.D.P. fee rebate

Application case numbers	Action	S.F.	Fees
<u>09EEZ</u> <u>40060</u>	<u>ASO</u>	<u>2</u>	<u>\$ 0</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
Hearing date <u>12/17/09</u>			Total <u>\$ 0</u>

Sandy Handley 11/03/09 Project # 1004831
 Planner signature / date

Form revised 4/07

FORM Z: ZONE CODE TEXT & MAP AMENDMENTS, PLAN APPROVALS & AMENDMENTS

ANNEXATION (EPC08)

- Application for zone map amendment including those submittal requirements. See below. Annexation and establishment of zoning must be applied for simultaneously.
 - Petition for Annexation Form and necessary attachments
 - Zone Atlas map with the entire property(ies) clearly outlined
NOTE: The Zone Atlas must show that the site is in County jurisdiction, but is contiguous to City limits.
 - Letter briefly describing, explaining, and justifying the request
NOTE: Justifications must adhere to the policies contained in "Resolution 54-1990"
 - Letter of authorization from the property owner if application is submitted by an agent
 - BCC Notice of Decision for City Submittals
 - Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts.
 - Sign Posting Agreement
 - TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
 - List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

- SDP PHASE I - DRB CONCEPTUAL PLAN REVIEW (DRBPH1)** (Unadvertised)
- SDP PHASE II - EPC FINAL REVIEW & APPROVAL (EPC14)** (Public Hearing)
- SDP PHASE II - DRB FINAL SIGN-OFF (DRBPH2)** (Unadvertised)

- Copy of findings from required pre-application meeting (needed for the DRB conceptual plan review only)
- Proposed Sector Plan (30 copies for EPC, 6 copies for DRB)
- Zone Atlas map with the entire plan area clearly outlined
- Letter briefly describing, explaining, and justifying the request
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (for EPC public hearing only)
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form (for EPC public hearing only)
- Fee for EPC final approval only (see schedule)
- List any original and/or related file numbers on the cover application

Refer to the schedules for the dates, times and places of DRB and EPC hearings.

Your attendance is required.

AMENDMENT TO ZONE MAP - ESTABLISHMENT OF ZONING OR ZONE CHANGE (EPC05)

- Zone Atlas map with the entire property clearly outlined
- Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980".
- Letter of authorization from the property owner if application is submitted by an agent
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- Sign Posting Agreement
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO SECTOR DEVELOPMENT MAP (EPC03)

AMENDMENT SECTOR DEVELOPMENT, AREA, FACILITY, OR COMPREHENSIVE PLAN (EPC04)

- Proposed Amendment referenced to the materials in the Plan being amended (text and/or map)
- Plan to be amended with materials to be changed noted and marked
- Zone Atlas map with the entire plan/amendment area clearly outlined
- Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980" (Sector Plan map change only)
- Letter of authorization from the property owner if application is submitted by an agent (Map change only)
- Letter briefly describing, explaining, and justifying the request
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (sector plans only)
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- Sign Posting Agreement
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO ZONING CODE OR SUBDIVISION REGULATORY TEXT (EPC07)

- Amendment referenced to the sections of the Zone Code/Subdivision Regulations being amended
- Sections of the Zone Code/Subdivision Regulations to be amended with text to be changed noted and marked
- Letter briefly describing, explaining, and justifying the request
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Carol Toffaleti
Applicant name (print)
Carol Toffaleti 11/3/09
Applicant signature / date



Form revised APRIL 07

Checklists complete
 Fees collected
 Case #s assigned
 Related #s listed

Application case numbers
09EPC - 40060
Sandy Handley 11/03/09
 Planner signature / date
 Project # 1004831

CITY OF ALBUQUERQUE
CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Richard Dineen, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-09-91
DATE: October 9, 2009

The attached ordinance was introduced by the City Council on October 7, 2009. We are requesting that you submit this text amendment to the Zoning Code to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to change the process for vacating public rights-of-way to ensure Council approval.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
File O-09-91

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**CITY of ALBUQUERQUE
EIGHTEENTH COUNCIL**

COUNCIL BILL NO. 0-09-91 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

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ORDINANCE

**AMENDING CHAPTER 14, ARTICLE 14, PART 7 ROA 1994 TO CLARIFY THE
PROCESS FOR VACATING PUBLIC RIGHTS-OF-WAY; PLACING THE FINAL
DISCRETIONARY AUTHORITY TO APPROVE THE VACATION OF A PUBLIC
RIGHT OF WAY OR EASEMENT IN THE CITY COUNCIL.**

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

**SECTION 1. Chapter 14, Article 14, Part 7 ROA 1994 is amended to read
as follows:**

§ 14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT.

**(A) Any final plat recorded in the office of the County Clerk may be
amended or vacated (voided) either:**

**(1) by recording a new subdivision plat (a resubdivision)
covering all or a portion of the previous plat sought to be amended or vacated
or by recording an amended plat covering such area. In either case, the new
plat or amended plat shall be processed as an original subdivision action
under Part 3 of this article and recorded as specified therein. If the new or
amended plat falls within the definition of minor subdivision, contained in §
14-14-1-6 of this article, it shall be processed as such; or**

**(2) upon a finding at a public hearing by the Development
Review Board that the plat was obtained by misrepresentation or fraud, the
plat may be vacated by the Development Review Board. A statement
approved by the Development Review Board shall be filed in the office of the
County Clerk. The County Clerk shall mark the original plat with the words
"VACATED" or "PARTIALLY VACATED" and refer on the plat to the volume
and page on which the statement of vacation is recorded.**

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1 (B) In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 (C) In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 (D) The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 (E) Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 (F) If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of [~~division (B) of this~~
17 ~~section~~][§ 14-14-7-2] shall be followed as to the vacations of right of way.

18 § 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS
19 AND EASEMENTS.

20 (A) Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 (1) The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 (2) The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division [~~(E)~~][G] of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

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1 (B) The vacation of public rights of way, private ways, or
2 easements, whether by new plat, plat amendment, or request to vacate, shall
3 be approved only when it is determined that:

4 (1) The public welfare is in no way served by retaining the
5 way or easement; or

6 (2) There is a net benefit to the public welfare because the
7 development made possible by the vacation is clearly more beneficial to the
8 public welfare than the minor detriment resulting from the vacation; and in
9 addition to divisions (1) or (2) of this division (B):

10 (3) There is no convincing evidence that any substantial
11 property right is being abridged against the will of the owner of the right.

12 [(C) Public rights of way and public easements may only be
13 vacated by action of the City Council following a determination by the DRB
14 that the requirements of subsection (B) have been met. Private ways and
15 private easements are vacated by action of the DRB and do not require City
16 Council action.]

17 [(D) The vacation of public rights of way or public easements,
18 whether by new plat, plat amendment, or request to vacate, is a discretionary
19 act by the City and a determination that the requirements of subdivision (B)
20 have been met is a precondition to a vacation but does not create a right to a
21 vacation.]

22 ~~[(C)]~~ [(E) In making a determination that the requirements of
23 subsection (B) have been met with respect to a public right of way or public
24 easement the Development Review Board may recommend that the City
25 Council only approve the vacation if] ~~[In approving the vacation the~~
26 ~~Development Review Board may require that]~~ some or all of the public rights
27 of way or easements ~~[are]~~ [be] retained by the appropriate governmental entity
28 as shown on the original plat.

29 ~~[(D)]~~ [(F) In the case of public rights of way or easements the
30 City Council and in the case of private rights of way or easements] ~~[F]~~ [t]he
31 Development Review Board may require that curb and gutter be placed, at the
32 expense of the applicant, so as to effectively halt the vacated area[’s] being
33 used as public way. It may also be necessary to remodel or otherwise

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1 reconstruct existing public improvements in order to solve problems created
2 by the vacation, and the [City Council or] Development Review Board may so
3 require. Costs involved shall be borne by the applicant.

4 [(E)][(G)] Procedure.

5 (1) In all cases where public right of way, private ways, or
6 easements are sought to be vacated, whether by new subdivision, plat
7 amendment, or request to vacate, the following procedures shall be followed
8 in addition to the procedures specified in Part 3 of this article; however, the
9 following procedure may be eliminated for the requested vacation of private
10 easements if the Planning Director is satisfied that all the benefitted and
11 burdened parties are clearly and completely defined and all agree to the
12 vacation.

13 (2) Notice and Request for Comment.

14 (a) The Planning Director shall mail letters to
15 franchised utilities and to the owner of record of all lots adjacent to the right of
16 way, private way, and/or easement to be vacated [and to any neighborhood
17 association known by the Office of Neighborhood Services to cover all or part
18 of the right of way, private way, and/or easement sought to be vacated],
19 informing them of the nature of the proposed vacation, and notifying them of
20 the date, time, and place of the public hearing by the Development Review
21 Board on the proposed vacation. For notifying property owners, the name and
22 address of the owners shown in the records of the County Assessor shall be
23 used.

24 (b) Prior to the hearing, the Planning Director shall
25 request interested city departments and other agencies to comment on the
26 application. Comments received shall be submitted to the Development
27 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
28 Control Authority and/or the Middle Rio Grande Conservancy District shall be
29 requested before vacation of any drainage easement or public right of way
30 within their respective areas of jurisdiction.

31 (c) If the public right of way, private way, and/or
32 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
33 vehicular or pedestrian traffic], the applicant shall post and maintain one or

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1 more signs, as provided and where instructed by the Planning Director, at
2 least 15 days before the date of the hearing. The applicant is responsible for
3 removing such signs within five days after the hearing is completed. Failure
4 to properly post signs is grounds for deferral of the request. No one except
5 the applicant, the agent of the applicant, or the city shall remove or tamper
6 with any such required sign during the period it is required to be maintained
7 under this division (c).

8 (d) Public notice in a newspaper of general
9 circulation in the city shall be published at least 15 days before date of the
10 hearing; the notice shall indicate the location of the proposed vacation, where
11 a map of the proposed vacation may be viewed, and information on the date,
12 time, and place of the hearing.

13 (3) Hearing and Decision.

14 (a) [A determination by the Development Review
15 Board with respect to a public right of way or easement as to whether the
16 requirements of subsection B have been met] or [A][a] decision [by the
17 Development Review Board with respect to a private right of way or easement
18 as to whether [on city approval of vacations][a vacation shall be approved]
19 shall be made [by the Development Review Board] at a public hearing.
20 [Approval or disapproval shall be given][Any decision shall be] in
21 writing[,expressing the reasons and any conditions,] and a copy shall be sent
22 to the applicant and any other persons who have indicated interest in the
23 matter. [For a public right of way or easement the Development Review Board
24 may recommend to the City Council conditions that should be imposed if a
25 vacation is approved. For a private right of way or easement the Development
26 Review Board may impose conditions if a vacation is approved.]

27 [(b) A DRB determination that the requirements of
28 subsection B have not been met for a public right of way or easement shall be
29 dispositive as to whether a vacation should be approved subject to appeal to
30 the City Council on that issue. If on appeal the City Council reverses a DRB
31 determination and finds that the requirements of subsection B have been met
32 the City Council shall at the same time exercise its discretion and determine
33 whether the public right of way or easement DRB should be vacated.

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1 (c) A DRB determination that the requirements of
2 subsection B have been met for a public right of way or easement shall be
3 forwarded to the City Council to determine if the vacation shall occur. If the
4 determination by the DRB that the requirements of subsection B have been
5 met is appealed to the City Council that issue shall be considered by the City
6 Council at the same time it exercises its discretion to determine whether the
7 public right of way or easement DRB should be vacated.]

8 [(b)][d] Approval of vacation of public right of way,
9 private ways or easements shall be conditional upon the following steps being
10 accomplished by the applicant or governmental entity within a time period set
11 by the [City Council or] Development Review Board, in no case exceeding one
12 year. If not so accomplished, the decision to vacate is voided.

13 1. The applicant shall present to the city a
14 final plat incorporating the vacated right of way into adjacent lots, which plat
15 the city shall record with the County Clerk; or

16 2. The appropriate governmental entity shall
17 record a final plat if the [City][Development Review Board] finds that it is in the
18 public interest for the governmental entity to own the vacated public right of
19 way as a lot or if adjacent property owners do not desire the vacated parcel.

20 3. The applicant shall secure the installing or
21 removing and disposing of such improvements, as are required by the [City
22 Council or] Development Review Board in order to remodel or otherwise
23 reconstruct existing public improvements to appropriately provide for the
24 proposed uses. Costs involved shall be borne by the applicant.

25 (4) Disposition of Right-of-Way.

26 (a) Normally the owners of land adjacent to the
27 vacated public right of way have an opportunity to obtain title to the land, for
28 some consideration, from the owner (normally the city).

29 (b) Immediately after a city decision to vacate platted
30 public right of way becomes final, if such land is proposed to be disposed of
31 by the city, the City Property Manager shall notify each owner of adjacent
32 property by certified letter. The certified letter shall notify each adjacent
33 landowner of the opportunity to purchase from the city one-half of the width of

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1 the vacated right of way contiguous to the landowner's property, subject to
2 any conditions or requirements stated in the decision to vacate. If an adjacent
3 landowner fails to notify the city Property Manager in writing, within 30 days of
4 the date of the receipt slip of the certified letter, that he or she intends to
5 purchase the adjacent public right of way, the city may dispose of the vacated
6 right of way in any manner which the city, in its discretion, deems appropriate.

7 **§ 14-14-7-3 TECHNICAL CORRECTIONS.**

8 (A) Technical corrections to approved, but as yet unrecorded, final
9 plats shall be approved by the Development Review Board before being
10 recorded with the County Clerk.

11 (B) Technical corrections to recorded final plats shall be made by
12 a correction plat approved by the Development Review Board. The plat shall
13 include only the area affected by the correction and shall clearly indicate the
14 correction. Correction plats for technical corrections shall be recorded in the
15 same manner as a final plat. See § 14-14-3-6 of this article.

16 **SECTION 3. SEVERABILITY CLAUSE.** If any section, paragraph, word
17 or phrase of this ordinance is for any reason held to be invalid or
18 unenforceable by any court of competent jurisdiction, such decision shall not
19 affect the validity of the remaining provisions of this ordinance. The Council
20 hereby declares that it would have passed this ordinance and each section,
21 paragraph, sentence, clause, word or phrase thereof irrespective of any
22 provision being declared unconstitutional or otherwise invalid.

23 **SECTION 4. COMPILATION.** This ordinance shall be incorporated in
24 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 **SECTION 5. EFFECTIVE DATE.** This ordinance shall take effect five
26 days following publication by title and general summary.

27

28



**Environmental
Planning
Commission**

**Agenda Number: 2
Project Number: 1004831
Case #'s: 09EPC 40060
December 17, 2009**

Staff Report

Applicant	City of Albuquerque City Council
Request	Text Amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council
Location	City-wide
Zoning	NA

Staff Recommendation

*That a recommendation of **CONDITIONAL APPROVAL** of a Text Amendment to Part §14-14-7 of the Subdivision Ordinance, 09EPC 40060, be forwarded to the City Council based on the Findings beginning on Page 5*

Staff Planner
Jack Cloud, AICP
Chair, Development Review Board

Summary of Analysis

This proposal consists of a text amendment to Part §14-14-7 ROA 1994, the 'Subdivision Ordinance,' regarding the process for vacation, or closing, of public rights of way and easements; the proposed text amendment would require City Council approval for all such vacation requests.

Staff finds the requirement for City Council approval to be extraordinary change in procedure, given that the Council has an opportunity for review of such vacations via appeals/ due process under existing ordinances and regulations.

City-wide

City Departments and other interested agencies reviewed this application from 11/09/2009 to 11/20/2009; agency comments begin on Page 7.

I. INTRODUCTION

Proposal

This proposal is for a text amendment to §14-14-7 ROA 1994, the portion of the Subdivision Ordinance that pertains to the vacation, or closing, of public rights of way and public easements. All vacations currently may be approved by the Development Review Board (DRB) subject to a public hearing; however all decisions of the DRB are subject to appeal, which go to the City Council after a hearing and recommendation by the Land Use Hearing Officer (LUHO). The proposed text amendment would require City Council approval for all vacation of public right of way or vacation of a public easement, so that the DRB could only make a recommendation from its public hearing.

Environmental Planning Commission (EPC) Role

The EPC's task is to make a recommendation to the City Council regarding the proposed changes to the Subdivision Ordinance. The City Council is the City's legislative body with the authority to change and adopt ordinances, and the EPC is a recommending body on certain changes that affect Chapter 14 of the City Code [ZONING, PLANNING, AND BUILDING].

Background and Context

The stated purpose of the amendment is to ensure that the City Council has the final discretionary authority for approval of these vacations. Following are comments from the City Council staff regarding the proposed text amendment:

'When the City agrees to vacate a right-of-way or easement it is determining that it should give up a potentially valuable interest in real property. In other cases where the City releases an interest in real property the City Council approves such actions as a matter of policy. State law that allows for the vacation of rights of way provides that if a roadway is not needed for public purposes, there is then a decision as to whether to vacate -- that decision is a policy decision.

The City Council has, by ordinance, elected to transfer its authority to make the determination of when to vacate property to the DRB. There is no legal problem with that delegation. The problem is that the determination to vacate a right-of-way has become a legal issue as to whether the ordinance has been complied with and the policy concerns have arguably dropped out. As you are aware, the City ordinance provides in relevant part:

"The vacation of public rights of way, private ways, or easements, whether by new plat, plat amendment, or request to vacate, shall be approved only when it is determined that:

- (1) The public welfare is in no way served by retaining the way or easement; or
- (2) There is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation; and in addition to divisions (1) or (2) of this division (B):

(3) There is no convincing evidence that any substantial property right is being abridged against the will of the owner of the right."

The DRB considers whether the ordinance terms are met and approves the vacation if they are complied with. The ordinance, however, does not say that rights-of-way or easements shall be vacated if the ordinance terms are met. It says that rights-of-way or easements shall not be vacated if the ordinance terms are not met. The current language of the ordinance recognizes that there may be more to the determination than simply looking at whether the ordinance language has been met. Admittedly, the DRB is charged with considering certain policy issues as it is to weigh "public welfare." But that term is not defined and if the ordinance is adopted it will be a recognition that the City Council should ultimately decide what will benefit "public welfare" along with any other policy considerations.

The DRB is a technical board with expertise in a wide range of specialized areas. It is not a policy making body. If the ordinance is adopted it will be a determination that the application of policy is best left with the Council. The technical determination of compliance with the ordinance requirements will remain with the DRB.

[In] at least one case where the City Council reversed a DRB decision to approve the vacation of an alley[, t]he party seeking the vacation filed an appeal in District Court taking the position that if the ordinance terms were met that the vacation was mandatory. Given the DRB's interpretation of the ordinance there is legal support for such an argument. That appeal was abandoned so the issue was never resolved. The ordinance amendment clarifies the fact that the City is never required to vacate a right-of-way or easement no matter what the factual determination. The final decision is always a policy call and the City Council is the appropriate body to make that call.'

II. ISSUES

Section 3, Minor changes to Section 1

There are three sections to Part §14-14-7 of the Subdivision Ordinance. The last section, §14-14-7-3 TECHNICAL CORRECTIONS, would not be changed by the proposed amendment. The first section, §14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT, has only one change by the proposed amendment, on page 2, Lines 16 and 17. This change would delete a reference to the paragraph at the top of page 2 (B) and add a new reference to section 2 of Part 7, VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS AND EASEMENTS. This section 2 generally provides the requirements and procedures for review of vacation requests, and the addition of the reference for this section 2 into section 1 could be appropriate. However, this would not necessarily need to have the existing reference to the preceding paragraph (B) deleted. That paragraph (B) requires the DRB to evaluate whether the "vacation action will adversely affect contiguous land, any owner of land within the subdivision being vacated, or the interests of the City." [this is also consistent with the New Mexico State Subdivision Statute]. It is recommended that the additional reference language in section 1 be included in the text amendment, but that none of the existing language of this section 1 be deleted.

Section 2 – Vacation not a right

Comments from the City Council staff reference a vacation that was approved by DRB, reversed by City Council such that the vacation was denied, and that action was then appealed to District Court. The appeal took the position that if the existing ordinance terms requiring certain determinations are met (that the public welfare is not served or there is a net benefit to the public welfare, and that no substantial property right is abridged), then the approval of a vacation request should be mandatory. Council staff argues that there may be legal support for this position, so the text amendment proposes an additional paragraph (D) to section 2 to counter this interpretation on page 3, lines 17 - 21:

[(D) The vacation of public rights of way or public easements, whether by new plat, plat amendment, or request to vacate, is a discretionary act by the City and a determination that the requirements of subdivision (B) have been met is a precondition to a vacation but does not create a right to a vacation.]

Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Mailed Notice to Neighborhood Associations

Additional language to the Subdivision Ordinance is proposed with this text amendment regarding vacation procedures, and specifically mailed notice to neighborhood associations on page 4, lines 16 - 18. This is already standard practice for these vacation requests in accordance with the Neighborhood Recognition Ordinance. [§14-14-7 ROA 1994] Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Required approval by City Council

The major staff concern with the proposed text amendment is the requirement for City Council approval for all vacations of public right of way or public easements. Clearly the City Council has the authority to amend City ordinances, and to require City Council approval of these vacations if the Council determines these are to be ‘policy’ decisions. However, when the DRB was established almost 30 years ago, the City Council at that time determined that these were more of a technical decision, consistent with the subdivision process. For instance, most vacation requests for public easements are either Public Utility Easements or Public Drainage Easements. Through the planning/ vacation process the affected agencies determine what kind and size of easements are needed to serve both the function (i.e. utility or drainage) of the easement as well as to adequately serve the adjacent property. Likewise with public right of way, most vacation requests involve the size of the right of way and whether it is needed to serve adjacent property; these decisions are generally technical decisions. Regarding what would be a ‘policy’ decision would be something like the Long Range Roadway System, where City Council members help decide what and where the major roadways are to be, while the DRB considers the technical design such as whether the minimum right of way is maintained.

Comments from the City Council staff reference the release of interest in real property as requiring City Council approval, as a matter of policy. However this only applies to real property having a value of more than \$10,000; real property having a value less than that may be determined to be unessential for a municipal purpose by the administration, and this is generally the case with the vast majority of vacations.

As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process.

III. APPLICABLE ORDINANCES, PLANS AND POLICIES

The applicable ordinance (Article 14 – Subdivision Regulations of Chapter 14 –Zoning, Planning and Building) is the subject of this proposed text amendment.

IV. CONCLUSION

The proposed text amendments regarding additional references and findings for DRB public hearings on vacations of public right of way and public easements could help clarify the vacation process, particularly to note that the City is not required to approve a vacation even if certain pre-conditions of the existing Subdivision Ordinance have been met.

The proposed amendment to require City Council approval for vacation of public rights of way and public easements, however, would put approximately 60 or more such applications each year into a category of process more complex than a major subdivision request, as well as most site development plans and zone map amendments.

FINDINGS- 09EPC 40060, December 17, 2009-Text Amendment

1. Part §14-14-7 ROA 1994 of the Subdivision Ordinance provides regulations and procedures for the vacation, or closing, of public rights of way, private ways, and easements.
2. The purpose of the proposed text amendment is to change the process for vacating public rights of way and public easements to ensure City Council approval.
3. Other portions of the proposed text amendment would codify that the approval of a vacation request is a discretionary action by the City, no matter if the existing Subdivision Ordinance pre-conditions for approval are met, plus the amendment would add references for [existing] procedures including notification of neighborhood associations.
4. The vacations of public right of way and public easements are generally technical decisions to determine if minimum subdivision standards are maintained, and thus that the public welfare is served.
5. The Development Review Board holds public hearings for vacations of public right of way and public easements consistent with public hearings for subdivisions, site development plans, and zone map amendments; this includes requiring neighborhood association notification, printing a legal advertisement in the local newspaper, posting of signs, and mailed notice, along with distribution to other City departments for review and comment.
6. The City of Albuquerque processed 77 applications for such vacations in 2007, 64 applications in 2008, and 47 applications to-date in 2009.
7. Requiring City Council approval for vacations of public right of way and public easements would put 50 - 70 such applications each year into a category of process more complex than a subdivision request as well as most site development plans and zone map amendments.

RECOMMENDATION

That a recommendation of CONDITIONAL APPROVAL of O-09-91/ Text Amendments to the Subdivision Ordinance Part §14-14-7 be forwarded to the City Council based on the preceding Findings and subject to the following Conditions of Approval.

CONDITIONS OF APPROVAL- 09EPC 40060, December 17, 2009-Zoning Code Text Amendments

1. That the existing language in Section 1 of Part §14-14-7 of the Subdivision Ordinance be retained [not deleted] and that the proposed new language in Section 1 [page 2, line 17] be included in the text amendment.
 2. That new paragraph (C) in Section 2 of Part §14-14-7 of the Subdivision Ordinance [page 3, lines 12 -16] not be included not be included in the text amendment, and that new paragraph (D) in Section 2 [page 3, lines 17 -21] be included in the text amendment and re-lettered as paragraph (C).
 3. That all other changes on page 3 not be included in the text amendment.
 4. That all other changes on pages 5 and 6 not be included in the text amendment.
-



**Jack Cloud, AICP
Chair, Development Review Board**

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Code Services

No comment.

Office of Neighborhood Coordination

City Wide

11/19/09 – was published in the “Neighborhood News” newsletter and is online in the Newsletter
11/30/09 - will be e-mail to Neighborhood Representatives - siw

Long Range Planning

CITY ENGINEER

Transportation Development Services

Findings

- Currently, the process for Vacation of Public Rights of Way, Private Ways and Easements is clearly defined in 14-14-7 of the Subdivision Regulations.
- Currently, City Council has final discretionary authority to approve the vacation of public rights-of-way as outlined in the Subdivision Regulations but has delegated the administration of this action to the Development Review Board (DRB). However, a DRB determination can be appealed to City Council who ultimately would make a final decision regarding the DRB determination.

Recommendation

- Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

Traffic Engineering Operations

Hydrology

- The Hydrology Section objects to the ordinance revision as written based on the following reasons:
 1. Public drainage easements and public utility easements should be established or vacated for technical reasons. The DRB is the technical review board.
 2. The appeal process is not clearly addressed.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance Operations (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

Conditions of approval for the proposed Text Amendment to the Subdivision Ordinance shall include:

- a. Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

WATER UTILITY AUTHORITY

Utility Services

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

PARKS AND RECREATION

Planning and Design

Open Space Division

Open Space has no adverse comments

City Forester

POLICE DEPARTMENT/Planning

No crime prevention of CPTED comment to the proposed text amendment at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

NO ADVERSE COMMENTS

FIRE DEPARTMENT/Planning

TRANSIT DEPARTMENT

Adjacent and nearby routes	N/A
Adjacent bus stops	N/A
Site plan requirements	None
Large site TDM suggestions	N/A
Other information	None.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

This amendment will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

No comments.

City of Albuquerque



DEVELOPMENT/ PLAN REVIEW APPLICATION

SUBDIVISION

- Major Subdivision action
- Minor Subdivision action
- Vacation
- Variance (Non-Zoning)

SITE DEVELOPMENT PLAN

- for Subdivision
- for Building Permit
- Administrative Amendment (AA)
- IP Master Development Plan
- Cert. of Appropriateness (LUCC)

STORM DRAINAGE (Form D)

- Storm Drainage Cost Allocation Plan

Supplemental form

S Z ZONING & PLANNING

- Annexation
- County Submittal
- EPC Submittal
- Zone Map Amendment (Establish or Change Zoning)
- Sector Plan (Phase I, II, III)
- Amendment to Sector, Area, Facility or Comprehensive Plan
- Text Amendment (Zoning Code/Sub Regs)
- Street Name Change (Local & Collector)
- L A APPEAL / PROTEST of...**
 - Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any): CoA Planning Department PHONE: 924-3860
 ADDRESS: 600 2nd St NW FAX: 924-3339
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

APPLICANT: CoA City Council PHONE: 768-3100
 ADDRESS: One Civic Plaza NW FAX: 768-3227
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

Proprietary interest in site: _____ List all owners: _____

DESCRIPTION OF REQUEST: Text amendment to Subdivision Ord. per 0-09-91

Is the applicant seeking incentives pursuant to the Family Housing Development Program? Yes. No.

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. city-wide Block: _____ Unit: _____
 Subdiv/Addn/TBKA: _____
 Existing Zoning: _____ Proposed zoning: _____ MRGCD Map No _____
 Zone Atlas page(s): _____ UPC Code: _____

CASE HISTORY:

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_Z_, V_, S_, etc.): _____

CASE INFORMATION:

Within city limits? Yes Within 1000FT of a landfill? _____
 No. of existing lots: _____ No. of proposed lots: _____ Total area of site (acres): _____

LOCATION OF PROPERTY BY STREETS: On or Near: city wide
 Between: _____ and _____

Check-off if project was previously reviewed by Sketch Plat/Plan , or Pre-application Review Team . Date of review: _____

SIGNATURE Carol Toffaleti DATE 11/3/09
 (Print) Carol Toffaleti Applicant: Agent:

FOR OFFICIAL USE ONLY

<input type="checkbox"/> INTERNAL ROUTING <input checked="" type="checkbox"/> All checklists are complete <input checked="" type="checkbox"/> All fees have been collected <input checked="" type="checkbox"/> All case #s are assigned <input checked="" type="checkbox"/> AGIS copy has been sent <input checked="" type="checkbox"/> Case history #s are listed <input checked="" type="checkbox"/> Site is within 1000ft of a landfill <input checked="" type="checkbox"/> F.H.D.P. density bonus <input checked="" type="checkbox"/> F.H.D.P. fee rebate	Application case numbers	Action	S.F.	Fees
	<u>09EPC 40060</u>	<u>ASO</u>	<u>2</u>	<u>\$ 0</u>
	_____	_____	_____	\$ _____
	_____	_____	_____	\$ _____
	_____	_____	_____	\$ _____
	_____	_____	_____	\$ _____
	Hearing date		Total	
<u>Sandy Handley</u>	<u>12/17/09</u>		<u>\$ 0</u>	
	Planner signature / date	Project #		
	<u>11/03/09</u>	<u>1004831</u>		

Form revised 4/07

FORM Z: ZONE CODE TEXT & MAP AMENDMENTS, PLAN APPROVALS & AMENDMENTS

ANNEXATION (EPC08)

- Application for zone map amendment including those submittal requirements. See below. Annexation and establishment of zoning must be applied for simultaneously.
 - Petition for Annexation Form and necessary attachments
 - Zone Atlas map with the entire property(ies) clearly outlined
NOTE: The Zone Atlas must show that the site is in County jurisdiction, but is contiguous to City limits.
 - Letter briefly describing, explaining, and justifying the request
NOTE: Justifications must adhere to the policies contained in "Resolution 54-1990"
 - Letter of authorization from the property owner if application is submitted by an agent
 - BCC Notice of Decision for City Submittals
 - Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts.
 - Sign Posting Agreement
 - TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
 - List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

SDP PHASE I – DRB CONCEPTUAL PLAN REVIEW (DRBPH1) (Unadvertised)

SDP PHASE II - EPC FINAL REVIEW & APPROVAL (EPC14) (Public Hearing)

SDP PHASE II - DRB FINAL SIGN-OFF (DRBPH2) (Unadvertised)

- Copy of findings from required pre-application meeting (needed for the DRB conceptual plan review only)
- Proposed Sector Plan (30 copies for EPC, 6 copies for DRB)
- Zone Atlas map with the entire plan area clearly outlined
- Letter briefly describing, explaining, and justifying the request
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (for EPC public hearing only)
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form (for EPC public hearing only)
- Fee for EPC final approval only (see schedule)
- List any original and/or related file numbers on the cover application

Refer to the schedules for the dates, times and places of DRB and EPC hearings.

Your attendance is required.

AMENDMENT TO ZONE MAP - ESTABLISHMENT OF ZONING OR ZONE CHANGE (EPC05)

- Zone Atlas map with the entire property clearly outlined
- Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980".
- Letter of authorization from the property owner if application is submitted by an agent
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- Sign Posting Agreement
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO SECTOR DEVELOPMENT MAP (EPC03)

AMENDMENT SECTOR DEVELOPMENT, AREA, FACILITY, OR COMPREHENSIVE PLAN (EPC04)

- Proposed Amendment referenced to the materials in the Plan being amended (text and/or map)
- Plan to be amended with materials to be changed noted and marked
- Zone Atlas map with the entire plan/amendment area clearly outlined
- Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980" (Sector Plan map change only)
- Letter of authorization from the property owner if application is submitted by an agent (Map change only)
- Letter briefly describing, explaining, and justifying the request
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (sector plans only)
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- Sign Posting Agreement
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO ZONING CODE OR SUBDIVISION REGULATORY TEXT (EPC07)

- Amendment referenced to the sections of the Zone Code/Subdivision Regulations being amended
- Sections of the Zone Code/Subdivision Regulations to be amended with text to be changed noted and marked
- Letter briefly describing, explaining, and justifying the request
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Carol Toffaleti
Applicant name (print)

Carol Toffaleti 11/3/09
Applicant signature / date



Form revised APRIL 07

- Checklists complete
- Fees collected
- Case #s assigned
- Related #s listed

Application case numbers

09EPC 40060

Sandy Handley 11/03/09
Planner Signature / date

Project # 1004831

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Richard Dineen, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-09-91
DATE: October 9, 2009

The attached ordinance was introduced by the City Council on October 7, 2009. We are requesting that you submit this text amendment to the Zoning Code to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to change the process for vacating public rights-of-way to ensure Council approval.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
File O-09-91

**CITY of ALBUQUERQUE
EIGHTEENTH COUNCIL**

COUNCIL BILL NO. 0-09-91 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

ORDINANCE

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AMENDING CHAPTER 14, ARTICLE 14, PART 7 ROA 1994 TO CLARIFY THE
PROCESS FOR VACATING PUBLIC RIGHTS-OF-WAY; PLACING THE FINAL
DISCRETIONARY AUTHORITY TO APPROVE THE VACATION OF A PUBLIC
RIGHT OF WAY OR EASEMENT IN THE CITY COUNCIL.
BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
ALBUQUERQUE:

SECTION 1. Chapter 14, Article 14, Part 7 ROA 1994 is amended to read
as follows:

§ 14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT.

(A) Any final plat recorded in the office of the County Clerk may be
amended or vacated (voided) either:

(1) by recording a new subdivision plat (a resubdivision)
covering all or a portion of the previous plat sought to be amended or vacated
or by recording an amended plat covering such area. In either case, the new
plat or amended plat shall be processed as an original subdivision action
under Part 3 of this article and recorded as specified therein. If the new or
amended plat falls within the definition of minor subdivision, contained in §
14-14-1-6 of this article, it shall be processed as such; or

(2) upon a finding at a public hearing by the Development
Review Board that the plat was obtained by misrepresentation or fraud, the
plat may be vacated by the Development Review Board. A statement
approved by the Development Review Board shall be filed in the office of the
County Clerk. The County Clerk shall mark the original plat with the words
"VACATED" or "PARTIALLY VACATED" and refer on the plat to the volume
and page on which the statement of vacation is recorded.

[-Bracketed/Strikethrough-Material] - Deletion

[-Bracketed/Strikethrough-Material] - Deletion

1 (B) In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 (C) In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 (D) The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 (E) Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 (F) If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of [~~division (B) of this~~
17 ~~section~~][§ 14-14-7-2] shall be followed as to the vacations of right of way.

18 § 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS
19 AND EASEMENTS.

20 (A) Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 (1) The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 (2) The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division [~~(E)~~][G] of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

1. **(B) The vacation of public rights of way, private ways, or**
2 **easements, whether by new plat, plat amendment, or request to vacate, shall**
3 **be approved only when it is determined that:**

4 **(1) The public welfare is in no way served by retaining the**
5 **way or easement; or**

6 **(2) There is a net benefit to the public welfare because the**
7 **development made possible by the vacation is clearly more beneficial to the**
8 **public welfare than the minor detriment resulting from the vacation; and in**
9 **addition to divisions (1) or (2) of this division (B):**

10 **(3) There is no convincing evidence that any substantial**
11 **property right is being abridged against the will of the owner of the right.**

12 **[(C) Public rights of way and public easements may only be**
13 **vacated by action of the City Council following a determination by the DRB**
14 **that the requirements of subsection (B) have been met. Private ways and**
15 **private easements are vacated by action of the DRB and do not require City**
16 **Council action.]**

17 **[(D) The vacation of public rights of way or public easements,**
18 **whether by new plat, plat amendment, or request to vacate, is a discretionary**
19 **act by the City and a determination that the requirements of subdivision (B)**
20 **have been met is a precondition to a vacation but does not create a right to a**
21 **vacation.]**

22 **[(C)][(E) In making a determination that the requirements of**
23 **subsection (B) have been met with respect to a public right of way or public**
24 **easement the Development Review Board may recommend that the City**
25 **Council only approve the vacation if]**~~**[In approving the vacation the**~~
26 ~~**Development Review Board may require that]**~~ some or all of the public rights
27 of way or easements ~~**[are]**~~~~**[be]**~~ retained by the appropriate governmental entity
28 as shown on the original plat.

29 **[(D)][(F) In the case of public rights of way or easements the**
30 **City Council and in the case of private rights of way or easements]** ~~**[F]**~~~~**[t]**~~he
31 Development Review Board may require that curb and gutter be placed, at the
32 expense of the applicant, so as to effectively halt the vacated area~~**['s]**~~ being
33 used as public way. It may also be necessary to remodel or otherwise

[-Bracketed/Strikethrough-Material-] - Deletion

1 reconstruct existing public improvements in order to solve problems created
2 by the vacation, and the [City Council or] Development Review Board may so
3 require. Costs involved shall be borne by the applicant.

4 ~~[(E)]~~[(G)] Procedure.

5 (1) In all cases where public right of way, private ways, or
6 easements are sought to be vacated, whether by new subdivision, plat
7 amendment, or request to vacate, the following procedures shall be followed
8 in addition to the procedures specified in Part 3 of this article; however, the
9 following procedure may be eliminated for the requested vacation of private
10 easements if the Planning Director is satisfied that all the benefitted and
11 burdened parties are clearly and completely defined and all agree to the
12 vacation.

13 (2) Notice and Request for Comment.

14 (a) The Planning Director shall mail letters to
15 franchised utilities and to the owner of record of all lots adjacent to the right of
16 way, private way, and/or easement to be vacated [and to any neighborhood
17 association known by the Office of Neighborhood Services to cover all or part
18 of the right of way, private way, and/or easement sought to be vacated],
19 informing them of the nature of the proposed vacation, and notifying them of
20 the date, time, and place of the public hearing by the Development Review
21 Board on the proposed vacation. For notifying property owners, the name and
22 address of the owners shown in the records of the County Assessor shall be
23 used.

24 (b) Prior to the hearing, the Planning Director shall
25 request interested city departments and other agencies to comment on the
26 application. Comments received shall be submitted to the Development
27 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
28 Control Authority and/or the Middle Rio Grande Conservancy District shall be
29 requested before vacation of any drainage easement or public right of way
30 within their respective areas of jurisdiction.

31 (c) If the public right of way, private way, and/or
32 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
33 vehicular or pedestrian traffic], the applicant shall post and maintain one or

1 more signs, as provided and where instructed by the Planning Director, at
2 least 15 days before the date of the hearing. The applicant is responsible for
3 removing such signs within five days after the hearing is completed. Failure
4 to properly post signs is grounds for deferral of the request. No one except
5 the applicant, the agent of the applicant, or the city shall remove or tamper
6 with any such required sign during the period it is required to be maintained
7 under this division (c).

8 (d) Public notice in a newspaper of general
9 circulation in the city shall be published at least 15 days before date of the
10 hearing; the notice shall indicate the location of the proposed vacation, where
11 a map of the proposed vacation may be viewed, and information on the date,
12 time, and place of the hearing.

13 (3) Hearing and Decision.

14 (a) [A determination by the Development Review
15 Board with respect to a public right of way or easement as to whether the
16 requirements of subsection B have been met] or [A][a] decision [by the
17 Development Review Board with respect to a private right of way or easement
18 as to whether [en-city approval of vacations][a vacation shall be approved]
19 shall be made [by the Development Review Board] at a public hearing.
20 [Approval or disapproval shall be given][Any decision shall be] in
21 writing[,expressing the reasons and any conditions,] and a copy shall be sent
22 to the applicant and any other persons who have indicated interest in the
23 matter. [For a public right of way or easement the Development Review Board
24 may recommend to the City Council conditions that should be imposed if a
25 vacation is approved. For a private right of way or easement the Development
26 Review Board may impose conditions if a vacation is approved.]

27 [(b) A DRB determination that the requirements of
28 subsection B have not been met for a public right of way or easement shall be
29 dispositive as to whether a vacation should be approved subject to appeal to
30 the City Council on that issue. If on appeal the City Council reverses a DRB
31 determination and finds that the requirements of subsection B have been met
32 the City Council shall at the same time exercise its discretion and determine
33 whether the public right of way or easement DRB should be vacated.

[-Bracketed/Strikethrough-Material] - Deletion

1 (c) A DRB determination that the requirements of
2 subsection B have been met for a public right of way or easement shall be
3 forwarded to the City Council to determine if the vacation shall occur. If the
4 determination by the DRB that the requirements of subsection B have been
5 met is appealed to the City Council that issue shall be considered by the City
6 Council at the same time it exercises its discretion to determine whether the
7 public right of way or easement DRB should be vacated.]

8 [(b)](d) Approval of vacation of public right of way,
9 private ways or easements shall be conditional upon the following steps being
10 accomplished by the applicant or governmental entity within a time period set
11 by the [City Council or] Development Review Board, in no case exceeding one
12 year. If not so accomplished, the decision to vacate is voided.

13 1. The applicant shall present to the city a
14 final plat incorporating the vacated right of way into adjacent lots, which plat
15 the city shall record with the County Clerk; or

16 2. The appropriate governmental entity shall
17 record a final plat if the [City][~~Development Review Board~~] finds that it is in the
18 public interest for the governmental entity to own the vacated public right of
19 way as a lot or if adjacent property owners do not desire the vacated parcel.

20 3. The applicant shall secure the installing or
21 removing and disposing of such improvements, as are required by the [City
22 Council or] Development Review Board in order to remodel or otherwise
23 reconstruct existing public improvements to appropriately provide for the
24 proposed uses. Costs involved shall be borne by the applicant.

25 (4) Disposition of Right-of-Way.

26 (a) Normally the owners of land adjacent to the
27 vacated public right of way have an opportunity to obtain title to the land, for
28 some consideration, from the owner (normally the city).

29 (b) Immediately after a city decision to vacate platted
30 public right of way becomes final, if such land is proposed to be disposed of
31 by the city, the City Property Manager shall notify each owner of adjacent
32 property by certified letter. The certified letter shall notify each adjacent
33 landowner of the opportunity to purchase from the city one-half of the width of

1 the vacated right of way contiguous to the landowner's property, subject to
2 any conditions or requirements stated in the decision to vacate. If an adjacent
3 landowner fails to notify the city Property Manager in writing, within 30 days of
4 the date of the receipt slip of the certified letter, that he or she intends to
5 purchase the adjacent public right of way, the city may dispose of the vacated
6 right of way in any manner which the city, in its discretion, deems appropriate.

7 § 14-14-7-3 TECHNICAL CORRECTIONS.

8 (A) Technical corrections to approved, but as yet unrecorded, final
9 plats shall be approved by the Development Review Board before being
10 recorded with the County Clerk.

11 (B) Technical corrections to recorded final plats shall be made by
12 a correction plat approved by the Development Review Board. The plat shall
13 include only the area affected by the correction and shall clearly indicate the
14 correction. Correction plats for technical corrections shall be recorded in the
15 same manner as a final plat. See § 14-14-3-6 of this article.

16 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word
17 or phrase of this ordinance is for any reason held to be invalid or
18 unenforceable by any court of competent jurisdiction, such decision shall not
19 affect the validity of the remaining provisions of this ordinance. The Council
20 hereby declares that it would have passed this ordinance and each section,
21 paragraph, sentence, clause, word or phrase thereof irrespective of any
22 provision being declared unconstitutional or otherwise invalid.

23 SECTION 4. COMPILATION. This ordinance shall be incorporated in
24 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
26 days following publication by title and general summary.

27

28

prior to the public hearing (Rules, A. Organization and Meetings: 2.)

3. The EPC will consider a motion to create a subcommittee for the purpose of drafting and refining language for the Rules (moved and then tabled at the 3:30 pm, 12 November 2009 public hearing).

Notice is hereby given that the City of Albuquerque Environmental Planning Commission will hold a **Public Hearing on Thursday, December 17, 2009, 8:30 a.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM to consider the following items: [Note: these items are not in the order they will be heard]

Project# 1002125
09EPC-40062 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)

BERGER BRIGGS agents for SANTA FE ARCHDIOCESAN request the above action for all or a portion of lot 20A, block 44, RAYNOLDS ADDITION zoned SU-2 FOR SU-1 FURNITURE / RETAIL to SU-2 for SU-1 FURNITURE / RETAIL AND O-1 USES located on IRON AVE SW BETWEEN 13TH ST SW AND 14TH ST SW containing approximately .489 acre(s). (K-13)
Carol Toffaleti, Staff Planner

Project# 1008069
09EPC-40063 SITE DEVELOPMENT -
BUILDG PRMT
09EPC-40064 SITE DEVELOPMENT -
SUBDIVISION

JOSHUA SKARSGARD agent for RESOLUTION EQUITIES LLC requests the above actions for all or a portion of lot(s) 13, 20 & 21, block 10, tract 2, NORTH ALBUQUERQUE ACRES Unit 3 zoned SU-2 / MU located on HOLLY AND PASEO DEL NORTE WEST OF WYOMING containing approximately 2 acres. (C-19) Carol Toffaleti, Staff Planner

Project# 1004831
09EPC-40060 TEXT AMENDMENT TO
SUBDIVISION REGULATIONS

CITY OF ALBUQUERQUE CITY COUNCIL request(s) recommendation on the referenced/ above action(s) for amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council.
Jack Cloud, Staff Planner

Project# 1007674
09EPC-40059 SITE DEV PL/WAIVER -
WIRELES TELECOM FAC

VERIZON WIRELESS, agents for PACIFIC REALTY CO request the above action for all or a PORTION OF THE WEST 1/2 OF LOT 1, zoned C-2 (SC) located at 7220 LOMAS BLVD NE, BETWEEN CHAMA ST. NE AND LOUISIANA BLVD. NE, containing approximately 1.21 acres. (K-19) Catalina Lehner, Staff Planner

Project# 1008059
09EPC-40061 SITE DEVELOPMENT -
BUILDG PRMT

SLAGLEHERR ARCHITECTS agents for MECHENBIER CONSTRUCTION INC request the above action for all or a portion of lots 4-6, block 4, tract A, Unit B, NORTH ALBUQUERQUE ACRES, zoned IP located on 5300 VENICE NE BETWEEN SAN MATEO NE AND I-25 containing approximately 2.66 acres. (B-18) Randall Falkner, Staff Planner

Details of these applications may be examined at the Current Planning Division of the Planning Department, 3rd Level, Plaza Del Sol Building, 600 Second Street NW, between 8:00 a.m. and 5:00 p.m., Monday through Friday, or you may call Mona Andrade at 924-3889. INDIVIDUALS WITH DISABILITIES who need special assistance to participate at the public hearing should contact Mona Andrade 924-3889.

Laurie Moye, Chair
Environmental Planning Commission

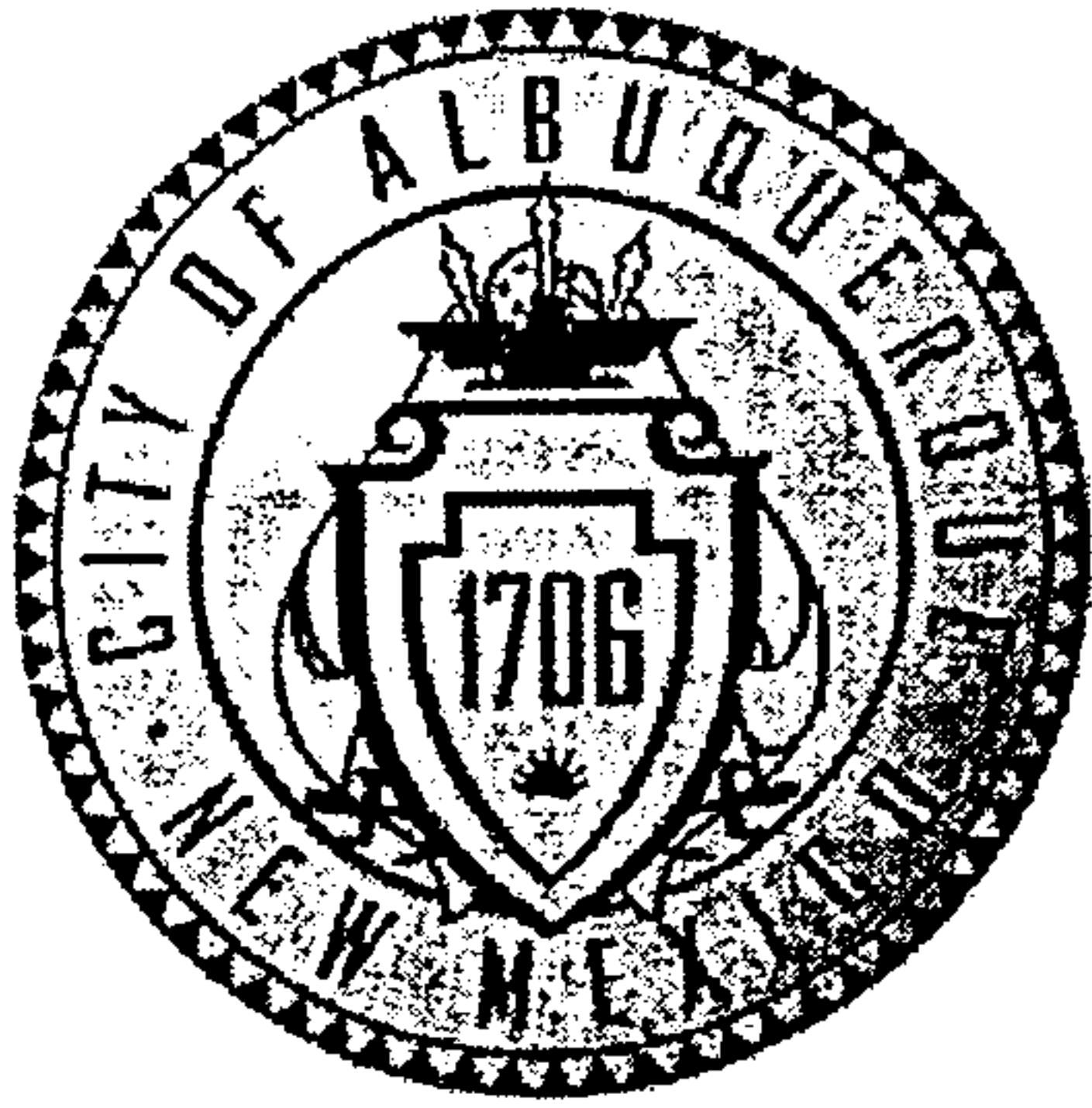
TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL NOVEMBER 25, 2009.

APPROVED



Russell Brito, Manager

Planning Department



Mayor Richard J. Berry

CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Office of the Mayor

INTER-OFFICE MEMORANDUM

February 25, 2010

TO: Ken Sanchez, President, City Council

FROM: Deborah L. Stover, Planning Department Director 

SUBJECT: O-09-91 - Project# 100483109EPC-40060, The Environmental Planning Commission recommends **NO RECOMMENDATION** of a TEXT AMENDMENT TO SUBDIVISION REGULATIONS, CITY OF ALBUQUERQUE CITY COUNCIL for amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council. Jack Cloud, Staff Planner

The Environmental Planning Commission (EPC) heard this proposal at its December 17, 2009 public hearing. After two tie votes, one to recommend denial of O-09-91 and one to endorse the staff recommendation for modified approval (deleting a proposed requirement for City Council action on certain vacation approvals), the Commission voted to adopt the Findings of the staff report plus a Finding regarding the two tie votes, but to make no recommendation on the proposed text amendment to the Subdivision Ordinance.

Overview

This proposed text amendment pertains to the vacation, or closing, of all or portions of public rights of way and public easements. The first part of the text amendment would provide a technical correction for a reference regarding Resubdivision or Amendment of a Previous Plat. A second component would amend the City Code to clearly state that these vacations are a discretionary act by the City, and that there is no absolute right to a vacation. Third, this portion of the code would be amended to call out the requirement for neighborhood notification for these vacations, which is already required by the Neighborhood Recognition Ordinance. Finally, the proposed text amendment would require City Council approval for all vacations of public right of way or vacation of a public easement.

Issues

The Planning Department staff recommends approval of this proposed text amendment *except* for the requirement of City Council approval for all vacations of public rights of way or easements. Currently these vacations may be approved by the Development Review Board (DRB) subject to a public hearing; however all decisions of the DRB are subject to administrative appeal which would

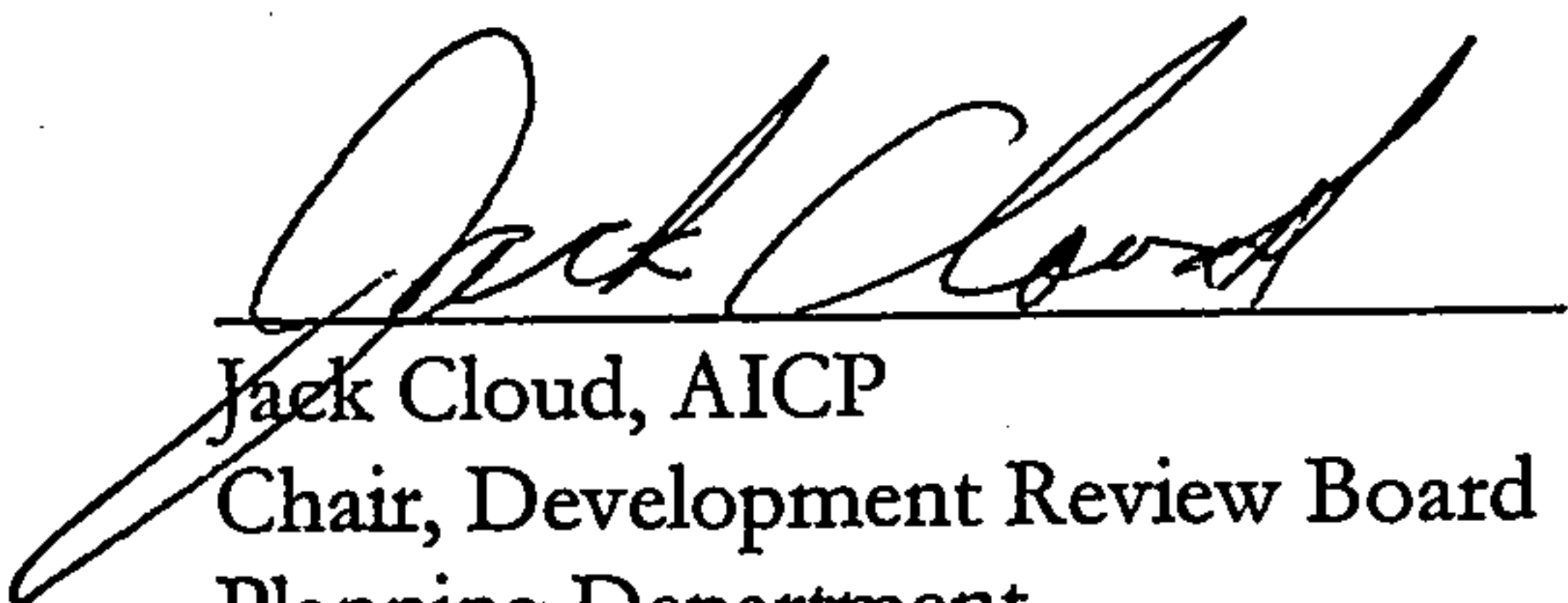
go to the City Council (after a hearing and recommendation by the Land Use Hearing Officer/LUHO). Most of these vacation requests involve technical adjustments to rights of way or easements. The additional process and review from this new requirement would be extraordinary, beyond what is required even for most zone changes, site development plans, and major subdivisions. The EPC (as well as the public testimony at the EPC hearing) posited that this would be a burdensome requirement on applicants and staff, for what are generally technical development requests.

Where the EPC divided was on whether to include the second component of the proposed amendment, which would codify that vacations are a discretionary act by the City. Concern was expressed that this could lead to arbitrary denials of vacation requests. Planning Department staff does not object to including this portion of the amendment, as it could provide an additional Finding of Fact when a vacation is denied. Similar to the amendment regarding neighborhood notification, this would appear to already be addressed within the code; i.e., if there is a public purpose to be served by retaining a right of way or easement then the City should be able to make a Finding of Fact that there would be benefit to the public welfare by denying the vacation (and thus keeping the right of way or easement in the public domain). It is difficult to envision any such requests being denied based solely on a conclusory Finding that a vacation 'is not a right,' rather there would be a combination of Findings which would specify the reason(s) the public welfare would benefit from not approving the vacation.

Conclusion

There are dozens of vacation requests each year that would be affected by the text amendment as proposed, without a discernable benefit to the public welfare from requiring City Council approval. The City Council delegated the review and approval authority of these requests to the DRB in 1982, yet has always retained final administrative approval through the appeal process. It is recommended that only the changes on page 2, 4, and new paragraph D on page 3 be included in the text amendment.

APPROVED:



Jack Cloud, AICP
Chair, Development Review Board
Planning Department

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**Environmental
Planning
Commission**

**Agenda Number: 2
Project Number: 1004831
Case #'s: 09EPC 40060
December 17, 2009**

Staff Report

Applicant City of Albuquerque City Council
Request Text Amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council
Location City-wide
Zoning NA

Staff Recommendation

*That a recommendation of **CONDITIONAL APPROVAL** of a Text Amendment to Part §14-14-7 of the Subdivision Ordinance, 09EPC 40060, be forwarded to the City Council based on the Findings beginning on Page 5*

Staff Planner

**Jack Cloud, AICP
Chair, Development Review Board**

Summary of Analysis

This proposal consists of a text amendment to Part §14-14-7 ROA 1994, the 'Subdivision Ordinance,' regarding the process for vacation, or closing, of public rights of way and easements; the proposed text amendment would require City Council approval for all such vacation requests.

Staff finds the requirement for City Council approval to be extraordinary change in procedure, given that the Council has an opportunity for review of such vacations via appeals/ due process under existing ordinances and regulations.

City-wide

City Departments and other interested agencies reviewed this application from 11/09/2009 to 11/20/2009; agency comments begin on Page 7.

I. INTRODUCTION

Proposal

This proposal is for a text amendment to §14-14-7 ROA 1994, the portion of the Subdivision Ordinance that pertains to the vacation, or closing, of public rights of way and public easements. All vacations currently may be approved by the Development Review Board (DRB) subject to a public hearing; however all decisions of the DRB are subject to appeal, which go to the City Council after a hearing and recommendation by the Land Use Hearing Officer (LUHO). The proposed text amendment would require City Council approval for all vacation of public right of way or vacation of a public easement, so that the DRB could only make a recommendation from its public hearing.

Environmental Planning Commission (EPC) Role

The EPC's task is to make a recommendation to the City Council regarding the proposed changes to the Subdivision Ordinance. The City Council is the City's legislative body with the authority to change and adopt ordinances, and the EPC is a recommending body on certain changes that affect Chapter 14 of the City Code [ZONING, PLANNING, AND BUILDING].

Background and Context

The stated purpose of the amendment is to ensure that the City Council has the final discretionary authority for approval of these vacations. Following are comments from the City Council staff regarding the proposed text amendment:

'When the City agrees to vacate a right-of-way or easement it is determining that it should give up a potentially valuable interest in real property. In other cases where the City releases an interest in real property the City Council approves such actions as a matter of policy. State law that allows for the vacation of rights of way provides that if a roadway is not needed for public purposes, there is then a decision as to whether to vacate -- that decision is a policy decision.

The City Council has, by ordinance, elected to transfer its authority to make the determination of when to vacate property to the DRB. There is no legal problem with that delegation. The problem is that the determination to vacate a right-of-way has become a legal issue as to whether the ordinance has been complied with and the policy concerns have arguably dropped out. As you are aware, the City ordinance provides in relevant part:

"The vacation of public rights of way, private ways, or easements, whether by new plat, plat amendment, or request to vacate, shall be approved only when it is determined that:

- (1) The public welfare is in no way served by retaining the way or easement; or
- (2) There is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation; and in addition to divisions (1) or (2) of this division (B):

(3) There is no convincing evidence that any substantial property right is being abridged against the will of the owner of the right."

The DRB considers whether the ordinance terms are met and approves the vacation if they are complied with. The ordinance, however, does not say that rights-of-way or easements shall be vacated if the ordinance terms are met. It says that rights-of-way or easements shall not be vacated if the ordinance terms are not met. The current language of the ordinance recognizes that there may be more to the determination than simply looking at whether the ordinance language has been met. Admittedly, the DRB is charged with considering certain policy issues as it is to weigh "public welfare." But that term is not defined and if the ordinance is adopted it will be a recognition that the City Council should ultimately decide what will benefit "public welfare" along with any other policy considerations.

The DRB is a technical board with expertise in a wide range of specialized areas. It is not a policy making body. If the ordinance is adopted it will be a determination that the application of policy is best left with the Council. The technical determination of compliance with the ordinance requirements will remain with the DRB.

[In] at least one case where the City Council reversed a DRB decision to approve the vacation of an alley[, t]he party seeking the vacation filed an appeal in District Court taking the position that if the ordinance terms were met that the vacation was mandatory. Given the DRB's interpretation of the ordinance there is legal support for such an argument. That appeal was abandoned so the issue was never resolved. The ordinance amendment clarifies the fact that the City is never required to vacate a right-of-way or easement no matter what the factual determination. The final decision is always a policy call and the City Council is the appropriate body to make that call.'

II. ISSUES

Section 3, Minor changes to Section 1

There are three sections to Part §14-14-7 of the Subdivision Ordinance. The last section, §14-14-7-3 TECHNICAL CORRECTIONS, would not be changed by the proposed amendment. The first section, §14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT, has only one change by the proposed amendment, on page 2, Lines 16 and 17. This change would delete a reference to the paragraph at the top of page 2 (B) and add a new reference to section 2 of Part 7, VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS AND EASEMENTS. This section 2 generally provides the requirements and procedures for review of vacation requests, and the addition of the reference for this section 2 into section 1 could be appropriate. However, this would not necessarily need to have the existing reference to the preceding paragraph (B) deleted. That paragraph (B) requires the DRB to evaluate whether the "vacation action will adversely affect contiguous land, any owner of land within the subdivision being vacated, or the interests of the City." [this is also consistent with the New Mexico State Subdivision Statute]. It is recommended that the additional reference language in section 1 be included in the text amendment, but that none of the existing language of this section 1 be deleted.

Section 2 – Vacation not a right

Comments from the City Council staff reference a vacation that was approved by DRB, reversed by City Council such that the vacation was denied, and that action was then appealed to District Court. The appeal took the position that if the existing ordinance terms requiring certain determinations are met (that the public welfare is not served or there is a net benefit to the public welfare, and that no substantial property right is abridged), then the approval of a vacation request should be mandatory. Council staff argues that there may be legal support for this position, so the text amendment proposes an additional paragraph (D) to section 2 to counter this interpretation on page 3, lines 17 - 21:

[(D) The vacation of public rights of way or public easements, whether by new plat, plat amendment, or request to vacate, is a discretionary act by the City and a determination that the requirements of subdivision (B) have been met is a precondition to a vacation but does not create a right to a vacation.]

Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Mailed Notice to Neighborhood Associations

Additional language to the Subdivision Ordinance is proposed with this text amendment regarding vacation procedures, and specifically mailed notice to neighborhood associations on page 4, lines 16 - 18. This is already standard practice for these vacation requests in accordance with the Neighborhood Recognition Ordinance. [§14-14-7 ROA 1994] Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Required approval by City Council

The major staff concern with the proposed text amendment is the requirement for City Council approval for all vacations of public right of way or public easements. Clearly the City Council has the authority to amend City ordinances, and to require City Council approval of these vacations if the Council determines these are to be 'policy' decisions. However, when the DRB was established almost 30 years ago, the City Council at that time determined that these were more of a technical decision, consistent with the subdivision process. For instance, most vacation requests for public easements are either Public Utility Easements or Public Drainage Easements. Through the planning/ vacation process the affected agencies determine what kind and size of easements are needed to serve both the function (i.e. utility or drainage) of the easement as well as to adequately serve the adjacent property. Likewise with public right of way, most vacation requests involve the size of the right of way and whether it is needed to serve adjacent property; these decisions are generally technical decisions. Regarding what would be a 'policy' decision would be something like the Long Range Roadway System, where City Council members help decide what and where the major roadways are to be, while the DRB considers the technical design such as whether the minimum right of way is maintained.

Comments from the City Council staff reference the release of interest in real property as requiring City Council approval, as a matter of policy. However this only applies to real property having a value of more than \$10,000; real property having a value less than that may be determined to be unessential for a municipal purpose by the administration, and this is generally the case with the vast majority of vacations.

As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process.

III. APPLICABLE ORDINANCES, PLANS AND POLICIES

The applicable ordinance (Article 14 – Subdivision Regulations of Chapter 14 –Zoning, Planning and Building) is the subject of this proposed text amendment.

IV. CONCLUSION

The proposed text amendments regarding additional references and findings for DRB public hearings on vacations of public right of way and public easements could help clarify the vacation process, particularly to note that the City is not required to approve a vacation even if certain pre-conditions of the existing Subdivision Ordinance have been met.

The proposed amendment to require City Council approval for vacation of public rights of way and public easements, however, would put approximately 60 or more such applications each year into a category of process more complex than a major subdivision request, as well as most site development plans and zone map amendments.

FINDINGS- 09EPC 40060, December 17, 2009-Text Amendment

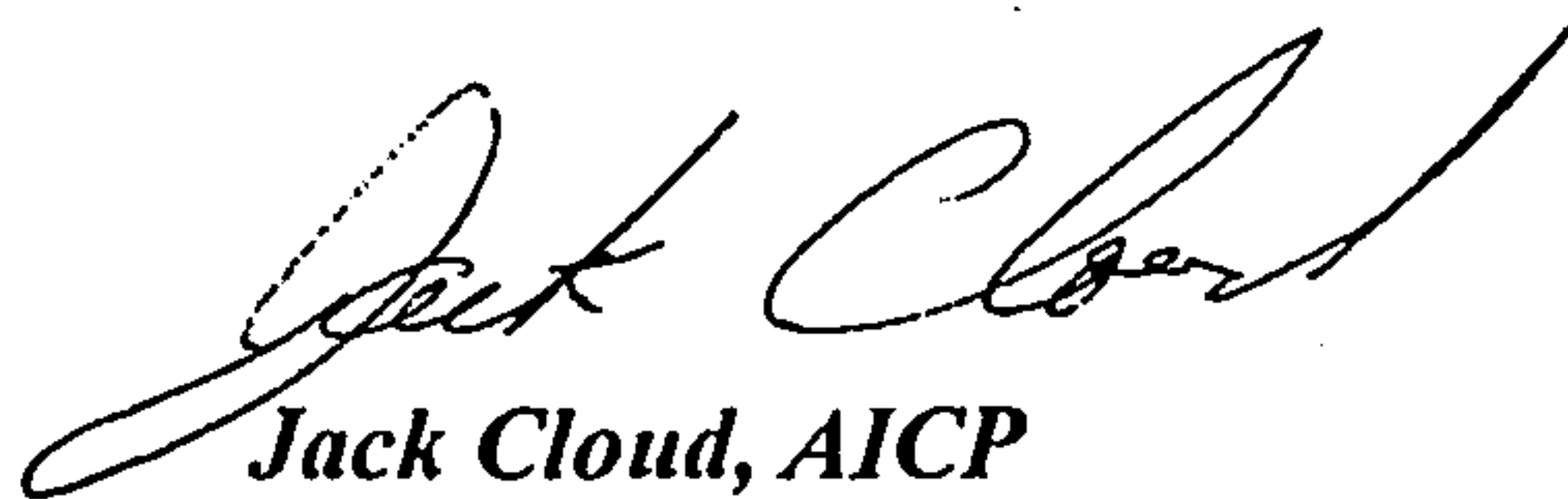
1. Part §14-14-7 ROA 1994 of the Subdivision Ordinance provides regulations and procedures for the vacation, or closing, of public rights of way, private ways, and easements.
2. The purpose of the proposed text amendment is to change the process for vacating public rights of way and public easements to ensure City Council approval.
3. Other portions of the proposed text amendment would codify that the approval of a vacation request is a discretionary action by the City, no matter if the existing Subdivision Ordinance pre-conditions for approval are met, plus the amendment would add references for [existing] procedures including notification of neighborhood associations.
4. The vacations of public right of way and public easements are generally technical decisions to determine if minimum subdivision standards are maintained, and thus that the public welfare is served.
5. The Development Review Board holds public hearings for vacations of public right of way and public easements consistent with public hearings for subdivisions, site development plans, and zone map amendments; this includes requiring neighborhood association notification, printing a legal advertisement in the local newspaper, posting of signs, and mailed notice, along with distribution to other City departments for review and comment.
6. The City of Albuquerque processed 77 applications for such vacations in 2007, 64 applications in 2008, and 47 applications to-date in 2009.
7. Requiring City Council approval for vacations of public right of way and public easements would put 50 - 70 such applications each year into a category of process more complex than a subdivision request as well as most site development plans and zone map amendments.

RECOMMENDATION

That a recommendation of **CONDITIONAL APPROVAL of O-09-91/ Text Amendments to the Subdivision Ordinance Part §14-14-7 be forwarded to the City Council based on the preceding Findings and subject to the following Conditions of Approval.**

CONDITIONS OF APPROVAL- 09EPC 40060, December 17, 2009-Zoning Code Text Amendments

1. That the existing language in Section 1 of Part §14-14-7 of the Subdivision Ordinance be retained [not deleted] and that the proposed new language in Section 1 [page 2, line 17] be included in the text amendment.
2. That new paragraph (C) in Section 2 of Part §14-14-7 of the Subdivision Ordinance [page 3, lines 12 -16] not be included not be included in the text amendment, and that new paragraph (D) in Section 2 [page 3, lines 17 -21] be included in the text amendment and re-lettered as paragraph (C).
3. That all other changes on page 3 not be included in the text amendment.
4. That all other changes on pages 5 and 6 not be included in the text amendment.



**Jack Cloud, AICP
Chair, Development Review Board**

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Code Services

No comment.

Office of Neighborhood Coordination

City Wide

11/19/09 – was published in the “Neighborhood News” newsletter and is online in the Newsletter
11/30/09 - will be e-mail to Neighborhood Representatives - siw

Long Range Planning

CITY ENGINEER

Transportation Development Services

Findings

- Currently, the process for Vacation of Public Rights of Way, Private Ways and Easements is clearly defined in 14-14-7 of the Subdivision Regulations.
- Currently, City Council has final discretionary authority to approve the vacation of public rights-of-way as outlined in the Subdivision Regulations but has delegated the administration of this action to the Development Review Board (DRB). However, a DRB determination can be appealed to City Council who ultimately would make a final decision regarding the DRB determination.

Recommendation

- Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

Traffic Engineering Operations

Hydrology

- The Hydrology Section objects to the ordinance revision as written based on the following reasons:
 1. Public drainage easements and public utility easements should be established or vacated for technical reasons. The DRB is the technical review board.
 2. The appeal process is not clearly addressed.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance Operations (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

Conditions of approval for the proposed Text Amendment to the Subdivision Ordinance shall include:

- a. Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

WATER UTILITY AUTHORITY

Utility Services

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

PARKS AND RECREATION

Planning and Design

Open Space Division

Open Space has no adverse comments

City Forester

POLICE DEPARTMENT/Planning

No crime prevention of CPTED comment to the proposed text amendment at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

NO ADVERSE COMMENTS

FIRE DEPARTMENT/Planning

TRANSIT DEPARTMENT

Adjacent and nearby routes	N/A
Adjacent bus stops	N/A
Site plan requirements	None
Large site TDM suggestions	N/A
Other information	None.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

This amendment will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

No comments.

City of Albuquerque



DEVELOPMENT/ PLAN REVIEW APPLICATION

SUBDIVISION

- Major Subdivision action
- Minor Subdivision action
- Vacation
- Variance (Non-Zoning)

SITE DEVELOPMENT PLAN

- for Subdivision
- for Building Permit
- Administrative Amendment (AA)
- IP Master Development Plan
- Cert. of Appropriateness (LUCC)

STORM DRAINAGE (Form D)

- Storm Drainage Cost Allocation Plan

Supplemental form

S Z ZONING & PLANNING

- Annexation
- County Submittal
- EPC Submittal
- Zone Map Amendment (Establish or Change Zoning)
- Sector Plan (Phase I, II, III)
- Amendment to Sector, Area, Facility or Comprehensive Plan
- Text Amendment (Zoning Code/Sub Regs)
- Street Name Change (Local & Collector)
- L A APPEAL / PROTEST of...
 - Decision by DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any): CoA Planning Department PHONE 924-3260
 ADDRESS: 900 Current Planning Div. 600 2nd St NW FAX 924-3339
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

APPLICANT: CoA City Council PHONE 768-3100
 ADDRESS: One Civic Plaza NW FAX 768-3227
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

Proprietary interest in site: _____ List all owners: _____

DESCRIPTION OF REQUEST: Text amendment to Subdivision Ord. per U-09-91

Is the applicant seeking incentives pursuant to the Family Housing Development Program? Yes No

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. city-wide Block: _____ Unit: _____

Subdiv/Addn/TBKA: _____

Existing Zoning: _____ Proposed zoning: _____ MRGCD Map No. _____

Zone Atlas page(s): _____ UPC Code: _____

CASE HISTORY:

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX-, Z-, V-, S-, etc.): _____

CASE INFORMATION:

Within city limits? Yes Within 1000FT of a landfill? _____

No. of existing lots: _____ No. of proposed lots: _____ Total area of site (acres): _____

LOCATION OF PROPERTY BY STREETS: On or Near: city wide

Between: _____ and _____

Check-off if project was previously reviewed by Sketch Plat/Plan , or Pre-application Review Team . Date of review: _____

SIGNATURE Carol Tuffalet DATE 11/3/09

(Print) Carol Tuffalet Applicant Agent

FOR OFFICIAL USE ONLY

- INTERNAL ROUTING
- All checklists are complete
- All fees have been collected
- All case #s are assigned
- AGIS copy has been sent
- Case history #s are listed
- Site is within 1000ft of a landfill
- F H D P density bonus
- F H D P fee rebate

Application case numbers

0912 40060

Action

ASE

Form revised 4/07

SF Fees

SF	Fees
<u>2</u>	<u>\$</u>
.....	\$
.....	\$
.....	\$
.....	\$
.....	\$
Total	<u>\$</u>

Hearing date 12/17/09

Sandy Handley 11/03/09
 Planner Signature / date

Project # 1004831

FORM Z: ZONE CODE TEXT & MAP AMENDMENTS, PLAN APPROVALS & AMENDMENTS

ANNEXATION (EPC08)

- ___ Application for zone map amendment including those submittal requirements. See below. Annexation and establishment of zoning must be applied for simultaneously.
 - ___ Petition for Annexation Form and necessary attachments
 - ___ Zone Atlas map with the entire property(ies) clearly outlined
NOTE: The Zone Atlas must show that the site is in County jurisdiction, but is contiguous to City limits.
 - ___ Letter briefly describing, explaining, and justifying the request
NOTE: Justifications must adhere to the policies contained in "Resolution 54-1990"
 - ___ Letter of authorization from the property owner if application is submitted by an agent
 - ___ BCC Notice of Decision for City Submittals
 - ___ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts.
 - ___ Sign Posting Agreement
 - ___ TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
 - ___ List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

- SDP PHASE I - DRB CONCEPTUAL PLAN REVIEW, (DRBPH1)** (Unadvertised)
- SDP PHASE II - EPC FINAL REVIEW & APPROVAL (EPC14)** (Public Hearing)
- SDP PHASE II - DRB FINAL SIGN-OFF (DRBPH2)** (Unadvertised)

- ___ Copy of findings from required pre-application meeting (needed for the DRB conceptual plan review only)
- ___ Proposed Sector Plan (30 copies for EPC, 6 copies for DRB)
- ___ Zone Atlas map with the entire plan area clearly outlined
- ___ Letter briefly describing, explaining, and justifying the request
- ___ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (for EPC public hearing only)
- ___ TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form (for EPC public hearing only)
- ___ Fee for EPC final approval only (see schedule)
- ___ List any original and/or related file numbers on the cover application

Refer to the schedules for the dates, times and places of DRB and EPC hearings.

Your attendance is required.

AMENDMENT TO ZONE MAP - ESTABLISHMENT OF ZONING OR ZONE CHANGE (EPC05)

- ___ Zone Atlas map with the entire property clearly outlined
- ___ Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980".
- ___ Letter of authorization from the property owner if application is submitted by an agent
- ___ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- ___ Sign Posting Agreement
- ___ TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- ___ Fee (see schedule)
- ___ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO SECTOR DEVELOPMENT MAP (EPC03)

AMENDMENT SECTOR DEVELOPMENT, AREA, FACILITY, OR COMPREHENSIVE PLAN (EPC04)

- ___ Proposed Amendment referenced to the materials in the Plan being amended (text and/or map)
- ___ Plan to be amended with materials to be changed noted and marked
- ___ Zone Atlas map with the entire plan/amendment area clearly outlined
- ___ Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980" (Sector Plan map change only)
- ___ Letter of authorization from the property owner if application is submitted by an agent (Map change only)
- ___ Letter briefly describing, explaining, and justifying the request
- ___ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (sector plans only)
- ___ TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- ___ Sign Posting Agreement
- ___ Fee (see schedule)
- ___ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO ZONING CODE OR SUBDIVISION REGULATORY TEXT (EPC07)

- Amendment referenced to the sections of the Zone Code/Subdivision Regulations being amended
- Sections of the Zone Code/Subdivision Regulations to be amended with text to be changed noted and marked
- Letter briefly describing, explaining, and justifying the request
- Fee (see schedule)
- ___ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Carol Tufford
Applicant name (print)

Carol Tufford 11/3/09
Applicant signature / date



Form revised APRIL 07

- Checklists complete
- Fees collected
- Case #s assigned
- Related #s listed

Application case numbers
09E10 - 40000 Sandy Harding 11/03/09
 Planner signature / date
 Project # 1004931

12

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Richard Dineen, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-09-91
DATE: October 9, 2009

The attached ordinance was introduced by the City Council on October 7, 2009. We are requesting that you submit this text amendment to the Zoning Code to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to change the process for vacating public rights-of-way to ensure Council approval.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
File O-09-91

X:\SHARE\Reports\LUPZ\EPCscheduleO-09-91.doc

**CITY of ALBUQUERQUE
EIGHTEENTH COUNCIL**

COUNCIL BILL NO. 0-09-91 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

ORDINANCE

**1 AMENDING CHAPTER 14, ARTICLE 14, PART 7 ROA 1994 TO CLARIFY THE
2 PROCESS FOR VACATING PUBLIC RIGHTS-OF-WAY; PLACING THE FINAL
3 DISCRETIONARY AUTHORITY TO APPROVE THE VACATION OF A PUBLIC
4 RIGHT OF WAY OR EASEMENT IN THE CITY COUNCIL.
5 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
6 ALBUQUERQUE:
7**

**8 SECTION 1. Chapter 14, Article 14, Part 7 ROA 1994 is amended to read
9 as follows:**

10 § 14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT.

**11 (A) Any final plat recorded in the office of the County Clerk may be
12 amended or vacated (voided) either:**

**13 (1) by recording a new subdivision plat (a resubdivision)
14 covering all or a portion of the previous plat sought to be amended or vacated
15 or by recording an amended plat covering such area. In either case, the new
16 plat or amended plat shall be processed as an original subdivision action
17 under Part 3 of this article and recorded as specified therein. If the new or
18 amended plat falls within the definition of minor subdivision, contained in §
19 14-14-1-6 of this article, it shall be processed as such; or**

**20 (2) upon a finding at a public hearing by the Development
21 Review Board that the plat was obtained by misrepresentation or fraud, the
22 plat may be vacated by the Development Review Board. A statement
23 approved by the Development Review Board shall be filed in the office of the
24 County Clerk. The County Clerk shall mark the original plat with the words
25 "VACATED" or "PARTIALLY VACATED" and refer on the plat to the volume
26 and page on which the statement of vacation is recorded.**

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1 **(B)** In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 **(C)** In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 **(D)** The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 **(E)** Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 **(F)** If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of ~~[division (B) of this~~
17 ~~section]~~**[§ 14-14-7-2]** shall be followed as to the vacations of right of way.

18 **§ 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS**
19 **AND EASEMENTS.**

20 **(A)** Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 **(1)** The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 **(2)** The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division ~~[(E)]~~**[G]** of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

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1 **(B) The vacation of public rights of way, private ways, or**
2 **easements, whether by new plat, plat amendment, or request to vacate, shall**
3 **be approved only when it is determined that:**

4 **(1) The public welfare is in no way served by retaining the**
5 **way or easement; or**

6 **(2) There is a net benefit to the public welfare because the**
7 **development made possible by the vacation is clearly more beneficial to the**
8 **public welfare than the minor detriment resulting from the vacation; and in**
9 **addition to divisions (1) or (2) of this division (B):**

10 **(3) There is no convincing evidence that any substantial**
11 **property right is being abridged against the will of the owner of the right.**

12 **[(C) Public rights of way and public easements may only be**
13 **vacated by action of the City Council following a determination by the DRB**
14 **that the requirements of subsection (B) have been met. Private ways and**
15 **private easements are vacated by action of the DRB and do not require City**
16 **Council action.]**

17 **[(D) The vacation of public rights of way or public easements,**
18 **whether by new plat, plat amendment, or request to vacate, is a discretionary**
19 **act by the City and a determination that the requirements of subdivision (B)**
20 **have been met is a precondition to a vacation but does not create a right to a**
21 **vacation.]**

22 **[(C)][(E) In making a determination that the requirements of**
23 **subsection (B) have been met with respect to a public right of way or public**
24 **easement the Development Review Board may recommend that the City**
25 **Council only approve the vacation if]**~~**[In approving the vacation the**~~
26 ~~**Development Review Board may require that]**~~ some or all of the public rights
27 of way or easements ~~**[are]**~~~~**[be]**~~ retained by the appropriate governmental entity
28 as shown on the original plat.

29 **[(D)][(F) In the case of public rights of way or easements the**
30 **City Council and in the case of private rights of way or easements] [F][t]he**
31 **Development Review Board may require that curb and gutter be placed, at the**
32 **expense of the applicant, so as to effectively halt the vacated area[-s] being**
33 **used as public way. It may also be necessary to remodel or otherwise**

1 reconstruct existing public improvements in order to solve problems created
2 by the vacation, and the [City Council or] Development Review Board may so
3 require. Costs involved shall be borne by the applicant.

4 ~~[(E)]~~[(G)] Procedure.

5 (1) In all cases where public right of way, private ways, or
6 easements are sought to be vacated, whether by new subdivision, plat
7 amendment, or request to vacate, the following procedures shall be followed
8 in addition to the procedures specified in Part 3 of this article; however, the
9 following procedure may be eliminated for the requested vacation of private
10 easements if the Planning Director is satisfied that all the benefitted and
11 burdened parties are clearly and completely defined and all agree to the
12 vacation.

13 (2) Notice and Request for Comment.

14 (a) The Planning Director shall mail letters to
15 franchised utilities and to the owner of record of all lots adjacent to the right of
16 way, private way, and/or easement to be vacated [and to any neighborhood
17 association known by the Office of Neighborhood Services to cover all or part
18 of the right of way, private way, and/or easement sought to be vacated],
19 informing them of the nature of the proposed vacation, and notifying them of
20 the date, time, and place of the public hearing by the Development Review
21 Board on the proposed vacation. For notifying property owners, the name and
22 address of the owners shown in the records of the County Assessor shall be
23 used.

24 (b) Prior to the hearing, the Planning Director shall
25 request interested city departments and other agencies to comment on the
26 application. Comments received shall be submitted to the Development
27 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
28 Control Authority and/or the Middle Rio Grande Conservancy District shall be
29 requested before vacation of any drainage easement or public right of way
30 within their respective areas of jurisdiction.

31 (c) If the public right of way, private way, and/or
32 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
33 vehicular or pedestrian traffic], the applicant shall post and maintain one or

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1 more signs, as provided and where instructed by the Planning Director, at
2 least 15 days before the date of the hearing. The applicant is responsible for
3 removing such signs within five days after the hearing is completed. Failure
4 to properly post signs is grounds for deferral of the request. No one except
5 the applicant, the agent of the applicant, or the city shall remove or tamper
6 with any such required sign during the period it is required to be maintained
7 under this division (c).

8 (d) Public notice in a newspaper of general
9 circulation in the city shall be published at least 15 days before date of the
10 hearing; the notice shall indicate the location of the proposed vacation, where
11 a map of the proposed vacation may be viewed, and information on the date,
12 time, and place of the hearing.

13 (3) Hearing and Decision.

14 (a) [A determination by the Development Review
15 Board with respect to a public right of way or easement as to whether the
16 requirements of subsection B have been met] or [A][a] decision [by the
17 Development Review Board with respect to a private right of way or easement
18 as to whether [on city approval of vacations][a vacation shall be approved]
19 shall be made [by the Development Review Board] at a public hearing.
20 [Approval or disapproval shall be given][Any decision shall be] in
21 writing[,expressing the reasons and any conditions,] and a copy shall be sent
22 to the applicant and any other persons who have indicated interest in the
23 matter. [For a public right of way or easement the Development Review Board
24 may recommend to the City Council conditions that should be imposed if a
25 vacation is approved. For a private right of way or easement the Development
26 Review Board may impose conditions if a vacation is approved.]

27 [(b) A DRB determination that the requirements of
28 subsection B have not been met for a public right of way or easement shall be
29 dispositive as to whether a vacation should be approved subject to appeal to
30 the City Council on that issue. If on appeal the City Council reverses a DRB
31 determination and finds that the requirements of subsection B have been met
32 the City Council shall at the same time exercise its discretion and determine
33 whether the public right of way or easement ~~DRB~~ should be vacated.

1 (c) A DRB determination that the requirements of
2 subsection B have been met for a public right of way or easement shall be
3 forwarded to the City Council to determine if the vacation shall occur. If the
4 determination by the DRB that the requirements of subsection B have been
5 met is appealed to the City Council that issue shall be considered by the City
6 Council at the same time it exercises its discretion to determine whether the
7 public right of way or easement ~~DRB~~ should be vacated.

8 **~~(b)~~[d]** Approval of vacation of public right of way,
9 private ways or easements shall be conditional upon the following steps being
10 accomplished by the applicant or governmental entity within a time period set
11 by the **[City Council or]** Development Review Board, in no case exceeding one
12 year. If not so accomplished, the decision to vacate is voided.

13 1. The applicant shall present to the city a
14 final plat incorporating the vacated right of way into adjacent lots, which plat
15 the city shall record with the County Clerk; or

16 2. The appropriate governmental entity shall
17 record a final plat if the **[City][Development Review Board]** finds that it is in the
18 public interest for the governmental entity to own the vacated public right of
19 way as a lot or if adjacent property owners do not desire the vacated parcel.

20 3. The applicant shall secure the installing or
21 removing and disposing of such improvements, as are required by the **[City**
22 **Council or]** Development Review Board in order to remodel or otherwise
23 reconstruct existing public improvements to appropriately provide for the
24 proposed uses. Costs involved shall be borne by the applicant.

25 **(4) Disposition of Right-of-Way.**

26 (a) Normally the owners of land adjacent to the
27 vacated public right of way have an opportunity to obtain title to the land, for
28 some consideration, from the owner (normally the city).

29 (b) Immediately after a city decision to vacate platted
30 public right of way becomes final, if such land is proposed to be disposed of
31 by the city, the City Property Manager shall notify each owner of adjacent
32 property by certified letter. The certified letter shall notify each adjacent
33 landowner of the opportunity to purchase from the city one-half of the width of

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1 the vacated right of way contiguous to the landowner's property, subject to
2 any conditions or requirements stated in the decision to vacate. If an adjacent
3 landowner fails to notify the city Property Manager in writing, within 30 days of
4 the date of the receipt slip of the certified letter, that he or she intends to
5 purchase the adjacent public right of way, the city may dispose of the vacated
6 right of way in any manner which the city, in its discretion, deems appropriate.

7 § 14-14-7-3 TECHNICAL CORRECTIONS.

8 (A) Technical corrections to approved, but as yet unrecorded, final
9 plats shall be approved by the Development Review Board before being
10 recorded with the County Clerk.

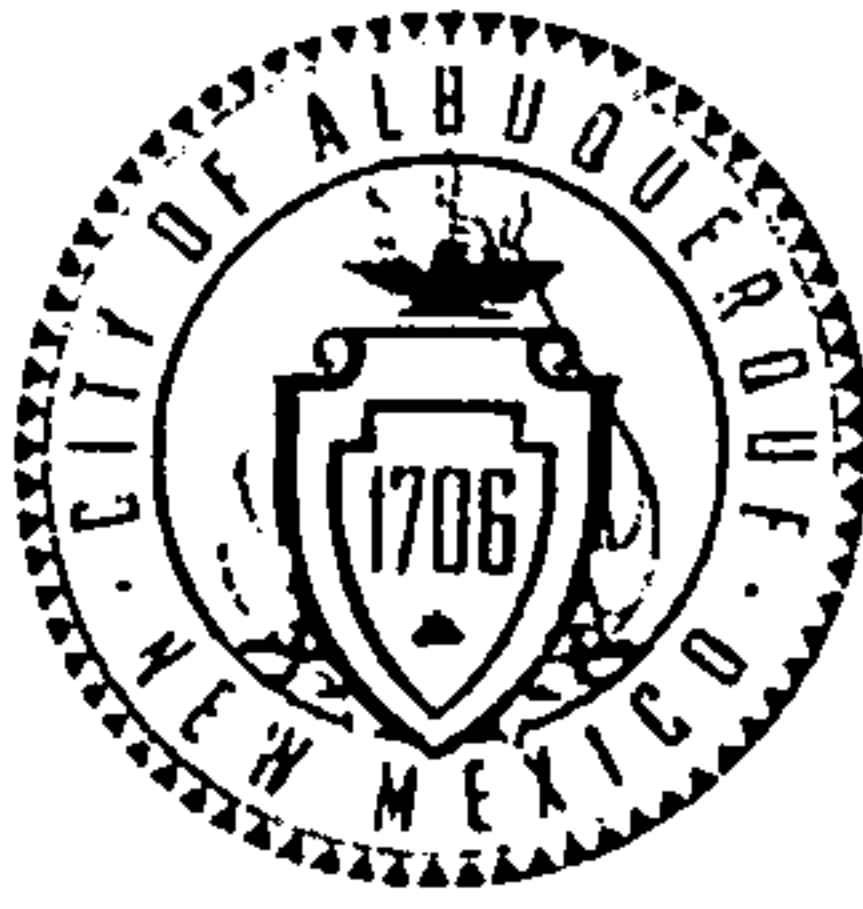
11 (B) Technical corrections to recorded final plats shall be made by
12 a correction plat approved by the Development Review Board. The plat shall
13 include only the area affected by the correction and shall clearly indicate the
14 correction. Correction plats for technical corrections shall be recorded in the
15 same manner as a final plat. See § 14-14-3-6 of this article.

16 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word
17 or phrase of this ordinance is for any reason held to be invalid or
18 unenforceable by any court of competent jurisdiction, such decision shall not
19 affect the validity of the remaining provisions of this ordinance. The Council
20 hereby declares that it would have passed this ordinance and each section,
21 paragraph, sentence, clause, word or phrase thereof irrespective of any
22 provision being declared unconstitutional or otherwise invalid.

23 SECTION 4. COMPILATION. This ordinance shall be incorporated in
24 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
26 days following publication by title and general summary.

27
28



City of Albuquerque
Planning Department
Current Planning Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Date: December 18, 2009

OFFICIAL NOTIFICATION OF DECISION

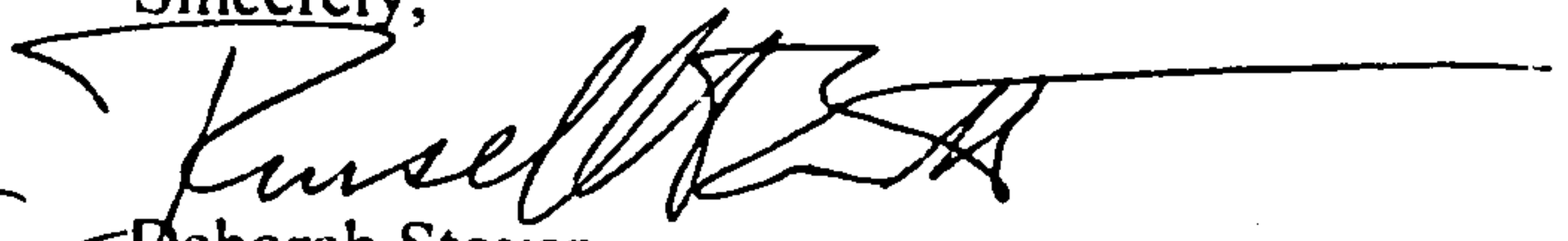
FILE: **Project # Project# 1004831**
09EPC-40060 TEXT AMENDMENT TO
SUBDIVISION REGULATIONS

City of Albuquerque, City Council
P.O. Box 1293
Albuquerque, NM 87103

LEGAL DESCRIPTION: CITY OF
ALBUQUERQUE CITY COUNCIL request(s)
recommendation on the referenced/ above
action(s) for amendment to §14-14-7 ROA 1994
(the Subdivision Ordinance), requiring approval of
Vacation of Public Rights of Way and Public
Easements to be by the City Council. Jack Cloud,
Staff Planner

On December 17, 2009 the Environmental Planning Commission voted that **NO RECOMMENDATION** be forwarded to City Council in the matter of Project 1004831 / 09EPC-40060, a text amendment to Subdivision Ordinance.

Sincerely,


For Deborah Stover
Planning Director

DS/JC/ma

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102
Lynne Anderson, 504 Camino Espanol NW, Albuquerque, NM 87107
Katherine Martinez, 722 Marquette NW, Albuquerque, NM 87102
Daniel Hernandez, 4333 Pan American Freeway, Albuquerque, NM 87107
Jean Moore, P.O. Box 1945, Albuquerque, NM 87103
Keli Krueger, 5571 Midway Park Place NE, Albuquerque, NM 87109

Approved 1/21/10

2. Project# 1004831
09EPC-40060 TEXT AMENDMENT TO
SUBDIVISION REGULATIONS

CITY OF ALBUQUERQUE CITY COUNCIL request(s) recommendation on the referenced/ above action(s) for amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council. Jack Cloud, Staff Planner

MEMBERS OF COMMISSION PRESENT:

Laurie Moye, Chair
Doug Peterson, Vice-Chair
Jonathan Siegel
Joe Yardumian
Len Malry
Michael Dickson
Jamie Jett-Walker (Arrived late.)

STAFF PRESENT

Jack Cloud, Planning Department
Bruce Thompson, Council Services
Kevin Curran, Legal Department

PERSONS PRESENT TO SPEAK IN OPPOSITION OF THIS REQUEST:

Lynne Anderson, 504 Camino Espanol NW, Albuquerque, NM 87107
Katherine Martinez, 722 Marquette NW, Albuquerque, NM 87102
Daniel Hernandez, 4333 Pan American Freeway, Albuquerque, NM 87107
Jean Moore, P.O. Box 1945, Albuquerque, NM 87103
Keli Krueger, 5571 Midway Park Place NE, Albuquerque, NM 87109

MR. CLOUD: This is a text amendment from the City Council. Bruce Thompson, Staff to City Council, is here to speak to the request.

CHAIR MOYE: Ok. Would he like to give us a presentation first or would you like to go first? Mr. Cloud, you're up. Why don't you present to us.

MR. CLOUD: Thank you, Madam Chairman, Commissioners. This is a request for a text amendment to the Subdivision Ordinance regarding vacations of public rights of way and public easements. As you know, City Council is the legislative body for the City of Albuquerque, so they write our laws. And a little bit of history – background from 1980 – what's called the Development Review Board, I currently am staff to the Development Review Board. They created the Subdivision Ordinance such that many of the things that used to be approved by City Council were approved by the Development Review Board – subdivisions and vacations. City Council maintains the final administrative authority through the appeal process, but if there were no appeal a decision could be made at the DRB level, similar to what also happened with the Planning Commission – at one time all zone changes had to

be approved by City Council. Eventually through home rule/ state statutes, they created the Zoning Ordinance such that you have authority to approve a zone change. If it's appealed, then the City Council is the final administrative authority.

This is a proposal to have vacations of public rights of way and public easements go back to City Council for final approval. Part of the thinking of this is that this might be more of a policy decision than a technical decision. Again, the DRB was created to address what are basically technical issues – subdivisions, creation of streets, infrastructure that's needed, those types of things.

Staff would suggest that this is still basically a technical decision and that the appeal process will allow for those situations when there may be more of a policy decision to be made. There are situations when often times vacation of right of way just involves a couple of hundred square feet of right of way. It's a very small amount of land area. We may have an encroachment of a building or we may need to adjust a right of way line and these types of things are generally pretty technical, and that's the bulk of what these types of vacations actions are. We would suggest that it really does not require a text amendment to have the City Council make all those decisions.

There are some things in here that we do recommend approval of – recommend that you recommend approval on – you being a recommending body on this. A new reference in Section 1 of the Subdivision Ordinance that would refer to our procedures, we do recommend that that be included. And then another issue had come up on an appeal of a vacation. It actually went to court. I understand that the case was dropped, but the way the Subdivision Ordinance reads now, there's that word "shall" in there. We always have to be a little cautious, I think, when we say "shall" in an ordinance. The particular appellant in this case said, "Well, if we meet these decisions, you *shall* approve our vacation." There's a proposed new paragraph which would say even though you may meet certain predetermined requirements, that doesn't mean that you have a right to a vacation. So this would make the ordinance really clear that this is a discretionary act by the City and we believe that that is probably a good idea to go ahead and insert that in the ordinance.

That's pretty much it unless you have questions for me, and Mr. Thompson is here.

CHAIR MOYE: Mr. Thompson, are you going to come up and talk to us about this or are you just here to answer questions?

MR. THOMPSON: I'm prepared to make a presentation with respect to a couple of different issues.

CHAIR MOYE: Ok. Why don't you do that and then we'll ask questions of both of you, if that's alright, Mr. Cloud.

MR. THOMPSON: First let me say that I want to talk about a couple of the technical issues that I've dealt with as staff and then I have a letter from Councilor Benton – he was unable to be here – that he wanted me to read into the record, and I have copies of that for staff.

CHAIR MOYE: Ok. Just for the record, Mr. Thompson, you are the City Council attorney. Is that correct?

MR. THOMPSON: I am a Senior Policy Analyst for the – while I am an attorney, that's not my formal title.

CHAIR MOYE: Ok; Senior Policy Analyst for the City Council. Welcome, Mr. Thompson.

MR. THOMPSON: Thank you, Chair. The first part has to do with a technical change. This goes back to a matter back in 1974, there was provision with respect to re-subdivision and plat amendment, which was codified as Section 7-16-8 Division A. There was also provision for vacations of right of way and easement, which was in the same section, 7-16-8, but it was Division B. And what it previously said was that if you are doing a re-subdivision or plat amendment under 7-16-8, A, it had the same effect of vacating a right of way or easement and to go through and use the process of 7-16-8, B. So, Section A referred to part B. The whole thing was recodified when the City Ordinance was recodified back in 1994. And 7-16-8, A, dealing with re-subdivision and plat amendment was recodified as 14-14-7-1. Division B was recodified as 14-14-7-2. And what it should have said was, if you are doing a re-subdivision or plat amendment under 7-1 and it turns out that you're doing a vacation of right of way or easement, look to the provisions of 14-14-7-2 which deal with process. It will be the same process that existed under the '74 codification. Unfortunately, the language was never changed. So, what it says under 14-14-7-1, is that if you are doing a re-subdivision or plat amendment, and it has the effect of vacating a right of way or easement, it still says look at Division B. Well, Division B that does exist has nothing to do with the vacation of a right of way or easement. So, what this does is take out referring the reference to Division B and says look at 14-14-7-2. The request of staff is leave in also the reference to Division B. I submit that that doesn't make a lot of sense. This is really a correction of something that should have been fixed fifteen years ago.

The second thing is the staff report says that the vacation is not a matter of right; it's simply a clarification of what the law is. It's much more than that because if you look at the – at least the vacations of right of way that have come to City Council, and those are the one that we see, the Findings of the DRB is that if you meet certain standards, you have a right to have the right of way vacated. Those are the Findings that we get at City Council. And the law is that no matter how the law is written, if the body charged with interpreting the law, in this case the DRB, reads it a certain way for a long enough period of time, that becomes the law, whether that was intended or not. And I think that there's a very strong argument that right now, that an argument can be made, that if you meet those certain standards about not harming anyone's rights and certain other standards, you have a right to a vacation, which I don't think was intended. I don't think that's what the law should be. These are City owned rights and the City should make the determination as a policy matter of whether it wants to give up those rights of way and easements. What the law says is that if it's been interpreted a certain way for a long time, the only way to fix that is with a code amendment. That's what the Supreme Court has said specifically in the Hinkle case. This is asking for a code amendment to clarify what should be the law; that there is no absolute right to a vacation of a right of way or easement even if you meet those basic standards that are set out in the code.

Third thing is, as a technical matter, we put in language that said that if you're going to vacate a right of way or easement, you give notice to the neighborhood association. The response is we already do it even if it's not required. All we're asking for is let's make it a requirement in case someone – a neighborhood association doesn't get noticed, no one can come back and argue well, you didn't have a right to it. Just because we didn't give you notice, you have no right to complain. We think the neighborhood associations should have notice.

There are a couple of comments that were made of why this wasn't necessary. The first one was this can be corrected with an appeal. That's not really right. If this is purely a policy decision, or the bottom line is that the policy decision with respect to vacate a right of way or easement, the standards

for appeal, of reversing a body that has made a decision, are very narrow. You have to show that there was an error in applying City plans or law; that there was an error with respect to stated facts or that the board acted arbitrarily or capriciously. But that doesn't meet the standard of what is the policy with a particular decision of the DRB. And arguably, the Council couldn't reverse a DRB decision strictly because the Council disagrees with the policy,

The second argument is there's too much paperwork involved in letting the Council decide it. If it's true that adequate notice is being given, that document is prepared that shows what is being done. The second thing is under state law when the DRB makes a decision they are required to come up with Findings with respect to the justification for their decision. That's all that has to go to the Council. The notice of what's being done, the findings of the DRB as to why they think this is appropriate. Those are already requirements. It would then go to LUPZ. Most of the time – 99% of the time, it would go through LUPZ, it would go on the consent calendar for the Council. No specific, great actions would have to be taken. Those are the technical issues that I wanted to talk about that I think why this is important. Councilor Benton did want me to read into the record his letter and we have copies for each of the commissioners. My copy has larger print because...

CHAIR MOYE: Does staff have a copy? Ok.

MR. THOMPSON (Letter from Councilor Benton): I regret that due to business in Santa Fe I am unable to attend your hearing today when you'll be considering a text amendment to the Zoning Code that I am sponsoring, 09-91. Bruce Thompson is familiar with the legal issues involved and I have seen the technical comments from planning staff. I want to convey the policy reasons behind the proposed legislation. These have to do with long range planning of land use, transportation, and storm drainage. I first discussed the vacations concerning this with Mr. Thompson after two vacations were approved in Council District 3. One was an alley vacation in the southwest part of the Downtown 2010 Plan area. Surrounded by surface parking lots, this alley was apparently vacated for the convenience of those parking lot owners. The problem is future redevelopment of the block. The goal of the sector plan may be impeded by the lack of an alley. Rear access for automobile traffic and parking is the preferred scheme in all our modern urban corridor and sector plans in downtown, Nob Hill, and elsewhere. As you know this is in order to maintain a safe and vibrant pedestrian environment on the street sidewalk side of the development. A consistent system of alleys is beneficial for this and other service purposed and should not be interrupted as a simple administrative matter without approval from the City's policy making body, the City Council.

The second example was a vacation of an innocuous looking stub street in the Old Town area. Shortly after its approval, a council transportation consultant was working on proposed improvement on the Central Avenue, Rio Grande Blvd. intersection and associated corridors. The consultants inquired about the possibility of utilizing the stub street to create a new connector reliever street parallel to the Central corridor. Unfortunately that option had been precluded and/or made to expensive by the recent vacation. Additionally, drainage is an area wide issue that affects individual localities; the Martineztown and Barelás flooding being prime examples. What may seem like a simple vacation of a locally unnecessary drainage or storm sewer easement may preclude future planning and improvement to area wide drainage issues. In most vacation cases, after DRB technical approval, Council staff would simply review DRB findings and the item would end up going on the City Council consent agenda. However, councilors and their staff are there to hear constituent concerns and have a unique understanding of their district's long standing goals and needs. The legislation would provide a final check and opportunity to vet any planning concerns that might not be in the

CITY of ALBUQUERQUE

EIGHTEENTH COUNCIL

COUNCIL BILL NO. F/S O-09-91 ENACTMENT NO. _____

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ORDINANCE

AMENDING CHAPTER 14, ARTICLE 14, PART 7 ROA 1994 TO CLARIFY THE PROCESS FOR VACATING PUBLIC RIGHTS-OF-WAY; PLACING THE FINAL DISCRETIONARY AUTHORITY TO APPROVE THE VACATION OF A PUBLIC RIGHT OF WAY OR EASEMENT IN THE CITY COUNCIL.

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

SECTION 1. Chapter 14, Article 14, Part 7 ROA 1994 is amended to read as follows:

§ 14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT.

(A) Any final plat recorded in the office of the County Clerk may be amended or vacated (voided) either:

(1) by recording a new subdivision plat (a resubdivision) covering all or a portion of the previous plat sought to be amended or vacated or by recording an amended plat covering such area. In either case, the new plat or amended plat shall be processed as an original subdivision action under Part 3 of this article and recorded as specified therein. If the new or amended plat falls within the definition of minor subdivision, contained in § 14-14-1-6 of this article, it shall be processed as such; or

(2) upon a finding at a public hearing by the Development Review Board that the plat was obtained by misrepresentation or fraud, the plat may be vacated by the Development Review Board. A statement approved by the Development Review Board shall be filed in the office of the County Clerk. The County Clerk shall mark the original plat with the words "VACATED" or "PARTIALLY VACATED" and refer on the plat to the volume and page on which the statement of vacation is recorded.

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1 **(B)** In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 **(C)** In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 **(D)** The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 **(E)** Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 **(F)** If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of [~~division (B) of this~~
17 ~~section~~][§ 14-14-7-2] shall be followed as to the vacations of right of way.

18 **§ 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS**
19 **AND EASEMENTS.**

20 **(A)** Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 **(1)** The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 **(2)** The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division [~~(E)~~][(F)] of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

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1 **(B) The vacation of public rights of way, private ways, or**
2 **easements, whether by new plat, plat amendment, or request to vacate, shall**
3 **be approved only when it is determined that:**

4 **(1) The public welfare is in no way served by retaining the**
5 **way or easement; or**

6 **(2) There is a net benefit to the public welfare because the**
7 **development made possible by the vacation is clearly more beneficial to the**
8 **public welfare than the minor detriment resulting from the vacation; and in**
9 **addition to divisions (1) or (2) of this division (B):**

10 **(3) There is no convincing evidence that any substantial**
11 **property right is being abridged against the will of the owner of the right.**

12 **(C) In approving the vacation the Development Review Board may**
13 **require that some or all of the public rights of way or easements be retained**
14 **by the appropriate governmental entity as shown on the original plat.**

15 **[(D) The vacation of public rights of way or public easements,**
16 **whether by new plat, plat amendment, or request to vacate, is a discretionary**
17 **act by the City and a determination that the requirements of subdivision (B)**
18 **have been met is a precondition to a vacation but does not create a right to a**
19 **vacation.]**

20 ~~**[(D)]**~~**[(E) The Development Review Board may require that curb**
21 **and gutter be placed, at the expense of the applicant, so as to effectively halt**
22 **the vacated area[s] being used as public way. It may also be necessary to**
23 **remodel or otherwise reconstruct existing public improvements in order to**
24 **solve problems created by the vacation, and the [City Council or] Development**
25 **Review Board may so require. Costs involved shall be borne by the applicant.**

26 ~~**[(E)]**~~**[(F) Procedure.**

27 **(1) In all cases where public right of way, private ways, or**
28 **easements are sought to be vacated, whether by new subdivision, plat**
29 **amendment, or request to vacate, the following procedures shall be followed**
30 **in addition to the procedures specified in Part 3 of this article; however, the**
31 **following procedure may be eliminated for the requested vacation of private**
32 **easements if the Planning Director is satisfied that all the benefitted and**

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1 burdened parties are clearly and completely defined and all agree to the
2 vacation.

3 (2) Notice and Request for Comment.

4 (a) The Planning Director shall mail letters to
5 franchised utilities and to the owner of record of all lots adjacent to the right of
6 way, private way, and/or easement to be vacated [and to any neighborhood
7 association known by the Office of Neighborhood Services to cover all or part
8 of the right of way, private way, and/or easement sought to be vacated],
9 informing them of the nature of the proposed vacation, and notifying them of
10 the date, time, and place of the public hearing by the Development Review
11 Board on the proposed vacation. For notifying property owners, the name and
12 address of the owners shown in the records of the County Assessor shall be
13 used.

14 (b) Prior to the hearing, the Planning Director shall
15 request interested city departments and other agencies to comment on the
16 application. Comments received shall be submitted to the Development
17 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
18 Control Authority and/or the Middle Rio Grande Conservancy District shall be
19 requested before vacation of any drainage easement or public right of way
20 within their respective areas of jurisdiction.

21 (c) If the public right of way, private way, and/or
22 easement proposed for vacation appears to be in use [~~for vehicular access~~][by
23 vehicular or pedestrian traffic], the applicant shall post and maintain one or
24 more signs, as provided and where instructed by the Planning Director, at
25 least 15 days before the date of the hearing. The applicant is responsible for
26 removing such signs within five days after the hearing is completed. Failure
27 to properly post signs is grounds for deferral of the request. No one except
28 the applicant, the agent of the applicant, or the city shall remove or tamper
29 with any such required sign during the period it is required to be maintained
30 under this division (c).

31 (d) Public notice in a newspaper of general
32 circulation in the city shall be published at least 15 days before [the] date of
33 the hearing; the notice shall indicate the location of the proposed vacation,

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1 where a map of the proposed vacation may be viewed, and information on the
2 date, time, and place of the hearing.

3 (3) Hearing and Decision.

4 (a) A decision on city approval of vacations shall be
5 made by the Development Review Board at a public hearing. Approval or
6 disapproval shall be given in writing, expressing the reasons and any
7 conditions, and a copy shall be sent to the applicant and any other persons
8 who have indicated interest in the matter.

9 [(b) Following a DRB decision to approve a vacation,
10 such vacation shall not be final until approved by the City Council when such
11 vacation involves the vacation of more than 500 square feet or the entire width
12 of an alley as that term is defined at § 8-1-1-2 of the Traffic Code or more than
13 5000 square feet or the entire width of a street as that term is defined at § 14-
14 14-1-6 of the Subdivision Regulations including any or all of the public way
15 adjoining such street as the term public way is defined at § 8-1-1-2 of the
16 Traffic Code. In those situations which require City Council approval,
17 following DRB approval, the matter shall be forwarded to the City Council to
18 determine if the vacation shall occur. The matter shall be placed on the City
19 Council's consent agenda for approval without first going to any Council
20 committee.]

21 ~~[(b)]~~ [(c)] Approval of vacation of public right of way,
22 private ways or easements shall be conditional upon the following steps being
23 accomplished by the applicant or governmental entity within a time period set
24 by the Development Review Board, in no case exceeding one year. If not so
25 accomplished, the decision to vacate is voided.

26 1. The applicant shall present to the city a
27 final plat incorporating the vacated right of way into adjacent lots, which plat
28 the city shall record with the County Clerk; or

29 2. The appropriate governmental entity shall
30 record a final plat if the Development Review Board finds that it is in the public
31 interest for the governmental entity to own the vacated public right of way as a
32 lot or if adjacent property owners do not desire the vacated parcel.

1 hereby declares that it would have passed this ordinance and each section,
2 paragraph, sentence, clause, word or phrase thereof irrespective of any
3 provision being declared unconstitutional or otherwise invalid.

4 SECTION 4. COMPILATION. This ordinance shall be incorporated in
5 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

6 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
7 days following publication by title and general summary.

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forefront of technical staff's considerations when they review a vacation application. Best practices, whether in complete streets, sustainable drainage schemes or land use are evolving. Our technical standards will also evolve accordingly, thus it is good government policy to look more carefully at vacations of public easements and rights of way. I am open to your suggestions for amended language on the technical front, but I believe that the essence of this legislation is sound planning and good public policy. Sincerely, Isaac Benton.

I would stand for any questions.

CHAIR MOYE: I have a question, Mr. Thompson, and then Commissioner Peterson has a question. My question is I just want to understand what you said. This is what I heard, ok? So, the Subdivision Ordinance as interpreted by the DRB becomes law if that's the way they have interpreted it for a number of years. Is that correct?

MR. THOMPSON: Basically, that is the standard that was applied in the Hinkle case.

CHAIR MOYE: So, there's a Subdivision Ordinance, staff has been interpreting it one way for twenty years. New staff comes in and they start interpreting it a different way. They can not do that because the previous interpretation has become law because of the decisions that have been made in the past?

MR. THOMPSON: Madam Chair, that is the argument that was made in the Hinkle case. The argument was there's an administrative gloss – whatever that means, but that's the term used. That if something is, in that particular case it was the ZHE that had, for years, interpreted a particular provision of the Zoning Code a particular way.

The first time it was appealed to the City Council the City Council said, no, that's not what it means. The New Mexico Supreme Court said no, the person charged with interpreting this for the last ten years, twenty years, whatever it was, has interpreted it a different way. The only way to change that after this much time is to amend your code and to clarify or clear up the misuse of that term.

CHAIR MOYE: Ok. Just to go a little bit further, I just want to understand this. So, we have a Subdivision Ordinance. Staff has been interpreting one way and now they want to interpret it a different way and the only way for City Council to make sure that new interpretation is followed is to change the code.

MR. THOMPSON: To ensure that it will not be misinterpreted or the argument will not be made. This will ensure that no one can make that argument that there has been a different interpretation for a number of years. Now whether or not in this particular case the court would treat it the same as in the Hinkle case, I can't say that. I sure don't want to argue that because this has been interpreted a certain way that that's the way it should be because it's clearly not the way I would interpret it, but I think, just to clarify the matter, this makes clear that this is not something that someone has a right to a vacation of a right of way or easement.

CHAIR MOYE: Alright. So, let me just go just one more step. Councilor Benton references plans. So, you have a Subdivision Ordinance that says A. You have a plan that comes in that says B. In A, staff has been interpreting it following the A. A plan comes in with a completely different interpretation or desire, if you will, and now the plan does not override the Subdivision Code.

MR. THOMPSON: Madam Chair, that is correct.

CHAIR MOYE: Ok. So, you've got a code, you've got a plan. So, what you have to do is have the code changed to agree with the plan then?

MR. THOMPSON: Madam Chair, if the Code is inconsistent with the plan that comes in, clearly the Code controls and the Code would have to be changed if the determination was that that was the plan that should be followed.

CHAIR MOYE: Ok. Thank you. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. Morning, Mr. Thompson. Looking at the standards that you referenced that are the current standards that the DRB must apply when an application comes in for a vacation of public rights of way, I believe those are at the top of page 3 of our copy of the Ordinance and it's a subsection B with further subsections 1, 2 and 3, and just for clarification I want to say that it seems to me that those are very broad standards. And I'll just read them real quickly. One is that the public welfare is in no way served by retaining the way or easement or there is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the detriment resulting from the vacation. So it would seem to me that if there is a vacation application that meet those standards, I couldn't foresee any reasonable reason why the City would want to retain that easement anyway. And I looked at Councilor Benton's letter and the two examples that he gives and it really seems as though maybe it way poor communication between two branches of government, meaning the Council and the DRB as to what the City's stance was on these two items.

For instance, the first example about the vacation of the alley way in the 2010 Plan; maybe Mr. Cloud on behalf of the Planning Department, didn't foresee that losing that alley would be a problem for the 2010 Plan or the Council just disagrees with where he came down on that issue. So a few questions; does Council currently get notice when DRB receives an application for a vacation?

MR. THOMPSON: Madam Chair, Commissioner, no.

COMMISSIONER PETERSON: Ok. That's something that I think should be solved because it would seem to me that if Council staff had the opportunity to come in and let DRB know that maybe there was something that the Council staff was working on that was relevant to a vacation or that they had a broader vision for an area plan or something like that, that would be helpful maybe beyond going all the way to taking this to City Council. But that is interesting. I assumed that you'd say that Council got noticed, but it's important that they don't. That's all I have for now.

MR. THOMPSON: Madam Chair, Commissioner, one other problem with that is the way that DRB handles this. This is a quasi judicial matter in front of DRB. If in fact they are making that final determination and if Council staff were to contact Mr. Cloud and say, Council doesn't like this, that would be an ex-parte communication. With a quasi judicial body it would raise additional problems. To make this a purely policy matter in front of the Council is whole different standard. And that's one of the things you want to get away from because right now there's a real question about who would even have standing to come in and object to a vacation. Does a city councilor have standing under our current ordinances to be able to raise these issues?

COMMISSIONER PETERSON: Well, I was going to get to a follow up question that I came up with was who has standing to appeal it? Whether the city council has that standing or whether a councilor individually may have that standing or maybe a neighborhood group or something of that sort because it seems to me that if one of those people had the ability to appeal this, that it could get up to the City Council and then the City Council could simply make a different interpretation of whether or not there was a net benefit to the public welfare. It might be different than what the DBR is making as opposed to making every one go to the City Council. Thank you.

CHAIR MOYE: I'm also wondering, Mr. Thompson, on the appeal process right now, if you're not happy with the DRB decision and you feel that the decision was not correct, you can appeal to the City Council as really the legislative policy makers – decision makers. Now, when the City Council makes this decision, the only place you have as an aggrieved party is to go to District Court. Is that correct?

MR. THOMPSON: Madam Chair, that's absolutely correct.

CHAIR MOYE: So, suddenly, now I don't like what's happened and I get to now hire a lawyer and to District Court as opposed to having this discussion for \$50.00 in front of the City Council.

MR. THOMPSON: The other part of that Madam Chair, is that if it is a purely policy decision in front of the City Council, I have no idea what the basis for an appeal to District Court would be. It's very similar to City Council decides to adopt an ordinance. Unless there's something unconstitutional about that ordinance, you can't go to District Court and say I don't like the ordinance that City Council adopted. So this really would cut off the process at City Council. There would not be any basis that I can imagine for appealing. City Council says we don't want to give up our piece of ownership of this property. Why would someone have the right to go to District Court and force the City to give up its ownership interest in a piece of property? It's like someone going to court and saying we don't think City Hall has any value. We are requesting that you vacate it. There's just no standing. Well, I know that people believe that and there's days that I believe that.

CHAIR MOYE: Now, I understand also that in the staff report, Mr. Thompson, that there is a dollar amount involved and I think that's State law that – I thought that there was something..... I read something about \$10,000.00.

MR. THOMPSON: Madam Chair, the Council has delegated - the Council has total control of City property. That's one of the things it has. It has delegated to the Mayor the authority to sell or dispose of unnecessary City property that has a value under \$10,000.00.

CHAIR MOYE: Under 10,000. Ok.

MR. THOMPSON: But the bottom line is that's, again, like with the DRB, it's a delegation from the City Council to a body to make a certain determination and there are specific standards that have established for when that kind of property can be sold.

CHAIR MOYE: Ok. It's on page 4 of the staff report; however, this only applies to real property having a value of more than \$10,000.00. Ok, I knew that I had read that in there somewhere. Alright, are there any other questions? Commissioner Dickson. Let the record show that Commissioner Jett-Walker is here, but will not be participating in this discussion.

COMMISSIONER DICKSON: Thank you, Madam Chair. May I ask a question of Mr. Cloud?

CHAIR MOYE: Yes, of course.

COMMISSIONER DICKSON: Just from a practical perspective, can you tell us how many cases per year you hear regarding vacations?

MR. CLOUD: These particular types of vacations, you know, we were up over 60, we're probably going to be around 50 this year, but it could easily be 60+ when things are busy.

COMMISSIONER DICKSON: Fifty to sixty. And on the average, how much time do you spend in a hearing per case. I know that's difficult to estimate, but an hour?

MR. CLOUD: I don't think an average is probably a good measure. Again, many of these are quite simple vacations – it's again, say a building was built and it encroaches into the right of way by just a couple of feet or less. These are all public hearing cases and we have a vacation of a right of way or public easement. We advertise, we do notify the neighborhood, that's fine to put that in the ordinance. We distribute it for comments. We have DMD, Long Range Planning, so if there was supposed to be street somewhere we expect them to be on top of that and tell us, there may need to be a street here and that's part of the record. That's part of our staff report at DRB. But again, average is not a good example. The very simple cases, by the time we get to the hearing, everybody's looked at it. It's like, no, we don't need this right of way; the sidewalk still works. We open the public hearing and we can be done in ten minutes. Some examples Mr. Benton gave, the Downtown Plan, I'm not sure his recollection of that case, there's half an alley already gone there and we were going to vacate the other half. So, I'm not sure how keeping a half alley completes the intent of the Plan, but that - we had at least four hearings at DRB. We would not just ignore the 2010 Plan and say, "Oh, you guys want to vacate that alley? Sure." That was a very protracted hearing. The opponents had legal representation at DRB. So, that case probably took 2-3 hours at least.

COMMISSIONER DICKSON: Well, I guess what I'm trying to determine is, it seems to me that as you've been saying, maybe 5-10 minutes for some cases all the way up to several hearings on one case and to me it seems like if you looked at that so you average an hour, sixty hours per year, you know, hearing all these cases. If the City Council assumes that work load, it just seems like a tremendous burden on City Council to spend – to meet once a month. It's pretty incredible. That's probably another three or four hours in a session that they have to dedicate to hearing just vacations.

MR. CLOUD: Well, as I understood Mr. Thompson, that's not their intent. We did not know their intent of how the process would work. I would still say it's going to be a lot of time and paperwork even if it's just on a consent agenda; that's probably not necessary, but it does not sound the intent to have a public hearing on each case. It would just be a transmittal. We have what are called ECs, executive communications, we would just tell the Council here's what happened, but you still have to do all that.

COMMISSIONER DICKSON: From your perspective, does the current system work pretty efficiently and the particular rights of the neighborhood and the property owner rights?

MR. CLOUD: I believe it does. I do, again, support the amendment to make it clear that this is a discretionary action by the City that it is not a right. And again, two examples that Mr. Benton gave -

one was appealed. My understanding is there is no case in District Court now, so I'd say the system worked there. And just if I could address the other case, the stub street, again, the right of way that we vacated was relatively short. The other right of way that would be needed to make this connection is substantial – so again, maybe that was communication that Council consultant had not checked with DMD, then DMD could have told us there may be need for a street corridor through here, but there's going to be a substantial condemnation of property required to make that connection even if we don't vacate, and plus I think that vacation is about to expire so we might still retain that right of way and when it comes up again we'll be aware of that study.

COMMISSIONER DICKSON: Thank you.

CHAIR MOYE: I'd like to follow up on that comment, Mr. Cloud. So, you approve a vacation of property. If they do not replat the property showing that there's a new property line, then that expires in a certain period of time?

MR. CLOUD: The ordinance requires that the property be acquired from the City within one year and replatted and filed with the County Clerk. So, if you do not do all that and get your plat filed within one year, the vacation expires. And there's no provision for an extension of a vacation. If you don't get it done in a year, you have to reapply.

CHAIR MOYE: Ok. So, we have a new process that we didn't know about when you wrote your staff report that appeared in testimony this morning. It seems that the DRB will continue to hear the cases, make the decision – I'm not sure if it's a decision or recommendation, but let's say it's a decision, then you transmit that decision to the City Council, it's scheduled for LUPZ, it's heard at LUPZ and then it's transmitted to the consent agenda for the City Council. So, the LUPZ would be the place.... I don't know if you're the right person. Maybe Mr. Thompson should jump up too.

LUPZ would be the place for someone who's not happy with your decision to raise I'm not happy with your decision?

MR. THOMPSON: I would assume so. Yes.

COMMISSIONER SIEGEL: Madam Chair, point of order. They're not making a decision and that's not the proposal in front of us. It's a recommendation and your use of the word decision very much clouds a simple issue to me. I think it's important that we stay with what's before us.

CHAIR MOYE: Mr. Thompson, could you come up here, please? So, DRB will continue to get to hear the case. Then they don't get to make a decision. They make a recommendation to the City Council. Is that correct?

MR. THOMPSON: Madam Chair, that's correct.

CHAIR MOYE: And so if you have a disagreement with the recommendation then your chance to discuss it is at LUPZ?

MR. THOMPSON: Madam Chair, that's correct. Or if a councilor has a concern about their particular district and how they think their district should be developed, they have the right to raise that at LUPZ.

CHAIR MOYE: At LUPZ.

MR. THOMPSON: And it only goes to consent calendar if there's a unanimous vote by the members of LUPZ to send it on to the council with a recommendation of due pass. At that point it would become a – it would go on the consent calendar and not have to be heard. If there was a concern raised at LUPZ to the extent that a councilor, one or more councilors opposed the particular action, then it would be scheduled in front of the council as a legislative matter where people could come in just for a couple of minutes and express their concerns and there would a vote on it.

CHAIR MOYE: Ok. So, if there isn't a unanimous agreement at LUPZ then there's going to be a full hearing at City Council.

MR. THOMPSON: There's going to be full consideration. That's where people come in and they're allowed two minutes to speak to the topic to point out their concerns or a councilor can ask for additional information.

CHAIR MOYE: Alright. I have a question, back to Commissioner Peterson's discussion and that is if notice is given to City Council, well, public notice is given about a case at DRB. If the City Council, either the councilor or I'm assuming staff attended those hearings, then they could speak on behalf of the Downtown 2010 Plan or the fact that City Council had hired a transportation consultant. Would that be correct that they could do it at that point? And that would not be ex-parte, but you're saying even if they were part of the commenting group, you know when they send things around for comments, that would be ex-parte because it's two different branches of government?

MR. THOMPSON: Madam Chair, I'm not sure how DRB actually operates not having been to their meetings. If someone who doesn't have standing is allowed to come in and make a presentation, for most administrative bodies that would violate the due process clause. So I don't know if a council staff person would have standing to come in and make a presentation in front of the DRB or how they handle those things if the general public is allowed to come in and make comments.

CHAIR MOYE: Mr. Cloud.

MR. CLOUD: Well, we certainly have a broad idea of "standing," if it's a public street. Anybody that might be using that street, we would probably let them speak.

CHAIR MOYE: Ok. Commissioner Siegel, do you have a comment to make?

COMMISSIONER SIEGEL: Well, I had quite a few and it may take a couple of opportunities to ask them. First of all, when you welcomed Commissioner Jett-Walker and said she wouldn't participate, I regret that. I hope she'll have questions and comments on the case.

CHAIR MOYE: Commission Siegel, she was not here at the beginning of the hearing of this case.

COMMISSIONER SIEGEL: I understand that. She's here now and I would hope

CHAIR MOYE: Thank you for your comment Commissioner Siegel.

COMMISSIONER SIEGEL: I would hope that she would have questions or comments and be free to make them and not be excluded from the remainder of this dialogue. It's just perhaps inappropriate that she votes since she missed the front part.

I had a question as a follow up to Commission Dickson's questions to Mr. Cloud having to do with the cases that you routinely hear that are like this. You said there are 60 or 70. Are they all about pedestrian rights of way and vehicular rights of way and this other storm sewer? Or are there other kinds of utility easement and so forth that make up that 60 to 70 cases or whatever you've got?

MR. CLOUD: Well, obviously the right of way is almost always street right of way. There are some drainage rights of way in the City and I believe we have heard a hand full of those types of vacations, but almost always right of way mean street right of way. In terms of the public easements, that's often a public utility easement. That's what we call the dry utilities; your telephone, your electric, cable tv, that type of thing. It can include gas. So, those are public utility easements. We require an advertised public hearing for a public easement, but generally it's just the easement that's needed to provide that tract with its utilities. And again, for whatever reason, a building encroachment, a change in the site plan perhaps, whereby they want to put a building where an easement is, they want to move the easement and get rid of the one that's there. That's the most common, is where an easement was platted and it's not that we have an existing encroachment, but they want to develop the property and put a building where the easement is and utility companies are not going to sign off on that unless they have an alternate easement, but we still go through the public hearing process.

COMMISSIONER SIEGEL: May I follow up?

CHAIR MOYE: Of course.

COMMISSIONER SIEGEL: Thank you, Madam Chair. That's what I was sort of interested in at driving at. If that's most of them as you just said..... What I'm trying to figure out is if it's possible to have certain cases kept at DRB while we're doing any rectification of this cluster of the ordinances and just send the topics to Council for final determination that need to be and leave say these dry utilities, a term I didn't know until this minute, separate and allow the DRB to still finish them and maybe there would be wisdom to that, that would facilitate applicants' rapid realization of projects and not ensnare them in further delays in hearings when not necessary and still retain the Council's and public's right to these kinds of hearings as policy matters. I'm still not 100% clear and I'll have questions for Mr. Thompson on that in a bit. Could you drop two-thirds, three-quarters of these cases by segregating out the so called dry utilities from the streets, walk ways, and drainage?

MR. CLOUD: I don't believe it would be that high. If you look on page 4 of the staff report, I gave you just a brief recount. Public easement in 2007, we had 48, in 2008 we had 43 and only 26 so far this year whereas in terms of the rights of way that's been in the twenties. It may be half, but I wouldn't say two-thirds.

COMMISSIONER SIEGEL: That was what I was trying to get at though. If there could be even half the load or better than half the load diminished from going through Council and still retained by the DRB. If that makes any sense to Council and the DRB it would only benefit every other person in the City; not clogging the Council's calendar and facilitating a more ready realization of projects with no harm taken.

The other question I had was whether you had findings in the specifics on these two street or alley vacations that address the sector development plans. Whether you say in the findings words to the effect of yes, we realize that alleys are desired and yet we're going to vacate. Did you catch those or was it missed?

MR. CLOUD: It was missed, but it was not ignored. Again, we look, as a technical body, look at the functionality of the right of way and half that right of way was already gone so the sector plan notwithstanding, didn't seem to make sense to keep that half the alley.

COMMISSIONER SIEGEL: And lastly, the question that had for both Mr. Thompson and perhaps for you, would be your point of view, on whether as Mr. Thompson asserts, the vacation of an alley is a policy decision or whether it's an administrative decision. I'd like both of your points of view on that.

MR. CLOUD: I believe those are the same thing. An administrative decision is a policy decision. It's a decision by the City that – here's what we want to implement in terms of policy. We consider it to be more technical at DRB and we consider it to be a technical decision more so than policy.

COMMISSIONER SIEGEL: And to prod you both, if you'd like, I tend to think that Council quite legitimately would say it's a policy decision that alleys are good for the world and that it's an administrative decision on how wide they should be and how continuous and so forth and I'll ask that same question of you, Mr. Thompson.

MR. THOMPSON: Madam Chair, Commissioner Siegel, I totally agree that even the way that it was pointed out by Commissioner Peterson, the language says the public welfare is no way served by retaining the way or easement. We're turning that determination over to a technical board. And I think that language, if you just look at it under the current ordinance, that policy language, what is the public welfare? And that kind of decision of what the public welfare is, really belongs in a policy making body whether it's even the Mayor's office or someplace else where there's people who are responsive and responsible directly to the public. I really think those kinds of calls and at least the councilors believe that those kinds of calls that deal with the public welfare don't belong in a technical board. Those belong at the City Council.

CHAIR MOYE: Are there more questions?

COMMISSIONER SIEGEL: I did want a final clarification. It does strike me as inappropriate for a councilor to go then to DRB and argue for or against a case. I think that would soil the Councilor's ability to hear the case and could a councilor send his or her staff? That makes very little sense to me. It seems to be a subversion of the same ex-parte rules.

MR. THOMPSON: Madam Chair, Commissioner Siegel, again, I don't know. It sounds like the DRB is fairly open about allowing groups to come in that claim they have an interest in the street that may get into some technical problems with the Battershell case a number of years ago about who really has standing and who should be allowed to come in and talk in a case, but that's something that I think that there are technical problems with having Council staff come in and take a position more than just the issues you raised. With the Council being involved as the ultimate employers of certain people, I think that it tends to skew the view of potentially of the DRB. I would hate to see Council staff involved in trying to influence a decision of what's supposed to be an independent body. I'm sure not here trying to influence you at all.

CHAIR MOYE: I believe we have members of the public here to speak. Let's hear from them and then we'll call Mr. Thompson and Mr. Cloud back up. Who's up first? Your name and address for the record. You've already been sworn in.

MS. ANDERSON: My name is Lynne Anderson. I live at 504 Camino Espanol NW in Albuquerque. I am Lynne Anderson with NAIOP. The Commercial Real Estate Development Association as well, I should note. I would like to read a letter into the record.

CHAIR MOYE: Do you have copies for us as well?

MS. ANDERSON: I do.

CHAIR MOYE: Mr. Brito, could you distribute the copies?

MS. ANDERSON: I apologize for the phone noise earlier. I realized that I had two phones in my purse. I had turned off one of them. I apologize. My husband won't be happy with the second one that I have.

NAIOP, the Commercial Real Estate Development Association, respectfully requests that the EPC recommend denial of the reference text change to the Subdivision Ordinance. A number of our members have also sent letters or will be presenting letters this morning requesting denial and have argued that the change is unwarranted and unnecessary based on existing mean of remedy and on the additional approval time and cost that the change would engender. It is clear from the staff report that the vast majority of these submissions are pro forma and not appealed.

NAIOP would like to add that, in the current economy, when commercial building permits are at an historic low, this type of legislation further complicates the permitting process. The additional time and money that this change would add to a development project could easily "kill the deal". It would not appear to be in the interests of the City or its citizens to hamper projects that create jobs and revenue, particularly when the existing system works for the majority of the submissions and a simple appeals process is available to the general public.

Finally, in light of the existing City policy of encouraging infill development as part of the Planned Growth Strategy, I would note that virtually all redevelopment projects require vacation actions since they usually have existing easements which conflict with the new use. So this bill would have an especially large impact to cost and schedule for redevelopment projects.

NAIOP urges your recommendation of denial, and our representatives are available for questions or discussion concerning the text revision.

Thank you.

CHAIR MOYE: Hold on. Are there any questions for Ms. Anderson? Commissioner Siegel?

COMMISSIONER SIEGEL: Thank you, Madam Chair. I wonder what your sense is about remarks I had having to do with some utility and other vacations versus the public right of way. If that helps clarify this.

MS. ANDERSON: My understanding from what was asked, Commissioner Siegel, Madam Chair, was that very few of them relate to dry utilities. That most of them are related to transportation and pedestrian. Am I correct on that?

COMMISSIONER SIEGEL: My understanding was more of a majority were about that?

MS. ANDERSON: My misunderstanding then.

COMMISSIONER SIEGEL: Would that help?

MS. ANDERSON: Well, I think anything would help that wouldn't put every project through the LUPZ to the City Council because it simply will add three to four months. I mean it's just that simple. Even if it ends up on a consent agenda, it's still going to add that long for the process. And three to four months in this economy right now, frankly, is enormously expensive and would complicate matters. Frankly, it would help more if we just leave the process as it is.

CHAIR MOYE: Do you have further questions, Commissioner Siegel? Ms. Anderson, I have a question for you. You referenced in this economy. I'm curious if the economy is doing well, what does three to four months do when it's added to the development process?

MS. ANDERSON: Well, there's money – assuming that you actually got the loan – there's more interest on the loan for the bank for three to four months. So, that could seriously challenge the bottom line of a project as to whether it would continue to pencil. It's just a tough economy. I mean, if the economy were doing well, you're still adding cost onto the top which affect the bottom line to the consumer that will be using that project.

CHAIR MOYE: Ok. Stay there. I have a point of quick clarification for Mr. Cloud. So, a public utility easement which typically contains the dry utilities is part of the public road right of way.

MR. CLOUD: No, it's a separate easement.

CHAIR MOYE: It's a separate easement.

MR. CLOUD: Utilities are franchised to be in the right of way, but often there is a separate easement just inside of the right of way...

CHAIR MOYE: Just inside

MR. CLOUD: Or across a lot.

CHAIR MOYE: Or across a lot. Typically when the lots in Albuquerque were platted, there was a public utility easement that was put on at least three sides of it.

MR. CLOUD: Or four.

CHAIR MOYE: Or four sides of it? The road right of way being the front and then side and back public utility easement right of ways put in.

MR. CLOUD: That's correct.

CHAIR MOYE: Ok. Thank you. Who's up next? Do you swear to tell the truth under penalty of perjury?

MS. MARTINEZ: I do.

CHAIR MOYE: Your name and address for the record?

MS. MARTINEZ: Katherine Martinez, 722 Marquette NW, Albuquerque, NM 87102.

CHAIR MOYE: Welcome.

MS. MARTINEZ: Thank you very much, Chairman Moye and Commissioners. I am Katherine Martinez and I'm here on behalf of the Homebuilders Association of Central New Mexico. First of all, I do apologize. The seventh copy of the letter is in my hands to read into the record so I can pass that up once I'm finished. I didn't come with enough copies and I'm sorry about that.

The Homebuilders Association would sort of reiterate NAIOP's position on this issue and I do have a letter to read into the record.

The Homebuilders Association of Central New Mexico opposes the proposed text amendment. Vacations of easements currently require administrative action and the amendment requiring Council action would change the process to an unnecessary and unpredictable political one.

Changing the existing process to require Council approval will add time and cost to an already lengthy and costly entitlement process. All design work must be completed up front in order to determine what will need to be vacated. In the current process the vacation is negotiated during the preliminary plat process. In the new process one would be required to spend all of the money up front (at least \$1,500.00 a lot for a large residential subdivision and possibly 40 or 50 thousand for a five acre commercial development) and left to rely on a political outcome.

A recent example provided by a member displays how a change to the procedure could have cost a must needed infill development:

The new CVS at the northeast corner of Central and Louisiana required a public alley vacation in order to make the site plan and vehicular movements work correctly. This alley was legally City controlled public right of way but it was not used for such for years. Nevertheless, under the proposed changes the new procedure would have required vacation of this alley to be approved by City Council action. The new store removed and eyesore and potential hazard on an infill site (an old gas station previously occupied the site) and replaced it with a job a tax generating business in this down economy. Clearly this is something that the City should be encouraging, rather than placing additional roadblocks in front of infill development.

The HBA of CNM's members have expressed the existing process works well; vacation actions require public notification and the public then has then opportunity to respond in writing an in person with questions, comments, and disagreements; and they have the right to appeal. Changing the process to a political one will add time, money and unpredictability. Most importantly, potentially adding another 4-6 months to any entitlement process could easily deter a company, not just home

builders, from investing in our city. This could have a serious impact on economic development efforts. Thank you.

CHAIR MOYE: Are there any questions for Ms. Martinez? Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. It is related to Ms. Martinez and Ms. Anderson's testimony, but it's for Mr. Brito. Does our 48 hour rule apply when we have a proposed legislative thing such as this?

MR. BRITO: Madam Chair, Commissioner Peterson, the submittal of late written materials is up to the Commission whether you want to accept them or not. Most of the time like this morning, these letters are read into the record so it's your discretion whether you want the actual paper to be handed out to you and if you actually want to read it or not.

COMMISSIONER PETERSON: Ok. Madam Chair, because these letters were read into the record I don't think it's harmful for us to also have one to read, but I would also respect that in order to be consistent with our 48 hour rule, in accordance with our recent discussions, that we not make what was handed out to us part of the written record. That's all I have.

CHAIR MOYE: I'm sorry, Commissioner Peterson. If it's read into the record, it's a courtesy for us to have a written copy. That's just a courtesy and because Mr. Thompson brought a letter from Councilor Benton that he handed out and read into the record, it seemed appropriate to me that anyone else that would have a comment on this case that they would be allowed to read their letter into the record and hand it out.

COMMISSIONER PETERSON: Ok. Thank you, Madam Chair. I guess in light of Council Benton's letter we can find that there were very extraordinary circumstances, which I believe is our threshold. If we take Councilor Benton's letter then we should take the other two letters. I see what you're saying. Thank you.

CHAIR MOYE: Alright. Are there any questions for Ms. Martinez? Do you have a question for Ms. Martinez?

COMMISSIONER SIEGEL: No. Thank you, Madam Chair. I'd like to follow up on this discussion that the two of you just had and support leaving hard copies as a matter of the public record of this case at this time. It's only a benefit to City Council. Not just any transcription of what was read.

CHAIR MOYE: Ok. No questions. Alright, thank you. I believe I swore you in Mr. Hernandez.

MR. HERNANDEZ: Yes, Ma'am.

CHAIR MOYE: Your name and address for the record, please.

MR. HERNANDEZ: Madam Chair, my name is Daniel Hernandez. Address is 4333 Pan American Freeway NE.

CHAIR MOYE: Do you have a letter for us?

MR. HERNANDEZ: I do not have a letter for you.

CHAIR MOYE: Darn it! So we have to pay close attention.

MR. HERNANDEZ: You do, but I won't have much to say. I was involved in all of this process when the DRB process was created. It was created exactly and has worked very successfully to prevent long delays in the review of plats and vacations and other parts of the development process. And it's worked very, I think, very well all these years. And the proposed change – I'm sorry. I didn't say this. I'm here representing, in my capacity as President of the Commercial Association of Realtors of New Mexico and we feel that the proposed change simply guts the DRB process and really takes us back thirty years to when all of these matters were heard by City Council and ended in needless delay and a lot of work for them when the great majority of them are technical matters. And so, I'm here just to urge you to deny the requested change.

CHAIR MOYE: Hold on a minute. Mr. Cloud, how long does this process take at the DRB? People have referenced it, but no one has said how long.

MR. CLOUD: It's approximately a 30 day process for the simple ones. From the time of your application to the DRB hearing is 30 days.

CHAIR MOYE: And the 30 days is for a public notice?

MR. CLOUD: That's correct.

CHAIR MOYE: Ok. So, you put your application in, public notice is done and then you're heard at that 30 day DRB hearing.

MR. CLOUD: That's correct.

CHAIR MOYE: And then, at that point, a decision is made by the DRB and the applicant is prepared to go forward with their development?

MR. CLOUD: In most cases, yes.

CHAIR MOYE: Ok. Thank you. Are there any questions for Mr. Hernandez? Commissioner Siegel.

COMMISSIONER SIEGEL: Thank you, Madam Chair. I regret not having asked this to the previous two speakers. Madam Chair, I would entertain a willingness for them to readdress it if they would like. If the EPC were to consider, as Mr. Cloud has suggested in his preparation of this case, accepting the text change such that meeting these pre-conditions does not guarantee a vacation of any public right of way, but only creates the conditions under which it may be considered. Whether you support that and are opposed to the change in procedure and time which is the recommending versus the approving body. I wonder - that's assuming you can follow my question - it seems that we have two lobes of this case before us.

MR. HERNANDEZ: Commissioner Siegel, I understand your question exactly and we are opposed to that change in part because it seems to make this now a political process rather than simply a technical one. Do you understand my answer?

COMMISSIONER SIEGEL: No.

MR. HERNANDEZ: So, all of the sudden you've given discretion to the body to deny a request for whatever reason. And here before the DRB process has been relatively straight forward. If you met the certain requirements of the law, you were entitled to get the vacation. And now, what the proposed change would do in this regard would be to say, now you've got to go solicit votes because it has nothing to do with the technical merits of what you're asking for. It can be denied for any reason.

COMMISSIONER SIEGEL: Ok. Thank you.

CHAIR MOYE: I would like to ask Ms. Anderson or Ms. Martinez if you would like to come up and address Commissioner Siegel's question about the two pieces of this, if you've had an opportunity to see the staff report. Ms. Anderson.

MS. ANDERSON: I think Mr. Hernandez spoke very well and eloquently in terms of our feelings about it. So, I would agree with him as well. I do think that it becomes an unpredictable political process rather than a straight forward technical one.

CHAIR MOYE: Ms. Martinez.

MS. MARTINEZ: Thank you, Chairman Moye. The Homebuilders Association would reiterate that as well and we stated that in our letter. We would oppose the Council being the deciding body and also if the developer met the legal requirements then it seems to me that they should be granted the vacation of easement.

CHAIR MOYE: Commissioner Siegel.

COMMISSIONER SIEGEL: I mean, it sounds like what you're saying is that this tends to politicize, using your words, the DRB.

MS. MARTINEZ: Correct.

COMMISSIONER SIEGEL: Ok. Thank you.

MR. MARTINEZ: Thank you.

CHAIR MOYE: Ok. I neglected to announce at the beginning of this particular portion of today's hearing, not this portion, but of today's hearing, that people that are making public comment have the right to question either Mr. Thompson or Mr. Cloud in regards to their testimony. So, we'll be giving you an opportunity to do that as well. So, who's up next? I don't believe that I swore you in.

MS. MOORE: You did, but I'd be happy to do it again.

CHAIR MOYE: Oh, I did? Ok, fine. Your name and address for the record.

MS. MOORE: My name is Jean Moore. My address is P.O. Box 1945, Albuquerque, 87103.

CHAIR MOYE: Welcome Ms. Moore.

MS. MOORE: Thank you. I'm not here representing anyone, although I am a real estate and land use lawyer at the Sutton Firm. I'm here largely because I heard about this and I think it's a bad idea. I agree with the previous speakers that the public is sufficiently protected under the current ordinance and that the proposed change and particularly the requirement for the City Council to approve vacation of public easements and rights of way would be unnecessary and unnecessarily burdensome. It'll be costly in terms of time and money and has the potential, as Ms. Anderson said, to kill some very valid and good deals. Just by way of example, a recent representation I had, a purchase of real property was contingent upon being able to vacate the right of way. This turns a 30 or 60 or 90 day due diligence period into a half a year due diligence period if we go with this current amendment.

CHAIR MOYE: Thank you. Are there any questions for Ms. Moore? Commissioner Siegel, do you have a question? No. Anyone else? Thank you. Who's up next? I believe you were sworn in twice.

MS. KRUEGER: Yes, I was.

CHAIR MOYE: Your name and address for the record.

MS. KRUEGER: Keli Krueger. My address is 5571 Midway Park Place and I am here representing Tierra West this morning as well as agent for Argus Development and I have letters to read into the record for both.

CHAIR MOYE: Do you have letters to hand out to us.

MS. KRUEGER: No, Ma'am. I don't. I was not prepared this morning. I apologize.

CHAIR MOYE: Alright.

MR. KRUEGER: The first letter I'll read is from Tierra West.

Dear Chairman Moye,

I am writing to you to ask the EPC to recommend denial on the referenced text changes to the Subdivision Ordinance. Our firm processes vacation requests on a regular basis and we do not see where the DRB violates any current procedure or policy with the current protocol and process for vacations. Requiring this process to be approved by City Council will greatly increase the cost for both the applicant and the City Council as well as extend the process for the vacation actions adding an additional four to five months. Further in the era of budget considerations it will take an inordinate amount of time for the City Council and the City Council staff to address this issue. As outlined in the staff's comments, the general public (if aggrieved or if they feel as if their rights have been violated) has the simple appeal process through the hearing officer and then to the City Council. In the 23 years that we have been processing vacation actions, we have yet to have a vacation action appealed.

I would like to quote the staff report that shows the number of cases that would be involved. If the City Council has to process this many cases it will take away from other Council business and stretch City Council staff even further. The following is from the staff report:

As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process."

Further, a vacation action may be required as a precursor to a preliminary plat thereby holding the entire project up until City Council acts on the vacation. So while the vacation action may be extended up to 4 to 6 months it could drastically lengthen a subdivision process as well. We believe that in those rare instances where an appeal is warranted the City has followed the normal protocol and has provided adequate due process in those cases. We feel that the current process does not need to be modified and would urge the EPC to recommend that this text amendment not be passed.

Ronald Bohannan

And the second letter from Argus Development is:

Dear Chairman Moye,

We have been informed that a text change is being proposed as referenced above and we ask that the EPC recommend denial on this proposal. As developers of properties in Albuquerque we frequently request and process vacation requests and this proposed amendment is unwarranted. Any City Council action will greatly increase the cost for both the applicant and the City Council as well as extend the process for the vacation actions adding an additional 4 to 5 months. We note that the staff report clearly outlines the deficiencies with this proposed change and encourage the Commission to review these comments carefully. Finally, any appeal is sent to the City Council anyway as the final administrative authority.

The current process does not warrant this change and we urge the EPC to recommend that this text amendment not be passed.

CHAIR MOYE: Are there any questions for Ms. Krueger? Commissioner Siegel.

COMMISSIONER SIEGEL: Thank you, Madam Chair. As a courtesy I'd ask if you could get Xerox copies of these and make them available to staff to include in the record along with the rest of the written statements. Thanks.

CHAIR MOYE: Mr. Brito.

MR. BRITO: Madam Chair, Commissioners, Kevin Curran from the Legal Department would like an opportunity to address the Commission. He has a time constraint and will have to leave shortly.

CHAIR MOYE: Come on up, Mr. Curran. Thank you, Ms. Krueger.

MR. CURRAN: Thank you, Madam Chair. In addition to my role as advisor to the EPC, I'm also Counsel to DRB. I have a couple of comments or questions that I want to get out before I have to leave. It's still unclear to me – the first one – it's still unclear to me whether or not the City Council, if this text amendment is approved, whether or not the City Council reviews the vacation requests as an appellant body or whether or not, based on the record that was created at the DRB in the first place as the recommending body. Or is City Council going to sit and hear the case de novo, as they say in the legal profession and accept evidence and testimony outside of evidence and testimony that the DRB heard? That's my first question.

Second question is, as Mr. Cloud explained, the DRB vacation process is a two step process. There's a hearing in which an approval or a denial is made and then there's a replat in which the applicant has to incorporate the vacated property into his property and my second question goes, is the City Council also going to review and approve that replat? Seems to me that there's two pieces of the puzzle there and the same body should probably be doing both pieces of the puzzle. That's all I have.

CHAIR MOYE: I think that's a Mr. Thompson response. So Mr. Thompson, could you respond to that question?

MR. THOMPSON: Madam Chair, Commissioners, it was made very clear that this is going to be a legislative process in front of the City Council. It is not a de novo hearing. As far as City Council's concerned by the time it gets to them there's been a determination or recommendation from the DRB that this meets the legal standards that no one is harmed by the particular action and the Council would make a policy call as a legislative matter. As far as the replatting, once the City vacates properties, it doesn't vacate and give it to anyone. What it does when it vacates property is the property is then – what they're giving up is their easement or right of way. They are not saying that they are at the same time giving it to someone. That's a whole separate process of replatting. The Council is not involved in replatting. The Council is simply making a determination if it is going to give up its property. I mean the City owns that easement or right of way and that's the determination that in other situations or most of the situations that Council makes the determination of whether or not they should give up this property interest. So, I think that those questions were dealt with earlier and if there's still any questions about that I'd be happy to respond.

CHAIR MOYE: It would be from Mr. Curran. Not from us, I don't think, unless the Commission has that type of question.

MR. CURRAN: Madam Chair, I guess that answers my questions. I guess I have a little bit of apprehension in treating these vacations as a legislative matter because if a determination is made that the vacation should be – well, broader speaking, you have access issues when you're determining whether a right of way stays or goes and an access issue is a property right. And if it's a property right it seems to me it's a quasi judicial process. I just want to raise that flag.

CHAIR MOYE: Are there questions for Mr. Curran? Ok. Who's up next? That's it. Alright, Ms. Anderson, Martinez, Krueger, Moore and Mr. Hernandez, do you have any questions you would like to ask of Mr. Cloud or Mr. Thompson at this time? No. Ok, any questions from the Commission?

COMMISSIONER SIEGEL: I'm sorry, Madam Chair. I thought I heard there were seven speakers signed up. One was a duplicate listing. I still only got five.

CHAIR MOYE: Are there any other questions. I'm going to ask for closing comments from Mr. Thompson and then Mr. Cloud. Mr. Thompson, any closing comments?

MR. THOMPSON: Madam Chair, just a real quick response to one of the comments that were made, and I don't disagree that this will delay to some extent approvals of vacations, but I've heard the comment that it would take 3 to 4 months, 4 to 5 months, or 4 to 6 months. There have been, in the past, some problems between the administration and the Council of getting things in front of the Council. I don't believe that six months or even five months or four months is how long it's going to take for this to happen. But it would be a delay of a month or two. And I think it's very clear that what everyone's saying is that this should be mandatory on the City to give up its property right if the DRB makes a determination that certain standards are met. And I don't think that's what the Code actually says now. So, this is not a mere clarification. I think that as a policy matter who should make the decision as to whether or not the City is mandated to give up an interest in property, I think that's really the basis, the bottom line, of this whole issue. Thank you.

CHAIR MOYE: Mr. Cloud, closing comments?

MR. CLOUD: Thank you, Madam Chair. Just again would urge the conditional approval. We believe that it's not necessarily a political issue regarding the discretionary action by the City. It's more of a legal issue and we support that. Our findings are on page 5. I did want to respond regarding the conditions of approval in your recommendation. Condition number 1; I did not know the history on the proposed deletion on Section 1. It appeared to read ok with Division B which is up at the top of page 2 and I thought that's what it was referring to. So, I'd actually concur with the text amendment as written per page 2 and I would recommend a change to Condition number 1.

CHAIR MOYE: And what would that change be, Mr. Cloud?

MR. CLOUD: I'd keep the first two words, "That the", and after that insert "proposed deletion" and then skip down to the next line to the word "and". So that it would read as follows: "That the proposed deletion and the proposed new language in Section 1, page 2." Then we need to include line 16.

CHAIR MOYE: I'm sorry. You're going to have to read the entire sentence as it should be.

MR. CLOUD: "That the proposed deletion and that the proposed new language in Section 1, page 2, line 16 and 17 be included in the text amendment" (not the *test* amendment).

CHAIR MOYE: Spell check's a wonderful thing. Ok. So, could you read that again? "That the proposed deletion

MR. CLOUD: and that the proposed new language in Section 1, page 2, line 16 and 17 be included in the text amendment."

CHAIR MOYE: Thank you. Are there any question for any of the public or Mr. Cloud or Mr. Thompson from the Commission? I'm going to close the floor. Commissioners, discussion? Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. A few things; first of all, I think it's important to think back to the basics as to how the City gets right of way to begin with - whether it's an

easement right or something that they acquire in fee simple. Almost without exception I would say that it comes from private property owners. Maybe, way back when the City was expanding the City said, ok, we need roads so we're going to take certain slots from property owners. And when the City does that, the City does it pursuant to their rights of eminent domain to acquire right of way. And they either go out and they buy it pursuant to constitutional standards or they wait until private property owners want something like a plat or a permit or something of that sort and then there's some type of quid pro quo.

It's also important to remember that pursuant to the ordinance as it is right now, the only person that can apply for a vacation of a public right of way is someone that is adjacent to it. So, I bring that up because that means that in almost every instance the only person trying to get some right of way back would either be the person or the successor to the person who gave it up in the first place, ok? And presumably that person got some type of just compensation for it when they gave it up. But, as Mr. Thompson alluded to, even if the vacation is approved that person doesn't just get that property back. They have to buy it back. There's an appraisal process and then they have to buy it from the City. So, I bring all that up because, you know, like I say, there are standards for when the city can go and get that right of way to begin with. There are constitutional standards; however, to sum it up for here, they can only go get it if it's in the public welfare, if they need that for the public welfare. Well, under the current standards, as are in the current ordinance, the only circumstance in which the city is now obligated to vacate that public right of way is if that public welfare benefit has expired; is no longer there. So, I respectfully disagree with I think the point that being asserted by Mr. Thompson is that somehow the City's property right is tantamount to the property rights that each of us might have in our home or something of that sort. The City only acquired this property because they said they needed it for public welfare. Under the current standards in the ordinance they only vacate that property if the public welfare has expired. And I think that's fair. I think that someone should have a right to have that property back – pay to get it back if that public welfare has expired. It's not the City can go and acquire property saying we need it for the public benefit and then a few years later acknowledge that the public benefit's not really there and say, "It's ours. We don't have to give it back now or we don't have to sell it back now." I would think that that's inappropriate.

And then to speak to the comments that were made about the delay in process. I mean that is real... Vacation actions and what will be platting actions going up to the City Council is something that might work for a very small city, you know, rural New Mexico, something of that sort. But not for a big city like Albuquerque and I think that was recognized about 30 years ago and I think has worked very, very well. And I mean to personify the City, there is absolutely no way that we could pass this ordinance and the amendment and say that we are a business friendly city. We couldn't even say that are not a business adverse city. I mean that would just be ridiculous the delay in process this would cause. And like I say, the politicalization, the politicizing – I'll invent words up here. I don't care – politicizing a vacation action. And I don't quite agree that a vacation action is always absolutely technical. There are some policy things to be considered. However, I think the only policies that legitimately should be considered are the ones that are already written, set forth policies of the City of Albuquerque.

Speaking as a developer, when I go to DRB, EPC, City Council, I just see the City. It's all the City. We're the City, the DRB's the City, City Council is the City. So, I think the problem that we're seeing today is that there is a breakdown in communication between two parts of the City that is trying to be resolved with an ordinance that doesn't make any sense.

When I go to the DRB, which I've been there several times, I currently see Mr. Cloud, who is the Chairman of the DRB, and is also the head of the Planning Department as being the voice for what's important to the city. So, there's a 2010 Plan and keeping a half of an alley is important to that 2010 Plan then Mr. Cloud will be informed of that as a representative of the Planning Department and that will inform his input as to the tests that currently as set forth in the ordinance. And if there's some problem with councilors getting the word down through Planning to the DRB chair about that, that's an internal city problem to be resolved not having to do anything with the public. Why go and complicate a process for the public unnecessarily because you have two parts of the city that aren't effectively communicating with each other? I don't think that makes any sense. That's all I've got. Thanks.

CHAIR MOYE: Commissioner Dickson.

COMMISSIONER DICKSON: Thank you, Madam Chair. I guess I believe that all the policies are already in place and it's certainly the responsibility of DRB and LUPZ and other groups to constantly be reminded of those policies and follow those policies, but I believe that they sincerely try to do that. I think that in many cases today that some of these public easements is an example of the alleys being made into a "silent hero" maybe of new urbanism. In many cases the alley is old technology. Many of them were created 30, 50 years ago to provide service to the back for rear residences and alleys or for refuse pick up; things like that that now take place actually at the front of the properties. And consequently, through times, these alleys actually become a nuisance and a detriment to the neighborhood. They actually become in many cases, in residential and commercial areas, kind of a transient highway where criminal and people that don't have the public's best interest at heart, you know, come and do graffiti and break into properties using that kind of rear access.

I think also as you drive through the city you see these poorly maintained easements. You know, they're, you know giant weed gardens. I don't know that in all cases these easements really need to stay in place and I think that the determination is certainly - there are guiding principles in the policies. But I think that the determination on each specific property is very specific to that property and thereby I think it's actually a technical issue. I think that it's really something that City Council doesn't need to bother with. They've already developed the DRB to actually take care of some of these other issues and so I guess I kind of like the process the way it is. So, I guess I'm not really supporting the text amendment.

CHAIR MOYE: Commissioner Siegel. Oh, I'm sorry. Commissioner Yardumian. Who was up first?

COMMISSIONER YARDUMIAN: Thank you, Madam Chair and Commissioner Siegel. Thank you. I'm inclined to agree with Mike (Commissioner Dickson) because the process has been in action for a long time and it's been basically working well. I hate to change something just for change sake. If it ain't broke don't fix it. I think that's kind of backwards. Anyway, you get the point.

On the other hand there are no doubt some cases that come up - some right of way cases - that come up where they are clearly decisions that ought to be made by the policy body of the city and with all due respect to Jack Cloud, it's not his job really. He's got a really big job worrying about the technical aspects of cases and to an extent the welfare of the City, but not in the same manner that the Council does. That's a policy question. There are not many of those types of cases and if there were some clearer or easy matter of deciding which ones are truly policy and impact on the welfare of the citizens of the city and they could be forwarded to the City Council as a recommendation from the

DRB that would be nice. I don't think it's that clean cut and that easy to do. So, I guess what I'm saying is that I'm leaning toward it ain't broke generally, so let's leave it alone. It's been working well for a lot of years, unless one of the other commissioners can change my mind. Thank you.

CHAIR MOYE: Commissioner Siegel.

COMMISSIONER SIEGEL: Thank you, Madam Chair. It's a complicated case. I came in having read the staff report and reasonably persuaded that staff was making an intelligent recommendation. I think Mr. Thompson's presentation to us persuaded me at that time that it was appropriate to follow essentially what's being offered up as the text amendment by Council. The public testimony blew me the other way again, which is important that the public testimony be available and do that sort of thing. Then Mr. Thompson's rejoinders and finally staff's rejoinders leave me at the following conclusion. Myself, I think the findings and conditions as amended are supportable. I think that the public has persuaded me at this time to not recommend to Council to take on the final approval of these many cases and even if in fact that they decide to take it up and entirely consider Councilor Benton's bill as proposed, I would suggest that they attempt to divide out what were called dry utilities.

I think that I mentioned earlier that there were two lobes to the case. There was apparently a typo made in – if I have the dates right – the 1974 still needs a recommendation amendment. I support staff in recommending repair of that. I also support staff in their analysis in making these conditions for a vacation of an easement qualifying conditions but not mandating the vacation of the easement. That it's still left as a discretion both of the DRB and it's important that it's left that way so that any further discussion by the Council is still supportable on appeal that it's discretionary, not mandatory. And I think that's an important distinction to have upon hearing any question for example about whether now it should be vacated.

I think there is significant harm to the city and its constituents including the development community's views as spoken to us and I think the time delays could be fairly significant. I also really take issue with everybody who spoke and said it would then become a political decision and I really disagree with that. I would like to believe that our DRB is making policy based decisions and would admonish them to consider and remember to make findings pertinent to the sector development plans. I spoke about that earlier and in fact as well to waste water treatment and the rest.

I think it's important that Council also make their decisions that are policy based and I don't really think that they get into cat fights about the politics of it. I hope and expect that they are making decisions about right of way vacations that have to do with policy. So saying, I rather support staff's report, although I had a few recommended alterations to some of the findings if the Commission decides to accept staff's report as amended. Thank you, Madam Chair.

CHAIR MOYE: Commissioner Siegel, if I could, I believe that they public testimony referenced these decisions going to City Council would become politicized, not at the DRB level becoming politicized.

COMMISSIONER SIEGEL: They actually at times said both and I would hope that both makers base their decision on policy, not politics. Thank you.

CHAIR MOYE: Is there anyone else that would like to comment on this. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. Having not seeing anyone else who would like to comment I'm ready to make a motion unless you had some comments yourself.

CHAIR MOYE: Well, I am persuaded by your testimony and Commissioner Dickson's testimony. Like Commissioner Siegel, I've had my mind changed several times since reading this and going back and forth. I do have a comment to Mr. Thompson. I noticed in reading the proposed language that DRB is circled a couple of times in the new proposed language and I agree that the language needs to be cleaned up cause it doesn't make any sense. I'm on page 5 and 6 of the proposed language. It says 3B, the last sentence says if on appeal the City Council reverses the DRB determination and finds that the requirements of subsection B have been met, the City Council shall at the same time exercise its discretion and determine whether the public right of way or easement DRB should be vacated. I'm not exactly sure what that meant. So, I'm assuming that the language will be clarified and once it gets to City Council and then again that is repeated in 3C. In reading it I wasn't quite sure what was trying to be said, but since I support staff's recommendation, I'm hopeful that it simply goes away. So, my comments are I certainly agree with what's been said and I thought that Councilor Benton's letter was interesting and again I was persuaded by staff's comment about these two incidences that Councilor Benton raised and I have to go with the recommendation of conditional approval. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. I'll make a motion in a moment but I just want to be clear that my comments earlier were such that I'd be recommending against any change to the ordinance whatsoever. I mean, obviously, if there's a typo with the 1974 that should be changed, but I don't think that that's something that we should drill down to. I even recommend against the language going in there about vacations being discretionary for the city because I was elucidating with my comment with Mr. Thompson, I believed that the standard already is high enough and already accounts for some policy and that the staff should be aware and I think is aware of current written policies of the City and should enforce those as well.

So, I'll make a motion now and I ask for your indulgence because it also involves some additions to the findings as set forth in the staff report. In the matter of case number 09EPC - 40060, a text amendment to the Subdivision Ordinance, I recommend for denial - I recommend that a recommendation of denial - I move that a recommendation of denial be forwarded to the City Council subject to the findings as set forth in the staff report provided that in regard to Finding 3, an additional sentence be added to the end thereof that reads as follows: "Such codification would enable the City to withhold its approval of a vacation in a way detrimental to the welfare of the City." And further, that with respect to Finding 5, and additional sentence be added to the end thereof that reads as follows: "Neighborhood notification is already required pursuant to an existing separate ordinance and therefore inclusion of such a requirement in the Subdivision Ordinance is repetitive and unnecessary." And that's the end of my motion.

CHAIR MOYE: Is there a second.

COMMISSIONER DICKSON: Second.

CHAIR MOYE: We have a second by Commissioner Dickson. Is there any discussion?
Commissioner Siegel.

COMMISSIONER SIEGEL: I urge my fellow commissioners not to support the motion as made. I think that's its using inadvised, overbearing rejection of a few matters that have been brought to our attention. I think there's two critical matters and I described them earlier as two lobes. I think it's important that Council, the DRB first, and Council, upon consideration of appeal, be able to determine and deny a vacation because they find that it's inappropriate due to, for example, sector development plans or other incipient plans. I would also recommend that the minor text amendment that Mr. Thompson requested be picked up and other typos be clarified. So saying I do not support the motion as presented. Thank you.

CHAIR MOYE: Commissioner Yardumian.

COMMISSIONER YARDUMIAN: Thank you, Madam Chair. I don't support the motion as presented either. I think it's a bit overbearing. I think there is merit in some of the staff report and findings and conditions that could improve the process without impacting the development community which would, I think, be a mistake. So, I'm not supporting this motion as presented either.

CHAIR MOYE: Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair; just one quick response to Commissioner Siegel's comments. I don't wish to prolong this, but as I stated earlier, the standard is already set forth in the Subdivision Ordinance for when a vacation should be granted, includes "there is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation." So, I believe, pursuant to that standard, both the DRB and then the City Council on appeal already have clear standards to consider all policies that are in effect such as sector plans and things of that sort. And so, I don't think that there needs to be further language to make it what I would feel be arbitrary in the City's discretion. Thank you.

CHAIR MOYE: Commissioner Siegel.

COMMISSIONER SIEGEL: Thank you and as rejoinder to that, in urging this Commission to consider adoption of that portion of the language as I am doing. I think I heard clear testimony both from Mr. Cloud and from Mr. Thompson in saying that the "shall" language chains the City in ways, and there are case precedence and I don't recall the names, which would establish that. And I think that that is an unnecessary burden and hardship on the citizens. And I think that less restrictive language, and that was what was put before us, is very supportable and that's why I am very nearly in entire support of staff's amended findings and recommendations. If this first motion were to be defeated, I will have minor corrections proposed to staff's findings. Thank you, Madam Chair.

CHAIR MOYE: I just want to clarify for the Commission, if this motion is defeated a new motion will be – the Chair will ask for a new motion. It does not mean that this is defeated, alright? Does everyone understand that?

COMMISSIONER YARDUMIAN: Madam Chair, did that finally get resolved? I mean, that's one of the issues that we've been hammering at in the EPC process. That's one of the things we objected to that said, oh, if you deny it, that's it. You can't make another motion. Now, can we in fact – where's our legal – oh, he took off, didn't he? So what is the policy?

CHAIR MOYE: Mr. Brito, is it necessary to suspend the rules? I mean that's how we can do this is to suspend the rules and make a statement of how we're going to handle this. Mr. Brito.

MR. BRITO: Madam Chair, Commissioner, the rules state that if any motion fails for lack of support, such motion dies. So, the case would still be open for another motion.

CHAIR MOYE: Thank you. Commissioner Yardumian, ok?

COMMISSIONER YARDUMIAN: How come the last time we faced this issue it had to go forward as a denial to the City Council and we had no choice in the matter. Did something change in the interim?

CHAIR MOYE: Mr. Brito.

MR. BRITO: Madam Chair, Commissioner Yardumian, it's the tie vote that creates that situation.

CHAIR MOYE: Right. Not the denial vote or approval vote.

COMMISSIONER YARDUMIAN: Alright, thank you.

CHAIR MOYE: Commissioner Siegel.

COMMISSIONER SIEGEL: Given that I believe Commission Jett-Walker will not vote, we will have six voters. It's possible to have a tie in which case I would recommend that we do suspend the rules on the matter only. And I'd like to so move ahead of the other vote. Is that procedurally possible?

CHAIR MOYE: I think it is. Mr. Brito.

MR. BRITO: Madam Chair, Commissioners, yes. The Commission may vote to suspend the rules at any time.

CHAIR MOYE: Thank you. We have a motion to suspend the rules. Is there a second?

COMMISSIONER SIEGEL: Just on the matter of a tie vote. Thank you.

COMMISSIONER YARDUMIAN: I'll second.

CHAIR MOYE: Just on the matter of the tie vote. We have a second from Commissioner Yardumian. All those in favor indicate by saying aye. Opposed? Motion carries. So, the rules are suspended in the event of a tie vote. So, if there's a tie vote we'll start all over again. Mr. Thompson, before you leave – I thought you'd already left.

MR. THOMPSON: I had left. I'm supposed to be in the same meeting as Mr. Curran and that's the reason that I apologize for leaving. It has nothing to do with the EPC. I'm supposed to be in a meeting that started 20 minutes ago.

CHAIR MOYE: Ok. Did you want a point of clarification, Commissioner Siegel? No. Ok, thank you so much.

MR. THOMPSON: I apologize.

CHAIR MOYE: Alright. Commissioner Peterson, you had your hand up.

COMMISSIONER PETERSON: I did, but it was on the procedural matter that we've now solved. Thank you, Madam Chair.

CHAIR MOYE: Ok. So what is before us is a recommendation of denial and we have a second. Do we have any further discussion? All those in favor of a denial, please raise your hand. All those opposed to a denial please raise your hand. There's tie vote. So, now we're back to the beginning again.

COMMISSIONER SIEGEL: Madam Chair, may I make an alternative motion if you would recognize me?

CHAIR MOYE: I've already recognized you, Commissioner Siegel.

COMMISSIONER SIEGEL: Ok. In the matter of 09EPC-40060, I would like to move recommendation to City Council based on Findings and the amended Conditions of approval as presented with the following change to Finding 7, and I would like to read my change – I'll be striking a couple of words – "Requiring City Council approval for vacations of public right of way and public easements would put such applications into a category of process more complex than subdivision request as well as most site development plans and zone map amendments." I'll add a sentence: "Such added complexity would be burdensome to both applicants and interested citizens as well as to City staff."

What I'm effectively doing, Madam Chair and fellow commissioners, is suggesting that we accept staff's suggestions and recommendations and Mr. Thompson's recommendations both to clean up errata and wrong pointing elusions within the existing ordinance and to permit DRB and/or City Council upon appeal to deny a vacation based on their best judgment. This maintains the first approval at DRB and I think helps to facilitate most of the processes and time frames of the development community and of the citizens. And I think this set of changes is of great benefit to the City. That's my motion.

CHAIR MOYE: Ok, Commissioner Siegel, before you finish with your motion, we did refer to some typos and some language that needed to be cleaned up.

COMMISSIONER SIEGEL: I'd be happy to have those in the record and would also be happy to have a condition that says that other typographical errors may be reviewed and cleaned up.

CHAIR MOYE: Has staff quickly drafted something that says, and other typographical errors? Mr. Cloud.

MR. CLOUD: No, but I think it will be a very simple condition that typographical errors and errata be corrected.

CHAIR MOYE: And so that would be part of your motion, as Condition 5.

COMMISSIONER SIEGEL: That's fine.

CHAIR MOYE: Commissioner Yardumian.

COMMISSIONER YARDUMIAN: Can we then – since some of us have marked some of those typos, can we just hand those in or do we need to read them?

CHAIR MOYE: I think that we can just give them to Mr. Cloud.

COMMISSIONER YARDUMIAN: Good. Thank you.

CHAIR MOYE: Alright. There is a motion on the floor from Commissioner Siegel. It has not been seconded. Is there a second?

COMMISSIONER YARDUMIAN: I'll second it.

CHAIR MOYE: We have a second from Commissioner Yardumian. We're now available for discussion. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. I will vote against the motion for the same reasons as I stated before in support of my previous motion. And one more thing; just in the event that this also ends up in a tie. I'd like it to be known that I intend to then make a motion for no recommendation and set forth that we tied twice. So, don't think that we're just going to suspend into forever with this. Thank you.

CHAIR MOYE: We still have until noon, Commissioner Peterson. Alright, is there any further discussion? Alright, the motion is now for a recommendation of conditional approval based on the amended findings and conditions as read in the record. All those in favor, please raise your hand. All those opposed, please raise your hand. Ok, so once again, we are stuck at a tie vote. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. In the matter of case number 09EPC-40060, I move that a recommendation of no recommendation be forwarded to the City Council pursuant to the findings set forth in the staff report provided that an additional Finding 8 be added that reads that "The Environmental Planning Commission considered two motions with regard to this case; one was for denial, one was for conditional approval. Both motions ended in a 3-3 tie." And that no conditions be attached to our recommendation.

COMMISSIONER YARDUMIAN: I'll second it.

CHAIR MOYE: We have a second by Commissioner Yardumian. Is there further discussion? Alright, commissioners, we are voting on a recommendation of no recommendation on this case. All those in favor of no recommendation, please raise your hand. All those opposed to no recommendation, please raise your hand. Alright, so it passes on a 5-1 vote.

FINAL ACTION TAKEN:

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted that no recommendation be forwarded to City Council for Project 1004831, a text amendment to the Subdivision Ordinance.

MOVED BY COMMISSIONER PETERSON
SECONDED BY COMMISSIONER YARDUMIAN

MOTION PASSED 5-1 (COMMISSIONER
SIEGEL VOTED NO)

3. Project# 1002125*
09EPC-40062 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)

BERGER BRIGGS agents for SANTA FE
ARCHDIOCESAN request the above action for all or a
portion of lot 20A, block 44, RAYNOLDS ADDITION
zoned SU-2 FOR SU-1 FURNITURE / RETAIL to SU-2 for
SU-1 FURNITURE / RETAIL AND O-1 USES located on
IRON AVE SW BETWEEN 13TH ST SW AND 14TH ST
SW containing approximately .489 acre(s). (K-13)
Carol Toffaleti, Staff Planner

STAFF PRESENT:

Carol Toffaleti, Staff Planner

PERSONS PRESENT TO SPEAK IN REFERENCE TO THIS MATTER:

None

MS. TOFFALETI: Reiterated comments made in the staff report in which approval was recommended with findings and conditions.

FINAL ACTION TAKEN:

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to approve Project 1002125 / 09EPC-40062, a zone map amendment for Lot 20-A, Block 44, Raynolds Addition, based on the following Findings and subject to the following Conditions:

FINDINGS:

1. The request is a sector development plan map amendment for Lot 20-A, Block 44, Raynolds Addition, a site of approximately 0.489 acres located at the northeast corner of Iron Ave. and 14th Street. The existing zoning of SU-2/SU-1 for furniture/retail would change to SU-2/SU-1 for furniture/retail and limited O-1 uses, specifically:
 - a. Beauty shop, barber shop
 - b. Church, or other place of worship, and incidental uses, excluding emergency shelters, homeless services and facilities
 - c. Community residential program, excluding community residential corrections or substance abusers program
 - d. Dwelling units constituting up to 60% of the Gross Floor Area on the premises, with open space as regulated in the O-1 zone
 - e. Incidental uses within a building, as regulated in the O-1 zone
 - f. Institution, as regulated in the O-1 zone
 - g. Medical supplies and services



CITY OF ALBUQUERQUE

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Laura Mason
Council Director

December 17, 2009

Dear Commissioners:

I regret that due to business in Santa Fe I am unable to attend your hearing today when you will be considering a Text Amendment to the Zoning Code that I am sponsoring (O-09-91). Bruce Thompson is familiar with the legal issues involved, and I have seen the technical comments from Planning staff. I want to convey the policy reasons behind the proposed legislation. These have to do with long-range planning of land use, transportation, and storm drainage.

I first discussed the vacation concern with Mr. Thompson after two vacations were approved in Council District 3.

One was an alley vacation in the southwest part of the Downtown 2010 Plan area. Surrounded by surface parking lots, this alley was apparently vacated for the convenience of those parking lot owners. The problem is, future redevelopment of the block, a goal of the sector plan, may be impeded by the lack of an alley. Rear access for automobile traffic and parking is the preferred scheme in all our modern urban corridor and sector plans in Downtown, Nob Hill and elsewhere. As you know, this is in order to maintain a safe and vibrant pedestrian environment on the street/sidewalk side of the development. A consistent system of alleys is beneficial for this and other service purposes and should not be interrupted as a simple administrative matter without approval from the City's policy-making body, the City Council.

The second example was the vacation of an innocuous-looking stub street in the Old Town area. Shortly after its approval, a Council transportation consultant was working on proposed improvements to the Central Ave./Rio Grande Blvd. intersection and associated corridors. The consultants inquired about the possibility of utilizing the stub street to create a new connector/reliever street parallel to the Central corridor. Unfortunately, that option had been precluded and/or made too expensive by the recent vacation.

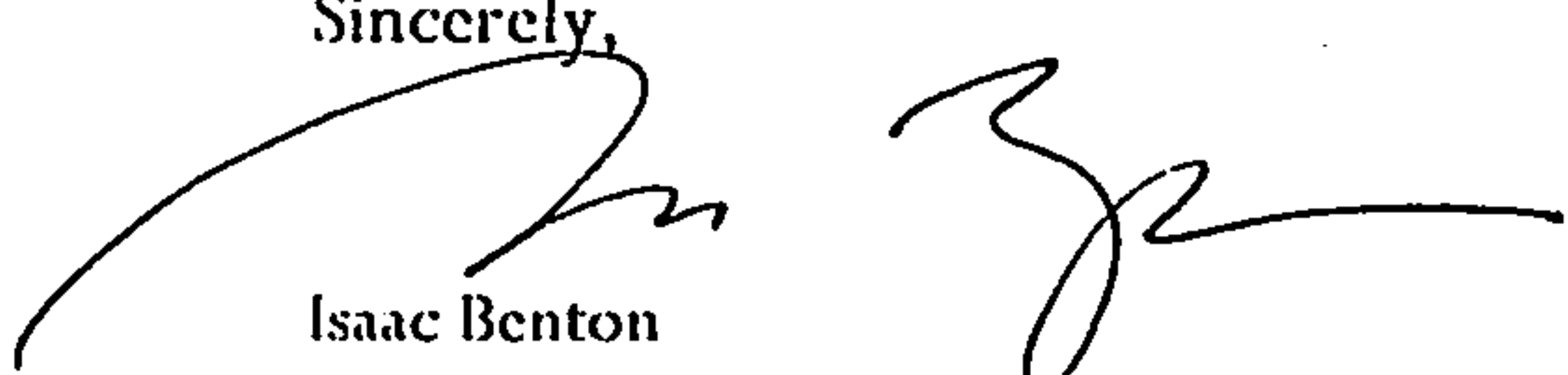
Additionally, drainage is an area-wide issue that affects individual localities, the Martineztown and Barelás flooding being prime examples. What may seem like a simple vacation of a locally-unnecessary drainage or storm sewer easement may preclude future planning and improvements to area-wide drainage issues.

In most vacation cases, after DRB technical approval, Council staff would simply review DRB findings and the item would end up going on the Council consent agenda. However, Councilors and their staff are there to hear constituent concerns and have a unique understanding of their districts' long-range goals and needs. The legislation would provide a final check and opportunity to vet any planning concerns that might not be in the forefront of technical staff's considerations when they review a vacation application.

"Best practices" whether in complete streets, sustainable drainage schemes or land use, are evolving. Our technical standards will also evolve accordingly. Thus it is good government policy to look more carefully at vacations of public easements and rights-of-way.

I am open to your suggestions for amended language on the technical front, but I believe that the essence of this legislation is sound planning and good public policy.

Sincerely,


Isaac Benton
City Councilor, District 3

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

NEW MEXICO CHAPTER

Revised 12.17.09

December 16, 2009

Ms Laurie Moyer, Chair
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico

**RE: TEST AMENDMENT TO §14-14-7 ROA 1994
VACATION ACTIONS**

Dear Chairman Moyer:

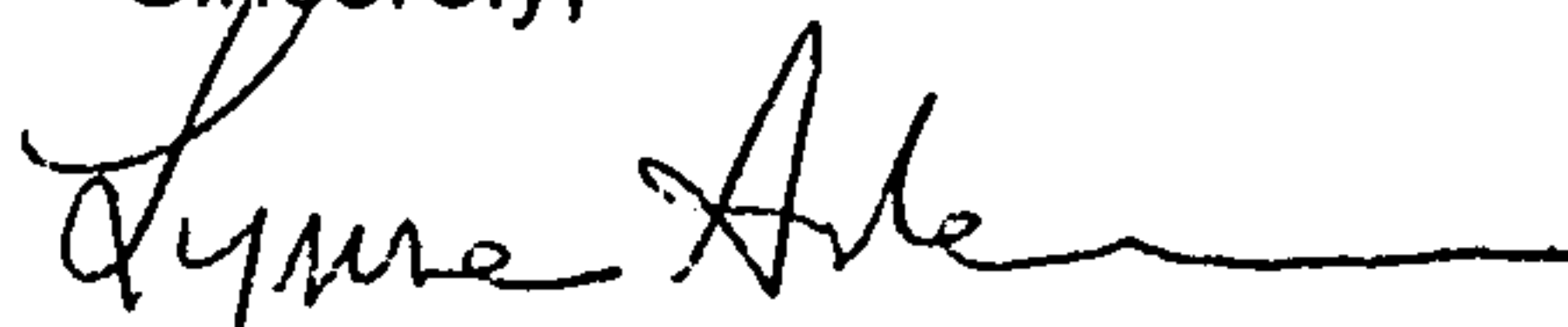
NAIOP, the Commercial Real Estate Development Association, respectfully requests that the EPC recommend denial of the referenced text change to the Subdivision Ordinance. A number of our members have also sent letters requesting denial, and have argued that the change is unwarranted and unnecessary based on existing means of remedy and on the additional approval time and costs that the change would engender. It is clear, from the staff report, that the vast majority of these submissions are pro forma and are not appealed.

NAIOP would like to add that, in the current economy, when commercial building permits are at an historic low, this type of legislation further complicates the permitting process. The additional time and money that this change would add to a development project could easily "kill the deal". It would not appear to be in the interests of the City or its citizens to hamper projects that create jobs and revenue, particularly when the existing system works for the majority of the submissions and a simple appeals process is available to the general public.

Finally, in light of the existing City policy of encouraging infill development as part of the Planned Growth Strategy, I would note that virtually all redevelopment projects require vacation actions since they usually have existing easements which conflict with the new use. So this bill would have an especially large impact to cost and schedule for redevelopment projects.

NAIOP urges your recommendation of denial, and our representatives are available for questions or discussion concerning this text revision.

Sincerely,



Lynne Andersen, President
NAIOP Commercial Real Estate Development Association

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LEGAL COUNSEL

Vogel Campbell & Bleener, P.C.

Received 12.17.09

December 17, 2009

Re: Text Amendment to §14-14-7 ROA 1994 (Case # 09EPC 40060)

To the Environmental Planning Commission:

The Home Builders Association of Central New Mexico (HBA of CNM) opposes the proposed text Amendment to §14-14-7 ROA 1994 (Case # 09EPC 40060). Vacations of easements currently require administrative action and the Amendment requiring Council action would change the process to an unnecessary, and unpredictable, political one.

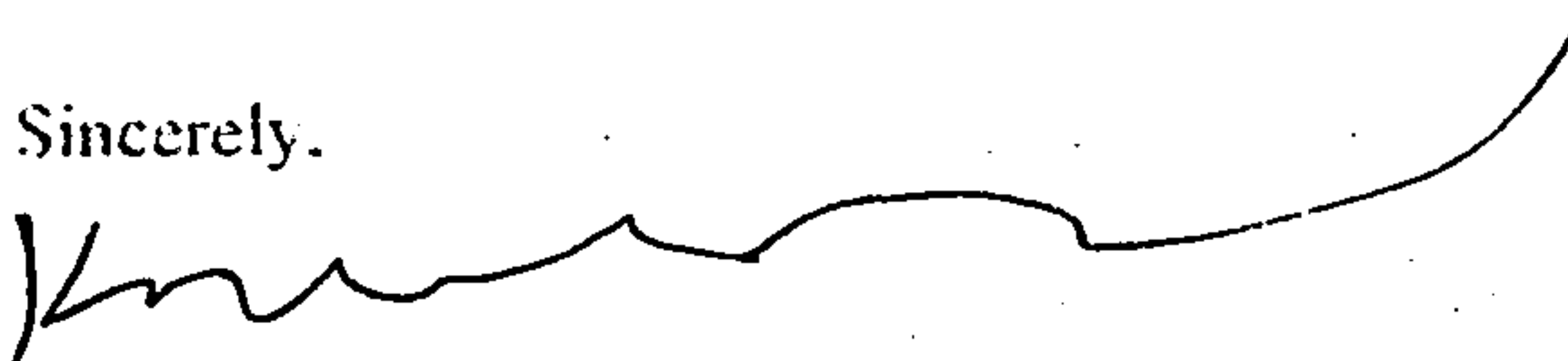
Changing the existing process to require Council approval will add time and cost to an already lengthy and costly entitlement process. All design work up must be completed up front in order to determine what will need to be vacated. In the current process, the vacation is negotiated during the preliminary plat process. In the new process, one would be required to spend all the money up front (at least \$1500 a lot for a large residential subdivision and possibly 40 or 50 thousand for a five acre commercial development) and left to rely on a political outcome.

A recent example provided by a member displays how a change to the procedure could have cost a much needed infill development:

The new CVS at the northeast corner of Central and Louisiana required a public alley vacation in order to make the site plan and vehicular movements work correctly. This alley was legally City controlled public right-of-way but it was not used for such for years. Nevertheless, under the proposed changes the new procedure would have required vacation of this alley to be approved by City Council action. The new store removed an eyesore and potential hazard on an infill site (an old gas station previously occupied the site) and replaced it with a job and tax generating business in this down economy. Clearly this is something that the City should be encouraging, rather than placing additional roadblocks in front of infill development.

The HBA of CNM's members have expressed the existing process works well; vacation actions require public notification and the public then has the opportunity to respond in writing and in person with questions comments, and disagreements; and they have the right to appeal. Changing the process to a political one will add time, money and unpredictability. Most importantly, potentially adding another 4 - 6 months to any entitlement process could easily deter a company, not just home builders, from investing in our city. This could have a serious impact on economic development efforts.

Sincerely,


Katherine Martinez
Director Of Government Affairs
Home Builders Association of Central New Mexico



BUILDERS OF THE AMERICAN DREAM

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gaw

TIERRA WEST, LLC

December 16, 2009

Ms Laurie Moye, Chair
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico

RE: TEST AMENDMENT TO §14-14-7 ROA 1994
VACATION ACTIONS

Dear Ms. Moye:

I am writing to you to ask the EPC to recommend denial on the referenced text change to the Subdivision Ordinance. Our firm processes vacation requests on a regular basis and we do not see where the DRB violates any current procedure or policy with the current protocol and process for vacations has occurred. Requiring this process to be approved by City Council action will greatly increase the cost for both the applicant and City Council as well as extend the process for the vacation actions adding an additional 4 to 5 months. Further, in this era of budget considerations it will take an inordinate amount of time for the City Council and City Council staff to address this issue. As outlined in the Staff's comments, the general public (if aggrieved or if they feel as if their rights are violated) has the simple appeal process through the hearing officer and then to City Council. In the 23 years that we have been processing vacation actions we have yet to have a vacation action appealed.

I would like to quote the Staff report that shows the number of cases that would be involved. If the City Council has to process this many cases it will take away from other Council business and stretch City Council staff even further. The following is from the staff report:

"As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process."

Further, a vacation action may be required as a precursor to a preliminary plat thereby holding the entire project up until City Council acts on the vacation. So while the vacation action may be extended up to 4 to 6 months it could drastically lengthen a subdivision process as well. We believe that in those rare instances where an appeal is warranted the City has followed the normal protocol and has provided adequate due process in those cases. We feel that the current process does not need to modify and would urge the EPC to recommend that this Text Amendment not be passed.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely



Ronald R. Bohannon, PE
President

RRB/djb

5571 Midway Park Place NE
(505) 858-3100
Albuquerque, NM 87109
Fax (505) 858-1118
1-800-245-3102
tierrawestllc.com



December 16, 2009

Ms. Laurie Moyer, Chairperson
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico 87102

RE: VACATION ACTIONS PROPOSED TEXT CHANGE

Dear Ms. Moyer:

We have been informed that a text change is being proposed as referenced above and we ask the EPC to recommend denial on this proposal. As developers of properties in Albuquerque, we frequently request and process vacation requests and this proposed amendment is unwarranted. Any City Council action will greatly increase the cost for both the applicant and City Council as well as extend the process for the vacation actions adding an additional 4 to 5 months. We note that the staff report clearly outlines the deficiencies with this proposed change and encourage the Commission to review these comments carefully. Finally, any appeal is sent to the City Council anyway as the final administrative authority.

The current process does not warrant this change and we urge the EPC to recommend that this Text Amendment not be passed.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Browning", with a long horizontal line extending to the right.

Kurt Browning, PE
Director of Development/Const.
Argus-Titan Development

CITY OF ALBUQUERQUE
CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Richard Dineen, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-09-91
DATE: October 9, 2009

The attached ordinance was introduced by the City Council on October 7, 2009. We are requesting that you submit this text amendment to the Zoning Code to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to change the process for vacating public rights-of-way to ensure Council approval.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
File O-09-91

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**CITY of ALBUQUERQUE
EIGHTEENTH COUNCIL**

COUNCIL BILL NO. 0-09-91 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

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ORDINANCE

**AMENDING CHAPTER 14, ARTICLE 14, PART 7 ROA 1994 TO CLARIFY THE
PROCESS FOR VACATING PUBLIC RIGHTS-OF-WAY; PLACING THE FINAL
DISCRETIONARY AUTHORITY TO APPROVE THE VACATION OF A PUBLIC
RIGHT OF WAY OR EASEMENT IN THE CITY COUNCIL.**

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

**SECTION 1. Chapter 14, Article 14, Part 7 ROA 1994 is amended to read
as follows:**

§ 14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT.

**(A) Any final plat recorded in the office of the County Clerk may be
amended or vacated (voided) either:**

**(1) by recording a new subdivision plat (a resubdivision)
covering all or a portion of the previous plat sought to be amended or vacated
or by recording an amended plat covering such area. In either case, the new
plat or amended plat shall be processed as an original subdivision action
under Part 3 of this article and recorded as specified therein. If the new or
amended plat falls within the definition of minor subdivision, contained in §
14-14-1-6 of this article, it shall be processed as such; or**

**(2) upon a finding at a public hearing by the Development
Review Board that the plat was obtained by misrepresentation or fraud, the
plat may be vacated by the Development Review Board. A statement
approved by the Development Review Board shall be filed in the office of the
County Clerk. The County Clerk shall mark the original plat with the words
"VACATED" or "PARTIALLY VACATED" and refer on the plat to the volume
and page on which the statement of vacation is recorded.**

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1 **(B)** In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 **(C)** In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 **(D)** The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 **(E)** Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 **(F)** If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of ~~[division (B) of this~~
17 ~~section]~~**[§ 14-14-7-2]** shall be followed as to the vacations of right of way.

18 **§ 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS**
19 **AND EASEMENTS.**

20 **(A)** Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 **(1)** The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 **(2)** The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division ~~[(E)]~~**[G]** of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

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1 **(B) The vacation of public rights of way, private ways, or**
2 **easements, whether by new plat, plat amendment, or request to vacate, shall**
3 **be approved only when it is determined that:**

4 **(1) The public welfare is in no way served by retaining the**
5 **way or easement; or**

6 **(2) There is a net benefit to the public welfare because the**
7 **development made possible by the vacation is clearly more beneficial to the**
8 **public welfare than the minor detriment resulting from the vacation; and in**
9 **addition to divisions (1) or (2) of this division (B):**

10 **(3) There is no convincing evidence that any substantial**
11 **property right is being abridged against the will of the owner of the right.**

12 **[(C) Public rights of way and public easements may only be**
13 **vacated by action of the City Council following a determination by the DRB**
14 **that the requirements of subsection (B) have been met. Private ways and**
15 **private easements are vacated by action of the DRB and do not require City**
16 **Council action.]**

17 **[(D) The vacation of public rights of way or public easements,**
18 **whether by new plat, plat amendment, or request to vacate, is a discretionary**
19 **act by the City and a determination that the requirements of subdivision (B)**
20 **have been met is a precondition to a vacation but does not create a right to a**
21 **vacation.]**

22 **[(C)][(E)] [In making a determination that the requirements of**
23 **subsection (B) have been met with respect to a public right of way or public**
24 **easement the Development Review Board may recommend that the City**
25 **Council only approve the vacation if][In approving the vacation the**
26 **Development Review Board may require that]** some or all of the public rights
27 of way or easements **[are][be]** retained by the appropriate governmental entity
28 as shown on the original plat.

29 **[(D)][(F)] [In the case of public rights of way or easements the**
30 **City Council and in the case of private rights of way or easements] [F][t]he**
31 **Development Review Board may require that curb and gutter be placed, at the**
32 **expense of the applicant, so as to effectively halt the vacated area[s] being**
33 **used as public way. It may also be necessary to remodel or otherwise**

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1 reconstruct existing public improvements in order to solve problems created
2 by the vacation, and the [City Council or] Development Review Board may so
3 require. Costs involved shall be borne by the applicant.

4 ~~[(E)]~~[(G)] Procedure.

5 (1) In all cases where public right of way, private ways, or
6 easements are sought to be vacated, whether by new subdivision, plat
7 amendment, or request to vacate, the following procedures shall be followed
8 in addition to the procedures specified in Part 3 of this article; however, the
9 following procedure may be eliminated for the requested vacation of private
10 easements if the Planning Director is satisfied that all the benefitted and
11 burdened parties are clearly and completely defined and all agree to the
12 vacation.

13 (2) Notice and Request for Comment.

14 (a) The Planning Director shall mail letters to
15 franchised utilities and to the owner of record of all lots adjacent to the right of
16 way, private way, and/or easement to be vacated [and to any neighborhood
17 association known by the Office of Neighborhood Services to cover all or part
18 of the right of way, private way, and/or easement sought to be vacated],
19 informing them of the nature of the proposed vacation, and notifying them of
20 the date, time, and place of the public hearing by the Development Review
21 Board on the proposed vacation. For notifying property owners, the name and
22 address of the owners shown in the records of the County Assessor shall be
23 used.

24 (b) Prior to the hearing, the Planning Director shall
25 request interested city departments and other agencies to comment on the
26 application. Comments received shall be submitted to the Development
27 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
28 Control Authority and/or the Middle Rio Grande Conservancy District shall be
29 requested before vacation of any drainage easement or public right of way
30 within their respective areas of jurisdiction.

31 (c) If the public right of way, private way, and/or
32 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
33 vehicular or pedestrian traffic], the applicant shall post and maintain one or

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1 more signs, as provided and where instructed by the Planning Director, at
2 least 15 days before the date of the hearing. The applicant is responsible for
3 removing such signs within five days after the hearing is completed. Failure
4 to properly post signs is grounds for deferral of the request. No one except
5 the applicant, the agent of the applicant, or the city shall remove or tamper
6 with any such required sign during the period it is required to be maintained
7 under this division (c).

8 (d) Public notice in a newspaper of general
9 circulation in the city shall be published at least 15 days before date of the
10 hearing; the notice shall indicate the location of the proposed vacation, where
11 a map of the proposed vacation may be viewed, and information on the date,
12 time, and place of the hearing.

13 (3) Hearing and Decision.

14 (a) [A determination by the Development Review
15 Board with respect to a public right of way or easement as to whether the
16 requirements of subsection B have been met] or [A][a] decision [by the
17 Development Review Board with respect to a private right of way or easement
18 as to whether [on-city approval of vacations][a vacation shall be approved]
19 shall be made [by the Development Review Board] at a public hearing.
20 [Approval or disapproval shall be given][Any decision shall be] in
21 writing[,expressing the reasons and any conditions,] and a copy shall be sent
22 to the applicant and any other persons who have indicated interest in the
23 matter. [For a public right of way or easement the Development Review Board
24 may recommend to the City Council conditions that should be imposed if a
25 vacation is approved. For a private right of way or easement the Development
26 Review Board may impose conditions if a vacation is approved.]

27 [(b) A DRB determination that the requirements of
28 subsection B have not been met for a public right of way or easement shall be
29 dispositive as to whether a vacation should be approved subject to appeal to
30 the City Council on that issue. If on appeal the City Council reverses a DRB
31 determination and finds that the requirements of subsection B have been met
32 the City Council shall at the same time exercise its discretion and determine
33 whether the public right of way or easement DRB should be vacated.

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1 (c) A DRB determination that the requirements of
2 subsection B have been met for a public right of way or easement shall be
3 forwarded to the City Council to determine if the vacation shall occur. If the
4 determination by the DRB that the requirements of subsection B have been
5 met is appealed to the City Council that issue shall be considered by the City
6 Council at the same time it exercises its discretion to determine whether the
7 public right of way or easement DRB should be vacated.]

8 ~~(b)~~[d] Approval of vacation of public right of way,
9 private ways or easements shall be conditional upon the following steps being
10 accomplished by the applicant or governmental entity within a time period set
11 by the [City Council or] Development Review Board, in no case exceeding one
12 year. If not so accomplished, the decision to vacate is voided.

13 1. The applicant shall present to the city a
14 final plat incorporating the vacated right of way into adjacent lots, which plat
15 the city shall record with the County Clerk; or

16 2. The appropriate governmental entity shall
17 record a final plat if the [City]~~[Development Review Board]~~ finds that it is in the
18 public interest for the governmental entity to own the vacated public right of
19 way as a lot or if adjacent property owners do not desire the vacated parcel.

20 3. The applicant shall secure the installing or
21 removing and disposing of such improvements, as are required by the [City
22 Council or] Development Review Board in order to remodel or otherwise
23 reconstruct existing public improvements to appropriately provide for the
24 proposed uses. Costs involved shall be borne by the applicant.

25 (4) Disposition of Right-of-Way.

26 (a) Normally the owners of land adjacent to the
27 vacated public right of way have an opportunity to obtain title to the land, for
28 some consideration, from the owner (normally the city).

29 (b) Immediately after a city decision to vacate platted
30 public right of way becomes final, if such land is proposed to be disposed of
31 by the city, the City Property Manager shall notify each owner of adjacent
32 property by certified letter. The certified letter shall notify each adjacent
33 landowner of the opportunity to purchase from the city one-half of the width of

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1 the vacated right of way contiguous to the landowner's property, subject to
2 any conditions or requirements stated in the decision to vacate. If an adjacent
3 landowner fails to notify the city Property Manager in writing, within 30 days of
4 the date of the receipt slip of the certified letter, that he or she intends to
5 purchase the adjacent public right of way, the city may dispose of the vacated
6 right of way in any manner which the city, in its discretion, deems appropriate.

7 § 14-14-7-3 TECHNICAL CORRECTIONS.

8 (A) Technical corrections to approved, but as yet unrecorded, final
9 plats shall be approved by the Development Review Board before being
10 recorded with the County Clerk.

11 (B) Technical corrections to recorded final plats shall be made by
12 a correction plat approved by the Development Review Board. The plat shall
13 include only the area affected by the correction and shall clearly indicate the
14 correction. Correction plats for technical corrections shall be recorded in the
15 same manner as a final plat. See § 14-14-3-6 of this article.

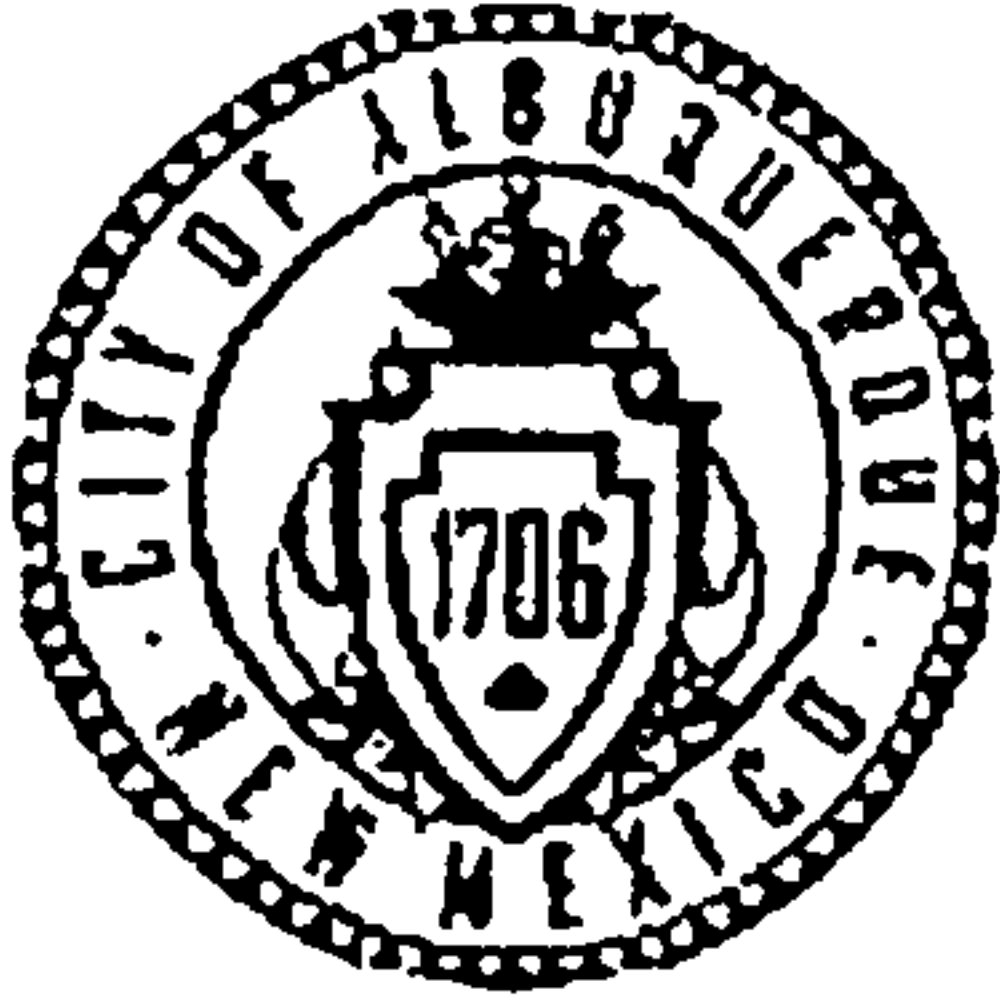
16 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word
17 or phrase of this ordinance is for any reason held to be invalid or
18 unenforceable by any court of competent jurisdiction, such decision shall not
19 affect the validity of the remaining provisions of this ordinance. The Council
20 hereby declares that it would have passed this ordinance and each section,
21 paragraph, sentence, clause, word or phrase thereof irrespective of any
22 provision being declared unconstitutional or otherwise invalid.

23 SECTION 4. COMPILATION. This ordinance shall be incorporated in
24 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
26 days following publication by title and general summary.

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Office of the City Clerk
P.O. Box 1293
Albuquerque, NM 87103
Phone (505) 768-3030 Fax (505) 768-2845
www.cabq.gov/clerk

Richard J. Berry, Mayor

Amy B. Bailey, City Clerk

August 30, 2010

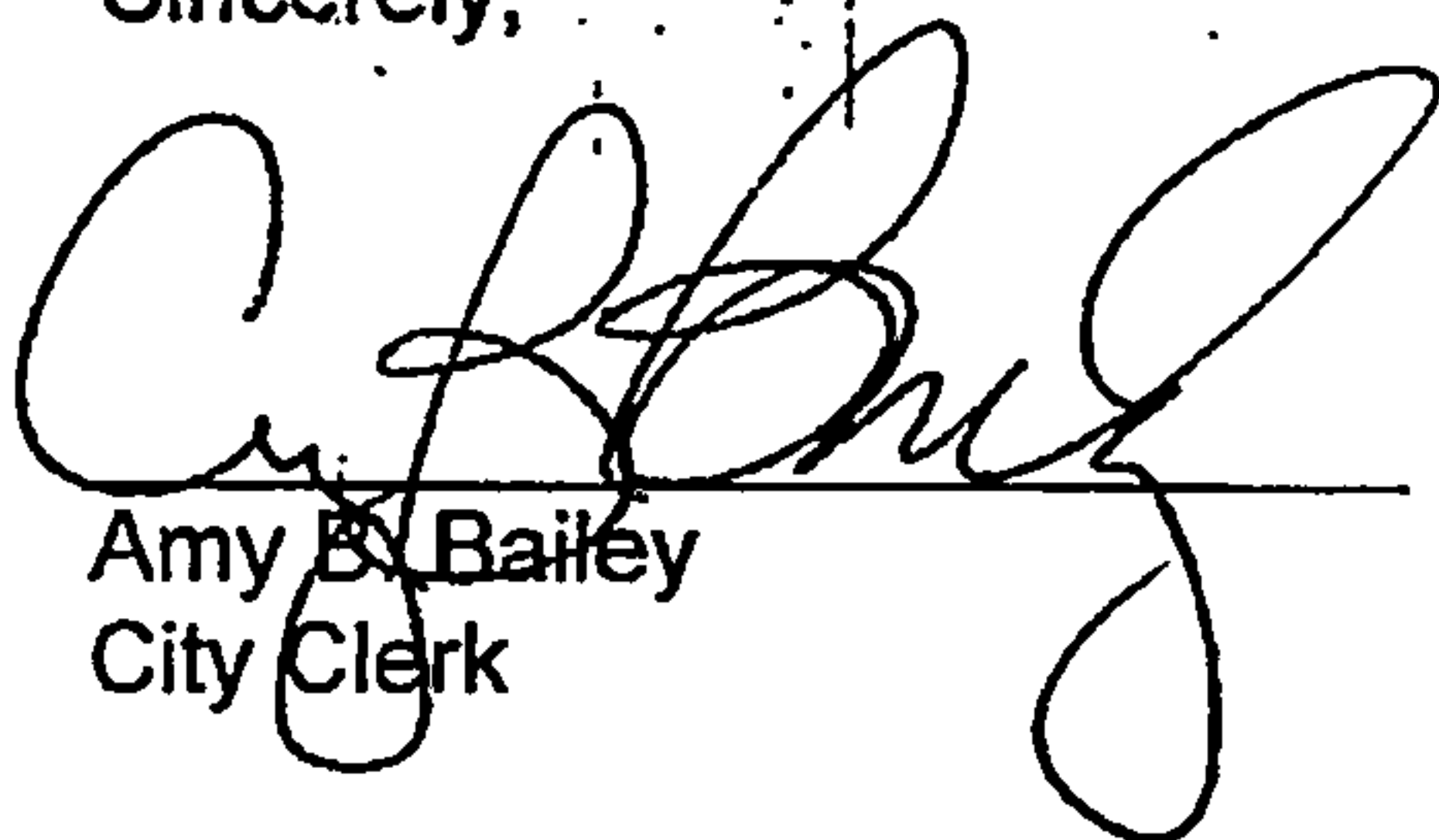
To: City Council

From: Amy B. Bailey, City Clerk

Subject: Bill No. O-09-91 Enactment No. O-2010-010

I hereby certify that on August 30, 2010, the Office of the City Clerk received Bill No. O-09-91 as signed by the president of the City Council, Ken Sanchez. Enactment No. O-2010-010 was passed at the August 16, 2010 City Council meeting. Mayor Berry did not sign the approved Ordinance within the 10 days allowed for his signature and did not exercise his veto power. Pursuant to the Albuquerque City Charter Article XI, Section 3, this Ordinance is in full effect without Mayor's approval or signature. This memorandum shall be placed in the permanent file for Bill No. O-09-91.

Sincerely,



Amy B. Bailey
City Clerk

1 **(B) In approving the amendment of or vacation of all or a part of a**
2 **plat, the Development Review Board shall evaluate whether the amendment or**
3 **vacation action will adversely affect contiguous land, any owner of land within**
4 **the subdivision being vacated, or the interests of the city.**

5 **(C) In approving the amendment of all or a portion of a plat, the**
6 **Development Review Board may require that streets dedicated to a**
7 **governmental entity in the original plat continue to be dedicated.**

8 **(D) The rights of any public or private utility, including drainage,**
9 **existing prior to the replat, total or partial, of any plat are not affected by the**
10 **replat unless an authorized representative of the utility involved agrees by**
11 **signing the plat to have the rights modified or terminated.**

12 **(E) Amendment or vacation of all or a portion of a subdivision**
13 **outside the municipal limits of the city, but within its platting and planning**
14 **jurisdiction, requires approval of both the city and county.**

15 **(F) If a resubdivision or amendment of a previous plat would**
16 **vacate public rights of way, the standards and process of § 14-14-7-2 shall be**
17 **followed as to the vacations of right of way.**

18 **§ 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS**
19 **AND EASEMENTS.**

20 **(A) Rights of way, including public rights of way, private ways,**
21 **and easements shown on recorded plats, may be vacated, that is, terminated,**
22 **by recording a new subdivision plat or by plat amendment, as described in §**
23 **14-14-7-1 of this part. In addition, where nothing except vacation of public**
24 **rights of way, private ways, and easements is proposed, it may be initiated by**
25 **a request to vacate filed by either:**

26 **(1) The owners of a majority of the front footage of land**
27 **abutting the proposed vacation; or**

28 **(2) The Planning Director, if he or she finds vacation likely**
29 **to be in the public interest. A request to vacate shall be processed under the**
30 **procedures of division (F) of this section in addition to the procedures relating**
31 **to minor subdivision applications under Part 3 of this article.**

1 **(B) The vacation of public rights of way, private ways, or**
2 **easements, whether by new plat, plat amendment, or request to vacate, may**
3 **be approved only when it is determined that:**

4 **(1) The public welfare is in no way served by retaining the**
5 **way or easement; or**

6 **(2) There is a net benefit to the public welfare because the**
7 **development made possible by the vacation is clearly more beneficial to the**
8 **public welfare than the minor detriment resulting from the vacation; and in**
9 **addition to divisions (1) or (2) of this division (B):**

10 **(3) There is no convincing evidence that any substantial**
11 **property right is being abridged against the will of the owner of the right.**

12 **(C) In approving the vacation the Development Review Board may**
13 **require that some or all of the public rights of way or easements be retained**
14 **by the appropriate governmental entity as shown on the original plat.**

15 **(D) The vacation of public rights of way or public easements,**
16 **whether by new plat, plat amendment, or request to vacate, is a discretionary**
17 **act by the City and a determination that the requirements of subdivision (B)**
18 **have been met is a precondition to a vacation but does not create a right to a**
19 **vacation.**

20 **(E) The Development Review Board may require that curb and**
21 **gutter be placed, at the expense of the applicant, so as to effectively halt the**
22 **vacated area being used as public way. It may also be necessary to remodel**
23 **or otherwise reconstruct existing public improvements in order to solve**
24 **problems created by the vacation, and the City Council or Development**
25 **Review Board may so require. Costs involved shall be borne by the applicant.**

26 **(F) Procedure.**

27 **(1) In all cases where public right of way, private ways, or**
28 **easements are sought to be vacated, whether by new subdivision, plat**
29 **amendment, or request to vacate, the following procedures shall be followed**
30 **in addition to the procedures specified in Part 3 of this article; however, the**
31 **following procedure may be eliminated for the requested vacation of private**
32 **easements if the Planning Director is satisfied that all the benefitted and**

1 **burdened parties are clearly and completely defined and all agree to the**
2 **vacation.**

3 **(2) Notice and Request for Comment.**

4 **(a) The Planning Director shall mail letters to**
5 **franchised utilities and to the owner of record of all lots adjacent to the right of**
6 **way, private way, and/or easement to be vacated and to any neighborhood**
7 **association known by the Office of Neighborhood Services to cover all or part**
8 **of the right of way, private way, and/or easement sought to be vacated,**
9 **informing them of the nature of the proposed vacation, and notifying them of**
10 **the date, time, and place of the public hearing by the Development Review**
11 **Board on the proposed vacation. For notifying property owners, the name and**
12 **address of the owners shown in the records of the County Assessor shall be**
13 **used.**

14 **(b) Prior to the hearing, the Planning Director shall**
15 **request interested city departments and other agencies to comment on the**
16 **application. Comments received shall be submitted to the Development**
17 **Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood**
18 **Control Authority and/or the Middle Rio Grande Conservancy District shall be**
19 **requested before vacation of any drainage easement or public right of way**
20 **within their respective areas of jurisdiction.**

21 **(c) If the public right of way, private way, and/or**
22 **easement proposed for vacation appears to be in use by vehicular or**
23 **pedestrian traffic, the applicant shall post and maintain one or more signs, as**
24 **provided and where instructed by the Planning Director, at least 15 days**
25 **before the date of the hearing. The applicant is responsible for removing such**
26 **signs within five days after the hearing is completed. Failure to properly post**
27 **signs is grounds for deferral of the request. No one except the applicant, the**
28 **agent of the applicant, or the city shall remove or tamper with any such**
29 **required sign during the period it is required to be maintained under this**
30 **division (c).**

31 **(d) Public notice in a newspaper of general**
32 **circulation in the city shall be published at least 15 days before the date of the**
33 **hearing; the notice shall indicate the location of the proposed vacation, where**

1 a map of the proposed vacation may be viewed, and information on the date,
2 time, and place of the hearing.

3 (3) Hearing and Decision.

4 (a) A decision on city approval of vacations shall be
5 made by the Development Review Board at a public hearing. Approval or
6 disapproval shall be given in writing, expressing the reasons and any
7 conditions, and a copy shall be sent to the applicant and any other persons
8 who have indicated interest in the matter.

9 (b) Following a DRB decision to approve a vacation,
10 such vacation shall not be final until approved by the City Council when such
11 vacation involves the vacation of more than 500 square feet or the entire width
12 of a platted alley as that term is defined at § 8-1-1-2 of the Traffic Code or more
13 than 5000 square feet or the entire width of a street as that term is defined at §
14 14-14-1-6 of the Subdivision Regulations including any or all of the public way
15 adjoining such street as the term public way is defined at § 8-1-1-2 of the
16 Traffic Code. In those situations which require City Council approval,
17 following DRB approval, the matter shall be forwarded to the City Council to
18 determine if the vacation shall occur. The matter shall be placed on the City
19 Council's consent agenda for approval without first going to any Council
20 committee.

21 (c) Approval of vacation of public right of way,
22 private ways or easements shall be conditional upon the following steps being
23 accomplished by the applicant or governmental entity within a time period set
24 by the Development Review Board, in no case exceeding one year. If not so
25 accomplished, the decision to vacate is voided.

26 1. The applicant shall present to the city a
27 final plat incorporating the vacated right of way into adjacent lots, which plat
28 the city shall record with the County Clerk; or

29 2. The appropriate governmental entity shall
30 record a final plat if the Development Review Board finds that it is in the public
31 interest for the governmental entity to own the vacated public right of way as a
32 lot or if adjacent property owners do not desire the vacated parcel.

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1 3. The applicant shall secure the installing or
2 removing and disposing of such improvements, as are required by the
3 Development Review Board in order to remodel or otherwise reconstruct
4 existing public improvements to appropriately provide for the proposed uses.
5 Costs involved shall be borne by the applicant.

6 (4) Disposition of Right-of-Way.

7 (a) Normally the owners of land adjacent to the
8 vacated public right of way have an opportunity to obtain title to the land, for
9 some consideration, from the owner (normally the city).

10 (b) Immediately after a city decision to vacate platted
11 public right of way becomes final, if such land is proposed to be disposed of
12 by the city, the City Property Manager shall notify each owner of adjacent
13 property by certified letter. The certified letter shall notify each adjacent
14 landowner of the opportunity to purchase from the city one-half of the width of
15 the vacated right of way contiguous to the landowner's property, subject to
16 any conditions or requirements stated in the decision to vacate. If an adjacent
17 landowner fails to notify the city Property Manager in writing, within 30 days of
18 the date of the receipt slip of the certified letter, that he or she intends to
19 purchase the adjacent public right of way, the city may dispose of the vacated
20 right of way in any manner which the city, in its discretion, deems appropriate.

21 **§ 14-14-7-3 TECHNICAL CORRECTIONS.**

22 (A) Technical corrections to approved, but as yet unrecorded, final
23 plats shall be approved by the Development Review Board before being
24 recorded with the County Clerk.

25 (B) Technical corrections to recorded final plats shall be made by
26 a correction plat approved by the Development Review Board. The plat shall
27 include only the area affected by the correction and shall clearly indicate the
28 correction. Correction plats for technical corrections shall be recorded in the
29 same manner as a final plat. See § 14-14-3-6 of this article.

30 **SECTION 2. SEVERABILITY CLAUSE.** If any section, paragraph, word
31 or phrase of this ordinance is for any reason held to be invalid or
32 unenforceable by any court of competent jurisdiction, such decision shall not
33 affect the validity of the remaining provisions of this ordinance. The Council

1 hereby declares that it would have passed this ordinance and each section,
2 paragraph, sentence, clause, word or phrase thereof irrespective of any
3 provision being declared unconstitutional or otherwise invalid.

4 SECTION 3. COMPILATION. This ordinance shall be incorporated in
5 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

6 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five
7 days following publication by title and general summary.

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1 PASSED AND ADOPTED THIS 16th DAY OF August 2010
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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9 Ken Sanchez, President
10 City Council

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13 APPROVED THIS _____ DAY OF _____, 2010

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17 Bill No. F/S O-09-91

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20 _____
21 Richard J. Berry, Mayor
22 City of Albuquerque

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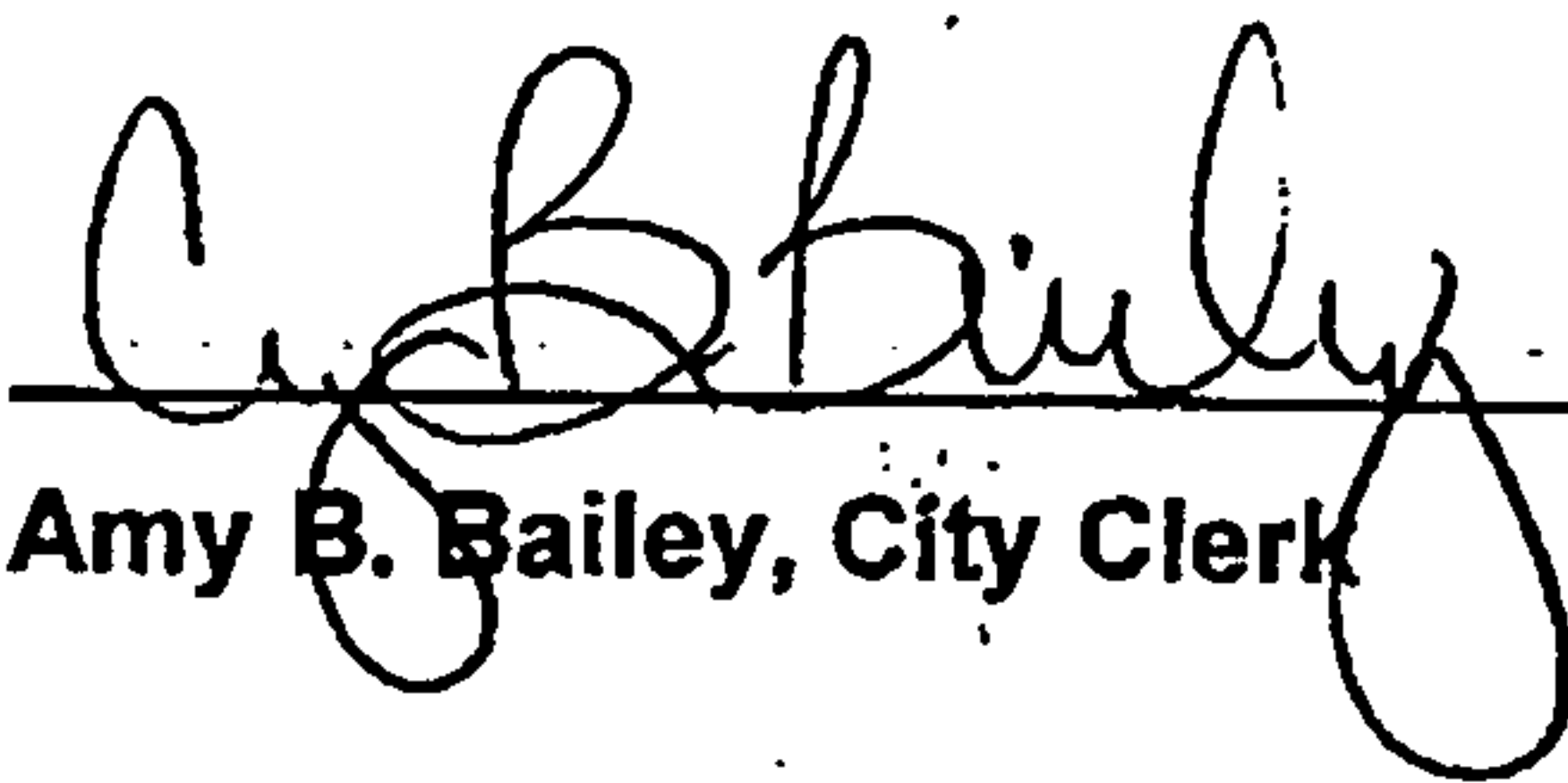
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26 ATTEST:

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29 Amy B. Bailey, City Clerk

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**CITY COUNCIL
OF THE
CITY OF ALBUQUERQUE**

August 16, 2010

FLOOR AMENDMENT NO. _____ TO BILL NO. F/S O-09-91

AMENDMENT SPONSORED BY COUNCILOR: Benton

1. On page 5, lines 11 and 12 delete: "of all or a portion of an alley or the entire width of an alley" and insert in lieu thereof: "of an alley or the entire width of a platted alley".

1 (B) In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 (C) In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 (D) The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 (E) Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 (F) If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of ~~[division (B) of this~~
17 ~~section]~~ § 14-14-7-2 shall be followed as to the vacations of right of way.

18 **§ 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS**
19 **AND EASEMENTS.**

20 (A) Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 (1) The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 (2) The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division ~~[(E)]~~ [(F)] of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

1 (B) The vacation of public rights of way, private ways, or
2 easements, whether by new plat, plat amendment, or request to vacate, shall
3 be approved only when it is determined that:

4 (1) The public welfare is in no way served by retaining the
5 way or easement; or

6 (2) There is a net benefit to the public welfare because the
7 development made possible by the vacation is clearly more beneficial to the
8 public welfare than the minor detriment resulting from the vacation; and in
9 addition to divisions (1) or (2) of this division (B):

10 (3) There is no convincing evidence that any substantial
11 property right is being abridged against the will of the owner of the right.

12 (C) In approving the vacation the Development Review Board may
13 require that some or all of the public rights of way or easements be retained
14 by the appropriate governmental entity as shown on the original plat.

15 [(D) The vacation of public rights of way or public easements,
16 whether by new plat, plat amendment, or request to vacate, is a discretionary
17 act by the City and a determination that the requirements of subdivision (B)
18 have been met is a precondition to a vacation but does not create a right to a
19 vacation.]

20 ~~[(D)]~~[(E)] The Development Review Board may require that curb
21 and gutter be placed, at the expense of the applicant, so as to effectively halt
22 the vacated area[-s] being used as public way. It may also be necessary to
23 remodel or otherwise reconstruct existing public improvements in order to
24 solve problems created by the vacation, and the [City Council or] Development
25 Review Board may so require. Costs involved shall be borne by the applicant.

26 ~~[(E)]~~[(F)] Procedure.

27 (1) In all cases where public right of way, private ways, or
28 easements are sought to be vacated, whether by new subdivision, plat
29 amendment, or request to vacate, the following procedures shall be followed
30 in addition to the procedures specified in Part 3 of this article; however, the
31 following procedure may be eliminated for the requested vacation of private
32 easements if the Planning Director is satisfied that all the benefitted and

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1 burdened parties are clearly and completely defined and all agree to the
2 vacation.

3 (2) Notice and Request for Comment.

4 (a) The Planning Director shall mail letters to
5 franchised utilities and to the owner of record of all lots adjacent to the right of
6 way, private way, and/or easement to be vacated [and to any neighborhood
7 association known by the Office of Neighborhood Services to cover all or part
8 of the right of way, private way, and/or easement sought to be vacated],
9 informing them of the nature of the proposed vacation, and notifying them of
10 the date, time, and place of the public hearing by the Development Review
11 Board on the proposed vacation. For notifying property owners, the name and
12 address of the owners shown in the records of the County Assessor shall be
13 used.

14 (b) Prior to the hearing, the Planning Director shall
15 request interested city departments and other agencies to comment on the
16 application. Comments received shall be submitted to the Development
17 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
18 Control Authority and/or the Middle Rio Grande Conservancy District shall be
19 requested before vacation of any drainage easement or public right of way
20 within their respective areas of jurisdiction.

21 (c) If the public right of way, private way, and/or
22 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
23 vehicular or pedestrian traffic], the applicant shall post and maintain one or
24 more signs, as provided and where instructed by the Planning Director, at
25 least 15 days before the date of the hearing. The applicant is responsible for
26 removing such signs within five days after the hearing is completed. Failure
27 to properly post signs is grounds for deferral of the request. No one except
28 the applicant, the agent of the applicant, or the city shall remove or tamper
29 with any such required sign during the period it is required to be maintained
30 under this division (c).

31 (d) Public notice in a newspaper of general
32 circulation in the city shall be published at least 15 days before [the] date of
33 the hearing; the notice shall indicate the location of the proposed vacation,

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1 where a map of the proposed vacation may be viewed, and information on the
2 date, time, and place of the hearing.

3 (3) Hearing and Decision.

4 (a) A decision on city approval of vacations shall be
5 made by the Development Review Board at a public hearing. Approval or
6 disapproval shall be given in writing, expressing the reasons and any
7 conditions, and a copy shall be sent to the applicant and any other persons
8 who have indicated interest in the matter.

9 ~~[(b) Following a DRB decision to approve a vacation,~~
10 ~~such vacation shall not be final until approved by the City Council when such~~
11 ~~vacation involves the vacation of more than 500 square feet or the entire width~~
12 ~~of an alley as that term is defined at § 8-1-1-2 of the Traffic Code or more than~~
13 ~~5000 square feet or the entire width of a street as that term is defined at § 14-~~
14 ~~14-1-6 of the Subdivision Regulations including any or all of the public way~~
15 ~~adjoining such street as the term public way is defined at § 8-1-1-2 of the~~
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18 ~~determine if the vacation shall occur. The matter shall be placed on the City~~
19 ~~Council's consent agenda for approval without first going to any Council~~
20 ~~committee.]~~

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21 ~~[(b)][(c)]~~ Approval of vacation of public right of way,
22 private ways or easements shall be conditional upon the following steps being
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24 by the Development Review Board, in no case exceeding one year. If not so
25 accomplished, the decision to vacate is voided.

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30 record a final plat if the Development Review Board finds that it is in the public
31 interest for the governmental entity to own the vacated public right of way as a
32 lot or if adjacent property owners do not desire the vacated parcel.

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1 3. The applicant shall secure the installing or
2 removing and disposing of such improvements, as are required by the
3 Development Review Board in order to remodel or otherwise reconstruct
4 existing public improvements to appropriately provide for the proposed uses.
5 Costs involved shall be borne by the applicant.

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7 (a) Normally the owners of land adjacent to the
8 vacated public right of way have an opportunity to obtain title to the land, for
9 some consideration, from the owner (normally the city).

10 (b) Immediately after a city decision to vacate platted
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13 property by certified letter. The certified letter shall notify each adjacent
14 landowner of the opportunity to purchase from the city one-half of the width of
15 the vacated right of way contiguous to the landowner's property, subject to
16 any conditions or requirements stated in the decision to vacate. If an adjacent
17 landowner fails to notify the city Property Manager in writing, within 30 days of
18 the date of the receipt slip of the certified letter, that he or she intends to
19 purchase the adjacent public right of way, the city may dispose of the vacated
20 right of way in any manner which the city, in its discretion, deems appropriate.

21 § 14-14-7-3 TECHNICAL CORRECTIONS.

22 (A) Technical corrections to approved, but as yet unrecorded, final
23 plats shall be approved by the Development Review Board before being
24 recorded with the County Clerk.

25 (B) Technical corrections to recorded final plats shall be made by
26 a correction plat approved by the Development Review Board. The plat shall
27 include only the area affected by the correction and shall clearly indicate the
28 correction. Correction plats for technical corrections shall be recorded in the
29 same manner as a final plat. See § 14-14-3-6 of this article.

30 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word
31 or phrase of this ordinance is for any reason held to be invalid or
32 unenforceable by any court of competent jurisdiction, such decision shall not
33 affect the validity of the remaining provisions of this ordinance. The Council

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2 plat, the Development Review Board shall evaluate whether the amendment or
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5 (C) In approving the amendment of all or a portion of a plat, the
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8 (D) The rights of any public or private utility, including drainage,
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12 (E) Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 (F) If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of ~~[division (B) of this~~
17 ~~section]~~[§ 14-14-7-2] shall be followed as to the vacations of right of way.

18 § 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS
19 AND EASEMENTS.

20 (A) Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 (1) The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 (2) The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of ~~division (E)]~~ of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

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1 (B) The vacation of public rights of way, private ways, or
2 easements, whether by new plat, plat amendment, or request to vacate, shall
3 be approved only when it is determined that:

may

4 (1) The public welfare is in no way served by retaining the
5 way or easement; or

6 (2) There is a net benefit to the public welfare because the
7 development made possible by the vacation is clearly more beneficial to the
8 public welfare than the minor detriment resulting from the vacation; and in
9 addition to divisions (1) or (2) of this division (B):

10 (3) There is no convincing evidence that any substantial
11 property right is being abridged against the will of the owner of the right.

12 (C) In approving the vacation the Development Review Board may
13 require that some or all of the public rights of way or easements be retained
14 by the appropriate governmental entity as shown on the original plat.

15 [(D) The vacation of public rights of way or public easements,
16 whether by new plat, plat amendment, or request to vacate, is a discretionary
17 act by the City and a determination that the requirements of subdivision (B)
18 have been met is a precondition to a vacation but does not create a right to a
19 vacation.]

20 ~~[(D)]~~ [(E)] The Development Review Board may require that curb
21 and gutter be placed, at the expense of the applicant, so as to effectively halt
22 the vacated area[s] being used as public way. It may also be necessary to
23 remodel or otherwise reconstruct existing public improvements in order to
24 solve problems created by the vacation, and the [City Council or] Development
25 Review Board may so require. Costs involved shall be borne by the applicant.

26 ~~[(E)]~~ [(F)] Procedure.

27 (1) In all cases where public right of way, private ways, or
28 easements are sought to be vacated, whether by new subdivision, plat
29 amendment, or request to vacate, the following procedures shall be followed
30 in addition to the procedures specified in Part 3 of this article; however, the
31 following procedure may be eliminated for the requested vacation of private
32 easements if the Planning Director is satisfied that all the benefitted and

1 burdened parties are clearly and completely defined and all agree to the
2 vacation.

3 (2) Notice and Request for Comment.

4 (a) The Planning Director shall mail letters to
5 franchised utilities and to the owner of record of all lots adjacent to the right of
6 way, private way, and/or easement to be vacated [and to any neighborhood
7 association known by the Office of Neighborhood Services to cover all or part
8 of the right of way, private way, and/or easement sought to be vacated],
9 informing them of the nature of the proposed vacation, and notifying them of
10 the date, time, and place of the public hearing by the Development Review
11 Board on the proposed vacation. For notifying property owners, the name and
12 address of the owners shown in the records of the County Assessor shall be
13 used.

14 (b) Prior to the hearing, the Planning Director shall
15 request interested city departments and other agencies to comment on the
16 application. Comments received shall be submitted to the Development
17 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
18 Control Authority and/or the Middle Rio Grande Conservancy District shall be
19 requested before vacation of any drainage easement or public right of way
20 within their respective areas of jurisdiction.

21 (c) If the public right of way, private way, and/or
22 easement proposed for vacation appears to be in use [~~for vehicular access~~][by
23 vehicular or pedestrian traffic], the applicant shall post and maintain one or
24 more signs, as provided and where instructed by the Planning Director, at
25 least 15 days before the date of the hearing. The applicant is responsible for
26 removing such signs within five days after the hearing is completed. Failure
27 to properly post signs is grounds for deferral of the request. No one except
28 the applicant, the agent of the applicant, or the city shall remove or tamper
29 with any such required sign during the period it is required to be maintained
30 under this division (c).

31 (d) Public notice in a newspaper of general
32 circulation in the city shall be published at least 15 days before date of the
33 hearing; the notice shall indicate the location of the proposed vacation, where

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1 a map of the proposed vacation may be viewed, and information on the date,
2 time, and place of the hearing.

3 (3) Hearing and Decision.

4 (a) A decision on city approval of vacations shall be
5 made by the Development Review Board at a public hearing. Approval or
6 disapproval shall be given in writing, expressing the reasons and any
7 conditions, and a copy shall be sent to the applicant and any other persons
8 who have indicated interest in the matter.

9 [(b) Following a DRB decision to approve a vacation,
10 such vacation shall not be final until approved by the City Council when such
11 vacation involves the vacation of all or a portion of an alley as that term is
12 defined at § 8-1-1-2 of the Traffic Code or all or a portion of a street as that
13 term is defined at § 14-14-1-6 of the Subdivision Regulations including any or
14 all of the public way adjoining such street as the term public way is defined at
15 § 8-1-1-2 of the Traffic Code. In those situations which require City Council
16 approval, following DRB approval, the matter shall be forwarded to the City
17 Council to determine if the vacation shall occur. The matter shall be placed on
18 the City Council's consent agenda for approval without first going to any
19 Council committee.]

20 ~~[(b)]~~ [(c)] Approval of vacation of public right of way,
21 private ways or easements shall be conditional upon the following steps being
22 accomplished by the applicant or governmental entity within a time period set
23 by the Development Review Board, in no case exceeding one year. If not so
24 accomplished, the decision to vacate is voided.

25 1. The applicant shall present to the city a
26 final plat incorporating the vacated right of way into adjacent lots, which plat
27 the city shall record with the County Clerk; or

28 2. The appropriate governmental entity shall
29 record a final plat if the Development Review Board finds that it is in the public
30 interest for the governmental entity to own the vacated public right of way as a
31 lot or if adjacent property owners do not desire the vacated parcel.

32 3. The applicant shall secure the installing or
33 removing and disposing of such improvements, as are required by the

1 Development Review Board in order to remodel or otherwise reconstruct
2 existing public improvements to appropriately provide for the proposed uses.
3 Costs involved shall be borne by the applicant.

4 (4) Disposition of Right-of-Way.

5 (a) Normally the owners of land adjacent to the
6 vacated public right of way have an opportunity to obtain title to the land, for
7 some consideration, from the owner (normally the city).

8 (b) Immediately after a city decision to vacate platted
9 public right of way becomes final, if such land is proposed to be disposed of
10 by the city, the City Property Manager shall notify each owner of adjacent
11 property by certified letter. The certified letter shall notify each adjacent
12 landowner of the opportunity to purchase from the city one-half of the width of
13 the vacated right of way contiguous to the landowner's property, subject to
14 any conditions or requirements stated in the decision to vacate. If an adjacent
15 landowner fails to notify the city Property Manager in writing, within 30 days of
16 the date of the receipt slip of the certified letter, that he or she intends to
17 purchase the adjacent public right of way, the city may dispose of the vacated
18 right of way in any manner which the city, in its discretion, deems appropriate.

19 § 14-14-7-3 TECHNICAL CORRECTIONS.

20 (A) Technical corrections to approved, but as yet unrecorded, final
21 plats shall be approved by the Development Review Board before being
22 recorded with the County Clerk.

23 (B) Technical corrections to recorded final plats shall be made by
24 a correction plat approved by the Development Review Board. The plat shall
25 include only the area affected by the correction and shall clearly indicate the
26 correction. Correction plats for technical corrections shall be recorded in the
27 same manner as a final plat. See § 14-14-3-6 of this article.

28 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word
29 or phrase of this ordinance is for any reason held to be invalid or
30 unenforceable by any court of competent jurisdiction, such decision shall not
31 affect the validity of the remaining provisions of this ordinance. The Council
32 hereby declares that it would have passed this ordinance and each section,

1 paragraph, sentence, clause, word or phrase thereof irrespective of any
2 provision being declared unconstitutional or otherwise invalid.

3 SECTION 4. COMPILATION. This ordinance shall be incorporated in
4 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

5 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
6 days following publication by title and general summary.

7

8

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**Environmental
Planning
Commission**

**Agenda Number: 2
Project Number: 1004831
Case #'s: 09EPC 40060
December 17, 2009**

Staff Report

Applicant	City of Albuquerque City Council
Request	Text Amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council
Location	City-wide
Zoning	NA

Staff Recommendation

*That a recommendation of **CONDITIONAL APPROVAL** of a Text Amendment to Part §14-14-7 of the Subdivision Ordinance, 09EPC 40060, be forwarded to the City Council based on the Findings beginning on Page 5*

Staff Planner

Jack Cloud, AICP
Chair, Development Review Board

Summary of Analysis

This proposal consists of a text amendment to Part §14-14-7 ROA 1994, the 'Subdivision Ordinance,' regarding the process for vacation, or closing, of public rights of way and easements; the proposed text amendment would require City Council approval for all such vacation requests.

Staff finds the requirement for City Council approval to be extraordinary change in procedure, given that the Council has an opportunity for review of such vacations via appeals/ due process under existing ordinances and regulations.

City-wide

City Departments and other interested agencies reviewed this application from 11/09/2009 to 11/20/2009; agency comments begin on Page 7.

J. + H EPC considered 2 items

Pr D

Pr

3.7 file

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I. INTRODUCTION

Proposal

This proposal is for a text amendment to §14-14-7 ROA 1994, the portion of the Subdivision Ordinance that pertains to the vacation, or closing, of public rights of way and public easements. All vacations currently may be approved by the Development Review Board (DRB) subject to a public hearing; however all decisions of the DRB are subject to appeal, which go to the City Council after a hearing and recommendation by the Land Use Hearing Officer (LUHO). The proposed text amendment would require City Council approval for all vacation of public right of way or vacation of a public easement, so that the DRB could only make a recommendation from its public hearing.

Environmental Planning Commission (EPC) Role

The EPC's task is to make a recommendation to the City Council regarding the proposed changes to the Subdivision Ordinance. The City Council is the City's legislative body with the authority to change and adopt ordinances, and the EPC is a recommending body on certain changes that affect Chapter 14 of the City Code [ZONING, PLANNING, AND BUILDING]..

Background and Context

The stated purpose of the amendment is to ensure that the City Council has the final discretionary authority for approval of these vacations. Following are comments from the City Council staff regarding the proposed text amendment:

'When the City agrees to vacate a right-of-way or easement it is determining that it should give up a potentially valuable interest in real property. In other cases where the City releases an interest in real property the City Council approves such actions as a matter of policy. State law that allows for the vacation of rights of way provides that if a roadway is not needed for public purposes, there is then a decision as to whether to vacate -- that decision is a policy decision.

The City Council has, by ordinance, elected to transfer its authority to make the determination of when to vacate property to the DRB. There is no legal problem with that delegation. The problem is that the determination to vacate a right-of-way has become a legal issue as to whether the ordinance has been complied with and the policy concerns have arguably dropped out. As you are aware, the City ordinance provides in relevant part:

"The vacation of public rights of way, private ways, or easements, whether by new plat, plat amendment, or request to vacate, shall be approved only when it is determined that:

- (1) The public welfare is in no way served by retaining the way or easement; or
- (2) There is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation; and in addition to divisions (1) or (2) of this division (B):

(3) There is no convincing evidence that any substantial property right is being abridged against the will of the owner of the right."

The DRB considers whether the ordinance terms are met and approves the vacation if they are complied with. The ordinance, however, does not say that rights-of-way or easements shall be vacated if the ordinance terms are met. It says that rights-of-way or easements shall not be vacated if the ordinance terms are not met. The current language of the ordinance recognizes that there may be more to the determination than simply looking at whether the ordinance language has been met. Admittedly, the DRB is charged with considering certain policy issues as it is to weigh "public welfare." But that term is not defined and if the ordinance is adopted it will be a recognition that the City Council should ultimately decide what will benefit "public welfare" along with any other policy considerations.

The DRB is a technical board with expertise in a wide range of specialized areas. It is not a policy making body. If the ordinance is adopted it will be a determination that the application of policy is best left with the Council. The technical determination of compliance with the ordinance requirements will remain with the DRB.

[In] at least one case where the City Council reversed a DRB decision to approve the vacation of an alley, [t]he party seeking the vacation filed an appeal in District Court taking the position that if the ordinance terms were met that the vacation was mandatory. Given the DRB's interpretation of the ordinance there is legal support for such an argument. That appeal was abandoned so the issue was never resolved. The ordinance amendment clarifies the fact that the City is never required to vacate a right-of-way or easement no matter what the factual determination. The final decision is always a policy call and the City Council is the appropriate body to make that call.

Anti-alley
respect Policy/Plan

clarify

State
of appeal
vernal

II. ISSUES

Section 3, Minor changes to Section 1

There are three sections to Part §14-14-7 of the Subdivision Ordinance. The last section, §14-14-7-3 TECHNICAL CORRECTIONS, would not be changed by the proposed amendment. The first section, §14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT, has only one change by the proposed amendment, on page 2, Lines 16 and 17. This change would delete a reference to the paragraph at the top of page 2 (B) and add a new reference to section 2 of Part 7, VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS AND EASEMENTS. This section 2 generally provides the requirements and procedures for review of vacation requests, and the addition of the reference for this section 2 into section 1 could be appropriate. However, this would not necessarily need to have the existing reference to the preceding paragraph (B) deleted. That paragraph (B) requires the DRB to evaluate whether the "vacation action will adversely affect contiguous land, any owner of land within the subdivision being vacated, or the interests of the City." [this is also consistent with the New Mexico State Subdivision Statute]. It is recommended that the additional reference language in section 1 be included in the text amendment, but that none of the existing language of this section 1 be deleted.

Concord Calendar > Findings only

Section 2 – Vacation not a right

Comments from the City Council staff reference a vacation that was approved by DRB, reversed by City Council such that the vacation was denied, and that action was then appealed to District Court. The appeal took the position that if the existing ordinance terms requiring certain determinations are met (that the public welfare is not served or there is a net benefit to the public welfare, and that no substantial property right is abridged), then the approval of a vacation request should be mandatory. Council staff argues that there may be legal support for this position, so the text amendment proposes an additional paragraph (D) to section 2 to counter this interpretation on page 3, lines 17 - 21:

[(D) The vacation of public rights of way or public easements, whether by new plat, plat amendment, or request to vacate, is a discretionary act by the City and a determination that the requirements of subdivision (B) have been met is a precondition to a vacation but does not create a right to a vacation.]

Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Mailed Notice to Neighborhood Associations

Additional language to the Subdivision Ordinance is proposed with this text amendment regarding vacation procedures, and specifically mailed notice to neighborhood associations on page 4, lines 16 - 18. This is already standard practice for these vacation requests in accordance with the Neighborhood Recognition Ordinance. [§14-14-7 ROA 1994] Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Required approval by City Council

The major staff concern with the proposed text amendment is the requirement for City Council approval for all vacations of public right of way or public easements. Clearly the City Council has the authority to amend City ordinances, and to require City Council approval of these vacations if the Council determines these are to be 'policy' decisions. However, when the DRB was established almost 30 years ago, the City Council at that time determined that these were more of a technical decision, consistent with the subdivision process. For instance, most vacation requests for public easements are either Public Utility Easements or Public Drainage Easements. Through the planning/ vacation process the affected agencies determine what kind and size of easements are needed to serve both the function (i.e. utility or drainage) of the easement as well as to adequately serve the adjacent property. Likewise with public right of way, most vacation requests involve the size of the right of way and whether it is needed to serve adjacent property; these decisions are generally technical decisions. Regarding what would be a 'policy' decision would be something like the Long Range Roadway System, where City Council members help decide what and where the major roadways are to be, while the DRB considers the technical design such as whether the minimum right of way is maintained.

Copy of
H B A

Comments from the City Council staff reference the release of interest in real property as requiring City Council approval, as a matter of policy. However this only applies to real property having a value of more than \$10,000; real property having a value less than that may be determined to be unessential for a municipal purpose by the administration, and this is generally the case with the vast majority of vacations.

As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process.

III. APPLICABLE ORDINANCES, PLANS AND POLICIES

The applicable ordinance (Article 14 – Subdivision Regulations of Chapter 14 –Zoning, Planning and Building) is the subject of this proposed text amendment.

IV. CONCLUSION

The proposed text amendments regarding additional references and findings for DRB public hearings on vacations of public right of way and public easements could help clarify the vacation process, particularly to note that the City is not required to approve a vacation even if certain pre-conditions of the existing Subdivision Ordinance have been met.

The proposed amendment to require City Council approval for vacation of public rights of way and public easements, however, would put approximately 60 or more such applications each year into a category of process more complex than a major subdivision request, as well as most site development plans and zone map amendments.

Appeal/Approval

T.W.

FINDINGS- 09EPC 40060, December 17, 2009-Text Amendment

1. Part §14-14-7 ROA 1994 of the Subdivision Ordinance provides regulations and procedures for the vacation, or closing, of public rights of way, private ways, and easements.

2. The purpose of the proposed text amendment is to change the process for vacating public rights of way and public easements to ensure City Council approval.

3. Other portions of the proposed text amendment would codify that the approval of a vacation request is a discretionary action by the City, no matter if the existing Subdivision Ordinance pre-conditions for approval are met, plus the amendment would add references for [existing] procedures including notification of neighborhood associations. *Such codification would enable the City to*

and held
4. The vacations of public right of way and public easements are generally technical decisions to determine if minimum subdivision standards are maintained, and thus that the public welfare is served. *to the detriment of the public welfare.*

5. The Development Review Board holds public hearings for vacations of public right of way and public easements consistent with public hearings for subdivisions, site development plans, and zone map amendments; this includes requiring neighborhood association notification, printing a legal advertisement in the local newspaper, posting of signs, and mailed notice, along with distribution to other City departments for review and comment. *N N is already required*

pursued to on existing
6. The City of Albuquerque processed 77 applications for such vacations in 2007, 64 applications in 2008, and 47 applications to-date in 2009.

7 7. Requiring City Council approval for vacations of public right of way and public easements would put ~~50-70~~ such applications each year into a category of process more complex than a subdivision request as well as most site development plans and zone map amendments.

Such a requirement would be burdensome

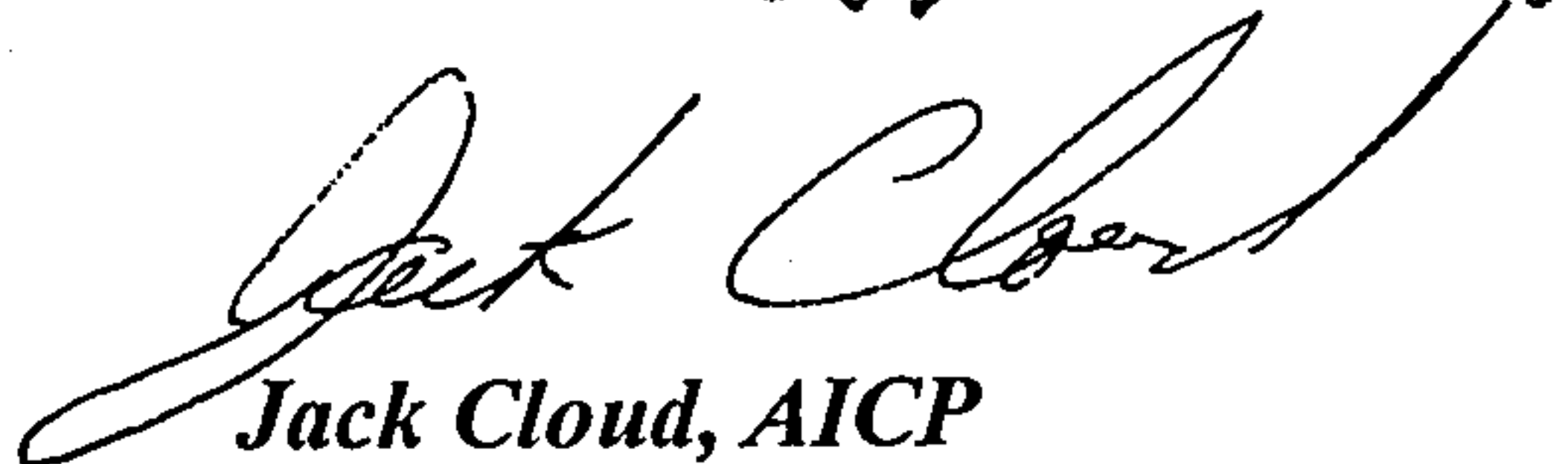
RECOMMENDATION

That a recommendation of **CONDITIONAL APPROVAL** of O-09-91/ Text Amendments to the Subdivision Ordinance Part §14-14-7 be forwarded to the City Council based on the preceding Findings and subject to the following Conditions of Approval.

CONDITIONS OF APPROVAL- 09EPC 40060, December 17, 2009-Zoning Code Text Amendments

1. That the ^{proposed deletion} existing language in Section 1 of Part §14-14-7 of the Subdivision Ordinance be ~~retained [not deleted]~~ and that the proposed new language in Section 1 [page 2, line 17] be included in the text amendment.
2. That new paragraph (C) in Section 2 of Part §14-14-7 of the Subdivision Ordinance [page 3, lines 12 -16] not be included not be included in the text amendment, and that new paragraph (D) in Section 2 [page 3, lines 17 -21] be included in the text amendment and re-lettered as paragraph (C).
3. That all other changes on page 3 not be included in the text amendment.
4. That all other changes on pages 5 and 6 not be included in the text amendment.

5. That typ and error be corrected


Jack Cloud, AICP
Chair, Development Review Board

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Code Services

No comment.

Office of Neighborhood Coordination

City Wide

11/19/09 – was published in the “Neighborhood News” newsletter and is online in the Newsletter
11/30/09 - will be e-mail to Neighborhood Representatives - siw

Long Range Planning

CITY ENGINEER

Transportation Development Services

Findings

- Currently, the process for Vacation of Public Rights of Way, Private Ways and Easements is clearly defined in 14-14-7 of the Subdivision Regulations.
- Currently, City Council has final discretionary authority to approve the vacation of public rights-of-way as outlined in the Subdivision Regulations but has delegated the administration of this action to the Development Review Board (DRB). However, a DRB determination can be appealed to City Council who ultimately would make a final decision regarding the DRB determination.

Recommendation

- Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

Traffic Engineering Operations

Hydrology

- The Hydrology Section objects to the ordinance revision as written based on the following reasons:
 1. Public drainage easements and public utility easements should be established or vacated for technical reasons. The DRB is the technical review board.
 2. The appeal process is not clearly addressed.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance Operations (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

Conditions of approval for the proposed Text Amendment to the Subdivision Ordinance shall include:

- a. Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

WATER UTILITY AUTHORITY

Utility Services

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

PARKS AND RECREATION

Planning and Design

Open Space Division

Open Space has no adverse comments

City Forester

POLICE DEPARTMENT/Planning

No crime prevention of CPTED comment to the proposed text amendment at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

NO ADVERSE COMMENTS

FIRE DEPARTMENT/Planning

TRANSIT DEPARTMENT

Adjacent and nearby routes	N/A
Adjacent bus stops	N/A
Site plan requirements	None
Large site TDM suggestions	N/A
Other information	None.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

This amendment will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

No comments.

City of Albuquerque



DEVELOPMENT/ PLAN REVIEW APPLICATION

SUBDIVISION

- ___ Major Subdivision action
- ___ Minor Subdivision action
- ___ Vacation
- ___ Variance (Non-Zoning)

SITE DEVELOPMENT PLAN

- ___ for Subdivision
- ___ for Building Permit
- ___ Administrative Amendment (AA)
- ___ IP Master Development Plan
- ___ Cert. of Appropriateness (LUCC)

STORM DRAINAGE (Form D)

- ___ Storm Drainage Cost Allocation Plan

Supplemental form

S Z ZONING & PLANNING

- ___ Annexation
- ___ County Submittal
- V ___ EPC Submittal
- ___ Zone Map Amendment (Establish or Change Zoning)
- P ___ Sector Plan (Phase I, II, III)
- ___ Amendment to Sector, Area, Facility or Comprehensive Plan
- ✓ Text Amendment (Zoning Code/Sub Regs)
- D ___ Street Name Change (Local & Collector)
- L A APPEAL / PROTEST of...
 - ___ Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any): CoA Planning Department PHONE: 424-3260
 ADDRESS: 96 Current Planning Div. 600 2nd St NW FAX: 424-3339
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

APPLICANT: CoA City Council PHONE: 768-3100
 ADDRESS: One Civic Plaza NW FAX: 768-3227
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

Proprietary interest in site: _____ List all owners: _____

DESCRIPTION OF REQUEST: Text amendment to Subdivision Ord. per 0-09-91

Is the applicant seeking incentives pursuant to the Family Housing Development Program? ___ Yes. ___ No.

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No: city-wide Block: _____ Unit: _____
 Subdiv/Addn/TBKA: _____
 Existing Zoning: _____ Proposed zoning: _____ MRGCD Map No _____
 Zone Atlas page(s): _____ UPC Code: _____

CASE HISTORY:

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_, Z_, V_, S_, etc.): _____

CASE INFORMATION:

Within city limits? Yes Within 1000FT of a landfill? _____
 No. of existing lots: _____ No. of proposed lots: _____ Total area of site (acres): _____

LOCATION OF PROPERTY BY STREETS: On or Near: city wide
 Between: _____ and _____

Check-off if project was previously reviewed by Sketch Plat/Plan , or Pre-application Review Team . Date of review: _____

SIGNATURE Carol Tuffaleti DATE 11/3/09
 (Print) Carol Tuffaleti Applicant: Agent:

FOR OFFICIAL USE ONLY

- INTERNAL ROUTING
- All checklists are complete
- All fees have been collected
- All case #s are assigned
- AGIS copy has been sent
- Case history #s are listed
- Site is within 1000ft of a landfill
- F.H.D.P. density bonus
- F.H.D.P. fee rebate

Application case numbers	Action	S.F.	Fees
<u>09EPZ 40060</u>	<u>ASO</u>	<u>2</u>	<u>\$ 0</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
Hearing date <u>12/17/09</u>			Total <u>\$ 0</u>

Sandy Handley 11/03/09 Project # 1004831
 Planner signature / date

Form revised 4/07

FORM Z: ZONE CODE TEXT & MAP AMENDMENTS, PLAN APPROVALS & AMENDMENTS

ANNEXATION (EPC08)

- Application for zone map amendment including those submittal requirements. See below. Annexation and establishment of zoning must be applied for simultaneously.
 - Petition for Annexation Form and necessary attachments
 - Zone Atlas map with the entire property(ies) clearly outlined
NOTE: The Zone Atlas must show that the site is in County jurisdiction, but is contiguous to City limits.
 - Letter briefly describing, explaining, and justifying the request
NOTE: Justifications must adhere to the policies contained in "Resolution 54-1990"
 - Letter of authorization from the property owner if application is submitted by an agent
 - BCC Notice of Decision for City Submittals
 - Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts.
 - Sign Posting Agreement
 - TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
 - List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

SDP PHASE I - DRB CONCEPTUAL PLAN REVIEW (DRBPH1) (Unadvertised)

SDP PHASE II - EPC FINAL REVIEW & APPROVAL (EPC14) (Public Hearing)

SDP PHASE II - DRB FINAL SIGN-OFF (DRBPH2) (Unadvertised)

- Copy of findings from required pre-application meeting (needed for the DRB conceptual plan review only)
- Proposed Sector Plan (30 copies for EPC, 6 copies for DRB)
- Zone Atlas map with the entire plan area clearly outlined
- Letter briefly describing, explaining, and justifying the request
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (for EPC public hearing only)
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form (for EPC public hearing only)
- Fee for EPC final approval only (see schedule)
- List any original and/or related file numbers on the cover application

Refer to the schedules for the dates, times and places of DRB and EPC hearings.

Your attendance is required.

AMENDMENT TO ZONE MAP - ESTABLISHMENT OF ZONING OR ZONE CHANGE (EPC05)

- Zone Atlas map with the entire property clearly outlined
- Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980".
- Letter of authorization from the property owner if application is submitted by an agent
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- Sign Posting Agreement
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO SECTOR DEVELOPMENT MAP (EPC03)

AMENDMENT SECTOR DEVELOPMENT, AREA, FACILITY, OR COMPREHENSIVE PLAN (EPC04)

- Proposed Amendment referenced to the materials in the Plan being amended (text and/or map)
- Plan to be amended with materials to be changed noted and marked
- Zone Atlas map with the entire plan/amendment area clearly outlined
- Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980" (Sector Plan map change only)
- Letter of authorization from the property owner if application is submitted by an agent (Map change only)
- Letter briefly describing, explaining, and justifying the request
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (sector plans only)
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- Sign Posting Agreement
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO ZONING CODE OR SUBDIVISION REGULATORY TEXT (EPC07)

- Amendment referenced to the sections of the Zone Code/Subdivision Regulations being amended
- Sections of the Zone Code/Subdivision Regulations to be amended with text to be changed noted and marked
- Letter briefly describing, explaining, and justifying the request
- Fee (see schedule)
- List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Carol Toffaleti
Applicant name (print)

Carol Toffaleti 11/3/09
Applicant signature / date



Form revised APRIL 07

- Checklists complete
- Fees collected
- Case #s assigned
- Related #s listed

Application case numbers

09EPC - 40060

Sandy Hamilton 11/03/09
Planner signature / date

Project # 1004831

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Richard Dineen, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-09-91
DATE: October 9, 2009

The attached ordinance was introduced by the City Council on October 7, 2009. We are requesting that you submit this text amendment to the Zoning Code to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to change the process for vacating public rights-of-way to ensure Council approval.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
File O-09-91

X:\SHARE\Reports\LUPZ\EPCscheduleO-09-91.doc

legislative
• de novo ? NO
• CC do replat? NO, just to give up ROW

**CITY of ALBUQUERQUE
EIGHTEENTH COUNCIL**

COUNCIL BILL NO. 0-09-91 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

ORDINANCE

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AMENDING CHAPTER 14, ARTICLE 14, PART 7 ROA 1994 TO CLARIFY THE PROCESS FOR VACATING PUBLIC RIGHTS-OF-WAY; PLACING THE FINAL DISCRETIONARY AUTHORITY TO APPROVE THE VACATION OF A PUBLIC RIGHT OF WAY OR EASEMENT IN THE CITY COUNCIL.

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

SECTION 1. Chapter 14, Article 14, Part 7 ROA 1994 is amended to read as follows:

§ 14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT.

(A) Any final plat recorded in the office of the County Clerk may be amended or vacated (voided) either:

(1) by recording a new subdivision plat (a resubdivision) covering all or a portion of the previous plat sought to be amended or vacated or by recording an amended plat covering such area. In either case, the new plat or amended plat shall be processed as an original subdivision action under Part 3 of this article and recorded as specified therein. If the new or amended plat falls within the definition of minor subdivision, contained in § 14-14-1-6 of this article, it shall be processed as such; or

(2) upon a finding at a public hearing by the Development Review Board that the plat was obtained by misrepresentation or fraud, the plat may be vacated by the Development Review Board. A statement approved by the Development Review Board shall be filed in the office of the County Clerk. The County Clerk shall mark the original plat with the words "VACATED" or "PARTIALLY VACATED" and refer on the plat to the volume and page on which the statement of vacation is recorded.

[-Bracketed/Strikethrough-Material-] - Deletion

[-Bracketed/Strikethrough Material] - Deletion

1 (B) In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 (C) In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 (D) The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 (E) Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 (F) If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of ~~[division (B) of this~~
17 ~~section]~~ § 14-14-7-2 shall be followed as to the vacations of right of way.

18 § 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS
19 AND EASEMENTS.

20 (A) Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 (1) The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 (2) The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division ~~[(E)]~~ [G] of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

division B

[-Bracketed/Strikethrough Material-] - Deletion

1 (B) The vacation of public rights of way, private ways, or
2 easements, whether by new plat, plat amendment, or request to vacate, shall
3 be approved only when it is determined that:

4 (1) The public welfare is in no way served by retaining the
5 way or easement; or

6 (2) There is a net benefit to the public welfare because the
7 development made possible by the vacation is clearly more beneficial to the
8 public welfare than the minor detriment resulting from the vacation; and in
9 addition to divisions (1) or (2) of this division (B):

10 (3) There is no convincing evidence that any substantial
11 property right is being abridged against the will of the owner of the right.

12 [(C) Public rights of way and public easements may only be
13 vacated by action of the City Council following a determination by the DRB
14 that the requirements of subsection (B) have been met. Private ways and
15 private easements are vacated by action of the DRB and do not require City
16 Council action.]

17 [(D) The vacation of public rights of way or public easements,
18 whether by new plat, plat amendment, or request to vacate, is a discretionary
19 act by the City and a determination that the requirements of subdivision (B)
20 have been met is a precondition to a vacation but does not create a right to a
21 vacation.]

22 ~~[(C)]~~ [(E) In making a determination that the requirements of
23 subsection (B) have been met with respect to a public right of way or public
24 easement the Development Review Board may recommend that the City
25 Council only approve the vacation if] ~~[In approving the vacation the~~
26 ~~Development Review Board may require that]~~ some or all of the public rights
27 of way or easements ~~[are]~~ [be] retained by the appropriate governmental entity
28 as shown on the original plat.

29 ~~[(D)]~~ [(F) In the case of public rights of way or easements the
30 City Council and in the case of private rights of way or easements] ~~[F]~~ [t]he
31 Development Review Board may require that curb and gutter be placed, at the
32 expense of the applicant, so as to effectively halt the vacated area~~['s]~~ being
33 used as public way. It may also be necessary to remodel or otherwise



CITY OF ALBUQUERQUE

City Council

P.O. Box 1293
Albuquerque, NM 87103
Tel: (505) 768-3100
Fax: (505) 768-3227
www.cabq.gov/council

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Isaac Benton
District 3

Brad Winter
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Dan Lewis
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Rey Garduño
District 6

Michael Cook
District 7

Don Harris
District 9

Laura Mason
Council Director

December 17, 2009

Dear Commissioners:

I regret that due to business in Santa Fe I am unable to attend your hearing today when you will be considering a Text Amendment to the Zoning Code that I am sponsoring (O-09-91). Bruce Thompson is familiar with the legal issues involved, and I have seen the technical comments from Planning staff. I want to convey the policy reasons behind the proposed legislation. These have to do with long-range planning of land use, transportation, and storm drainage.

I first discussed the vacation concern with Mr. Thompson after two vacations were approved in Council District 3.

One was an alley vacation in the southwest part of the Downtown 2010 Plan area. Surrounded by surface parking lots, this alley was apparently vacated for the convenience of those parking lot owners. The problem is, future redevelopment of the block, a goal of the sector plan, may be impeded by the lack of an alley. Rear access for automobile traffic and parking is the preferred scheme in all our modern urban corridor and sector plans in Downtown, Nob Hill and elsewhere. As you know, this is in order to maintain a safe and vibrant pedestrian environment on the street/sidewalk side of the development. A consistent system of alleys is beneficial for this and other service purposes and should not be interrupted as a simple administrative matter without approval from the City's policy-making body, the City Council.

The second example was the vacation of an innocuous-looking stub street in the Old Town area. Shortly after its approval, a Council transportation consultant was working on proposed improvements to the Central Ave./Rio Grande Blvd. intersection and associated corridors. The consultants inquired about the possibility of utilizing the stub street to create a new connector/reliever street parallel to the Central corridor. Unfortunately, that option had been precluded and/or made too expensive by the recent vacation.

Additionally, drainage is an area-wide issue that affects individual localities, the Martineztown and Barelas flooding being prime examples. What may seem like a simple vacation of a locally-unnecessary drainage or storm sewer easement may preclude future planning and improvements to area-wide drainage issues.

In most vacation cases, after DRB technical approval, Council staff would simply review DRB findings and the item would end up going on the Council consent agenda. However, Councilors and their staff are there to hear constituent concerns and have a unique understanding of their districts' long-range goals and needs. The legislation would provide a final check and opportunity to vet any planning concerns that might not be in the forefront of technical staff's considerations when they review a vacation application.

"Best practices" whether in complete streets, sustainable drainage schemes or land use, are evolving. Our technical standards will also evolve accordingly. Thus it is good government policy to look more carefully at vacations of public easements and rights-of-way.

I am open to your suggestions for amended language on the technical front, but I believe that the essence of this legislation is sound planning and good public policy.

Sincerely,

Isaac Benton
City Councilor, District 3



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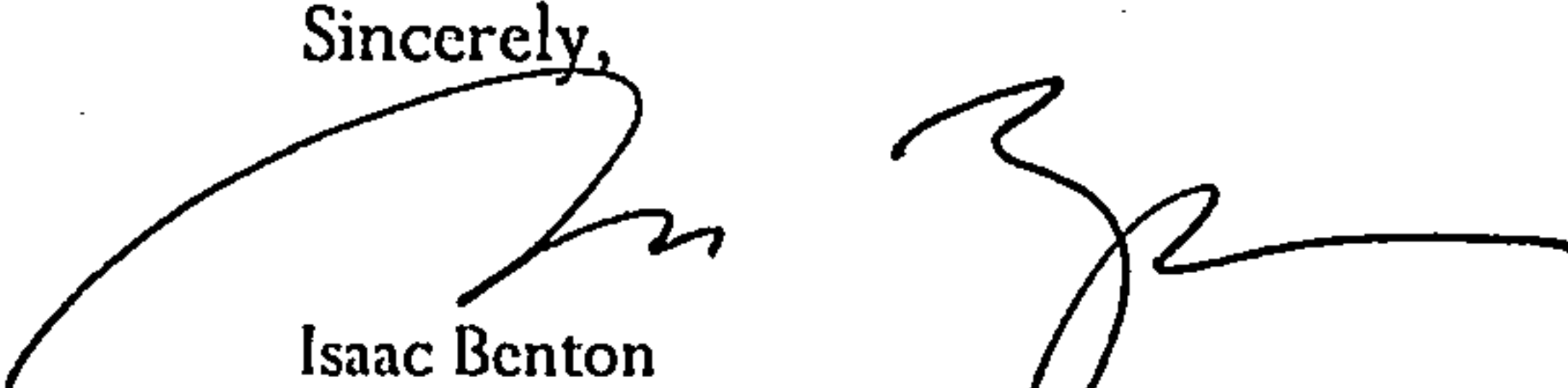
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Sincerely,


Isaac Benton
City Councilor, District 3

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

NEW MEXICO CHAPTER

December 16, 2009

Ms Laurie Moye, Chair
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico

**RE: TEST AMENDMENT TO §14-14-7 ROA 1994
VACATION ACTIONS**

Dear Chairman Moye:

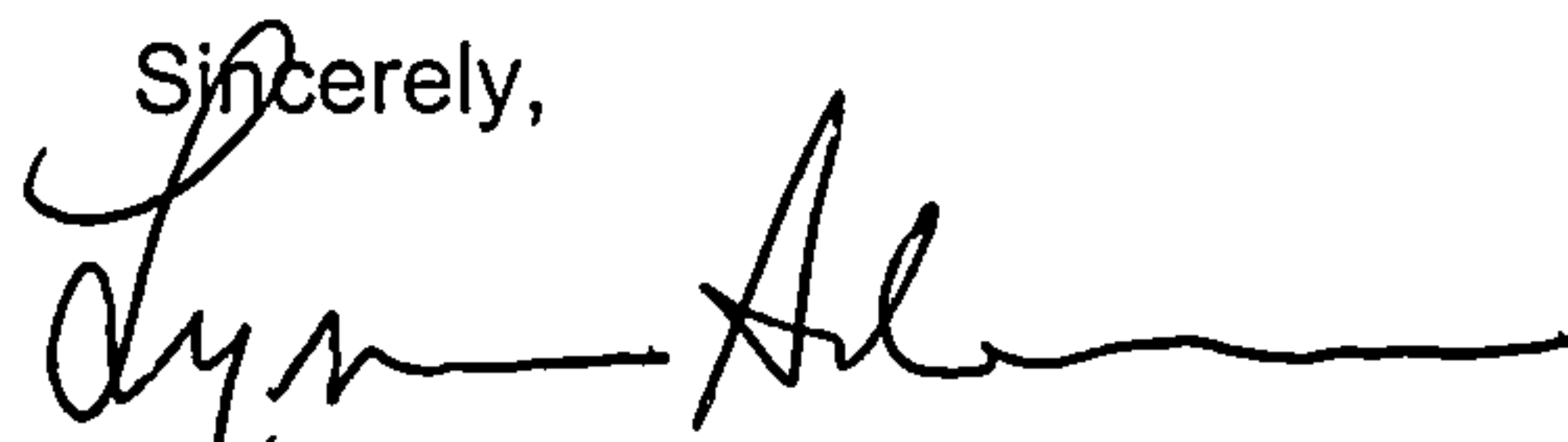
NAIOP, the Commercial Real Estate Development Association, respectfully requests that the EPC recommend denial of the referenced text change to the Subdivision Ordinance. A number of our members have also sent letters requesting denial, and have argued that the change is unwarranted and unnecessary based on existing means of remedy and on the additional approval time and costs that the change would engender. It is clear, from the staff report, that the vast majority of these submissions are pro forma and are not appealed.

NAIOP would like to add that, in the current economy, when commercial building permits are at an historic low, this type of legislation further complicates the permitting process. The additional time and money that this change would add to a development project could easily "kill the deal". It would not appear to be in the interests of the City or its citizens to hamper projects that create jobs and revenue, particularly when the existing system works for the majority of the submissions and a simple appeals process is available to the general public.

Finally, in light of the existing City policy of encouraging infill development as part of the Planned Growth Strategy, I would note that virtually all redevelopment projects require vacation actions since they usually have existing easements which conflict with the new use. So this bill would have an especially large impact to cost and schedule for redevelopment projects.

NAIOP urges your recommendation of denial, and our representatives are available for questions or discussion concerning this text revision.

Sincerely,



Lynne Andersen, President
NAIOP Commercial Real Estate Development Association

NEW MEXICO CHAPTER 2009 Board of Directors

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December 17, 2009

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LEGAL COUNSEL
Vogel Campbell & Blueher, P.C.

Re: Text Amendment to §14-14-7 ROA 1994 (Case # 09EPC 40060)

To the Environmental Planning Commission:

The Home Builders Association of Central New Mexico (HBA of CNM) opposes the proposed text Amendment to §14-14-7 ROA 1994 (Case # 09EPC 40060). Vacations of easements currently require administrative action and the Amendment requiring Council action would change the process to an unnecessary, and unpredictable, political one.

Changing the existing process to require Council approval will add time and cost to an already lengthy and costly entitlement process. All design work up must be completed up front in order to determine what will need to be vacated. In the current process, the vacation is negotiated during the preliminary plat process. In the new process, one would be required to spend all the money up front (at least \$1500 a lot for a large residential subdivision and possibly 40 or 50 thousand for a five acre commercial development) and left to rely on a political outcome.

A recent example provided by a member displays how a change to the procedure could have cost a much needed infill development:

The new CVS at the northeast corner of Central and Louisiana required a public alley vacation in order to make the site plan and vehicular movements work correctly. This alley was legally City controlled public right-of-way but it was not used for such for years. Nevertheless, under the proposed changes the new procedure would have required vacation of this alley to be approved by City Council action. The new store removed an eyesore and potential hazard on an infill site (an old gas station previously occupied the site) and replaced it with a job and tax generating business in this down economy. Clearly this is something that the City should be encouraging, rather than placing additional roadblocks in front of infill development.

The HBA of CNM's members have expressed the existing process works well; vacation actions require public notification and the public then has the opportunity to respond in writing and in person with questions comments, and disagreements; and they have the right to appeal. Changing the process to a political one will add time, money and unpredictability. Most importantly, potentially adding another 4 - 6 months to any entitlement process could easily deter a company, not just home builders, from investing in our city. This could have a serious impact on economic development efforts.

Sincerely,

Katherine Martinez
Director Of Government Affairs
Home Builders Association of Central New Mexico

BUILDERS OF THE AMERICAN DREAM

Affiliated with the National Association of Home Builders since 1947

4100 Wolcott Ave. NE, Suite B • Albuquerque, NM 87109


(505) 344-3294 • Fax: (505) 345-3795

mailbox@hbcnm.com • www.hbcnm.com

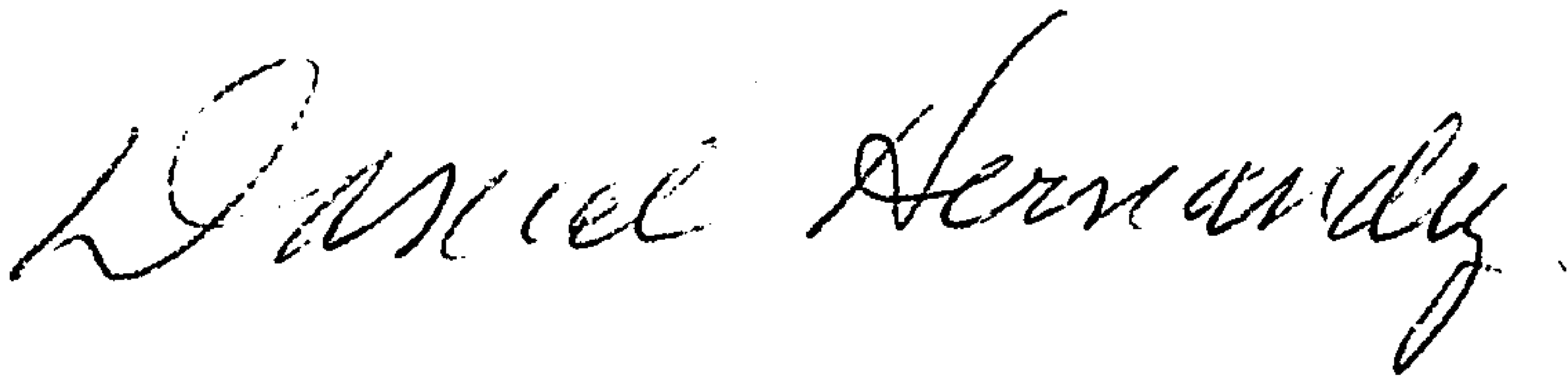


CONDITIONS OF APPROVAL- 09EPC 40060, December 17, 2009-Zoning Code Text Amendments

1. That the existing language in Section 1 of Part §14-14-7 of the Subdivision Ordinance be retained [not deleted] and that the proposed new language in Section 1 [page 2, line 17] be included in the text amendment.
 - X 2. That new paragraph (C) in Section 2 of Part §14-14-7 of the Subdivision Ordinance [page 3, lines 12 -16] ~~not be included~~ not be included in the text amendment, and that new paragraph (D) in Section 2 [page 3, lines 17 -21] be included in the text amendment and re-lettered as paragraph (C).
 3. That all other changes on page 3 not be included in the text amendment.
 4. That all other changes on pages 5 and 6 not be included in the text amendment.
-


Jack Cloud, AICP
Chair, Development Review Board

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102



CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Code Services

No comment.

Office of Neighborhood Coordination

City Wide

11/19/09 – was published in the “Neighborhood News” newsletter and is online in the Newsletter
11/30/09 - will be e-mail to Neighborhood Representatives - siw

Long Range Planning

CITY ENGINEER

Transportation Development Services

Findings

- Currently, the process for Vacation of Public Rights of Way, Private Ways and Easements is clearly defined in 14-14-7 of the Subdivision Regulations.
- Currently, City Council has final discretionary authority to approve the vacation of public rights-of-way as outlined in the Subdivision Regulations but has delegated the administration of this action to the Development Review Board (DRB). However, a DRB determination can be appealed to City Council who ultimately would make a final decision regarding the DRB determination.

Recommendation

- Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

Traffic Engineering Operations

Hydrology

- The Hydrology Section objects to the ordinance revision as written based on the following reasons:
 1. Public drainage easements and public utility easements should be established or vacated for technical reasons. The DRB is the technical review board.
 2. The appeal process is not clearly addressed.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

[-Bracketed/Strikethrough-Material] - Deletion

1 reconstruct existing public improvements in order to solve problems created
2 by the vacation, and the [City Council or] Development Review Board may so
3 require. Costs involved shall be borne by the applicant.

4 ~~[(E)]~~[(G)] Procedure.

5 (1) In all cases where public right of way, private ways, or
6 easements are sought to be vacated, whether by new subdivision, plat
7 amendment, or request to vacate, the following procedures shall be followed
8 in addition to the procedures specified in Part 3 of this article; however, the
9 following procedure may be eliminated for the requested vacation of private
10 easements if the Planning Director is satisfied that all the benefitted and
11 burdened parties are clearly and completely defined and all agree to the
12 vacation.

13 (2) Notice and Request for Comment.

14 (a) The Planning Director shall mail letters to
15 franchised utilities and to the owner of record of all lots adjacent to the right of
16 way, private way, and/or easement to be vacated [and to any neighborhood
17 association known by the Office of Neighborhood Services to cover all or part
18 of the right of way, private way, and/or easement sought to be vacated],
19 informing them of the nature of the proposed vacation, and notifying them of
20 the date, time, and place of the public hearing by the Development Review
21 Board on the proposed vacation. For notifying property owners, the name and
22 address of the owners shown in the records of the County Assessor shall be
23 used.

24 (b) Prior to the hearing, the Planning Director shall
25 request interested city departments and other agencies to comment on the
26 application. Comments received shall be submitted to the Development
27 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
28 Control Authority and/or the Middle Rio Grande Conservancy District shall be
29 requested before vacation of any drainage easement or public right of way
30 within their respective areas of jurisdiction.

31 (c) If the public right of way, private way, and/or
32 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
33 vehicular or pedestrian traffic], the applicant shall post and maintain one or

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1 more signs, as provided and where instructed by the Planning Director, at
2 least 15 days before the date of the hearing. The applicant is responsible for
3 removing such signs within five days after the hearing is completed. Failure
4 to properly post signs is grounds for deferral of the request. No one except
5 the applicant, the agent of the applicant, or the city shall remove or tamper
6 with any such required sign during the period it is required to be maintained
7 under this division (c).

8 (d) Public notice in a newspaper of general
9 circulation in the city shall be published at least 15 days before date of the
10 hearing; the notice shall indicate the location of the proposed vacation, where
11 a map of the proposed vacation may be viewed, and information on the date,
12 time, and place of the hearing.

13 (3) Hearing and Decision.

14 (a) [A determination by the Development Review
15 Board with respect to a public right of way or easement as to whether the
16 requirements of subsection B have been met] or [A][a] decision [by the
17 Development Review Board with respect to a private right of way or easement
18 as to whether [on city approval of vacations][a vacation shall be approved]
19 shall be made [by the Development Review Board] at a public hearing.
20 [Approval or disapproval shall be given][Any decision shall be] in
21 writing[,expressing the reasons and any conditions,] and a copy shall be sent
22 to the applicant and any other persons who have indicated interest in the
23 matter. [For a public right of way or easement the Development Review Board
24 may recommend to the City Council conditions that should be imposed if a
25 vacation is approved. For a private right of way or easement the Development
26 Review Board may impose conditions if a vacation is approved.]

27 [(b) A DRB determination that the requirements of
28 subsection B have not been met for a public right of way or easement shall be
29 dispositive as to whether a vacation should be approved subject to appeal to
30 the City Council on that issue. If on appeal the City Council reverses a DRB
31 determination and finds that the requirements of subsection B have been met
32 the City Council shall at the same time exercise its discretion and determine
33 whether the public right of way or easement DRB should be vacated.

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1 (c) A DRB determination that the requirements of
2 subsection B have been met for a public right of way or easement shall be
3 forwarded to the City Council to determine if the vacation shall occur. If the
4 determination by the DRB that the requirements of subsection B have been
5 met is appealed to the City Council that issue shall be considered by the City
6 Council at the same time it exercises its discretion to determine whether the
7 public right of way or easement DRB should be vacated.]

8 [(b)][d] Approval of vacation of public right of way,
9 private ways or easements shall be conditional upon the following steps being
10 accomplished by the applicant or governmental entity within a time period set
11 by the [City Council or] Development Review Board, in no case exceeding one
12 year. If not so accomplished, the decision to vacate is voided.

13 1. The applicant shall present to the city a
14 final plat incorporating the vacated right of way into adjacent lots, which plat
15 the city shall record with the County Clerk; or

16 2. The appropriate governmental entity shall
17 record a final plat if the [City][Development Review Board] finds that it is in the
18 public interest for the governmental entity to own the vacated public right of
19 way as a lot or if adjacent property owners do not desire the vacated parcel.

20 3. The applicant shall secure the installing or
21 removing and disposing of such improvements, as are required by the [City
22 Council or] Development Review Board in order to remodel or otherwise
23 reconstruct existing public improvements to appropriately provide for the
24 proposed uses. Costs involved shall be borne by the applicant.

25 (4) Disposition of Right-of-Way.

26 (a) Normally the owners of land adjacent to the
27 vacated public right of way have an opportunity to obtain title to the land, for
28 some consideration, from the owner (normally the city).

29 (b) Immediately after a city decision to vacate platted
30 public right of way becomes final, if such land is proposed to be disposed of
31 by the city, the City Property Manager shall notify each owner of adjacent
32 property by certified letter. The certified letter shall notify each adjacent
33 landowner of the opportunity to purchase from the city one-half of the width of

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1 the vacated right of way contiguous to the landowner's property, subject to
2 any conditions or requirements stated in the decision to vacate. If an adjacent
3 landowner fails to notify the city Property Manager in writing, within 30 days of
4 the date of the receipt slip of the certified letter, that he or she intends to
5 purchase the adjacent public right of way, the city may dispose of the vacated
6 right of way in any manner which the city, in its discretion, deems appropriate.

7 **§ 14-14-7-3 TECHNICAL CORRECTIONS.**

8 (A) Technical corrections to approved, but as yet unrecorded, final
9 plats shall be approved by the Development Review Board before being
10 recorded with the County Clerk.

11 (B) Technical corrections to recorded final plats shall be made by
12 a correction plat approved by the Development Review Board. The plat shall
13 include only the area affected by the correction and shall clearly indicate the
14 correction. Correction plats for technical corrections shall be recorded in the
15 same manner as a final plat. See § 14-14-3-6 of this article.

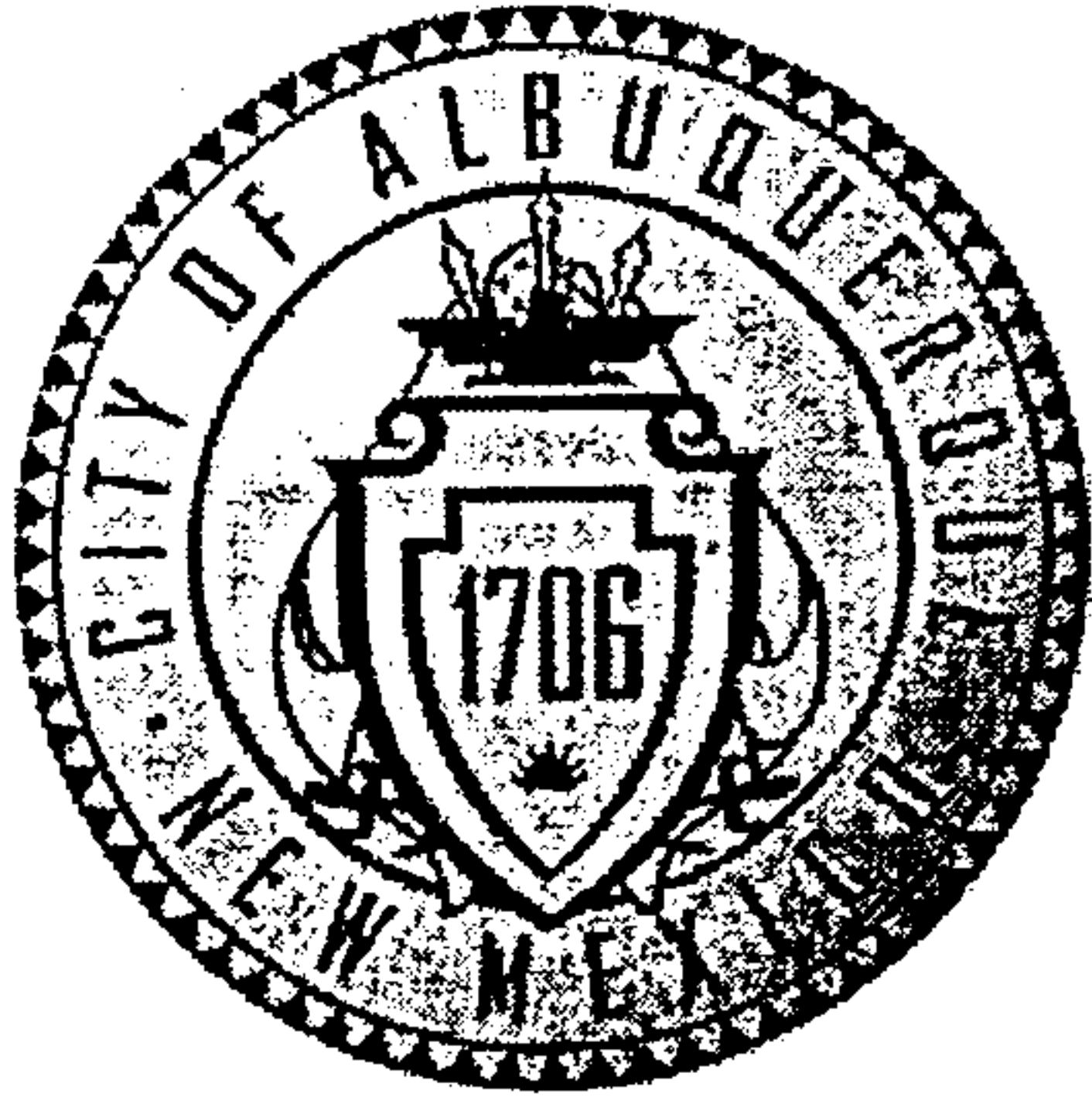
16 **SECTION 3. SEVERABILITY CLAUSE.** If any section, paragraph, word
17 or phrase of this ordinance is for any reason held to be invalid or
18 unenforceable by any court of competent jurisdiction, such decision shall not
19 affect the validity of the remaining provisions of this ordinance. The Council
20 hereby declares that it would have passed this ordinance and each section,
21 paragraph, sentence, clause, word or phrase thereof irrespective of any
22 provision being declared unconstitutional or otherwise invalid.

23 **SECTION 4. COMPILATION.** This ordinance shall be incorporated in
24 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 **SECTION 5. EFFECTIVE DATE.** This ordinance shall take effect five
26 days following publication by title and general summary.

27

28



Mayor Richard J. Berry

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

February 25, 2010

TO: Ken Sanchez, President, City Council

FROM: Deborah L. Stover, Planning Department Director 

SUBJECT: O-09-91 - Project# 100483109EPC-40060, The Environmental Planning Commission recommends **NO RECOMMENDATION** of a TEXT AMENDMENT TO SUBDIVISION REGULATIONS, CITY OF ALBUQUERQUE CITY COUNCIL for amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council. Jack Cloud, Staff Planner

The Environmental Planning Commission (EPC) heard this proposal at its December 17, 2009 public hearing. After two tie votes, one to recommend denial of O-09-91 and one to endorse the staff recommendation for modified approval (deleting a proposed requirement for City Council action on certain vacation approvals), the Commission voted to adopt the Findings of the staff report plus a Finding regarding the two tie votes, but to make no recommendation on the proposed text amendment to the Subdivision Ordinance.

Overview

This proposed text amendment pertains to the vacation, or closing, of all or portions of public rights of way and public easements. The first part of the text amendment would provide a technical correction for a reference regarding Resubdivision or Amendment of a Previous Plat. A second component would amend the City Code to clearly state that these vacations are a discretionary act by the City, and that there is no absolute right to a vacation. Third, this portion of the code would be amended to call out the requirement for neighborhood notification for these vacations, which is already required by the Neighborhood Recognition Ordinance. Finally, the proposed text amendment would require City Council approval for all vacations of public right of way or vacation of a public easement.

Issues

The Planning Department staff recommends approval of this proposed text amendment *except* for the requirement of City Council approval for all vacations of public rights of way or easements. Currently these vacations may be approved by the Development Review Board (DRB) subject to a public hearing; however all decisions of the DRB are subject to administrative appeal which would

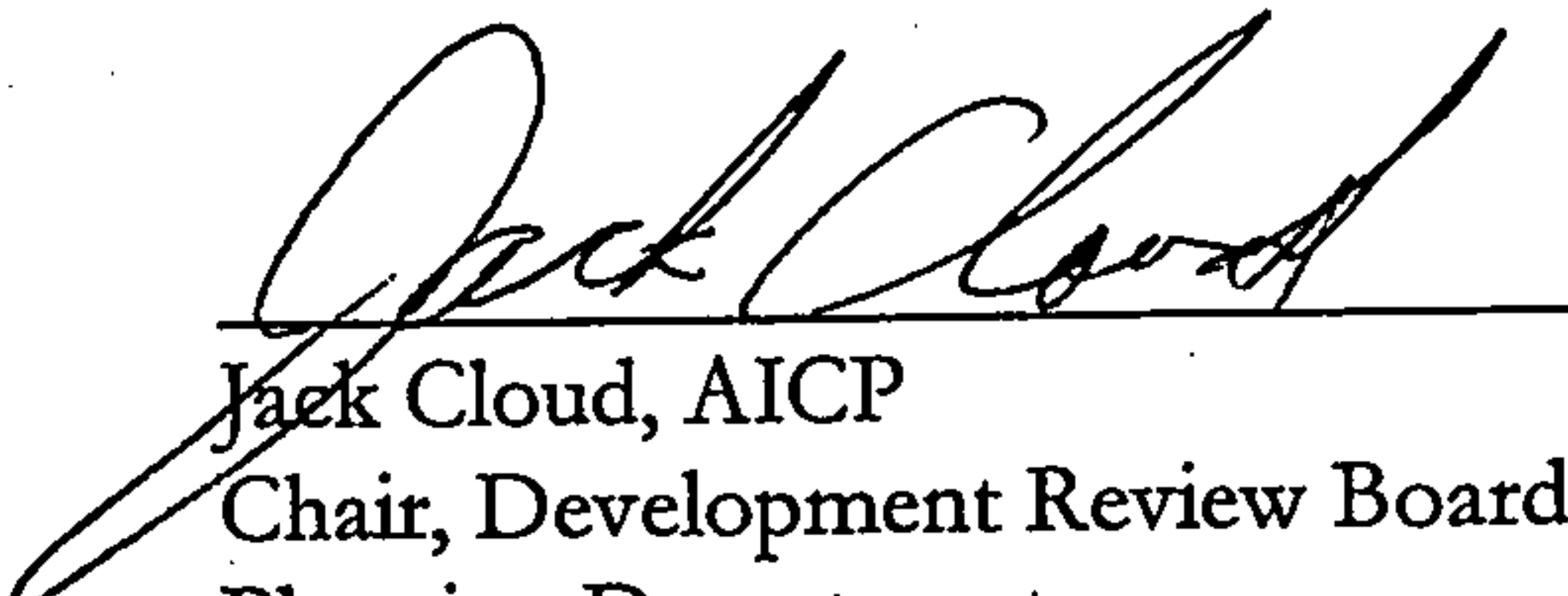
go to the City Council (after a hearing and recommendation by the Land Use Hearing Officer/LUHO). Most of these vacation requests involve technical adjustments to rights of way or easements. The additional process and review from this new requirement would be extraordinary, beyond what is required even for most zone changes, site development plans, and major subdivisions. The EPC (as well as the public testimony at the EPC hearing) posited that this would be a burdensome requirement on applicants and staff, for what are generally technical development requests.

Where the EPC divided was on whether to include the second component of the proposed amendment, which would codify that vacations are a discretionary act by the City. Concern was expressed that this could lead to arbitrary denials of vacation requests. Planning Department staff does not object to including this portion of the amendment, as it could provide an additional Finding of Fact when a vacation is denied. Similar to the amendment regarding neighborhood notification, this would appear to already be addressed within the code; i.e., if there is a public purpose to be served by retaining a right of way or easement then the City should be able to make a Finding of Fact that there would be benefit to the public welfare by denying the vacation (and thus keeping the right of way or easement in the public domain). It is difficult to envision any such requests being denied based solely on a conclusory Finding that a vacation 'is not a right,' rather there would be a combination of Findings which would specify the reason(s) the public welfare would benefit from not approving the vacation.

Conclusion

There are dozens of vacation requests each year that would be affected by the text amendment as proposed, without a discernable benefit to the public welfare from requiring City Council approval. The City Council delegated the review and approval authority of these requests to the DRB in 1982, yet has always retained final administrative approval through the appeal process. It is recommended that only the changes on page 2, 4, and new paragraph D on page 3 be included in the text amendment.

APPROVED:



Jack Cloud, AICP
Chair, Development Review Board
Planning Department

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**Environmental
Planning
Commission**

**Agenda Number: 2
Project Number: 1004831
Case #'s: 09EPC 40060
December 17, 2009**

Staff Report

Applicant City of Albuquerque City Council
Request Text Amendment to §14-14-7 ROA 1994 (the Subdivision Ordinance), requiring approval of Vacation of Public Rights of Way and Public Easements to be by the City Council
Location City-wide
Zoning NA

Staff Recommendation

*That a recommendation of **CONDITIONAL APPROVAL** of a Text Amendment to Part §14-14-7 of the Subdivision Ordinance, 09EPC 40060, be forwarded to the City Council based on the Findings beginning on Page 5*

Staff Planner

**Jack Cloud, AICP
Chair, Development Review Board**

Summary of Analysis

This proposal consists of a text amendment to Part §14-14-7 ROA 1994, the 'Subdivision Ordinance,' regarding the process for vacation, or closing, of public rights of way and easements; the proposed text amendment would require City Council approval for all such vacation requests.

Staff finds the requirement for City Council approval to be extraordinary change in procedure, given that the Council has an opportunity for review of such vacations via appeals/ due process under existing ordinances and regulations.

City-wide

City Departments and other interested agencies reviewed this application from 11/09/2009 to 11/20/2009; agency comments begin on Page 7.

I. INTRODUCTION

Proposal

This proposal is for a text amendment to §14-14-7 ROA 1994, the portion of the Subdivision Ordinance that pertains to the vacation, or closing, of public rights of way and public easements. All vacations currently may be approved by the Development Review Board (DRB) subject to a public hearing; however all decisions of the DRB are subject to appeal, which go to the City Council after a hearing and recommendation by the Land Use Hearing Officer (LUHO). The proposed text amendment would require City Council approval for all vacation of public right of way or vacation of a public easement, so that the DRB could only make a recommendation from its public hearing.

Environmental Planning Commission (EPC) Role

The EPC's task is to make a recommendation to the City Council regarding the proposed changes to the Subdivision Ordinance. The City Council is the City's legislative body with the authority to change and adopt ordinances, and the EPC is a recommending body on certain changes that affect Chapter 14 of the City Code [ZONING, PLANNING, AND BUILDING].

Background and Context

The stated purpose of the amendment is to ensure that the City Council has the final discretionary authority for approval of these vacations. Following are comments from the City Council staff regarding the proposed text amendment:

'When the City agrees to vacate a right-of-way or easement it is determining that it should give up a potentially valuable interest in real property. In other cases where the City releases an interest in real property the City Council approves such actions as a matter of policy. State law that allows for the vacation of rights of way provides that if a roadway is not needed for public purposes, there is then a decision as to whether to vacate -- that decision is a policy decision.

The City Council has, by ordinance, elected to transfer its authority to make the determination of when to vacate property to the DRB. There is no legal problem with that delegation. The problem is that the determination to vacate a right-of-way has become a legal issue as to whether the ordinance has been complied with and the policy concerns have arguably dropped out. As you are aware, the City ordinance provides in relevant part:

"The vacation of public rights of way, private ways, or easements, whether by new plat, plat amendment, or request to vacate, shall be approved only when it is determined that:

- (1) The public welfare is in no way served by retaining the way or easement; or
- (2) There is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation; and in addition to divisions (1) or (2) of this division (B):

(3) There is no convincing evidence that any substantial property right is being abridged against the will of the owner of the right."

The DRB considers whether the ordinance terms are met and approves the vacation if they are complied with. The ordinance, however, does not say that rights-of-way or easements shall be vacated if the ordinance terms are met. It says that rights-of-way or easements shall not be vacated if the ordinance terms are not met. The current language of the ordinance recognizes that there may be more to the determination than simply looking at whether the ordinance language has been met. Admittedly, the DRB is charged with considering certain policy issues as it is to weigh "public welfare." But that term is not defined and if the ordinance is adopted it will be a recognition that the City Council should ultimately decide what will benefit "public welfare" along with any other policy considerations.

The DRB is a technical board with expertise in a wide range of specialized areas. It is not a policy making body. If the ordinance is adopted it will be a determination that the application of policy is best left with the Council. The technical determination of compliance with the ordinance requirements will remain with the DRB.

[In] at least one case where the City Council reversed a DRB decision to approve the vacation of an alley[, t]he party seeking the vacation filed an appeal in District Court taking the position that if the ordinance terms were met that the vacation was mandatory. Given the DRB's interpretation of the ordinance there is legal support for such an argument. That appeal was abandoned so the issue was never resolved. The ordinance amendment clarifies the fact that the City is never required to vacate a right-of-way or easement no matter what the factual determination. The final decision is always a policy call and the City Council is the appropriate body to make that call.'

II. ISSUES

Section 3, Minor changes to Section 1

There are three sections to Part §14-14-7 of the Subdivision Ordinance. The last section, §14-14-7-3 TECHNICAL CORRECTIONS, would not be changed by the proposed amendment. The first section, §14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT, has only one change by the proposed amendment, on page 2, Lines 16 and 17. This change would delete a reference to the paragraph at the top of page 2 (B) and add a new reference to section 2 of Part 7, VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS AND EASEMENTS. This section 2 generally provides the requirements and procedures for review of vacation requests, and the addition of the reference for this section 2 into section 1 could be appropriate. However, this would not necessarily need to have the existing reference to the preceding paragraph (B) deleted. That paragraph (B) requires the DRB to evaluate whether the "vacation action will adversely affect contiguous land, any owner of land within the subdivision being vacated, or the interests of the City." [this is also consistent with the New Mexico State Subdivision Statute]. It is recommended that the additional reference language in section 1 be included in the text amendment, but that none of the existing language of this section 1 be deleted.

Section 2 – Vacation not a right

Comments from the City Council staff reference a vacation that was approved by DRB, reversed by City Council such that the vacation was denied, and that action was then appealed to District Court. The appeal took the position that if the existing ordinance terms requiring certain determinations are met (that the public welfare is not served or there is a net benefit to the public welfare, and that no substantial property right is abridged), then the approval of a vacation request should be mandatory. Council staff argues that there may be legal support for this position, so the text amendment proposes an additional paragraph (D) to section 2 to counter this interpretation on page 3, lines 17 - 21:

[(D) The vacation of public rights of way or public easements, whether by new plat, plat amendment, or request to vacate, is a discretionary act by the City and a determination that the requirements of subdivision (B) have been met is a precondition to a vacation but does not create a right to a vacation.]

Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Mailed Notice to Neighborhood Associations

Additional language to the Subdivision Ordinance is proposed with this text amendment regarding vacation procedures, and specifically mailed notice to neighborhood associations on page 4, lines 16 - 18. This is already standard practice for these vacation requests in accordance with the Neighborhood Recognition Ordinance. [§14-14-7 ROA 1994] Planning staff does not object to this clarification to the ordinance, and recommends it be included in the text amendment.

– Required approval by City Council

The major staff concern with the proposed text amendment is the requirement for City Council approval for all vacations of public right of way or public easements. Clearly the City Council has the authority to amend City ordinances, and to require City Council approval of these vacations if the Council determines these are to be 'policy' decisions. However, when the DRB was established almost 30 years ago, the City Council at that time determined that these were more of a technical decision, consistent with the subdivision process. For instance, most vacation requests for public easements are either Public Utility Easements or Public Drainage Easements. Through the planning/ vacation process the affected agencies determine what kind and size of easements are needed to serve both the function (i.e. utility or drainage) of the easement as well as to adequately serve the adjacent property. Likewise with public right of way, most vacation requests involve the size of the right of way and whether it is needed to serve adjacent property; these decisions are generally technical decisions. Regarding what would be a 'policy' decision would be something like the Long Range Roadway System, where City Council members help decide what and where the major roadways are to be, while the DRB considers the technical design such as whether the minimum right of way is maintained.

Comments from the City Council staff reference the release of interest in real property as requiring City Council approval, as a matter of policy. However this only applies to real property having a value of more than \$10,000; real property having a value less than that may be determined to be unessential for a municipal purpose by the administration, and this is generally the case with the vast majority of vacations.

As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process.

III. APPLICABLE ORDINANCES, PLANS AND POLICIES

The applicable ordinance (Article 14 – Subdivision Regulations of Chapter 14 –Zoning, Planning and Building) is the subject of this proposed text amendment.

IV. CONCLUSION

The proposed text amendments regarding additional references and findings for DRB public hearings on vacations of public right of way and public easements could help clarify the vacation process, particularly to note that the City is not required to approve a vacation even if certain pre-conditions of the existing Subdivision Ordinance have been met.

The proposed amendment to require City Council approval for vacation of public rights of way and public easements, however, would put approximately 60 or more such applications each year into a category of process more complex than a major subdivision request, as well as most site development plans and zone map amendments.

FINDINGS- 09EPC 40060, December 17, 2009-Text Amendment

1. Part §14-14-7 ROA 1994 of the Subdivision Ordinance provides regulations and procedures for the vacation, or closing, of public rights of way, private ways, and easements.
2. The purpose of the proposed text amendment is to change the process for vacating public rights of way and public easements to ensure City Council approval.
3. Other portions of the proposed text amendment would codify that the approval of a vacation request is a discretionary action by the City, no matter if the existing Subdivision Ordinance pre-conditions for approval are met, plus the amendment would add references for [existing] procedures including notification of neighborhood associations.
4. The vacations of public right of way and public easements are generally technical decisions to determine if minimum subdivision standards are maintained, and thus that the public welfare is served.
5. The Development Review Board holds public hearings for vacations of public right of way and public easements consistent with public hearings for subdivisions, site development plans, and zone map amendments; this includes requiring neighborhood association notification, printing a legal advertisement in the local newspaper, posting of signs, and mailed notice, along with distribution to other City departments for review and comment.
6. The City of Albuquerque processed 77 applications for such vacations in 2007, 64 applications in 2008, and 47 applications to-date in 2009.
7. Requiring City Council approval for vacations of public right of way and public easements would put 50 - 70 such applications each year into a category of process more complex than a subdivision request as well as most site development plans and zone map amendments.

RECOMMENDATION

That a recommendation of **CONDITIONAL APPROVAL of O-09-91/ Text Amendments to the Subdivision Ordinance Part §14-14-7 be forwarded to the City Council based on the preceding Findings and subject to the following Conditions of Approval.**

CONDITIONS OF APPROVAL- 09EPC 40060, December 17, 2009-Zoning Code Text Amendments

1. That the existing language in Section 1 of Part §14-14-7 of the Subdivision Ordinance be retained [not deleted] and that the proposed new language in Section 1 [page 2, line 17] be included in the text amendment.
 2. That new paragraph (C) in Section 2 of Part §14-14-7 of the Subdivision Ordinance [page 3, lines 12 -16] not be included not be included in the text amendment, and that new paragraph (D) in Section 2 [page 3, lines 17 -21] be included in the text amendment and re-lettered as paragraph (C).
 3. That all other changes on page 3 not be included in the text amendment.
 4. That all other changes on pages 5 and 6 not be included in the text amendment.
-



Jack Cloud, AICP
Chair, Development Review Board

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Code Services

No comment.

Office of Neighborhood Coordination

City Wide

11/19/09 – was published in the “Neighborhood News” newsletter and is online in the Newsletter
11/30/09 - will be e-mail to Neighborhood Representatives - siw

Long Range Planning

CITY ENGINEER

Transportation Development Services

Findings

- Currently, the process for Vacation of Public Rights of Way, Private Ways and Easements is clearly defined in 14-14-7 of the Subdivision Regulations.
- Currently, City Council has final discretionary authority to approve the vacation of public rights-of-way as outlined in the Subdivision Regulations but has delegated the administration of this action to the Development Review Board (DRB). However, a DRB determination can be appealed to City Council who ultimately would make a final decision regarding the DRB determination.

Recommendation

- Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

Traffic Engineering Operations

Hydrology

- The Hydrology Section objects to the ordinance revision as written based on the following reasons:
 1. Public drainage easements and public utility easements should be established or vacated for technical reasons. The DRB is the technical review board.
 2. The appeal process is not clearly addressed.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance Operations (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

Conditions of approval for the proposed Text Amendment to the Subdivision Ordinance shall include:

- a. Maintain the current procedures for Vacation of Public Rights of Way, Private Ways and Easements as defined in 14-14-7 of the Subdivision Regulations.

WATER UTILITY AUTHORITY

Utility Services

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

PARKS AND RECREATION

Planning and Design

Open Space Division

Open Space has no adverse comments

City Forester

POLICE DEPARTMENT/Planning

No crime prevention of CPTED comment to the proposed text amendment at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

NO ADVERSE COMMENTS

FIRE DEPARTMENT/Planning

TRANSIT DEPARTMENT

Adjacent and nearby routes	N/A
Adjacent bus stops	N/A
Site plan requirements	None
Large site TDM suggestions	N/A
Other information	None.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

This amendment will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

No comments.

City of Albuquerque



DEVELOPMENT/ PLAN REVIEW APPLICATION

<p>SUBDIVISION</p> <p>..... Major Subdivision action</p> <p>..... Minor Subdivision action</p> <p>..... Vacation</p> <p>..... Variance (Non-Zoning)</p> <p>SITE DEVELOPMENT PLAN</p> <p>..... for Subdivision</p> <p>..... for Building Permit</p> <p>..... Administrative Amendment (AA)</p> <p>..... IP Master Development Plan</p> <p>..... Cert. of Appropriateness (LUCC)</p> <p>STORM DRAINAGE (Form D)</p> <p>..... Storm Drainage Cost Allocation Plan</p>	<p>Supplemental form</p> <p>S Z</p> <p>V</p> <p>P</p> <p>D</p> <p>L A</p>	<p>ZONING & PLANNING</p> <p>..... Annexation</p> <p>..... County Submittal</p> <p>..... EPC Submittal</p> <p>..... Zone Map Amendment (Establish or Change Zoning)</p> <p>..... Sector Plan (Phase I, II, III)</p> <p>..... Amendment to Sector, Area, Facility or Comprehensive Plan</p> <p><input checked="" type="checkbox"/> Text Amendment (Zoning Code/Sub Regs)</p> <p>..... Street Name Change (Local & Collector)</p> <p>APPEAL / PROTEST of...</p> <p>..... Decision by DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals</p>
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PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any): COA Planning Department PHONE 424-3250
3250
 ADDRESS: 1/2 Current Planning Div. 600 2nd St NW FAX 424-3339
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

APPLICANT: COA City Council PHONE 768-3100
 ADDRESS: One Civic Plaza NW FAX 768-3227
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

Proprietary interest in site: _____ List all owners: _____

DESCRIPTION OF REQUEST: Text amendment to Subdivision Ord. per U-09-91

Is the applicant seeking incentives pursuant to the Family Housing Development Program? Yes No

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No: city-wide Block: _____ Unit: _____

Subdiv/Addn/TBKA: _____

Existing Zoning: _____ Proposed zoning: _____ MRGCD Map No: _____

Zone Atlas page(s): _____ UPC Code: _____

CASE HISTORY:
 List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX, Z, V, S, etc.) _____

CASE INFORMATION:

Within city limits? Yes Within 1000FT of a landfill? _____

No. of existing lots: _____ No. of proposed lots: _____ Total area of site (acres): _____

LOCATION OF PROPERTY BY STREETS: On or Near: city wide

Between: _____ and _____

Check-off if project was previously reviewed by Sketch Plat/Plan or Pre-application Review Team Date of review: _____

SIGNATURE Carol Toffaleti DATE 11/3/09
 (Print) Carol Toffaleti Applicant Agent

FOR OFFICIAL USE ONLY

<ul style="list-style-type: none"> <input type="checkbox"/> INTERNAL ROUTING <input checked="" type="checkbox"/> All checklists are complete <input checked="" type="checkbox"/> All fees have been collected <input checked="" type="checkbox"/> All case #s are assigned <input checked="" type="checkbox"/> AGIS copy has been sent <input checked="" type="checkbox"/> Case history #s are listed <input type="checkbox"/> Site is within 1000ft of a landfill <input type="checkbox"/> F H D P density bonus <input checked="" type="checkbox"/> F H D P fee rebate 	<p style="text-align: right;">Form revised 4/07</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 40%;">Application case numbers</td> <td style="width: 10%;">Action</td> <td style="width: 10%;">SF</td> <td style="width: 40%;">Fees</td> </tr> <tr> <td><u>09122</u></td> <td><u>A50</u></td> <td><u>2</u></td> <td>\$ <u>100</u></td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>Total</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>\$ <u>100</u></td> </tr> </table> <p>Hearing date <u>12/17/09</u></p> <p><u>Sandy Handley</u> <u>11/03/09</u> Planner signature / date</p> <p>Project # <u>1004831</u></p>	Application case numbers	Action	SF	Fees	<u>09122</u>	<u>A50</u>	<u>2</u>	\$ <u>100</u>	_____	_____	_____	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____	\$ _____	_____	_____	_____	Total	_____	_____	_____	\$ <u>100</u>
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FORM Z: ZONE CODE TEXT & MAP AMENDMENTS, PLAN APPROVALS & AMENDMENTS

ANNEXATION (EPC08)

- ___ Application for zone map amendment including those submittal requirements. See below. Annexation and establishment of zoning must be applied for simultaneously.
 - ___ Petition for Annexation Form and necessary attachments
 - ___ Zone Atlas map with the entire property(ies) clearly outlined
NOTE: The Zone Atlas must show that the site is in County jurisdiction, but is contiguous to City limits.
 - ___ Letter briefly describing, explaining, and justifying the request
NOTE: Justifications must adhere to the policies contained in "Resolution 54-1990"
 - ___ Letter of authorization from the property owner if application is submitted by an agent
 - ___ BCC Notice of Decision for City Submittals
 - ___ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts.
 - ___ Sign Posting Agreement
 - ___ TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
 - ___ List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

- SDP PHASE I - DRB CONCEPTUAL PLAN REVIEW (DRBPH1)** (Unadvertised)
- SDP PHASE II - EPC FINAL REVIEW & APPROVAL (EPC14)** (Public Hearing)
- SDP PHASE II - DRB FINAL SIGN-OFF (DRBPH2)** (Unadvertised)

- ___ Copy of findings from required pre-application meeting (needed for the DRB conceptual plan review only)
- ___ Proposed Sector Plan (30 copies for EPC, 6 copies for DRB)
- ___ Zone Atlas map with the entire plan area clearly outlined
- ___ Letter briefly describing, explaining, and justifying the request
- ___ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (for EPC public hearing only)
- ___ TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form (for EPC public hearing only)
- ___ Fee for EPC final approval only (see schedule)
- ___ List any original and/or related file numbers on the cover application

Refer to the schedules for the dates, times and places of DRB and EPC hearings.

Your attendance is required.

AMENDMENT TO ZONE MAP - ESTABLISHMENT OF ZONING OR ZONE CHANGE (EPC05)

- ___ Zone Atlas map with the entire property clearly outlined
- ___ Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980".
- ___ Letter of authorization from the property owner if application is submitted by an agent
- ___ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
- ___ Sign Posting Agreement
- ___ TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- ___ Fee (see schedule)
- ___ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO SECTOR DEVELOPMENT MAP (EPC03)

AMENDMENT SECTOR DEVELOPMENT, AREA, FACILITY, OR COMPREHENSIVE PLAN (EPC04)

- ___ Proposed Amendment referenced to the materials in the Plan being amended (text and/or map)
- ___ Plan to be amended with materials to be changed noted and marked
- ___ Zone Atlas map with the entire plan/amendment area clearly outlined
- ___ Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980" (Sector Plan map change only)
- ___ Letter of authorization from the property owner if application is submitted by an agent (Map change only)
- ___ Letter briefly describing, explaining, and justifying the request
- ___ Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (sector plans only)
- ___ TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
- ___ Sign Posting Agreement
- ___ Fee (see schedule)
- ___ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO ZONING CODE OR SUBDIVISION REGULATORY TEXT (EPC07)

- Amendment referenced to the sections of the Zone Code/Subdivision Regulations being amended
- Sections of the Zone Code/Subdivision Regulations to be amended with text to be changed noted and marked
- Letter briefly describing, explaining, and justifying the request
- Fee (see schedule)
- ___ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Carol Tufford
Applicant name (print)
Carol Tufford 11/3/09
Applicant signature / date



Form revised APRIL 07

- Checklists complete
 - Fees collected
 - Case #s assigned
 - Related #s listed
- Application case numbers: 09EPC - 40060 Sandy Handley 11/03/09
Planner signature / date
Project # 100-49-31

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Richard Dineen, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-09-91
DATE: October 9, 2009

The attached ordinance was introduced by the City Council on October 7, 2009. We are requesting that you submit this text amendment to the Zoning Code to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to change the process for vacating public rights-of-way to ensure Council approval.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
File O-09-91

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**CITY of ALBUQUERQUE
EIGHTEENTH COUNCIL**

COUNCIL BILL NO. 0-09-91 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

ORDINANCE

1
2 **AMENDING CHAPTER 14, ARTICLE 14, PART 7 ROA 1994 TO CLARIFY THE**
3 **PROCESS FOR VACATING PUBLIC RIGHTS-OF-WAY; PLACING THE FINAL**
4 **DISCRETIONARY AUTHORITY TO APPROVE THE VACATION OF A PUBLIC**
5 **RIGHT OF WAY OR EASEMENT IN THE CITY COUNCIL.**

6 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
7 **ALBUQUERQUE:**

8 **SECTION 1. Chapter 14, Article 14, Part 7 ROA 1994 is amended to read**
9 **as follows:**

10 **§ 14-14-7-1 RESUBDIVISION OR AMENDMENT OF PREVIOUS PLAT.**

11 **(A) Any final plat recorded in the office of the County Clerk may be**
12 **amended or vacated (voided) either:**

13 **(1) by recording a new subdivision plat (a resubdivision)**
14 **covering all or a portion of the previous plat sought to be amended or vacated**
15 **or by recording an amended plat covering such area. In either case, the new**
16 **plat or amended plat shall be processed as an original subdivision action**
17 **under Part 3 of this article and recorded as specified therein. If the new or**
18 **amended plat falls within the definition of minor subdivision, contained in §**
19 **14-14-1-6 of this article, it shall be processed as such; or**

20 **(2) upon a finding at a public hearing by the Development**
21 **Review Board that the plat was obtained by misrepresentation or fraud, the**
22 **plat may be vacated by the Development Review Board. A statement**
23 **approved by the Development Review Board shall be filed in the office of the**
24 **County Clerk. The County Clerk shall mark the original plat with the words**
25 **"VACATED" or "PARTIALLY VACATED" and refer on the plat to the volume**
26 **and page on which the statement of vacation is recorded.**

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1 (B) In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 (C) In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 (D) The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 (E) Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 (F) If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of ~~[division (B) of this~~
17 ~~section]~~[§ 14-14-7-2] shall be followed as to the vacations of right of way.

18 § 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS
19 AND EASEMENTS.

20 (A) Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 (1) The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 (2) The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division ~~[(E)]~~[G] of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

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1 (B) The vacation of public rights of way, private ways, or
2 easements, whether by new plat, plat amendment, or request to vacate, shall
3 be approved only when it is determined that:

4 (1) The public welfare is in no way served by retaining the
5 way or easement; or

6 (2) There is a net benefit to the public welfare because the
7 development made possible by the vacation is clearly more beneficial to the
8 public welfare than the minor detriment resulting from the vacation; and in
9 addition to divisions (1) or (2) of this division (B):

10 (3) There is no convincing evidence that any substantial
11 property right is being abridged against the will of the owner of the right.

12 [(C) Public rights of way and public easements may only be
13 vacated by action of the City Council following a determination by the DRB
14 that the requirements of subsection (B) have been met. Private ways and
15 private easements are vacated by action of the DRB and do not require City
16 Council action.]

17 [(D) The vacation of public rights of way or public easements,
18 whether by new plat, plat amendment, or request to vacate, is a discretionary
19 act by the City and a determination that the requirements of subdivision (B)
20 have been met is a precondition to a vacation but does not create a right to a
21 vacation.]

22 [(G)][(E)] [In making a determination that the requirements of
23 subsection (B) have been met with respect to a public right of way or public
24 easement the Development Review Board may recommend that the City
25 Council only approve the vacation if][In approving the vacation the
26 Development Review Board may require that] some or all of the public rights
27 of way or easements [are][be] retained by the appropriate governmental entity
28 as shown on the original plat.

29 [(H)][(F)] [In the case of public rights of way or easements the
30 City Council and in the case of private rights of way or easements] [¶][t]he
31 Development Review Board may require that curb and gutter be placed, at the
32 expense of the applicant, so as to effectively halt the vacated area[’s] being
33 used as public way. It may also be necessary to remodel or otherwise

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1 reconstruct existing public improvements in order to solve problems created
2 by the vacation, and the [City Council or] Development Review Board may so
3 require. Costs involved shall be borne by the applicant.

4 ~~[(E)]~~[(G)] Procedure.

5 (1) In all cases where public right of way, private ways, or
6 easements are sought to be vacated, whether by new subdivision, plat
7 amendment, or request to vacate, the following procedures shall be followed
8 in addition to the procedures specified in Part 3 of this article; however, the
9 following procedure may be eliminated for the requested vacation of private
10 easements if the Planning Director is satisfied that all the benefitted and
11 burdened parties are clearly and completely defined and all agree to the
12 vacation.

13 (2) Notice and Request for Comment.

14 (a) The Planning Director shall mail letters to
15 franchised utilities and to the owner of record of all lots adjacent to the right of
16 way, private way, and/or easement to be vacated [and to any neighborhood
17 association known by the Office of Neighborhood Services to cover all or part
18 of the right of way, private way, and/or easement sought to be vacated],
19 informing them of the nature of the proposed vacation, and notifying them of
20 the date, time, and place of the public hearing by the Development Review
21 Board on the proposed vacation. For notifying property owners, the name and
22 address of the owners shown in the records of the County Assessor shall be
23 used.

24 (b) Prior to the hearing, the Planning Director shall
25 request interested city departments and other agencies to comment on the
26 application. Comments received shall be submitted to the Development
27 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
28 Control Authority and/or the Middle Rio Grande Conservancy District shall be
29 requested before vacation of any drainage easement or public right of way
30 within their respective areas of jurisdiction.

31 (c) If the public right of way, private way, and/or
32 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
33 vehicular or pedestrian traffic], the applicant shall post and maintain one or



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1 more signs, as provided and where instructed by the Planning Director, at
2 least 15 days before the date of the hearing. The applicant is responsible for
3 removing such signs within five days after the hearing is completed. Failure
4 to properly post signs is grounds for deferral of the request. No one except
5 the applicant, the agent of the applicant, or the city shall remove or tamper
6 with any such required sign during the period it is required to be maintained
7 under this division (c).

8 (d) Public notice in a newspaper of general
9 circulation in the city shall be published at least 15 days before date of the
10 hearing; the notice shall indicate the location of the proposed vacation, where
11 a map of the proposed vacation may be viewed, and information on the date,
12 time, and place of the hearing.

13 (3) Hearing and Decision.

14 (a) [A determination by the Development Review
15 Board with respect to a public right of way or easement as to whether the
16 requirements of subsection B have been met] or [A][a] decision [by the
17 Development Review Board with respect to a private right of way or easement
18 as to whether [on city approval of vacations][a vacation shall be approved]
19 shall be made [by the Development Review Board] at a public hearing.
20 [Approval or disapproval shall be given][Any decision shall be] in
21 writing[, expressing the reasons and any conditions,] and a copy shall be sent
22 to the applicant and any other persons who have indicated interest in the
23 matter. [For a public right of way or easement the Development Review Board
24 may recommend to the City Council conditions that should be imposed if a
25 vacation is approved. For a private right of way or easement the Development
26 Review Board may impose conditions if a vacation is approved.]

27 [(b) A DRB determination that the requirements of
28 subsection B have not been met for a public right of way or easement shall be
29 dispositive as to whether a vacation should be approved subject to appeal to
30 the City Council on that issue. If on appeal the City Council reverses a DRB
31 determination and finds that the requirements of subsection B have been met
32 the City Council shall at the same time exercise its discretion and determine
33 whether the public right of way or easement ~~DRB~~ should be vacated.

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1 (c) A DRB determination that the requirements of
2 subsection B have been met for a public right of way or easement shall be
3 forwarded to the City Council to determine if the vacation shall occur. If the
4 determination by the DRB that the requirements of subsection B have been
5 met is appealed to the City Council that issue shall be considered by the City
6 Council at the same time it exercises its discretion to determine whether the
7 public right of way or easement ~~DRB~~ should be vacated.]

8 [(b)][d] Approval of vacation of public right of way,
9 private ways or easements shall be conditional upon the following steps being
10 accomplished by the applicant or governmental entity within a time period set
11 by the [City Council or] Development Review Board, in no case exceeding one
12 year. If not so accomplished, the decision to vacate is voided.

13 1. The applicant shall present to the city a
14 final plat incorporating the vacated right of way into adjacent lots, which plat
15 the city shall record with the County Clerk; or

16 2. The appropriate governmental entity shall
17 record a final plat if the [City][~~Development Review Board~~] finds that it is in the
18 public interest for the governmental entity to own the vacated public right of
19 way as a lot or if adjacent property owners do not desire the vacated parcel.

20 3. The applicant shall secure the installing or
21 removing and disposing of such improvements, as are required by the [City
22 Council or] Development Review Board in order to remodel or otherwise
23 reconstruct existing public improvements to appropriately provide for the
24 proposed uses. Costs involved shall be borne by the applicant.

25 (4) Disposition of Right-of-Way.

26 (a) Normally the owners of land adjacent to the
27 vacated public right of way have an opportunity to obtain title to the land, for
28 some consideration, from the owner (normally the city).

29 (b) Immediately after a city decision to vacate platted
30 public right of way becomes final, if such land is proposed to be disposed of
31 by the city, the City Property Manager shall notify each owner of adjacent
32 property by certified letter. The certified letter shall notify each adjacent
33 landowner of the opportunity to purchase from the city one-half of the width of

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1 the vacated right of way contiguous to the landowner's property, subject to
2 any conditions or requirements stated in the decision to vacate. If an adjacent
3 landowner fails to notify the city Property Manager in writing, within 30 days of
4 the date of the receipt slip of the certified letter, that he or she intends to
5 purchase the adjacent public right of way, the city may dispose of the vacated
6 right of way in any manner which the city, in its discretion, deems appropriate.

7 § 14-14-7-3 TECHNICAL CORRECTIONS.

8 (A) Technical corrections to approved, but as yet unrecorded, final
9 plats shall be approved by the Development Review Board before being
10 recorded with the County Clerk.

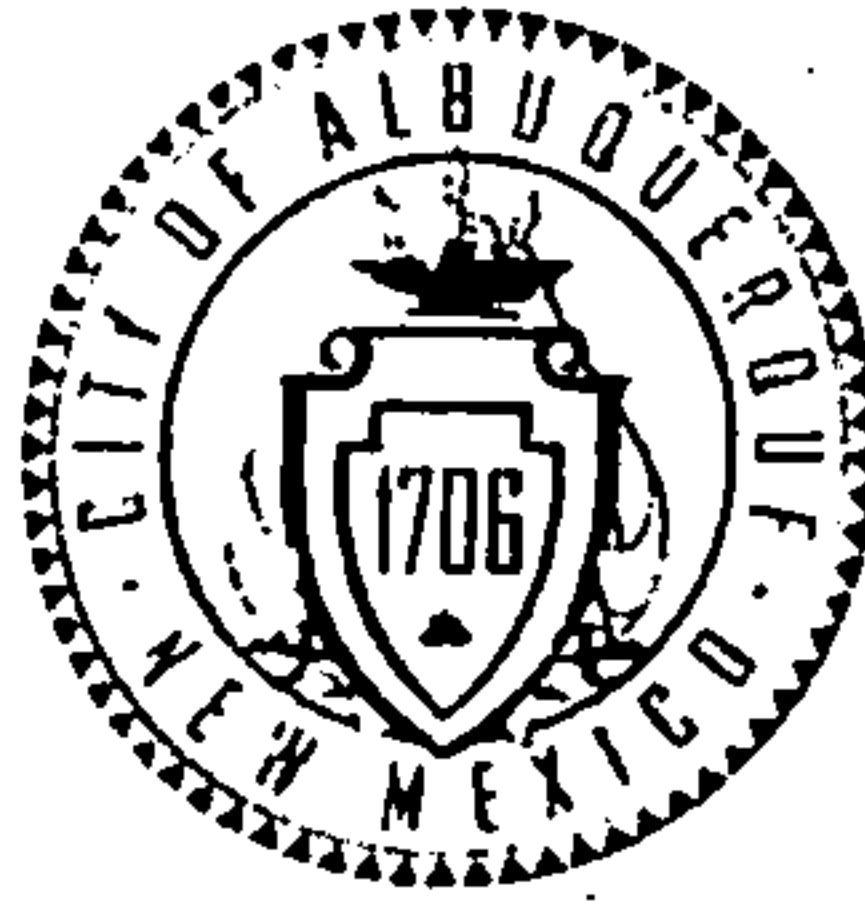
11 (B) Technical corrections to recorded final plats shall be made by
12 a correction plat approved by the Development Review Board. The plat shall
13 include only the area affected by the correction and shall clearly indicate the
14 correction. Correction plats for technical corrections shall be recorded in the
15 same manner as a final plat. See § 14-14-3-6 of this article.

16 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word
17 or phrase of this ordinance is for any reason held to be invalid or
18 unenforceable by any court of competent jurisdiction, such decision shall not
19 affect the validity of the remaining provisions of this ordinance. The Council
20 hereby declares that it would have passed this ordinance and each section,
21 paragraph, sentence, clause, word or phrase thereof irrespective of any
22 provision being declared unconstitutional or otherwise invalid.

23 SECTION 4. COMPILATION. This ordinance shall be incorporated in
24 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
26 days following publication by title and general summary.

27
28



City of Albuquerque
Planning Department
Current Planning Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Date: December 18, 2009

OFFICIAL NOTIFICATION OF DECISION

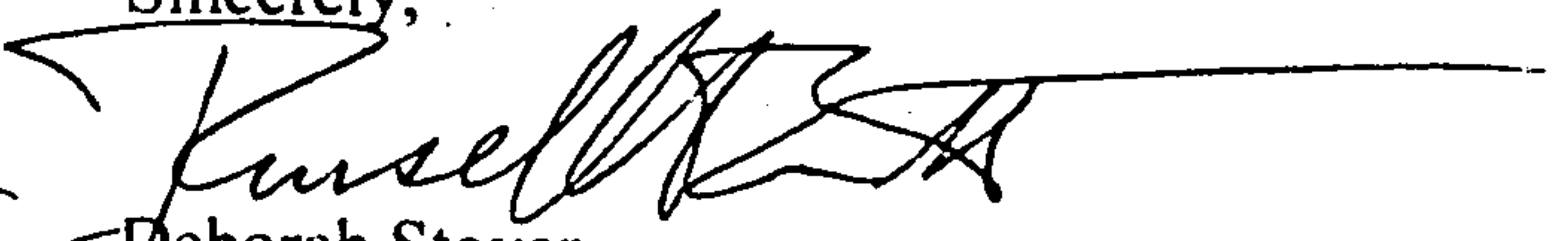
FILE: **Project # Project# 1004831**
09EPC-40060 TEXT AMENDMENT TO
SUBDIVISION REGULATIONS

City of Albuquerque, City Council
P.O. Box 1293
Albuquerque, NM 87103

LEGAL DESCRIPTION: CITY OF
ALBUQUERQUE CITY COUNCIL request(s)
recommendation on the referenced/ above
action(s) for amendment to §14-14-7 ROA 1994
(the Subdivision Ordinance), requiring approval of
Vacation of Public Rights of Way and Public
Easements to be by the City Council. Jack Cloud,
Staff Planner

On December 17, 2009 the Environmental Planning Commission voted that **NO RECOMMENDATION** be forwarded to City Council in the matter of Project 1004831 / 09EPC-40060, a text amendment to Subdivision Ordinance.

Sincerely,


For Deborah Stover
Planning Director

DS/JC/ma

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102
Lynne Anderson, 504 Camino Espanol NW, Albuquerque, NM 87107
Katherine Martinez, 722 Marquette NW, Albuquerque, NM 87102
Daniel Hernandez, 4333 Pan American Freeway, Albuquerque, NM 87107
Jean Moore, P.O. Box 1945, Albuquerque, NM 87103
Keli Krueger, 5571 Midway Park Place NE, Albuquerque, NM 87109

Approved 1/21/10

2. Project# 1004831
09EPC-40060 TEXT AMENDMENT TO
SUBDIVISION REGULATIONS

CITY OF ALBUQUERQUE CITY COUNCIL request(s)
recommendation on the referenced/ above action(s) for
amendment to §14-14-7 ROA 1994 (the Subdivision
Ordinance), requiring approval of Vacation of Public Rights
of Way and Public Easements to be by the City Council.
Jack Cloud, Staff Planner

MEMBERS OF COMMISSION PRESENT:

Laurie Moye, Chair
Doug Peterson, Vice-Chair
Jonathan Siegel
Joe Yardumian
Len Malry
Michael Dickson
Jamie Jett-Walker (Arrived late.)

STAFF PRESENT

Jack Cloud, Planning Department
Bruce Thompson, Council Services
Kevin Curran, Legal Department

PERSONS PRESENT TO SPEAK IN OPPOSITION OF THIS REQUEST:

Lynne Anderson, 504 Camino Espanol NW, Albuquerque, NM 87107
Katherine Martinez, 722 Marquette NW, Albuquerque, NM 87102
Daniel Hernandez, 4333 Pan American Freeway, Albuquerque, NM 87107
Jean Moore, P.O. Box 1945, Albuquerque, NM 87103
Keli Krueger, 5571 Midway Park Place NE, Albuquerque, NM 87109

MR. CLOUD: This is a text amendment from the City Council. Bruce Thompson, Staff to City Council, is here to speak to the request.

CHAIR MOYE: Ok. Would he like to give us a presentation first or would you like to go first? Mr. Cloud, you're up. Why don't you present to us.

MR. CLOUD: Thank you, Madam Chairman, Commissioners. This is a request for a text amendment to the Subdivision Ordinance regarding vacations of public rights of way and public easements. As you know, City Council is the legislative body for the City of Albuquerque, so they write our laws. And a little bit of history – background from 1980 – what's called the Development Review Board, I currently am staff to the Development Review Board. They created the Subdivision Ordinance such that many of the things that used to be approved by City Council were approved by the Development Review Board – subdivisions and vacations. City Council maintains the final administrative authority through the appeal process, but if there were no appeal a decision could be made at the DRB level, similar to what also happened with the Planning Commission – at one time all zone changes had to

be approved by City Council. Eventually through home rule/ state statutes, they created the Zoning Ordinance such that you have authority to approve a zone change. If it's appealed, then the City Council is the final administrative authority.

This is a proposal to have vacations of public rights of way and public easements go back to City Council for final approval. Part of the thinking of this is that this might be more of a policy decision than a technical decision. Again, the DRB was created to address what are basically technical issues – subdivisions, creation of streets, infrastructure that's needed, those types of things.

Staff would suggest that this is still basically a technical decision and that the appeal process will allow for those situations when there may be more of a policy decision to be made. There are situations when often times vacation of right of way just involves a couple of hundred square feet of right of way. It's a very small amount of land area. We may have an encroachment of a building or we may need to adjust a right of way line and these types of things are generally pretty technical, and that's the bulk of what these types of vacations actions are. We would suggest that it really does not require a text amendment to have the City Council make all those decisions.

There are some things in here that we do recommend approval of – recommend that you recommend approval on – you being a recommending body on this. A new reference in Section 1 of the Subdivision Ordinance that would refer to our procedures, we do recommend that that be included. And then another issue had come up on an appeal of a vacation. It actually went to court. I understand that the case was dropped, but the way the Subdivision Ordinance reads now, there's that word "shall" in there. We always have to be a little cautious, I think, when we say "shall" in an ordinance. The particular appellant in this case said, "Well, if we meet these decisions, you *shall* approve our vacation." There's a proposed new paragraph which would say even though you may meet certain predetermined requirements, that doesn't mean that you have a right to a vacation. So this would make the ordinance really clear that this is a discretionary act by the City and we believe that that is probably a good idea to go ahead and insert that in the ordinance.

That's pretty much it unless you have questions for me, and Mr. Thompson is here.

CHAIR MOYE: Mr. Thompson, are you going to come up and talk to us about this or are you just here to answer questions?

MR. THOMPSON: I'm prepared to make a presentation with respect to a couple of different issues.

CHAIR MOYE: Ok. Why don't you do that and then we'll ask questions of both of you, if that's alright, Mr. Cloud.

MR. THOMPSON: First let me say that I want to talk about a couple of the technical issues that I've dealt with as staff and then I have a letter from Councilor Benton – he was unable to be here – that he wanted me to read into the record, and I have copies of that for staff.

CHAIR MOYE: Ok. Just for the record, Mr. Thompson, you are the City Council attorney. Is that correct?

MR. THOMPSON: I am a Senior Policy Analyst for the – while I am an attorney, that's not my formal title.

CHAIR MOYE: Ok; Senior Policy Analyst for the City Council. Welcome, Mr. Thompson.

MR. THOMPSON: Thank you, Chair. The first part has to do with a technical change. This goes back to a matter back in 1974, there was provision with respect to re-subdivision and plat amendment, which was codified as Section 7-16-8 Division A. There was also provision for vacations of right of way and easement, which was in the same section, 7-16-8, but it was Division B. And what it previously said was that if you are doing a re-subdivision or plat amendment under 7-16-8, A, it had the same effect of vacating a right of way or easement and to go through and use the process of 7-16-8, B. So, Section A referred to part B. The whole thing was recodified when the City Ordinance was recodified back in 1994. And 7-16-8, A, dealing with re-subdivision and plat amendment was recodified as 14-14-7-1. Division B was recodified as 14-14-7-2. And what it should have said was, if you are doing a re-subdivision or plat amendment under 7-1 and it turns out that you're doing a vacation of right of way or easement, look to the provisions of 14-14-7-2 which deal with process. It will be the same process that existed under the '74 codification. Unfortunately, the language was never changed. So, what it says under 14-14-7-1, is that if you are doing a re-subdivision or plat amendment, and it has the effect of vacating a right of way or easement, it still says look at Division B. Well, Division B that does exist has nothing to do with the vacation of a right of way or easement. So, what this does is take out referring the reference to Division B and says look at 14-14-7-2. The request of staff is leave in also the reference to Division B. I submit that that doesn't make a lot of sense. This is really a correction of something that should have been fixed fifteen years ago.

The second thing is the staff report says that the vacation is not a matter of right; it's simply a clarification of what the law is. It's much more than that because if you look at the – at least the vacations of right of way that have come to City Council, and those are the one that we see, the Findings of the DRB is that if you meet certain standards, you have a right to have the right of way vacated. Those are the Findings that we get at City Council. And the law is that no matter how the law is written, if the body charged with interpreting the law, in this case the DRB, reads it a certain way for a long enough period of time, that becomes the law, whether that was intended or not. And I think that there's a very strong argument that right now, that an argument can be made, that if you meet those certain standards about not harming anyone's rights and certain other standards, you have a right to a vacation, which I don't think was intended. I don't think that's what the law should be. These are City owned rights and the City should make the determination as a policy matter of whether it wants to give up those rights of way and easements. What the law says is that if it's been interpreted a certain way for a long time, the only way to fix that is with a code amendment. That's what the Supreme Court has said specifically in the Hinkle case. This is asking for a code amendment to clarify what should be the law; that there is no absolute right to a vacation of a right of way or easement even if you meet those basic standards that are set out in the code.

Third thing is, as a technical matter, we put in language that said that if you're going to vacate a right of way or easement, you give notice to the neighborhood association. The response is we already do it even if it's not required. All we're asking for is let's make it a requirement in case someone – a neighborhood association doesn't get noticed, no one can come back and argue well, you didn't have a right to it. Just because we didn't give you notice, you have no right to complain. We think the neighborhood associations should have notice.

There are a couple of comments that were made of why this wasn't necessary. The first one was this can be corrected with an appeal. That's not really right. If this is purely a policy decision, or the bottom line is that the policy decision with respect to vacate a right of way or easement, the standards

for appeal, of reversing a body that has made a decision, are very narrow. You have to show that there was an error in applying City plans or law; that there was an error with respect to stated facts or that the board acted arbitrarily or capriciously. But that doesn't meet the standard of what is the policy with a particular decision of the DRB. And arguably, the Council couldn't reverse a DRB decision strictly because the Council disagrees with the policy,

The second argument is there's too much paperwork involved in letting the Council decide it. If it's true that adequate notice is being given, that document is prepared that shows what is being done. The second thing is under state law when the DRB makes a decision they are required to come up with Findings with respect to the justification for their decision. That's all that has to go to the Council. The notice of what's being done, the findings of the DRB as to why they think this is appropriate. Those are already requirements. It would then go to LUPZ. Most of the time – 99% of the time, it would go through LUPZ, it would go on the consent calendar for the Council. No specific, great actions would have to be taken. Those are the technical issues that I wanted to talk about that I think why this is important. Councilor Benton did want me to read into the record his letter and we have copies for each of the commissioners. My copy has larger print because...

CHAIR MOYE: Does staff have a copy? Ok.

MR. THOMPSON (Letter from Councilor Benton): I regret that due to business in Santa Fe I am unable to attend your hearing today when you'll be considering a text amendment to the Zoning Code that I am sponsoring, 09-91. Bruce Thompson is familiar with the legal issues involved and I have seen the technical comments from planning staff. I want to convey the policy reasons behind the proposed legislation. These have to do with long range planning of land use, transportation, and storm drainage. I first discussed the vacations concerning this with Mr. Thompson after two vacations were approved in Council District 3. One was an alley vacation in the southwest part of the Downtown 2010 Plan area. Surrounded by surface parking lots, this alley was apparently vacated for the convenience of those parking lot owners. The problem is future redevelopment of the block. The goal of the sector plan may be impeded by the lack of an alley. Rear access for automobile traffic and parking is the preferred scheme in all our modern urban corridor and sector plans in downtown, Nob Hill, and elsewhere. As you know this is in order to maintain a safe and vibrant pedestrian environment on the street sidewalk side of the development. A consistent system of alleys is beneficial for this and other service purposed and should not be interrupted as a simple administrative matter without approval from the City's policy making body, the City Council.

The second example was a vacation of an innocuous looking stub street in the Old Town area. Shortly after its approval, a council transportation consultant was working on proposed improvement on the Central Avenue, Rio Grande Blvd. intersection and associated corridors. The consultants inquired about the possibility of utilizing the stub street to create a new connector reliever street parallel to the Central corridor. Unfortunately that option had been precluded and/or made to expensive by the recent vacation. Additionally, drainage is an area wide issue that affects individual localities; the Martineztown and Barelvas flooding being prime examples. What may seem like a simple vacation of a locally unnecessary drainage or storm sewer easement may preclude future planning and improvement to area wide drainage issues. In most vacation cases, after DRB technical approval, Council staff would simply review DRB findings and the item would end up going on the City Council consent agenda. However, councilors and their staff are there to hear constituent concerns and have a unique understanding of their district's long standing goals and needs. The legislation would provide a final check and opportunity to vet any planning concerns that might not be in the

forefront of technical staff's considerations when they review a vacation application. Best practices, whether in complete streets, sustainable drainage schemes or land use are evolving. Our technical standards will also evolve accordingly, thus it is good government policy to look more carefully at vacations of public easements and rights of way. I am open to your suggestions for amended language on the technical front, but I believe that the essence of this legislation is sound planning and good public policy. Sincerely, Isaac Benton.

I would stand for any questions.

CHAIR MOYE: I have a question, Mr. Thompson, and then Commissioner Peterson has a question. My question is I just want to understand what you said. This is what I heard, ok? So, the Subdivision Ordinance as interpreted by the DRB becomes law if that's the way they have interpreted it for a number of years. Is that correct?

MR. THOMPSON: Basically, that is the standard that was applied in the Hinkle case.

CHAIR MOYE: So, there's a Subdivision Ordinance, staff has been interpreting it one way for twenty years. New staff comes in and they start interpreting it a different way. They can not do that because the previous interpretation has become law because of the decisions that have been made in the past?

MR. THOMPSON: Madam Chair, that is the argument that was made in the Hinkle case. The argument was there's an administrative gloss – whatever that means, but that's the term used. That if something is, in that particular case it was the ZHE that had, for years, interpreted a particular provision of the Zoning Code a particular way.

The first time it was appealed to the City Council the City Council said, no, that's not what it means. The New Mexico Supreme Court said no, the person charged with interpreting this for the last ten years, twenty years, whatever it was, has interpreted it a different way. The only way to change that after this much time is to amend your code and to clarify or clear up the misuse of that term.

CHAIR MOYE: Ok. Just to go a little bit further, I just want to understand this. So, we have a Subdivision Ordinance. Staff has been interpreting one way and now they want to interpret it a different way and the only way for City Council to make sure that new interpretation is followed is to change the code.

MR. THOMPSON: To ensure that it will not be misinterpreted or the argument will not be made. This will ensure that no one can make that argument that there has been a different interpretation for a number of years. Now whether or not in this particular case the court would treat it the same as in the Hinkle case, I can't say that. I sure don't want to argue that because this has been interpreted a certain way that that's the way it should be because it's clearly not the way I would interpret it, but I think, just to clarify the matter, this makes clear that this is not something that someone has a right to a vacation of a right of way or easement.

CHAIR MOYE: Alright. So, let me just go just one more step. Councilor Benton references plans. So, you have a Subdivision Ordinance that says A. You have a plan that comes in that says B. In A, staff has been interpreting it following the A. A plan comes in with a completely different interpretation or desire, if you will, and now the plan does not override the Subdivision Code.

MR. THOMPSON: Madam Chair, that is correct.

CHAIR MOYE: Ok. So, you've got a code, you've got a plan. So, what you have to do is have the code changed to agree with the plan then?

MR. THOMPSON: Madam Chair, if the Code is inconsistent with the plan that comes in, clearly the Code controls and the Code would have to be changed if the determination was that that was the plan that should be followed.

CHAIR MOYE: Ok. Thank you. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. Morning, Mr. Thompson. Looking at the standards that you referenced that are the current standards that the DRB must apply when an application comes in for a vacation of public rights of way, I believe those are at the top of page 3 of our copy of the Ordinance and it's a subsection B with further subsections 1, 2 and 3, and just for clarification I want to say that it seems to me that those are very broad standards. And I'll just read them real quickly. One is that the public welfare is in no way served by retaining the way or easement or there is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the detriment resulting from the vacation. So it would seem to me that if there is a vacation application that meet those standards, I couldn't foresee any reasonable reason why the City would want to retain that easement anyway. And I looked at Councilor Benton's letter and the two examples that he gives and it really seems as though maybe it way poor communication between two branches of government, meaning the Council and the DRB as to what the City's stance was on these two items.

For instance, the first example about the vacation of the alley way in the 2010 Plan; maybe Mr. Cloud on behalf of the Planning Department, didn't foresee that losing that alley would be a problem for the 2010 Plan or the Council just disagrees with where he came down on that issue. So a few questions; does Council currently get notice when DRB receives an application for a vacation?

MR. THOMPSON: Madam Chair, Commissioner, no.

COMMISSIONER PETERSON: Ok. That's something that I think should be solved because it would seem to me that if Council staff had the opportunity to come in and let DRB know that maybe there was something that the Council staff was working on that was relevant to a vacation or that they had a broader vision for an area plan or something like that, that would be helpful maybe beyond going all the way to taking this to City Council. But that is interesting. I assumed that you'd say that Council got noticed, but it's important that they don't. That's all I have for now.

MR. THOMPSON: Madam Chair, Commissioner, one other problem with that is the way that DRB handles this. This is a quasi judicial matter in front of DRB. If in fact they are making that final determination and if Council staff were to contact Mr. Cloud and say, Council doesn't like this, that would be an ex-parte communication. With a quasi judicial body it would raise additional problems. To make this a purely policy matter in front of the Council is whole different standard. And that's one of the things you want to get away from because right now there's a real question about who would even have standing to come in and object to a vacation. Does a city councilor have standing under our current ordinances to be able to raise these issues?

COMMISSIONER PETERSON: Well, I was going to get to a follow up question that I came up with was who has standing to appeal it? Whether the city council has that standing or whether a councilor individually may have that standing or maybe a neighborhood group or something of that sort because it seems to me that if one of those people had the ability to appeal this, that it could get up to the City Council and then the City Council could simply make a different interpretation of whether or not there was a net benefit to the public welfare. It might be different than what the DBR is making as opposed to making every one go to the City Council. Thank you.

CHAIR MOYE: I'm also wondering, Mr. Thompson, on the appeal process right now, if you're not happy with the DRB decision and you feel that the decision was not correct, you can appeal to the City Council as really the legislative policy makers – decision makers. Now, when the City Council makes this decision, the only place you have as an aggrieved party is to go to District Court. Is that correct?

MR. THOMPSON: Madam Chair, that's absolutely correct.

CHAIR MOYE: So, suddenly, now I don't like what's happened and I get to now hire a lawyer and to District Court as opposed to having this discussion for \$50.00 in front of the City Council.

MR. THOMPSON: The other part of that Madam Chair, is that if it is a purely policy decision in front of the City Council, I have no idea what the basis for an appeal to District Court would be. It's very similar to City Council decides to adopt an ordinance. Unless there's something unconstitutional about that ordinance, you can't go to District Court and say I don't like the ordinance that City Council adopted. So this really would cut off the process at City Council. There would not be any basis that I can imagine for appealing. City Council says we don't want to give up our piece of ownership of this property. Why would someone have the right to go to District Court and force the City to give up its ownership interest in a piece of property? It's like someone going to court and saying we don't think City Hall has any value. We are requesting that you vacate it. There's just no standing. Well, I know that people believe that and there's days that I believe that.

CHAIR MOYE: Now, I understand also that in the staff report, Mr. Thompson, that there is a dollar amount involved and I think that's State law that – I thought that there was something..... I read something about \$10,000.00.

MR. THOMPSON: Madam Chair, the Council has delegated - the Council has total control of City property. That's one of the things it has. It has delegated to the Mayor the authority to sell or dispose of unnecessary City property that has a value under \$10,000.00.

CHAIR MOYE: Under 10,000. Ok.

MR. THOMPSON: But the bottom line is that's, again, like with the DRB, it's a delegation from the City Council to a body to make a certain determination and there are specific standards that have established for when that kind of property can be sold.

CHAIR MOYE: Ok. It's on page 4 of the staff report; however, this only applies to real property having a value of more than \$10,000.00. Ok, I knew that I had read that in there somewhere. Alright, are there any other questions? Commissioner Dickson. Let the record show that Commissioner Jett-Walker is here, but will not be participating in this discussion.

COMMISSIONER DICKSON: Thank you, Madam Chair. May I ask a question of Mr. Cloud?

CHAIR MOYE: Yes, of course.

COMMISSIONER DICKSON: Just from a practical perspective, can you tell us how many cases per year you hear regarding vacations?

MR. CLOUD: These particular types of vacations, you know, we were up over 60, we're probably going to be around 50 this year, but it could easily be 60+ when things are busy.

COMMISSIONER DICKSON: Fifty to sixty. And on the average, how much time do you spend in a hearing per case. I know that's difficult to estimate, but an hour?

MR. CLOUD: I don't think an average is probably a good measure. Again, many of these are quite simple vacations – it's again, say a building was built and it encroaches into the right of way by just a couple of feet or less. These are all public hearing cases and we have a vacation of a right of way or public easement. We advertise, we do notify the neighborhood, that's fine to put that in the ordinance. We distribute it for comments. We have DMD, Long Range Planning, so if there was supposed to be a street somewhere we expect them to be on top of that and tell us, there may need to be a street here and that's part of the record. That's part of our staff report at DRB. But again, average is not a good example. The very simple cases, by the time we get to the hearing, everybody's looked at it. It's like, no, we don't need this right of way; the sidewalk still works. We open the public hearing and we can be done in ten minutes. Some examples Mr. Benton gave, the Downtown Plan, I'm not sure his recollection of that case, there's half an alley already gone there and we were going to vacate the other half. So, I'm not sure how keeping a half alley completes the intent of the Plan, but that - we had at least four hearings at DRB. We would not just ignore the 2010 Plan and say, "Oh, you guys want to vacate that alley? Sure." That was a very protracted hearing. The opponents had legal representation at DRB. So, that case probably took 2-3 hours at least.

COMMISSIONER DICKSON: Well, I guess what I'm trying to determine is, it seems to me that as you've been saying, maybe 5-10 minutes for some cases all the way up to several hearings on one case and to me it seems like if you looked at that so you average an hour, sixty hours per year, you know, hearing all these cases. If the City Council assumes that work load, it just seems like a tremendous burden on City Council to spend – to meet once a month. It's pretty incredible. That's probably another three or four hours in a session that they have to dedicate to hearing just vacations.

MR. CLOUD: Well, as I understood Mr. Thompson, that's not their intent. We did not know their intent of how the process would work. I would still say it's going to be a lot of time and paperwork even if it's just on a consent agenda; that's probably not necessary, but it does not sound the intent to have a public hearing on each case. It would just be a transmittal. We have what are called ECs, executive communications, we would just tell the Council here's what happened, but you still have to do all that.

COMMISSIONER DICKSON: From your perspective, does the current system work pretty efficiently and the particular rights of the neighborhood and the property owner rights?

MR. CLOUD: I believe it does. I do, again, support the amendment to make it clear that this is a discretionary action by the City that it is not a right. And again, two examples that Mr. Benton gave -

one was appealed. My understanding is there is no case in District Court now, so I'd say the system worked there. And just if I could address the other case, the stub street, again, the right of way that we vacated was relatively short. The other right of way that would be needed to make this connection is substantial – so again, maybe that was communication that Council consultant had not checked with DMD, then DMD could have told us there may be need for a street corridor through here, but there's going to be a substantial condemnation of property required to make that connection even if we don't vacate, and plus I think that vacation is about to expire so we might still retain that right of way and when it comes up again we'll be aware of that study.

COMMISSIONER DICKSON: Thank you.

CHAIR MOYE: I'd like to follow up on that comment, Mr. Cloud. So, you approve a vacation of property. If they do not replat the property showing that there's a new property line, then that expires in a certain period of time?

MR. CLOUD: The ordinance requires that the property be acquired from the City within one year and replatted and filed with the County Clerk. So, if you do not do all that and get your plat filed within one year, the vacation expires. And there's no provision for an extension of a vacation. If you don't get it done in a year, you have to reapply.

CHAIR MOYE: Ok. So, we have a new process that we didn't know about when you wrote your staff report that appeared in testimony this morning. It seems that the DRB will continue to hear the cases, make the decision – I'm not sure if it's a decision or recommendation, but let's say it's a decision, then you transmit that decision to the City Council, it's scheduled for LUPZ, it's heard at LUPZ and then it's transmitted to the consent agenda for the City Council. So, the LUPZ would be the place.... I don't know if you're the right person. Maybe Mr. Thompson should jump up too.

LUPZ would be the place for someone who's not happy with your decision to raise I'm not happy with your decision?

MR. THOMPSON: I would assume so. Yes.

COMMISSIONER SIEGEL: Madam Chair, point of order. They're not making a decision and that's not the proposal in front of us. It's a recommendation and your use of the word decision very much clouds a simple issue to me. I think it's important that we stay with what's before us.

CHAIR MOYE: Mr. Thompson, could you come up here, please? So, DRB will continue to get to hear the case. Then they don't get to make a decision. They make a recommendation to the City Council. Is that correct?

MR. THOMPSON: Madam Chair, that's correct.

CHAIR MOYE: And so if you have a disagreement with the recommendation then your chance to discuss it is at LUPZ?

MR. THOMPSON: Madam Chair, that's correct. Or if a councilor has a concern about their particular district and how they think their district should be developed, they have the right to raise that at LUPZ.

CHAIR MOYE: At LUPZ.

MR. THOMPSON: And it only goes to consent calendar if there's a unanimous vote by the members of LUPZ to send it on to the council with a recommendation of due pass. At that point it would become a – it would go on the consent calendar and not have to be heard. If there was a concern raised at LUPZ to the extent that a councilor, one or more councilors opposed the particular action, then it would be scheduled in front of the council as a legislative matter where people could come in just for a couple of minutes and express their concerns and there would a vote on it.

CHAIR MOYE: Ok. So, if there isn't a unanimous agreement at LUPZ then there's going to be a full hearing at City Council.

MR. THOMPSON: There's going to be full consideration. That's where people come in and they're allowed two minutes to speak to the topic to point out their concerns or a councilor can ask for additional information.

CHAIR MOYE: Alright. I have a question, back to Commissioner Peterson's discussion and that is if notice is given to City Council, well, public notice is given about a case at DRB. If the City Council, either the councilor or I'm assuming staff attended those hearings, then they could speak on behalf of the Downtown 2010 Plan or the fact that City Council had hired a transportation consultant. Would that be correct that they could do it at that point? And that would not be ex-parte, but you're saying even if they were part of the commenting group, you know when they send things around for comments, that would be ex-parte because it's two different branches of government?

MR. THOMPSON: Madam Chair, I'm not sure how DRB actually operates not having been to their meetings. If someone who doesn't have standing is allowed to come in and make a presentation, for most administrative bodies that would violate the due process clause. So I don't know if a council staff person would have standing to come in and make a presentation in front of the DRB or how they handle those things if the general public is allowed to come in and make comments.

CHAIR MOYE: Mr. Cloud.

MR. CLOUD: Well, we certainly have a broad idea of "standing," if it's a public street. Anybody that might be using that street, we would probably let them speak.

CHAIR MOYE: Ok. Commissioner Siegel, do you have a comment to make?

COMMISSIONER SIEGEL: Well, I had quite a few and it may take a couple of opportunities to ask them. First of all, when you welcomed Commissioner Jett-Walker and said she wouldn't participate, I regret that. I hope she'll have questions and comments on the case.

CHAIR MOYE: Commission Siegel, she was not here at the beginning of the hearing of this case.

COMMISSIONER SIEGEL: I understand that. She's here now and I would hope

CHAIR MOYE: Thank you for your comment Commissioner Siegel.

COMMISSIONER SIEGEL: I would hope that she would have questions or comments and be free to make them and not be excluded from the remainder of this dialogue. It's just perhaps inappropriate that she votes since she missed the front part.

I had a question as a follow up to Commission Dickson's questions to Mr. Cloud having to do with the cases that you routinely hear that are like this. You said there are 60 or 70. Are they all about pedestrian rights of way and vehicular rights of way and this other storm sewer? Or are there other kinds of utility easement and so forth that make up that 60 to 70 cases or whatever you've got?

MR. CLOUD: Well, obviously the right of way is almost always street right of way. There are some drainage rights of way in the City and I believe we have heard a hand full of those types of vacations, but almost always right of way mean street right of way. In terms of the public easements, that's often a public utility easement. That's what we call the dry utilities; your telephone, your electric, cable tv, that type of thing. It can include gas. So, those are public utility easements. We require an advertised public hearing for a public easement, but generally it's just the easement that's needed to provide that tract with its utilities. And again, for whatever reason, a building encroachment, a change in the site plan perhaps, whereby they want to put a building where an easement is, they want to move the easement and get rid of the one that's there. That's the most common, is where an easement was platted and it's not that we have an existing encroachment, but they want to develop the property and put a building where the easement is and utility companies are not going to sign off on that unless they have an alternate easement, but we still go through the public hearing process.

COMMISSIONER SIEGEL: May I follow up?

CHAIR MOYE: Of course.

COMMISSIONER SIEGEL: Thank you, Madam Chair. That's what I was sort of interested in at driving at. If that's most of them as you just said..... What I'm trying to figure out is if it's possible to have certain cases kept at DRB while we're doing any rectification of this cluster of the ordinances and just send the topics to Council for final determination that need to be and leave say these dry utilities, a term I didn't know until this minute, separate and allow the DRB to still finish them and maybe there would be wisdom to that, that would facilitate applicants' rapid realization of projects and not ensnare them in further delays in hearings when not necessary and still retain the Council's and public's right to these kinds of hearings as policy matters. I'm still not 100% clear and I'll have questions for Mr. Thompson on that in a bit. Could you drop two-thirds, three-quarters of these cases by segregating out the so called dry utilities from the streets, walk ways, and drainage?

MR. CLOUD: I don't believe it would be that high. If you look on page 4 of the staff report, I gave you just a brief recount. Public easement in 2007, we had 48, in 2008 we had 43 and only 26 so far this year whereas in terms of the rights of way that's been in the twenties. It may be half, but I wouldn't say two-thirds.

COMMISSIONER SIEGEL: That was what I was trying to get at though. If there could be even half the load or better than half the load diminished from going through Council and still retained by the DRB. If that makes any sense to Council and the DRB it would only benefit every other person in the City; not clogging the Council's calendar and facilitating a more ready realization of projects with no harm taken.

The other question I had was whether you had findings in the specifics on these two street or alley vacations that address the sector development plans. Whether you say in the findings words to the effect of yes, we realize that alleys are desired and yet we're going to vacate. Did you catch those or was it missed?

MR. CLOUD: It was missed, but it was not ignored. Again, we look, as a technical body, look at the functionality of the right of way and half that right of way was already gone so the sector plan notwithstanding, didn't seem to make sense to keep that half the alley.

COMMISSIONER SIEGEL: And lastly, the question that had for both Mr. Thompson and perhaps for you, would be your point of view, on whether as Mr. Thompson asserts, the vacation of an alley is a policy decision or whether it's an administrative decision. I'd like both of your points of view on that.

MR. CLOUD: I believe those are the same thing. An administrative decision is a policy decision. It's a decision by the City that – here's what we want to implement in terms of policy. We consider it to be more technical at DRB and we consider it to be a technical decision more so than policy.

COMMISSIONER SIEGEL: And to prod you both, if you'd like, I tend to think that Council quite legitimately would say it's a policy decision that alleys are good for the world and that it's an administrative decision on how wide they should be and how continuous and so forth and I'll ask that same question of you, Mr. Thompson.

MR. THOMPSON: Madam Chair, Commissioner Siegel, I totally agree that even the way that it was pointed out by Commissioner Peterson, the language says the public welfare is no way served by retaining the way or easement. We're turning that determination over to a technical board. And I think that language, if you just look at it under the current ordinance, that policy language, what is the public welfare? And that kind of decision of what the public welfare is, really belongs in a policy making body whether it's even the Mayor's office or someplace else where there's people who are responsive and responsible directly to the public. I really think those kinds of calls and at least the councilors believe that those kinds of calls that deal with the public welfare don't belong in a technical board. Those belong at the City Council.

CHAIR MOYE: Are there more questions?

COMMISSIONER SIEGEL: I did want a final clarification. It does strike me as inappropriate for a councilor to go then to DRB and argue for or against a case. I think that would soil the Councilor's ability to hear the case and could a councilor send his or her staff? That makes very little sense to me. It seems to be a subversion of the same ex-parte rules.

MR. THOMPSON: Madam Chair, Commissioner Siegel, again, I don't know. It sounds like the DRB is fairly open about allowing groups to come in that claim they have an interest in the street that may get into some technical problems with the Battershell case a number of years ago about who really has standing and who should be allowed to come in and talk in a case, but that's something that I think that there are technical problems with having Council staff come in and take a position more than just the issues you raised. With the Council being involved as the ultimate employers of certain people, I think that it tends to skew the view of potentially of the DRB. I would hate to see Council staff involved in trying to influence a decision of what's supposed to be an independent body. I'm sure not here trying to influence you at all.

CHAIR MOYE: I believe we have members of the public here to speak. Let's hear from them and then we'll call Mr. Thompson and Mr. Cloud back up. Who's up first? Your name and address for the record. You've already been sworn in.

MS. ANDERSON: My name is Lynne Anderson. I live at 504 Camino Espanol NW in Albuquerque. I am Lynne Anderson with NAIOP. The Commercial Real Estate Development Association as well, I should note. I would like to read a letter into the record.

CHAIR MOYE: Do you have copies for us as well?

MS. ANDERSON: I do.

CHAIR MOYE: Mr. Brito, could you distribute the copies?

MS. ANDERSON: I apologize for the phone noise earlier. I realized that I had two phones in my purse. I had turned off one of them. I apologize. My husband won't be happy with the second one that I have.

NAIOP, the Commercial Real Estate Development Association, respectfully requests that the EPC recommend denial of the reference text change to the Subdivision Ordinance. A number of our members have also sent letters or will be presenting letters this morning requesting denial and have argued that the change is unwarranted and unnecessary based on existing mean of remedy and on the additional approval time and cost that the change would engender. It is clear from the staff report that the vast majority of these submissions are pro forma and not appealed.

NAIOP would like to add that, in the current economy, when commercial building permits are at an historic low, this type of legislation further complicates the permitting process. The additional time and money that this change would add to a development project could easily "kill the deal". It would not appear to be in the interests of the City or its citizens to hamper projects that create jobs and revenue, particularly when the existing system works for the majority of the submissions and a simple appeals process is available to the general public.

Finally, in light of the existing City policy of encouraging infill development as part of the Planned Growth Strategy, I would note that virtually all redevelopment projects require vacation actions since they usually have existing easements which conflict with the new use. So this bill would have an especially large impact to cost and schedule for redevelopment projects.

NAIOP urges your recommendation of denial, and our representatives are available for questions or discussion concerning the text revision.

Thank you.

CHAIR MOYE: Hold on. Are there any questions for Ms. Anderson? Commissioner Siegel?

COMMISSIONER SIEGEL: Thank you, Madam Chair. I wonder what your sense is about remarks I had having to do with some utility and other vacations versus the public right of way. If that helps clarify this.

MS. ANDERSON: My understanding from what was asked, Commissioner Siegel, Madam Chair, was that very few of them relate to dry utilities. That most of them are related to transportation and pedestrian. Am I correct on that?

COMMISSIONER SIEGEL: My understanding was more of a majority were about that?

MS. ANDERSON: My misunderstanding then.

COMMISSIONER SIEGEL: Would that help?

MS. ANDERSON: Well, I think anything would help that wouldn't put every project through the LUPZ to the City Council because it simply will add three to four months. I mean it's just that simple. Even if it ends up on a consent agenda, it's still going to add that long for the process. And three to four months in this economy right now, frankly, is enormously expensive and would complicate matters. Frankly, it would help more if we just leave the process as it is.

CHAIR MOYE: Do you have further questions, Commissioner Siegel? Ms. Anderson, I have a question for you. You referenced in this economy. I'm curious if the economy is doing well, what does three to four months do when it's added to the development process?

MS. ANDERSON: Well, there's money – assuming that you actually got the loan – there's more interest on the loan for the bank for three to four months. So, that could seriously challenge the bottom line of a project as to whether it would continue to pencil. It's just a tough economy. I mean, if the economy were doing well, you're still adding cost onto the top which affect the bottom line to the consumer that will be using that project.

CHAIR MOYE: Ok. Stay there. I have a point of quick clarification for Mr. Cloud. So, a public utility easement which typically contains the dry utilities is part of the public road right of way.

MR. CLOUD: No, it's a separate easement.

CHAIR MOYE: It's a separate easement.

MR. CLOUD: Utilities are franchised to be in the right of way, but often there is a separate easement just inside of the right of way...

CHAIR MOYE: Just inside

MR. CLOUD: Or across a lot.

CHAIR MOYE: Or across a lot. Typically when the lots in Albuquerque were platted, there was a public utility easement that was put on at least three sides of it.

MR. CLOUD: Or four.

CHAIR MOYE: Or four sides of it? The road right of way being the front and then side and back public utility easement right of ways put in.

MR. CLOUD: That's correct.

CHAIR MOYE: Ok. Thank you. Who's up next? Do you swear to tell the truth under penalty of perjury?

MS. MARTINEZ: I do.

CHAIR MOYE: Your name and address for the record?

MS. MARTINEZ: Katherine Martinez, 722 Marquette NW, Albuquerque, NM 87102.

CHAIR MOYE: Welcome.

MS. MARTINEZ: Thank you very much, Chairman Moyer and Commissioners. I am Katherine Martinez and I'm here on behalf of the Homebuilders Association of Central New Mexico. First of all, I do apologize. The seventh copy of the letter is in my hands to read into the record so I can pass that up once I'm finished. I didn't come with enough copies and I'm sorry about that.

The Homebuilders Association would sort of reiterate NAIOP's position on this issue and I do have a letter to read into the record.

The Homebuilders Association of Central New Mexico opposes the proposed text amendment. Vacations of easements currently require administrative action and the amendment requiring Council action would change the process to an unnecessary and unpredictable political one.

Changing the existing process to require Council approval will add time and cost to an already lengthy and costly entitlement process. All design work must be completed up front in order to determine what will need to be vacated. In the current process the vacation is negotiated during the preliminary plat process. In the new process one would be required to spend all of the money up front (at least \$1,500.00 a lot for a large residential subdivision and possibly 40 or 50 thousand for a five acre commercial development) and left to rely on a political outcome.

A recent example provided by a member displays how a change to the procedure could have cost a must needed infill development:

The new CVS at the northeast corner of Central and Louisiana required a public alley vacation in order to make the site plan and vehicular movements work correctly. This alley was legally City controlled public right of way but it was not used for such for years. Nevertheless, under the proposed changes the new procedure would have required vacation of this alley to be approved by City Council action. The new store removed and eyesore and potential hazard on an infill site (an old gas station previously occupied the site) and replaced it with a job a tax generating business in this down economy. Clearly this is something that the City should be encouraging, rather than placing additional roadblocks in front of infill development.

The HBA of CNM's members have expressed the existing process works well; vacation actions require public notification and the public then has then opportunity to respond in writing an in person with questions, comments, and disagreements; and they have the right to appeal. Changing the process to a political one will add time, money and unpredictability. Most importantly, potentially adding another 4-6 months to any entitlement process could easily deter a company, not just home

builders, from investing in our city. This could have a serious impact on economic development efforts. Thank you.

CHAIR MOYE: Are there any questions for Ms. Martinez? Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. It is related to Ms. Martinez and Ms. Anderson's testimony, but it's for Mr. Brito. Does our 48 hour rule apply when we have a proposed legislative thing such as this?

MR. BRITO: Madam Chair, Commissioner Peterson, the submittal of late written materials is up to the Commission whether you want to accept them or not. Most of the time like this morning, these letters are read into the record so it's your discretion whether you want the actual paper to be handed out to you and if you actually want to read it or not.

COMMISSIONER PETERSON: Ok. Madam Chair, because these letters were read into the record I don't think it's harmful for us to also have one to read, but I would also respect that in order to be consistent with our 48 hour rule, in accordance with our recent discussions, that we not make what was handed out to us part of the written record. That's all I have.

CHAIR MOYE: I'm sorry, Commissioner Peterson. If it's read into the record, it's a courtesy for us to have a written copy. That's just a courtesy and because Mr. Thompson brought a letter from Councilor Benton that he handed out and read into the record, it seemed appropriate to me that anyone else that would have a comment on this case that they would be allowed to read their letter into the record and hand it out.

COMMISSIONER PETERSON: Ok. Thank you, Madam Chair. I guess in light of Council Benton's letter we can find that there were very extraordinary circumstances, which I believe is our threshold. If we take Councilor Benton's letter then we should take the other two letters. I see what you're saying. Thank you.

CHAIR MOYE: Alright. Are there any questions for Ms. Martinez? Do you have a question for Ms. Martinez?

COMMISSIONER SIEGEL: No. Thank you, Madam Chair. I'd like to follow up on this discussion that the two of you just had and support leaving hard copies as a matter of the public record of this case at this time. It's only a benefit to City Council. Not just any transcription of what was read.

CHAIR MOYE: Ok. No questions. Alright, thank you. I believe I swore you in Mr. Hernandez.

MR. HERNANDEZ: Yes, Ma'am.

CHAIR MOYE: Your name and address for the record, please.

MR. HERNANDEZ: Madam Chair, my name is Daniel Hernandez. Address is 4333 Pan American Freeway NE.

CHAIR MOYE: Do you have a letter for us?

MR. HERNANDEZ: I do not have a letter for you.

CHAIR MOYE: Darn it! So we have to pay close attention.

MR. HERNANDEZ: You do, but I won't have much to say. I was involved in all of this process when the DRB process was created. It was created exactly and has worked very successfully to prevent long delays in the review of plats and vacations and other parts of the development process. And it's worked very, I think, very well all these years. And the proposed change – I'm sorry. I didn't say this. I'm here representing, in my capacity as President of the Commercial Association of Realtors of New Mexico and we feel that the proposed change simply guts the DRB process and really takes us back thirty years to when all of these matters were heard by City Council and ended in needless delay and a lot of work for them when the great majority of them are technical matters. And so, I'm here just to urge you to deny the requested change.

CHAIR MOYE: Hold on a minute. Mr. Cloud, how long does this process take at the DRB? People have referenced it, but no one has said how long.

MR. CLOUD: It's approximately a 30 day process for the simple ones. From the time of your application to the DRB hearing is 30 days.

CHAIR MOYE: And the 30 days is for a public notice?

MR. CLOUD: That's correct.

CHAIR MOYE: Ok. So, you put your application in, public notice is done and then you're heard at that 30 day DRB hearing.

MR. CLOUD: That's correct.

CHAIR MOYE: And then, at that point, a decision is made by the DRB and the applicant is prepared to go forward with their development?

MR. CLOUD: In most cases, yes.

CHAIR MOYE: Ok. Thank you. Are there any questions for Mr. Hernandez? Commissioner Siegel.

COMMISSIONER SIEGEL: Thank you, Madam Chair. I regret not having asked this to the previous two speakers. Madam Chair, I would entertain a willingness for them to readdress it if they would like. If the EPC were to consider, as Mr. Cloud has suggested in his preparation of this case, accepting the text change such that meeting these pre-conditions does not guarantee a vacation of any public right of way, but only creates the conditions under which it may be considered. Whether you support that and are opposed to the change in procedure and time which is the recommending versus the approving body. I wonder - that's assuming you can follow my question - it seems that we have two lobes of this case before us.

MR. HERNANDEZ: Commissioner Siegel, I understand your question exactly and we are opposed to that change in part because it seems to make this now a political process rather than simply a technical one. Do you understand my answer?

COMMISSIONER SIEGEL: No.

MR. HERNANDEZ: So, all of the sudden you've given discretion to the body to deny a request for whatever reason. And here before the DRB process has been relatively straight forward. If you met the certain requirements of the law, you were entitled to get the vacation. And now, what the proposed change would do in this regard would be to say, now you've got to go solicit votes because it has nothing to do with the technical merits of what you're asking for. It can be denied for any reason.

COMMISSIONER SIEGEL: Ok. Thank you.

CHAIR MOYE: I would like to ask Ms. Anderson or Ms. Martinez if you would like to come up and address Commissioner Siegel's question about the two pieces of this, if you've had an opportunity to see the staff report. Ms. Anderson.

MS. ANDERSON: I think Mr. Hernandez spoke very well and eloquently in terms of our feelings about it. So, I would agree with him as well. I do think that it becomes an unpredictable political process rather than a straight forward technical one.

CHAIR MOYE: Ms. Martinez.

MS. MARTINEZ: Thank you, Chairman Moye. The Homebuilders Association would reiterate that as well and we stated that in our letter. We would oppose the Council being the deciding body and also if the developer met the legal requirements then it seems to me that they should be granted the vacation of easement.

CHAIR MOYE: Commissioner Siegel.

COMMISSIONER SIEGEL: I mean, it sounds like what you're saying is that this tends to politicize, using your words, the DRB.

MS. MARTINEZ: Correct.

COMMISSIONER SIEGEL: Ok. Thank you.

MR. MARTINEZ: Thank you.

CHAIR MOYE: Ok. I neglected to announce at the beginning of this particular portion of today's hearing, not this portion, but of today's hearing, that people that are making public comment have the right to question either Mr. Thompson or Mr. Cloud in regards to their testimony. So, we'll be giving you an opportunity to do that as well. So, who's up next? I don't believe that I swore you in.

MS. MOORE: You did, but I'd be happy to do it again.

CHAIR MOYE: Oh, I did? Ok, fine. Your name and address for the record.

MS. MOORE: My name is Jean Moore. My address is P.O. Box 1945, Albuquerque, 87103.

CHAIR MOYE: Welcome Ms. Moore.

MS. MOORE: Thank you. I'm not here representing anyone, although I am a real estate and land use lawyer at the Sutton Firm. I'm here largely because I heard about this and I think it's a bad idea. I agree with the previous speakers that the public is sufficiently protected under the current ordinance and that the proposed change and particularly the requirement for the City Council to approve vacation of public easements and rights of way would be unnecessary and unnecessarily burdensome. It'll be costly in terms of time and money and has the potential, as Ms. Anderson said, to kill some very valid and good deals. Just by way of example, a recent representation I had, a purchase of real property was contingent upon being able to vacate the right of way. This turns a 30 or 60 or 90 day due diligence period into a half a year due diligence period if we go with this current amendment.

CHAIR MOYE: Thank you. Are there any questions for Ms. Moore? Commissioner Siegel, do you have a question? No. Anyone else? Thank you. Who's up next? I believe you were sworn in twice.

MS. KRUEGER: Yes, I was.

CHAIR MOYE: Your name and address for the record.

MS. KRUEGER: Keli Krueger. My address is 5571 Midway Park Place and I am here representing Tierra West this morning as well as agent for Argus Development and I have letters to read into the record for both.

CHAIR MOYE: Do you have letters to hand out to us.

MS. KRUEGER: No, Ma'am. I don't. I was not prepared this morning. I apologize.

CHAIR MOYE: Alright.

MR. KRUEGER: The first letter I'll read is from Tierra West.

Dear Chairman Moye,

I am writing to you to ask the EPC to recommend denial on the referenced text changes to the Subdivision Ordinance. Our firm processes vacation requests on a regular basis and we do not see where the DRB violates any current procedure or policy with the current protocol and process for vacations. Requiring this process to be approved by City Council will greatly increase the cost for both the applicant and the City Council as well as extend the process for the vacation actions adding an additional four to five months. Further in the era of budget considerations it will take an inordinate amount of time for the City Council and the City Council staff to address this issue. As outlined in the staff's comments, the general public (if aggrieved or if they feel as if their rights have been violated) has the simple appeal process through the hearing officer and then to the City Council. In the 23 years that we have been processing vacation actions, we have yet to have a vacation action appealed.

I would like to quote the staff report that shows the number of cases that would be involved. If the City Council has to process this many cases it will take away from other Council business and stretch City Council staff even further. The following is from the staff report:

As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process."

Further, a vacation action may be required as a precursor to a preliminary plat thereby holding the entire project up until City Council acts on the vacation. So while the vacation action may be extended up to 4 to 6 months it could drastically lengthen a subdivision process as well. We believe that in those rare instances where an appeal is warranted the City has followed the normal protocol and has provided adequate due process in those cases. We feel that the current process does not need to be modified and would urge the EPC to recommend that this text amendment not be passed.

Ronald Bohannon

And the second letter from Argus Development is:

Dear Chairman Moye,

We have been informed that a text change is being proposed as referenced above and we ask that the EPC recommend denial on this proposal. As developers of properties in Albuquerque we frequently request and process vacation requests and this proposed amendment is unwarranted. Any City Council action will greatly increase the cost for both the applicant and the City Council as well as extend the process for the vacation actions adding an additional 4 to 5 months. We note that the staff report clearly outlines the deficiencies with this proposed change and encourage the Commission to review these comments carefully. Finally, any appeal is sent to the City Council anyway as the final administrative authority.

The current process does not warrant this change and we urge the EPC to recommend that this text amendment not be passed.

CHAIR MOYE: Are there any questions for Ms. Krueger? Commissioner Siegel.

COMMISSIONER SIEGEL: Thank you, Madam Chair. As a courtesy I'd ask if you could get Xerox copies of these and make them available to staff to include in the record along with the rest of the written statements. Thanks.

CHAIR MOYE: Mr. Brito.

MR. BRITO: Madam Chair, Commissioners, Kevin Curran from the Legal Department would like an opportunity to address the Commission. He has a time constraint and will have to leave shortly.

CHAIR MOYE: Come on up, Mr. Curran. Thank you, Ms. Krueger.

MR. CURRAN: Thank you, Madam Chair. In addition to my role as advisor to the EPC, I'm also Counsel to DRB. I have a couple of comments or questions that I want to get out before I have to leave. It's still unclear to me – the first one – it's still unclear to me whether or not the City Council, if this text amendment is approved, whether or not the City Council reviews the vacation requests as an appellant body or whether or not, based on the record that was created at the DRB in the first place as the recommending body. Or is City Council going to sit and hear the case de novo, as they say in the legal profession and accept evidence and testimony outside of evidence and testimony that the DRB heard? That's my first question.

Second question is, as Mr. Cloud explained, the DRB vacation process is a two step process. There's a hearing in which an approval or a denial is made and then there's a replat in which the applicant has to incorporate the vacated property into his property and my second question goes, is the City Council also going to review and approve that replat? Seems to me that there's two pieces of the puzzle there and the same body should probably be doing both pieces of the puzzle. That's all I have.

CHAIR MOYE: I think that's a Mr. Thompson response. So Mr. Thompson, could you respond to that question?

MR. THOMPSON: Madam Chair, Commissioners, it was made very clear that this is going to be a legislative process in front of the City Council. It is not a de novo hearing. As far as City Council's concerned by the time it gets to them there's been a determination or recommendation from the DRB that this meets the legal standards that no one is harmed by the particular action and the Council would make a policy call as a legislative matter. As far as the replatting, once the City vacates properties, it doesn't vacate and give it to anyone. What it does when it vacates property is the property is then – what they're giving up is their easement or right of way. They are not saying that they are at the same time giving it to someone. That's a whole separate process of replatting. The Council is not involved in replatting. The Council is simply making a determination if it is going to give up its property. I mean the City owns that easement or right of way and that's the determination that in other situations or most of the situations that Council makes the determination of whether or not they should give up this property interest. So, I think that those questions were dealt with earlier and if there's still any questions about that I'd be happy to respond.

CHAIR MOYE: It would be from Mr. Curran. Not from us, I don't think, unless the Commission has that type of question.

MR. CURRAN: Madam Chair, I guess that answers my questions. I guess I have a little bit of apprehension in treating these vacations as a legislative matter because if a determination is made that the vacation should be – well, broader speaking, you have access issues when you're determining whether a right of way stays or goes and an access issue is a property right. And if it's a property right it seems to me it's a quasi judicial process. I just want to raise that flag.

CHAIR MOYE: Are there questions for Mr. Curran? Ok. Who's up next? That's it. Alright, Ms. Anderson, Martinez, Krueger, Moore and Mr. Hernandez, do you have any questions you would like to ask of Mr. Cloud or Mr. Thompson at this time? No. Ok, any questions from the Commission?

COMMISSIONER SIEGEL: I'm sorry, Madam Chair. I thought I heard there were seven speakers signed up. One was a duplicate listing. I still only got five.

CHAIR MOYE: Are there any other questions. I'm going to ask for closing comments from Mr. Thompson and then Mr. Cloud. Mr. Thompson, any closing comments?

MR. THOMPSON: Madam Chair, just a real quick response to one of the comments that were made, and I don't disagree that this will delay to some extent approvals of vacations, but I've heard the comment that it would take 3 to 4 months, 4 to 5 months, or 4 to 6 months. There have been, in the past, some problems between the administration and the Council of getting things in front of the Council. I don't believe that six months or even five months or four months is how long it's going to take for this to happen. But it would be a delay of a month or two. And I think it's very clear that what everyone's saying is that this should be mandatory on the City to give up its property right if the DRB makes a determination that certain standards are met. And I don't think that's what the Code actually says now. So, this is not a mere clarification. I think that as a policy matter who should make the decision as to whether or not the City is mandated to give up an interest in property, I think that's really the basis, the bottom line, of this whole issue. Thank you.

CHAIR MOYE: Mr. Cloud, closing comments?

MR. CLOUD: Thank you, Madam Chair. Just again would urge the conditional approval. We believe that it's not necessarily a political issue regarding the discretionary action by the City. It's more of a legal issue and we support that. Our findings are on page 5. I did want to respond regarding the conditions of approval in your recommendation. Condition number 1; I did not know the history on the proposed deletion on Section 1. It appeared to read ok with Division B which is up at the top of page 2 and I thought that's what it was referring to. So, I'd actually concur with the text amendment as written per page 2 and I would recommend a change to Condition number 1.

CHAIR MOYE: And what would that change be, Mr. Cloud?

MR. CLOUD: I'd keep the first two words, "That the", and after that insert "proposed deletion" and then skip down to the next line to the word "and". So that it would read as follows: "That the proposed deletion and the proposed new language in Section 1, page 2." Then we need to include line 16.

CHAIR MOYE: I'm sorry. You're going to have to read the entire sentence as it should be.

MR. CLOUD: "That the proposed deletion and that the proposed new language in Section 1, page 2, line 16 and 17 be included in the text amendment" (not the *test* amendment).

CHAIR MOYE: Spell check's a wonderful thing. Ok. So, could you read that again? "That the proposed deletion

MR. CLOUD: and that the proposed new language in Section 1, page 2, line 16 and 17 be included in the text amendment."

CHAIR MOYE: Thank you. Are there any question for any of the public or Mr. Cloud or Mr. Thompson from the Commission? I'm going to close the floor. Commissioners, discussion? Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. A few things; first of all, I think it's important to think back to the basics as to how the City gets right of way to begin with - whether it's an

easement right or something that they acquire in fee simple. Almost without exception I would say that it comes from private property owners. Maybe, way back when the City was expanding the City said, ok, we need roads so we're going to take certain slots from property owners. And when the City does that, the City does it pursuant to their rights of eminent domain to acquire right of way. And they either go out and they buy it pursuant to constitutional standards or they wait until private property owners want something like a plat or a permit or something of that sort and then there's some type of quid pro quo.

It's also important to remember that pursuant to the ordinance as it is right now, the only person that can apply for a vacation of a public right of way is someone that is adjacent to it. So, I bring that up because that means that in almost every instance the only person trying to get some right of way back would either be the person or the successor to the person who gave it up in the first place, ok? And presumably that person got some type of just compensation for it when they gave it up. But, as Mr. Thompson alluded to, even if the vacation is approved that person doesn't just get that property back. They have to buy it back. There's an appraisal process and then they have to buy it from the City. So, I bring all that up because, you know, like I say, there are standards for when the city can go and get that right of way to begin with. There are constitutional standards; however, to sum it up for here, they can only go get it if it's in the public welfare, if they need that for the public welfare. Well, under the current standards, as are in the current ordinance, the only circumstance in which the city is now obligated to vacate that public right of way is if that public welfare benefit has expired; is no longer there. So, I respectfully disagree with I think the point that being asserted by Mr. Thompson is that somehow the City's property right is tantamount to the property rights that each of us might have in our home or something of that sort. The City only acquired this property because they said they needed it for public welfare. Under the current standards in the ordinance they only vacate that property if the public welfare has expired. And I think that's fair. I think that someone should have a right to have that property back – pay to get it back if that public welfare has expired. It's not the City can go and acquire property saying we need it for the public benefit and then a few years later acknowledge that the public benefit's not really there and say, "It's ours. We don't have to give it back now or we don't have to sell it back now." I would think that that's inappropriate.

And then to speak to the comments that were made about the delay in process. I mean that is real... Vacation actions and what will be platting actions going up to the City Council is something that might work for a very small city, you know, rural New Mexico, something of that sort. But not for a big city like Albuquerque and I think that was recognized about 30 years ago and I think has worked very, very well. And I mean to personify the City, there is absolutely no way that we could pass this ordinance and the amendment and say that we are a business friendly city. We couldn't even say that are not a business adverse city. I mean that would just be ridiculous the delay in process this would cause. And like I say, the politicalization, the politicizing – I'll invent words up here. I don't care – politicizing a vacation action. And I don't quite agree that a vacation action is always absolutely technical. There are some policy things to be considered. However, I think the only policies that legitimately should be considered are the ones that are already written, set forth policies of the City of Albuquerque.

Speaking as a developer, when I go to DRB, EPC, City Council, I just see the City. It's all the City. We're the City, the DRB's the City, City Council is the City. So, I think the problem that we're seeing today is that there is a breakdown in communication between two parts of the City that is trying to be resolved with an ordinance that doesn't make any sense.

When I go to the DRB, which I've been there several times, I currently see Mr. Cloud, who is the Chairman of the DRB, and is also the head of the Planning Department as being the voice for what's important to the city. So, there's a 2010 Plan and keeping a half of an alley is important to that 2010 Plan then Mr. Cloud will be informed of that as a representative of the Planning Department and that will inform his input as to the tests that currently as set forth in the ordinance. And if there's some problem with councilors getting the word down through Planning to the DRB chair about that, that's an internal city problem to be resolved not having to do anything with the public. Why go and complicate a process for the public unnecessarily because you have two parts of the city that aren't effectively communicating with each other? I don't think that makes any sense. That's all I've got. Thanks.

CHAIR MOYE: Commissioner Dickson.

COMMISSIONER DICKSON: Thank you, Madam Chair. I guess I believe that all the policies are already in place and it's certainly the responsibility of DRB and LUPZ and other groups to constantly be reminded of those policies and follow those policies, but I believe that they sincerely try to do that. I think that in many cases today that some of these public easements is an example of the alleys being made into a "silent hero" maybe of new urbanism. In many cases the alley is old technology. Many of them were created 30, 50 years ago to provide service to the back for rear residences and alleys or for refuse pick up; things like that that now take place actually at the front of the properties. And consequently, through times, these alleys actually become a nuisance and a detriment to the neighborhood. They actually become in many cases, in residential and commercial areas, kind of a transient highway where criminal and people that don't have the public's best interest at heart, you know, come and do graffiti and break into properties using that kind of rear access.

I think also as you drive through the city you see these poorly maintained easements. You know, they're, you know giant weed gardens. I don't know that in all cases these easements really need to stay in place and I think that the determination is certainly - there are guiding principles in the policies. But I think that the determination on each specific property is very specific to that property and thereby I think it's actually a technical issue. I think that it's really something that City Council doesn't need to bother with. They've already developed the DRB to actually take care of some of these other issues and so I guess I kind of like the process the way it is. So, I guess I'm not really supporting the text amendment.

CHAIR MOYE: Commissioner Siegel. Oh, I'm sorry. Commissioner Yardumian. Who was up first?

COMMISSIONER YARDUMIAN: Thank you, Madam Chair and Commissioner Siegel. Thank you. I'm inclined to agree with Mike (Commissioner Dickson) because the process has been in action for a long time and it's been basically working well. I hate to change something just for change sake. If it ain't broke don't fix it. I think that's kind of backwards. Anyway, you get the point.

On the other hand there are no doubt some cases that come up - some right of way cases - that come up where they are clearly decisions that ought to be made by the policy body of the city and with all due respect to Jack Cloud, it's not his job really. He's got a really big job worrying about the technical aspects of cases and to an extent the welfare of the City, but not in the same manner that the Council does. That's a policy question. There are not many of those types of cases and if there were some clearer or easy matter of deciding which ones are truly policy and impact on the welfare of the citizens of the city and they could be forwarded to the City Council as a recommendation from the

DRB that would be nice. I don't think it's that clean cut and that easy to do. So, I guess what I'm saying is that I'm leaning toward it ain't broke generally, so let's leave it alone. It's been working well for a lot of years, unless one of the other commissioners can change my mind. Thank you.

CHAIR MOYE: Commissioner Siegel.

COMMISSIONER SIEGEL: Thank you, Madam Chair. It's a complicated case. I came in having read the staff report and reasonably persuaded that staff was making an intelligent recommendation. I think Mr. Thompson's presentation to us persuaded me at that time that it was appropriate to follow essentially what's being offered up as the text amendment by Council. The public testimony blew me the other way again, which is important that the public testimony be available and do that sort of thing. Then Mr. Thompson's rejoinders and finally staff's rejoinders leave me at the following conclusion. Myself, I think the findings and conditions as amended are supportable. I think that the public has persuaded me at this time to not recommend to Council to take on the final approval of these many cases and even if in fact that they decide to take it up and entirely consider Councilor Benton's bill as proposed, I would suggest that they attempt to divide out what were called dry utilities.

I think that I mentioned earlier that there were two lobes to the case. There was apparently a typo made in – if I have the dates right – the 1974 still needs a recommendation amendment. I support staff in recommending repair of that. I also support staff in their analysis in making these conditions for a vacation of an easement qualifying conditions but not mandating the vacation of the easement. That it's still left as a discretion both of the DRB and it's important that it's left that way so that any further discussion by the Council is still supportable on appeal that it's discretionary, not mandatory. And I think that's an important distinction to have upon hearing any question for example about whether now it should be vacated.

I think there is significant harm to the city and its constituents including the development community's views as spoken to us and I think the time delays could be fairly significant. I also really take issue with everybody who spoke and said it would then become a political decision and I really disagree with that. I would like to believe that our DRB is making policy based decisions and would admonish them to consider and remember to make findings pertinent to the sector development plans. I spoke about that earlier and in fact as well to waste water treatment and the rest.

I think it's important that Council also make their decisions that are policy based and I don't really think that they get into cat fights about the politics of it. I hope and expect that they are making decisions about right of way vacations that have to do with policy. So saying, I rather support staff's report, although I had a few recommended alterations to some of the findings if the Commission decides to accept staff's report as amended. Thank you, Madam Chair.

CHAIR MOYE: Commissioner Siegel, if I could, I believe that they public testimony referenced these decisions going to City Council would become politicized, not at the DRB level becoming politicized.

COMMISSIONER SIEGEL: They actually at times said both and I would hope that both makers base their decision on policy, not politics. Thank you.

CHAIR MOYE: Is there anyone else that would like to comment on this. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. Having not seeing anyone else who would like to comment I'm ready to make a motion unless you had some comments yourself.

CHAIR MOYE: Well, I am persuaded by your testimony and Commissioner Dickson's testimony. Like Commissioner Siegel, I've had my mind changed several times since reading this and going back and forth. I do have a comment to Mr. Thompson. I noticed in reading the proposed language that DRB is circled a couple of times in the new proposed language and I agree that the language needs to be cleaned up cause it doesn't make any sense. I'm on page 5 and 6 of the proposed language. It says 3B, the last sentence says if on appeal the City Council reverses the DRB determination and finds that the requirements of subsection B have been met, the City Council shall at the same time exercise its discretion and determine whether the public right of way or easement DRB should be vacated. I'm not exactly sure what that meant. So, I'm assuming that the language will be clarified and once it gets to City Council and then again that is repeated in 3C. In reading it I wasn't quite sure what was trying to be said, but since I support staff's recommendation, I'm hopeful that it simply goes away. So, my comments are I certainly agree with what's been said and I thought that Councilor Benton's letter was interesting and again I was persuaded by staff's comment about these two incidences that Councilor Benton raised and I have to go with the recommendation of conditional approval. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. I'll make a motion in a moment but I just want to be clear that my comments earlier were such that I'd be recommending against any change to the ordinance whatsoever. I mean, obviously, if there's a typo with the 1974 that should be changed, but I don't think that that's something that we should drill down to. I even recommend against the language going in there about vacations being discretionary for the city because I was elucidating with my comment with Mr. Thompson, I believed that the standard already is high enough and already accounts for some policy and that the staff should be aware and I think is aware of current written policies of the City and should enforce those as well.

So, I'll make a motion now and I ask for your indulgence because it also involves some additions to the findings as set forth in the staff report. In the matter of case number 09EPC - 40060, a text amendment to the Subdivision Ordinance, I recommend for denial - I recommend that a recommendation of denial - I move that a recommendation of denial be forwarded to the City Council subject to the findings as set forth in the staff report provided that in regard to Finding 3, an additional sentence be added to the end thereof that reads as follows: "Such codification would enable the City to withhold its approval of a vacation in a way detrimental to the welfare of the City." And further, that with respect to Finding 5, an additional sentence be added to the end thereof that reads as follows: "Neighborhood notification is already required pursuant to an existing separate ordinance and therefore inclusion of such a requirement in the Subdivision Ordinance is repetitive and unnecessary." And that's the end of my motion.

CHAIR MOYE: Is there a second.

COMMISSIONER DICKSON: Second.

CHAIR MOYE: We have a second by Commissioner Dickson. Is there any discussion?
Commissioner Siegel.

COMMISSIONER SIEGEL: I urge my fellow commissioners not to support the motion as made. I think that's its using inadvised, overbearing rejection of a few matters that have been brought to our attention. I think there's two critical matters and I described them earlier as two lobes. I think it's important that Council, the DRB first, and Council, upon consideration of appeal, be able to determine and deny a vacation because they find that it's inappropriate due to, for example, sector development plans or other incipient plans. I would also recommend that the minor text amendment that Mr. Thompson requested be picked up and other typos be clarified. So saying I do not support the motion as presented. Thank you.

CHAIR MOYE: Commissioner Yardumian.

COMMISSIONER YARDUMIAN: Thank you, Madam Chair. I don't support the motion as presented either. I think it's a bit overbearing. I think there is merit in some of the staff report and findings and conditions that could improve the process without impacting the development community which would, I think, be a mistake. So, I'm not supporting this motion as presented either.

CHAIR MOYE: Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair; just one quick response to Commissioner Siegel's comments. I don't wish to prolong this, but as I stated earlier, the standard is already set forth in the Subdivision Ordinance for when a vacation should be granted, includes "there is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation." So, I believe, pursuant to that standard, both the DRB and then the City Council on appeal already have clear standards to consider all policies that are in effect such as sector plans and things of that sort. And so, I don't think that there needs to be further language to make it what I would feel be arbitrary in the City's discretion. Thank you.

CHAIR MOYE: Commissioner Siegel.

COMMISSIONER SIEGEL: Thank you and as rejoinder to that, in urging this Commission to consider adoption of that portion of the language as I am doing. I think I heard clear testimony both from Mr. Cloud and from Mr. Thompson in saying that the "shall" language chains the City in ways, and there are case precedence and I don't recall the names, which would establish that. And I think that that is an unnecessary burden and hardship on the citizens. And I think that less restrictive language, and that was what was put before us, is very supportable and that's why I am very nearly in entire support of staff's amended findings and recommendations. If this first motion were to be defeated, I will have minor corrections proposed to staff's findings. Thank you, Madam Chair.

CHAIR MOYE: I just want to clarify for the Commission, if this motion is defeated a new motion will be – the Chair will ask for a new motion. It does not mean that this is defeated, alright? Does everyone understand that?

COMMISSIONER YARDUMIAN: Madam Chair, did that finally get resolved? I mean, that's one of the issues that we've been hammering at in the EPC process. That's one of the things we objected to that said, oh, if you deny it, that's it. You can't make another motion. Now, can we in fact – where's our legal – oh, he took off, didn't he? So what is the policy?

CHAIR MOYE: Mr. Brito, is it necessary to suspend the rules? I mean that's how we can do this is to suspend the rules and make a statement of how we're going to handle this. Mr. Brito.

MR. BRITO: Madam Chair, Commissioner, the rules state that if any motion fails for lack of support, such motion dies. So, the case would still be open for another motion.

CHAIR MOYE: Thank you. Commissioner Yardumian, ok?

COMMISSIONER YARDUMIAN: How come the last time we faced this issue it had to go forward as a denial to the City Council and we had no choice in the matter. Did something change in the interim?

CHAIR MOYE: Mr. Brito.

MR. BRITO: Madam Chair, Commissioner Yardumian, it's the tie vote that creates that situation.

CHAIR MOYE: Right. Not the denial vote or approval vote.

COMMISSIONER YARDUMIAN: Alright, thank you.

CHAIR MOYE: Commissioner Siegel.

COMMISSIONER SIEGEL: Given that I believe Commission Jett-Walker will not vote, we will have six voters. It's possible to have a tie in which case I would recommend that we do suspend the rules on the matter only. And I'd like to so move ahead of the other vote. Is that procedurally possible?

CHAIR MOYE: I think it is. Mr. Brito.

MR. BRITO: Madam Chair, Commissioners, yes. The Commission may vote to suspend the rules at any time.

CHAIR MOYE: Thank you. We have a motion to suspend the rules. Is there a second?

COMMISSIONER SIEGEL: Just on the matter of a tie vote. Thank you.

COMMISSIONER YARDUMIAN: I'll second.

CHAIR MOYE: Just on the matter of the tie vote. We have a second from Commissioner Yardumian. All those in favor indicate by saying aye. Opposed? Motion carries. So, the rules are suspended in the event of a tie vote. So, if there's a tie vote we'll start all over again. Mr. Thompson, before you leave – I thought you'd already left.

MR. THOMPSON: I had left. I'm supposed to be in the same meeting as Mr. Curran and that's the reason that I apologize for leaving. It has nothing to do with the EPC. I'm supposed to be in a meeting that started 20 minutes ago.

CHAIR MOYE: Ok. Did you want a point of clarification, Commissioner Siegel? No. Ok, thank you so much.

MR. THOMPSON: I apologize.

CHAIR MOYE: Alright. Commissioner Peterson, you had your hand up.

COMMISSIONER PETERSON: I did, but it was on the procedural matter that we've now solved. Thank you, Madam Chair.

CHAIR MOYE: Ok. So what is before us is a recommendation of denial and we have a second. Do we have any further discussion? All those in favor of a denial, please raise your hand. All those opposed to a denial please raise your hand. There's tie vote. So, now we're back to the beginning again.

COMMISSIONER SIEGEL: Madam Chair, may I make an alternative motion if you would recognize me?

CHAIR MOYE: I've already recognized you, Commissioner Siegel.

COMMISSIONER SIEGEL: Ok. In the matter of 09EPC-40060, I would like to move recommendation to City Council based on Findings and the amended Conditions of approval as presented with the following change to Finding 7, and I would like to read my change – I'll be striking a couple of words – "Requiring City Council approval for vacations of public right of way and public easements would put such applications into a category of process more complex than subdivision request as well as most site development plans and zone map amendments." I'll add a sentence: "Such added complexity would be burdensome to both applicants and interested citizens as well as to City staff."

What I'm effectively doing, Madam Chair and fellow commissioners, is suggesting that we accept staff's suggestions and recommendations and Mr. Thompson's recommendations both to clean up errata and wrong pointing elusions within the existing ordinance and to permit DRB and/or City Council upon appeal to deny a vacation based on their best judgment. This maintains the first approval at DRB and I think helps to facilitate most of the processes and time frames of the development community and of the citizens. And I think this set of changes is of great benefit to the City. That's my motion.

CHAIR MOYE: Ok, Commissioner Siegel, before you finish with your motion, we did refer to some typos and some language that needed to be cleaned up.

COMMISSIONER SIEGEL: I'd be happy to have those in the record and would also be happy to have a condition that says that other typographical errors may be reviewed and cleaned up.

CHAIR MOYE: Has staff quickly drafted something that says, and other typographical errors? Mr. Cloud.

MR. CLOUD: No, but I think it will be a very simple condition that typographical errors and errata be corrected.

CHAIR MOYE: And so that would be part of your motion, as Condition 5.

COMMISSIONER SIEGEL: That's fine.

CHAIR MOYE: Commissioner Yardumian.

COMMISSIONER YARDUMIAN: Can we then – since some of us have marked some of those typos, can we just hand those in or do we need to read them?

CHAIR MOYE: I think that we can just give them to Mr. Cloud.

COMMISSIONER YARDUMIAN: Good. Thank you.

CHAIR MOYE: Alright. There is a motion on the floor from Commissioner Siegel. It has not been seconded. Is there a second?

COMMISSIONER YARDUMIAN: I'll second it.

CHAIR MOYE: We have a second from Commissioner Yardumian. We're now available for discussion. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. I will vote against the motion for the same reasons as I stated before in support of my previous motion. And one more thing; just in the event that this also ends up in a tie. I'd like it to be known that I intend to then make a motion for no recommendation and set forth that we tied twice. So, don't think that we're just going to suspend into forever with this. Thank you.

CHAIR MOYE: We still have until noon, Commissioner Peterson. Alright, is there any further discussion? Alright, the motion is now for a recommendation of conditional approval based on the amended findings and conditions as read in the record. All those in favor, please raise your hand. All those opposed, please raise your hand. Ok, so once again, we are stuck at a tie vote. Commissioner Peterson.

COMMISSIONER PETERSON: Thank you, Madam Chair. In the matter of case number 09EPC-40060, I move that a recommendation of no recommendation be forwarded to the City Council pursuant to the findings set forth in the staff report provided that an additional Finding 8 be added that reads that "The Environmental Planning Commission considered two motions with regard to this case; one was for denial, one was for conditional approval. Both motions ended in a 3-3 tie." And that no conditions be attached to our recommendation.

COMMISSIONER YARDUMIAN: I'll second it.

CHAIR MOYE: We have a second by Commissioner Yardumian. Is there further discussion? Alright, commissioners, we are voting on a recommendation of no recommendation on this case. All those in favor of no recommendation, please raise your hand. All those opposed to no recommendation, please raise your hand. Alright, so it passes on a 5-1 vote.

FINAL ACTION TAKEN:

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted that no recommendation be forwarded to City Council for Project 1004831, a text amendment to the Subdivision Ordinance.

MOVED BY COMMISSIONER PETERSON
SECONDED BY COMMISSIONER YARDUMIAN

MOTION PASSED 5-1 (COMMISSIONER
SIEGEL VOTED NO)

3. Project# 1002125*
09EPC-40062 AMNDT TO ZONE MAP
(ESTB ZONING/ZONE CHG)

BERGER BRIGGS agents for SANTA FE
ARCHDIOCESAN request the above action for all or a
portion of lot 20A, block 44, RAYNOLDS ADDITION
zoned SU-2 FOR SU-1 FURNITURE / RETAIL to SU-2 for
SU-1 FURNITURE / RETAIL AND O-1 USES located on
IRON AVE SW BETWEEN 13TH ST SW AND 14TH ST
SW containing approximately .489 acre(s). (K-13)
Carol Toffaleti, Staff Planner

STAFF PRESENT:

Carol Toffaleti, Staff Planner

PERSONS PRESENT TO SPEAK IN REFERENCE TO THIS MATTER:

None

MS. TOFFALETI: Reiterated comments made in the staff report in which approval was recommended with findings and conditions.

FINAL ACTION TAKEN:

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission voted to approve Project 1002125 / 09EPC-40062, a zone map amendment for Lot 20-A, Block 44, Raynolds Addition, based on the following Findings and subject to the following Conditions:

FINDINGS:

1. The request is a sector development plan map amendment for Lot 20-A, Block 44, Raynolds Addition, a site of approximately 0.489 acres located at the northeast corner of Iron Ave. and 14th Street. The existing zoning of SU-2/SU-1 for furniture/retail would change to SU-2/SU-1 for furniture/retail and limited O-1 uses, specifically:
 - a. Beauty shop, barber shop
 - b. Church, or other place of worship, and incidental uses, excluding emergency shelters, homeless services and facilities
 - c. Community residential program, excluding community residential corrections or substance abusers program
 - d. Dwelling units constituting up to 60% of the Gross Floor Area on the premises, with open space as regulated in the O-1 zone
 - e. Incidental uses within a building, as regulated in the O-1 zone
 - f. Institution, as regulated in the O-1 zone
 - g. Medical supplies and services



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December 17, 2009

Dear Commissioners:

I regret that due to business in Santa Fe I am unable to attend your hearing today when you will be considering a Text Amendment to the Zoning Code that I am sponsoring (O-09-91). Bruce Thompson is familiar with the legal issues involved, and I have seen the technical comments from Planning staff. I want to convey the policy reasons behind the proposed legislation. These have to do with long-range planning of land use, transportation, and storm drainage.

I first discussed the vacation concern with Mr. Thompson after two vacations were approved in Council District 3.

One was an alley vacation in the southwest part of the Downtown 2010 Plan area. Surrounded by surface parking lots, this alley was apparently vacated for the convenience of those parking lot owners. The problem is, future redevelopment of the block, a goal of the sector plan, may be impeded by the lack of an alley. Rear access for automobile traffic and parking is the preferred scheme in all our modern urban corridor and sector plans in Downtown, Nob Hill and elsewhere. As you know, this is in order to maintain a safe and vibrant pedestrian environment on the street/sidewalk side of the development. A consistent system of alleys is beneficial for this and other service purposes and should not be interrupted as a simple administrative matter without approval from the City's policy-making body, the City Council.

The second example was the vacation of an innocuous-looking stub street in the Old Town area. Shortly after its approval, a Council transportation consultant was working on proposed improvements to the Central Ave./Rio Grande Blvd. intersection and associated corridors. The consultants inquired about the possibility of utilizing the stub street to create a new connector/reliever street parallel to the Central corridor. Unfortunately, that option had been precluded and/or made too expensive by the recent vacation.

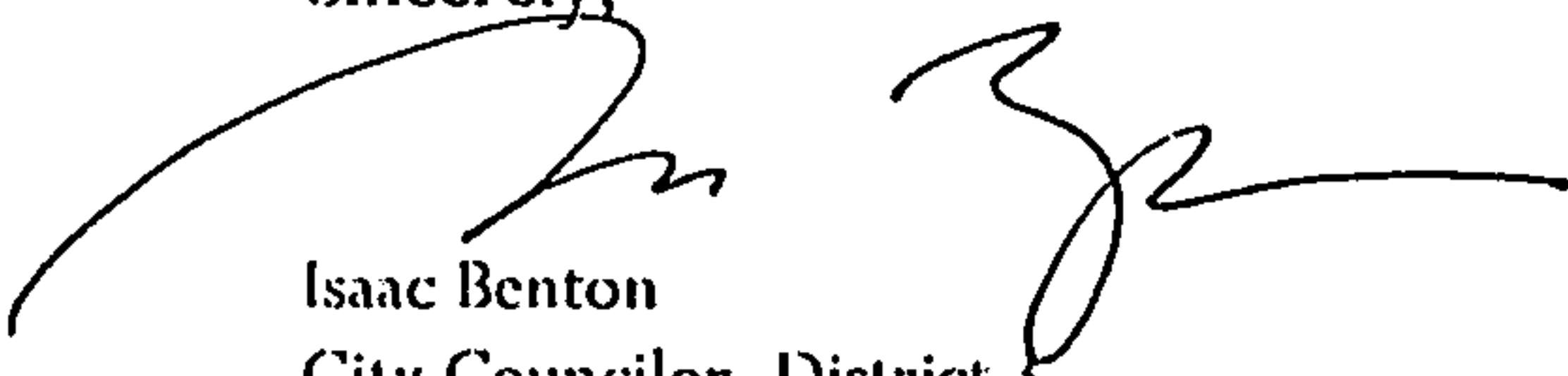
Additionally, drainage is an area-wide issue that affects individual localities, the Martineztown and Barelás flooding being prime examples. What may seem like a simple vacation of a locally-unnecessary drainage or storm sewer easement may preclude future planning and improvements to area-wide drainage issues.

In most vacation cases, after DRB technical approval, Council staff would simply review DRB findings and the item would end up going on the Council consent agenda. However, Councilors and their staff are there to hear constituent concerns and have a unique understanding of their districts' long-range goals and needs. The legislation would provide a final check and opportunity to vet any planning concerns that might not be in the forefront of technical staff's considerations when they review a vacation application.

"Best practices" whether in complete streets, sustainable drainage schemes or land use, are evolving. Our technical standards will also evolve accordingly. Thus it is good government policy to look more carefully at vacations of public easements and rights-of-way.

I am open to your suggestions for amended language on the technical front, but I believe that the essence of this legislation is sound planning and good public policy.

Sincerely,


Isaac Benton
City Councilor, District 3

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
NEW MEXICO CHAPTER

Revised 12.17.09

December 16, 2009

Ms Laurie Moyer, Chair
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico

**RE: TEST AMENDMENT TO §14-14-7 ROA 1994
VACATION ACTIONS**

Dear Chairman Moyer:

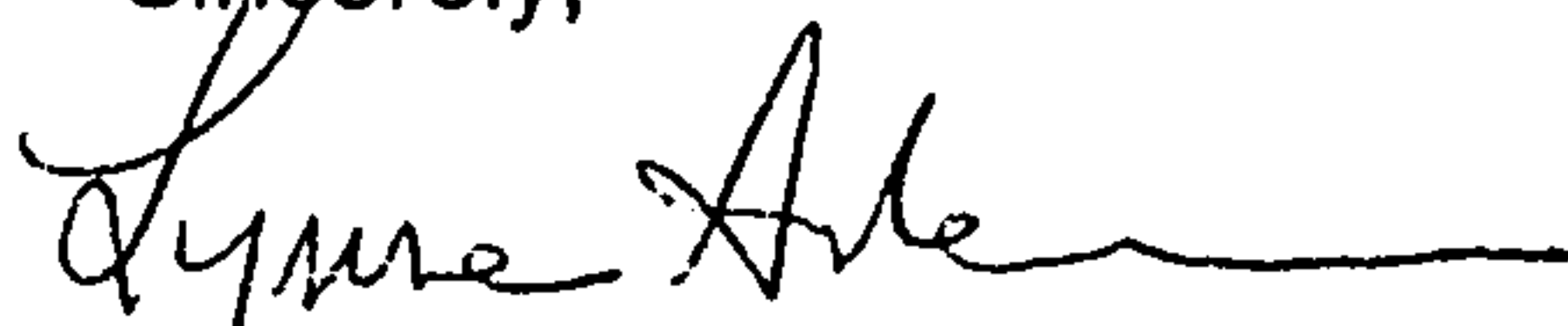
NAIOP, the Commercial Real Estate Development Association, respectfully requests that the EPC recommend denial of the referenced text change to the Subdivision Ordinance. A number of our members have also sent letters requesting denial, and have argued that the change is unwarranted and unnecessary based on existing means of remedy and on the additional approval time and costs that the change would engender. It is clear, from the staff report, that the vast majority of these submissions are pro forma and are not appealed.

NAIOP would like to add that, in the current economy, when commercial building permits are at an historic low, this type of legislation further complicates the permitting process. The additional time and money that this change would add to a development project could easily "kill the deal". It would not appear to be in the interests of the City or its citizens to hamper projects that create jobs and revenue, particularly when the existing system works for the majority of the submissions and a simple appeals process is available to the general public.

Finally, in light of the existing City policy of encouraging infill development as part of the Planned Growth Strategy, I would note that virtually all redevelopment projects require vacation actions since they usually have existing easements which conflict with the new use. So this bill would have an especially large impact to cost and schedule for redevelopment projects.

NAIOP urges your recommendation of denial, and our representatives are available for questions or discussion concerning this text revision.

Sincerely,



Lynne Andersen, President
NAIOP Commercial Real Estate Development Association

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LEGAL COUNSEL

Vogel Campbell & Blener, P.C.

Revised 12.17.09

December 17, 2009

Re: Text Amendment to §14-14-7 ROA 1994 (Case # 09EPC 40060)

To the Environmental Planning Commission:

The Home Builders Association of Central New Mexico (HBA of CNM) opposes the proposed text Amendment to §14-14-7 ROA 1994 (Case # 09EPC 40060). Vacations of easements currently require administrative action and the Amendment requiring Council action would change the process to an unnecessary, and unpredictable, political one.


Changing the existing process to require Council approval will add time and cost to an already lengthy and costly entitlement process. All design work up must be completed up front in order to determine what will need to be vacated. In the current process, the vacation is negotiated during the preliminary plat process. In the new process, one would be required to spend all the money up front (at least \$1500 a lot for a large residential subdivision and possibly 40 or 50 thousand for a five acre commercial development) and left to rely on a political outcome.

A recent example provided by a member displays how a change to the procedure could have cost a much needed infill development:

The new CVS at the northeast corner of Central and Louisiana required a public alley vacation in order to make the site plan and vehicular movements work correctly. This alley was legally City controlled public right-of-way but it was not used for such for years. Nevertheless, under the proposed changes the new procedure would have required vacation of this alley to be approved by City Council action. The new store removed an eyesore and potential hazard on an infill site (an old gas station previously occupied the site) and replaced it with a job and tax generating business in this down economy. Clearly this is something that the City should be encouraging, rather than placing additional roadblocks in front of infill development.

The HBA of CNM's members have expressed the existing process works well; vacation actions require public notification and the public then has the opportunity to respond in writing and in person with questions comments, and disagreements; and they have the right to appeal. Changing the process to a political one will add time, money and unpredictability. Most importantly, potentially adding another 4 - 6 months to any entitlement process could easily deter a company, not just home builders, from investing in our city. This could have a serious impact on economic development efforts.

Sincerely,


Katherine Martinez
Director Of Government Affairs
Home Builders Association of Central New Mexico

BUILDERS OF THE AMERICAN DREAM

Affiliated with the National Association of Home Builders since 1947

4100 Wolcott Ave. NE, Suite B • Albuquerque, NM 87109

(505) 344-3294 • Fax: (505) 345-3795

mailbox@hbacnm.com • www.hbacnm.com



gaw

TIERRA WEST, LLC

December 16, 2009

Ms Laurie Moye, Chair
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico

RE: TEST AMENDMENT TO §14-14-7 ROA 1994
VACATION ACTIONS

Dear Ms. Moye:

I am writing to you to ask the EPC to recommend denial on the referenced text change to the Subdivision Ordinance. Our firm processes vacation requests on a regular basis and we do not see where the DRB violates any current procedure or policy with the current protocol and process for vacations has occurred. Requiring this process to be approved by City Council action will greatly increase the cost for both the applicant and City Council as well as extend the process for the vacation actions adding an additional 4 to 5 months. Further, in this era of budget considerations it will take an inordinate amount of time for the City Council and City Council staff to address this issue. As outlined in the Staff's comments, the general public (if aggrieved or if they feel as if their rights are violated) has the simple appeal process through the hearing officer and then to City Council. In the 23 years that we have been processing vacation actions we have yet to have a vacation action appealed.

I would like to quote the Staff report that shows the number of cases that would be involved. If the City Council has to process this many cases it will take away from other Council business and stretch City Council staff even further. The following is from the staff report:

"As the legislative body for the City of Albuquerque, the City Council already has final administrative authority for actions taken by the City under the regulations of the Subdivision Ordinance. Currently, the DRB holds a public hearing for all vacations, and of course any decision by the DRB is subject to appeal. The DRB heard 29 vacation of public right of way requests in 2007, 21 in 2008, and will have heard 21 in 2009; there were 48 vacation of public easement requests in 2007, 43 in 2008, and 26 so far in 2009. However, only one or two of these vacation requests are appealed each year. This proposed text amendment would result in an extraordinary amount of paperwork and expenditure of staff (and Council) time without a clear benefit to the process."

Further, a vacation action may be required as a precursor to a preliminary plat thereby holding the entire project up until City Council acts on the vacation. So while the vacation action may be extended up to 4 to 6 months it could drastically lengthen a subdivision process as well. We believe that in those rare instances where an appeal is warranted the City has followed the normal protocol and has provided adequate due process in those cases. We feel that the current process does not need to modify and would urge the EPC to recommend that this Text Amendment not be passed.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely



Ronald R. Bohannon, PE
President

RRB/djb

5571 Midway Park Place NE
(505) 858-3100
Albuquerque, NM 87109
Fax (505) 858-1118
1-800-245-3102
tierrawestllc.com



December 16, 2009

Ms. Laurie Moyer, Chairperson
Environmental Planning Commission
One Civic Plaza
Albuquerque New Mexico 87102

RE: VACATION ACTIONS PROPOSED TEXT CHANGE

Dear Ms. Moyer:

We have been informed that a text change is being proposed as referenced above and we ask the EPC to recommend denial on this proposal. As developers of properties in Albuquerque, we frequently request and process vacation requests and this proposed amendment is unwarranted. Any City Council action will greatly increase the cost for both the applicant and City Council as well as extend the process for the vacation actions adding an additional 4 to 5 months. We note that the staff report clearly outlines the deficiencies with this proposed change and encourage the Commission to review these comments carefully. Finally, any appeal is sent to the City Council anyway as the final administrative authority.

The current process does not warrant this change and we urge the EPC to recommend that this Text Amendment not be passed.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Browning", with a long horizontal stroke extending to the right.

Kurt Browning, PE
Director of Development/Const.
Argus-Titan Development

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Richard Dineen, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-09-91
DATE: October 9, 2009

The attached ordinance was introduced by the City Council on October 7, 2009. We are requesting that you submit this text amendment to the Zoning Code to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to change the process for vacating public rights-of-way to ensure Council approval.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
File O-09-91

X:\SHARE\Reports\LUPZ\EPCscheduleO-09-91.doc

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1 **(B)** In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 **(C)** In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 **(D)** The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 **(E)** Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 **(F)** If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of [~~division (B) of this~~
17 ~~section~~][§ 14-14-7-2] shall be followed as to the vacations of right of way.

18 **§ 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS**
19 **AND EASEMENTS.**

20 **(A)** Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 **(1)** The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 **(2)** The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division [~~(E)~~][G] of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

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1 **(B) The vacation of public rights of way, private ways, or**
2 **easements, whether by new plat, plat amendment, or request to vacate, shall**
3 **be approved only when it is determined that:**

4 **(1) The public welfare is in no way served by retaining the**
5 **way or easement; or**

6 **(2) There is a net benefit to the public welfare because the**
7 **development made possible by the vacation is clearly more beneficial to the**
8 **public welfare than the minor detriment resulting from the vacation; and in**
9 **addition to divisions (1) or (2) of this division (B):**

10 **(3) There is no convincing evidence that any substantial**
11 **property right is being abridged against the will of the owner of the right.**

12 **[(C) Public rights of way and public easements may only be**
13 **vacated by action of the City Council following a determination by the DRB**
14 **that the requirements of subsection (B) have been met. Private ways and**
15 **private easements are vacated by action of the DRB and do not require City**
16 **Council action.]**

17 **[(D) The vacation of public rights of way or public easements,**
18 **whether by new plat, plat amendment, or request to vacate, is a discretionary**
19 **act by the City and a determination that the requirements of subdivision (B)**
20 **have been met is a precondition to a vacation but does not create a right to a**
21 **vacation.]**

22 **[(C)][(E)] [In making a determination that the requirements of**
23 **subsection (B) have been met with respect to a public right of way or public**
24 **easement the Development Review Board may recommend that the City**
25 **Council only approve the vacation if][In approving the vacation the**
26 **Development Review Board may require that]** some or all of the public rights
27 of way or easements **[are][be]** retained by the appropriate governmental entity
28 as shown on the original plat.

29 **[(D)][(F)] [In the case of public rights of way or easements the**
30 **City Council and in the case of private rights of way or easements] [F][t]he**
31 **Development Review Board may require that curb and gutter be placed, at the**
32 **expense of the applicant, so as to effectively halt the vacated area[s] being**
33 **used as public way. It may also be necessary to remodel or otherwise**

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1 reconstruct existing public improvements in order to solve problems created
2 by the vacation, and the [City Council or] Development Review Board may so
3 require. Costs involved shall be borne by the applicant.

4 ~~[(E)]~~[(G)] Procedure.

5 (1) In all cases where public right of way, private ways, or
6 easements are sought to be vacated, whether by new subdivision, plat
7 amendment, or request to vacate, the following procedures shall be followed
8 in addition to the procedures specified in Part 3 of this article; however, the
9 following procedure may be eliminated for the requested vacation of private
10 easements if the Planning Director is satisfied that all the benefitted and
11 burdened parties are clearly and completely defined and all agree to the
12 vacation.

13 (2) Notice and Request for Comment.

14 (a) The Planning Director shall mail letters to
15 franchised utilities and to the owner of record of all lots adjacent to the right of
16 way, private way, and/or easement to be vacated [and to any neighborhood
17 association known by the Office of Neighborhood Services to cover all or part
18 of the right of way, private way, and/or easement sought to be vacated],
19 informing them of the nature of the proposed vacation, and notifying them of
20 the date, time, and place of the public hearing by the Development Review
21 Board on the proposed vacation. For notifying property owners, the name and
22 address of the owners shown in the records of the County Assessor shall be
23 used.

24 (b) Prior to the hearing, the Planning Director shall
25 request interested city departments and other agencies to comment on the
26 application. Comments received shall be submitted to the Development
27 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
28 Control Authority and/or the Middle Rio Grande Conservancy District shall be
29 requested before vacation of any drainage easement or public right of way
30 within their respective areas of jurisdiction.

31 (c) If the public right of way, private way, and/or
32 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
33 vehicular or pedestrian traffic], the applicant shall post and maintain one or

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1 more signs, as provided and where instructed by the Planning Director, at
2 least 15 days before the date of the hearing. The applicant is responsible for
3 removing such signs within five days after the hearing is completed. Failure
4 to properly post signs is grounds for deferral of the request. No one except
5 the applicant, the agent of the applicant, or the city shall remove or tamper
6 with any such required sign during the period it is required to be maintained
7 under this division (c).

8 (d) Public notice in a newspaper of general
9 circulation in the city shall be published at least 15 days before date of the
10 hearing; the notice shall indicate the location of the proposed vacation, where
11 a map of the proposed vacation may be viewed, and information on the date,
12 time, and place of the hearing.

13 (3) Hearing and Decision.

14 (a) [A determination by the Development Review
15 Board with respect to a public right of way or easement as to whether the
16 requirements of subsection B have been met] or [A][a] decision [by the
17 Development Review Board with respect to a private right of way or easement
18 as to whether [en-city-approval-of-vacations][a vacation shall be approved]
19 shall be made [by the Development Review Board] at a public hearing.
20 [Approval or disapproval shall be given][Any decision shall be] in
21 writing[,expressing the reasons and any conditions,] and a copy shall be sent
22 to the applicant and any other persons who have indicated interest in the
23 matter. [For a public right of way or easement the Development Review Board
24 may recommend to the City Council conditions that should be imposed if a
25 vacation is approved. For a private right of way or easement the Development
26 Review Board may impose conditions if a vacation is approved.]

27 [(b) A DRB determination that the requirements of
28 subsection B have not been met for a public right of way or easement shall be
29 dispositive as to whether a vacation should be approved subject to appeal to
30 the City Council on that issue. If on appeal the City Council reverses a DRB
31 determination and finds that the requirements of subsection B have been met
32 the City Council shall at the same time exercise its discretion and determine
33 whether the public right of way or easement ~~DRB~~ should be vacated.

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1 (c) A DRB determination that the requirements of
2 subsection B have been met for a public right of way or easement shall be
3 forwarded to the City Council to determine if the vacation shall occur. If the
4 determination by the DRB that the requirements of subsection B have been
5 met is appealed to the City Council that issue shall be considered by the City
6 Council at the same time it exercises its discretion to determine whether the
7 public right of way or easement DRB should be vacated.]

8 ~~(b)~~[d] Approval of vacation of public right of way,
9 private ways or easements shall be conditional upon the following steps being
10 accomplished by the applicant or governmental entity within a time period set
11 by the [City Council or] Development Review Board, in no case exceeding one
12 year. If not so accomplished, the decision to vacate is voided.

13 1. The applicant shall present to the city a
14 final plat incorporating the vacated right of way into adjacent lots, which plat
15 the city shall record with the County Clerk; or

16 2. The appropriate governmental entity shall
17 record a final plat if the [City][~~Development Review Board~~] finds that it is in the
18 public interest for the governmental entity to own the vacated public right of
19 way as a lot or if adjacent property owners do not desire the vacated parcel.

20 3. The applicant shall secure the installing or
21 removing and disposing of such improvements, as are required by the [City
22 Council or] Development Review Board in order to remodel or otherwise
23 reconstruct existing public improvements to appropriately provide for the
24 proposed uses. Costs involved shall be borne by the applicant.

25 (4) Disposition of Right-of-Way.

26 (a) Normally the owners of land adjacent to the
27 vacated public right of way have an opportunity to obtain title to the land, for
28 some consideration, from the owner (normally the city).

29 (b) Immediately after a city decision to vacate platted
30 public right of way becomes final, if such land is proposed to be disposed of
31 by the city, the City Property Manager shall notify each owner of adjacent
32 property by certified letter. The certified letter shall notify each adjacent
33 landowner of the opportunity to purchase from the city one-half of the width of

1 the vacated right of way contiguous to the landowner's property, subject to
2 any conditions or requirements stated in the decision to vacate. If an adjacent
3 landowner fails to notify the city Property Manager in writing, within 30 days of
4 the date of the receipt slip of the certified letter, that he or she intends to
5 purchase the adjacent public right of way, the city may dispose of the vacated
6 right of way in any manner which the city, in its discretion, deems appropriate.

7 § 14-14-7-3 TECHNICAL CORRECTIONS.

8 (A) Technical corrections to approved, but as yet unrecorded, final
9 plats shall be approved by the Development Review Board before being
10 recorded with the County Clerk.

11 (B) Technical corrections to recorded final plats shall be made by
12 a correction plat approved by the Development Review Board. The plat shall
13 include only the area affected by the correction and shall clearly indicate the
14 correction. Correction plats for technical corrections shall be recorded in the
15 same manner as a final plat. See § 14-14-3-6 of this article.

16 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word
17 or phrase of this ordinance is for any reason held to be invalid or
18 unenforceable by any court of competent jurisdiction, such decision shall not
19 affect the validity of the remaining provisions of this ordinance. The Council
20 hereby declares that it would have passed this ordinance and each section,
21 paragraph, sentence, clause, word or phrase thereof irrespective of any
22 provision being declared unconstitutional or otherwise invalid.

23 SECTION 4. COMPILATION. This ordinance shall be incorporated in
24 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
26 days following publication by title and general summary.

27

28

City of Albuquerque



DEVELOPMENT/ PLAN REVIEW APPLICATION

Supplemental form

SUBDIVISION

- Major Subdivision action
- Minor Subdivision action
- Vacation
- Variance (Non-Zoning)

SITE DEVELOPMENT PLAN

- for Subdivision
- for Building Permit
- Administrative Amendment (AA)
- IP Master Development Plan
- Cert. of Appropriateness (LUCC)

STORM DRAINAGE (Form D)

- Storm Drainage Cost Allocation Plan

S Z ZONING & PLANNING

- Annexation
- County Submittal
- EPC Submittal
- Zone Map Amendment (Establish or Change Zoning)
- Sector Plan (Phase I, II, III)
- Amendment to Sector, Area, Facility or Comprehensive Plan
- Text Amendment (Zoning Code/Sub Regs)
- Street Name Change (Local & Collector)
- L A APPEAL / PROTEST of...**
 - Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Zoning Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any): CoA Planning Department PHONE: 924-3860
 ADDRESS: 90 Current Planning Div. 600 2nd St NW FAX: 924-3339
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

APPLICANT: CoA City Council PHONE: 768-3100
 ADDRESS: One Civic Plaza NW FAX: 768-3227
 CITY: Albuq. STATE NM ZIP 87102 E-MAIL: _____

Proprietary interest in site: _____ List all owners: _____

DESCRIPTION OF REQUEST: Text amendment to Subdivision Ord. per 0-09-91

Is the applicant seeking incentives pursuant to the Family Housing Development Program? Yes. No.

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. city-wide Block: _____ Unit: _____
 Subdiv/Addn/TBKA: _____
 Existing Zoning: _____ Proposed zoning: _____ MRGCD Map No _____
 Zone Atlas page(s): _____ UPC Code: _____

CASE HISTORY:

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_, Z_, V_, S_, etc.): _____

CASE INFORMATION:

Within city limits? Yes Within 1000FT of a landfill? _____
 No. of existing lots: _____ No. of proposed lots: _____ Total area of site (acres): _____
 LOCATION OF PROPERTY BY STREETS: On or Near: city wide
 Between: _____ and _____

Check-off if project was previously reviewed by Sketch Plat/Plan , or Pre-application Review Team . Date of review: _____

SIGNATURE Carol Toffaleti DATE 11/3/09
 (Print) Carol Toffaleti Applicant: Agent:

FOR OFFICIAL USE ONLY

Form revised 4/07

- INTERNAL ROUTING
- All checklists are complete
- All fees have been collected
- All case #s are assigned
- AGIS copy has been sent
- Case history #s are listed
- Site is within 1000ft of a landfill
- F.H.D.P. density bonus
- F.H.D.P. fee rebate

Application case numbers	Action	S.F.	Fees
<u>09EPC 40060</u>	<u>ASO</u>	<u>2</u>	<u>\$ 0</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
Hearing date <u>12/17/09</u>			Total <u>\$ 0</u>

Sandy Handley 11/03/09
 Planner signature / date

Project # 1004831

FORM Z: ZONE CODE TEXT & MAP AMENDMENTS, PLAN APPROVALS & AMENDMENTS

ANNEXATION (EPC08)

- Application for zone map amendment including those submittal requirements. See below. Annexation and establishment of zoning must be applied for simultaneously.
 - Petition for Annexation Form and necessary attachments
 - Zone Atlas map with the entire property(ies) clearly outlined
NOTE: The Zone Atlas must show that the site is in County jurisdiction, but is contiguous to City limits.
 - Letter briefly describing, explaining, and justifying the request
NOTE: Justifications must adhere to the policies contained in "Resolution 54-1990"
 - Letter of authorization from the property owner if application is submitted by an agent
 - BCC Notice of Decision for City Submittals
 - Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
 - Sign Posting Agreement
 - TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
 - List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

- SDP PHASE I - DRB CONCEPTUAL PLAN REVIEW (DRBPH1)** (Unadvertised)
- SDP PHASE II - EPC FINAL REVIEW & APPROVAL (EPC14)** (Public Hearing)
- SDP PHASE II - DRB FINAL SIGN-OFF (DRBPH2)** (Unadvertised)

- Copy of findings from required pre-application meeting (needed for the DRB conceptual plan review only)
- Proposed Sector Plan (30 copies for EPC, 6 copies for DRB)
- Zone Atlas map with the entire plan area clearly outlined
- Letter briefly describing, explaining, and justifying the request
- Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (for EPC public hearing only)
- TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form (for EPC public hearing only)
- Fee for EPC final approval only (see schedule)
- List any original and/or related file numbers on the cover application

Refer to the schedules for the dates, times and places of DRB and EPC hearings.

Your attendance is required.

AMENDMENT TO ZONE MAP - ESTABLISHMENT OF ZONING OR ZONE CHANGE (EPC05)

- Zone Atlas map with the entire property clearly outlined
 - Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980".
 - Letter of authorization from the property owner if application is submitted by an agent
 - Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts
 - Sign Posting Agreement
 - TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
 - Fee (see schedule)
 - List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO SECTOR DEVELOPMENT MAP (EPC03)

AMENDMENT SECTOR DEVELOPMENT, AREA, FACILITY, OR COMPREHENSIVE PLAN (EPC04)

- Proposed Amendment referenced to the materials in the Plan being amended (text and/or map)
 - Plan to be amended with materials to be changed noted and marked
 - Zone Atlas map with the entire plan/amendment area clearly outlined
 - Letter briefly describing, explaining, and justifying the request per "Resolution 270-1980" (Sector Plan map change only)
 - Letter of authorization from the property owner if application is submitted by an agent (Map change only)
 - Letter briefly describing, explaining, and justifying the request
 - Office of Community & Neighborhood Coordination inquiry response, notifying letter, certified mail receipts (sector plans only)
 - TIS/AQIA Traffic Impact Study / Air Quality Impact Assessment form
 - Sign Posting Agreement
 - Fee (see schedule)
 - List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

AMENDMENT TO ZONING CODE OR SUBDIVISION REGULATORY TEXT (EPC07)

- Amendment referenced to the sections of the Zone Code/Subdivision Regulations being amended
 - Sections of the Zone Code/Subdivision Regulations to be amended with text to be changed noted and marked
 - Letter briefly describing, explaining, and justifying the request
 - Fee (see schedule)
 - List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Carol Toffaleti Applicant name (print)
Carol Toffaleti Applicant signature / date
 11/3/09



Form revised APRIL 07

- Checklists complete
- Fees collected
- Case #s assigned
- Related #s listed

Application case numbers
09 EPC - 40060

Sandy Handley 11/03/09
 Planner signature / date
 Project # 1004831

[-Bracketed/Strikethrough-Material-] - Deletion

1 **(B)** In approving the amendment of or vacation of all or a part of a
2 plat, the Development Review Board shall evaluate whether the amendment or
3 vacation action will adversely affect contiguous land, any owner of land within
4 the subdivision being vacated, or the interests of the city.

5 **(C)** In approving the amendment of all or a portion of a plat, the
6 Development Review Board may require that streets dedicated to a
7 governmental entity in the original plat continue to be dedicated.

8 **(D)** The rights of any public or private utility, including drainage,
9 existing prior to the replat, total or partial, of any plat are not affected by the
10 replat unless an authorized representative of the utility involved agrees by
11 signing the plat to have the rights modified or terminated.

12 **(E)** Amendment or vacation of all or a portion of a subdivision
13 outside the municipal limits of the city, but within its platting and planning
14 jurisdiction, requires approval of both the city and county.

15 **(F)** If a resubdivision or amendment of a previous plat would
16 vacate public rights of way, the standards and process of [~~division (B) of this~~
17 ~~section~~][§ 14-14-7-2] shall be followed as to the vacations of right of way.

18 **§ 14-14-7-2 VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS**
19 **AND EASEMENTS.**

20 **(A)** Rights of way, including public rights of way, private ways,
21 and easements shown on recorded plats, may be vacated, that is, terminated,
22 by recording a new subdivision plat or by plat amendment, as described in §
23 14-14-7-1 of this part. In addition, where nothing except vacation of public
24 rights of way, private ways, and easements is proposed, it may be initiated by
25 a request to vacate filed by either:

26 **(1)** The owners of a majority of the front footage of land
27 abutting the proposed vacation; or

28 **(2)** The Planning Director, if he or she finds vacation likely
29 to be in the public interest. A request to vacate shall be processed under the
30 procedures of division [~~(E)~~][G] of this section in addition to the procedures
31 relating to minor subdivision applications under Part 3 of this article.

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1 (B) The vacation of public rights of way, private ways, or
2 easements, whether by new plat, plat amendment, or request to vacate, shall
3 be approved only when it is determined that:

4 (1) The public welfare is in no way served by retaining the
5 way or easement; or

6 (2) There is a net benefit to the public welfare because the
7 development made possible by the vacation is clearly more beneficial to the
8 public welfare than the minor detriment resulting from the vacation; and in
9 addition to divisions (1) or (2) of this division (B):

10 (3) There is no convincing evidence that any substantial
11 property right is being abridged against the will of the owner of the right.

12 [(C) Public rights of way and public easements may only be
13 vacated by action of the City Council following a determination by the DRB
14 that the requirements of subsection (B) have been met. Private ways and
15 private easements are vacated by action of the DRB and do not require City
16 Council action.]

17 [(D) The vacation of public rights of way or public easements,
18 whether by new plat, plat amendment, or request to vacate, is a discretionary
19 act by the City and a determination that the requirements of subdivision (B)
20 have been met is a precondition to a vacation but does not create a right to a
21 vacation.]

22 [(C)][(E) In making a determination that the requirements of
23 subsection (B) have been met with respect to a public right of way or public
24 easement the Development Review Board may recommend that the City
25 Council only approve the vacation if][In approving the vacation the
26 Development Review Board may require that] some or all of the public rights
27 of way or easements [are][be] retained by the appropriate governmental entity
28 as shown on the original plat.

29 [(D)][(F) In the case of public rights of way or easements the
30 City Council and in the case of private rights of way or easements] [†][t]he
31 Development Review Board may require that curb and gutter be placed, at the
32 expense of the applicant, so as to effectively halt the vacated area[-s] being
33 used as public way. It may also be necessary to remodel or otherwise

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1 reconstruct existing public improvements in order to solve problems created
2 by the vacation, and the [City Council or] Development Review Board may so
3 require. Costs involved shall be borne by the applicant.

4 ~~[(E)]~~[(G)] Procedure.

5 (1) In all cases where public right of way, private ways, or
6 easements are sought to be vacated, whether by new subdivision, plat
7 amendment, or request to vacate, the following procedures shall be followed
8 in addition to the procedures specified in Part 3 of this article; however, the
9 following procedure may be eliminated for the requested vacation of private
10 easements if the Planning Director is satisfied that all the benefitted and
11 burdened parties are clearly and completely defined and all agree to the
12 vacation.

13 (2) Notice and Request for Comment.

14 (a) The Planning Director shall mail letters to
15 franchised utilities and to the owner of record of all lots adjacent to the right of
16 way, private way, and/or easement to be vacated [and to any neighborhood
17 association known by the Office of Neighborhood Services to cover all or part
18 of the right of way, private way, and/or easement sought to be vacated],
19 informing them of the nature of the proposed vacation, and notifying them of
20 the date, time, and place of the public hearing by the Development Review
21 Board on the proposed vacation. For notifying property owners, the name and
22 address of the owners shown in the records of the County Assessor shall be
23 used.

24 (b) Prior to the hearing, the Planning Director shall
25 request interested city departments and other agencies to comment on the
26 application. Comments received shall be submitted to the Development
27 Review Board. Comments from the Albuquerque Metropolitan Arroyo Flood
28 Control Authority and/or the Middle Rio Grande Conservancy District shall be
29 requested before vacation of any drainage easement or public right of way
30 within their respective areas of jurisdiction.

31 (c) If the public right of way, private way, and/or
32 easement proposed for vacation appears to be in use ~~[for vehicular access]~~[by
33 vehicular or pedestrian traffic], the applicant shall post and maintain one or

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1 more signs, as provided and where instructed by the Planning Director, at
2 least 15 days before the date of the hearing. The applicant is responsible for
3 removing such signs within five days after the hearing is completed. Failure
4 to properly post signs is grounds for deferral of the request. No one except
5 the applicant, the agent of the applicant, or the city shall remove or tamper
6 with any such required sign during the period it is required to be maintained
7 under this division (c).

8 (d) Public notice in a newspaper of general
9 circulation in the city shall be published at least 15 days before date of the
10 hearing; the notice shall indicate the location of the proposed vacation, where
11 a map of the proposed vacation may be viewed, and information on the date,
12 time, and place of the hearing.

13 (3) Hearing and Decision.

14 (a) [A determination by the Development Review
15 Board with respect to a public right of way or easement as to whether the
16 requirements of subsection B have been met] or [A][a] decision [by the
17 Development Review Board with respect to a private right of way or easement
18 as to whether [on city approval of vacations][a vacation shall be approved]
19 shall be made [by the Development Review Board] at a public hearing.
20 [Approval or disapproval shall be given][Any decision shall be] in
21 writing[,expressing the reasons and any conditions,] and a copy shall be sent
22 to the applicant and any other persons who have indicated interest in the
23 matter. [For a public right of way or easement the Development Review Board
24 may recommend to the City Council conditions that should be imposed if a
25 vacation is approved. For a private right of way or easement the Development
26 Review Board may impose conditions if a vacation is approved.]

27 [(b) A DRB determination that the requirements of
28 subsection B have not been met for a public right of way or easement shall be
29 dispositive as to whether a vacation should be approved subject to appeal to
30 the City Council on that issue. If on appeal the City Council reverses a DRB
31 determination and finds that the requirements of subsection B have been met
32 the City Council shall at the same time exercise its discretion and determine
33 whether the public right of way or easement DRB should be vacated.

1 (c) A DRB determination that the requirements of
2 subsection B have been met for a public right of way or easement shall be
3 forwarded to the City Council to determine if the vacation shall occur. If the
4 determination by the DRB that the requirements of subsection B have been
5 met is appealed to the City Council that issue shall be considered by the City
6 Council at the same time it exercises its discretion to determine whether the
7 public right of way or easement DRB should be vacated.]

8 ~~(b)~~[d] Approval of vacation of public right of way,
9 private ways or easements shall be conditional upon the following steps being
10 accomplished by the applicant or governmental entity within a time period set
11 by the [City Council or] Development Review Board, in no case exceeding one
12 year. If not so accomplished, the decision to vacate is voided.

13 1. The applicant shall present to the city a
14 final plat incorporating the vacated right of way into adjacent lots, which plat
15 the city shall record with the County Clerk; or

16 2. The appropriate governmental entity shall
17 record a final plat if the [City][~~Development Review Board~~] finds that it is in the
18 public interest for the governmental entity to own the vacated public right of
19 way as a lot or if adjacent property owners do not desire the vacated parcel.

20 3. The applicant shall secure the installing or
21 removing and disposing of such improvements, as are required by the [City
22 Council or] Development Review Board in order to remodel or otherwise
23 reconstruct existing public improvements to appropriately provide for the
24 proposed uses. Costs involved shall be borne by the applicant.

25 (4) Disposition of Right-of-Way.

26 (a) Normally the owners of land adjacent to the
27 vacated public right of way have an opportunity to obtain title to the land, for
28 some consideration, from the owner (normally the city).

29 (b) Immediately after a city decision to vacate platted
30 public right of way becomes final, if such land is proposed to be disposed of
31 by the city, the City Property Manager shall notify each owner of adjacent
32 property by certified letter. The certified letter shall notify each adjacent
33 landowner of the opportunity to purchase from the city one-half of the width of

1 the vacated right of way contiguous to the landowner's property, subject to
2 any conditions or requirements stated in the decision to vacate. If an adjacent
3 landowner fails to notify the city Property Manager in writing, within 30 days of
4 the date of the receipt slip of the certified letter, that he or she intends to
5 purchase the adjacent public right of way, the city may dispose of the vacated
6 right of way in any manner which the city, in its discretion, deems appropriate.

7 § 14-14-7-3 TECHNICAL CORRECTIONS.

8 (A) Technical corrections to approved, but as yet unrecorded, final
9 plats shall be approved by the Development Review Board before being
10 recorded with the County Clerk.

11 (B) Technical corrections to recorded final plats shall be made by
12 a correction plat approved by the Development Review Board. The plat shall
13 include only the area affected by the correction and shall clearly indicate the
14 correction. Correction plats for technical corrections shall be recorded in the
15 same manner as a final plat. See § 14-14-3-6 of this article.

16 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word
17 or phrase of this ordinance is for any reason held to be invalid or
18 unenforceable by any court of competent jurisdiction, such decision shall not
19 affect the validity of the remaining provisions of this ordinance. The Council
20 hereby declares that it would have passed this ordinance and each section,
21 paragraph, sentence, clause, word or phrase thereof irrespective of any
22 provision being declared unconstitutional or otherwise invalid.

23 SECTION 4. COMPILATION. This ordinance shall be incorporated in
24 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five
26 days following publication by title and general summary.

27
28

MEMO

Date: Nov. 3, 2009

To: Sandra Handley, Land Development Coordination, COA Planning Department

From: Carol Toffaleti, Planner 
Current Planning Division, City of Albuquerque Planning Department
Tel 924-3345, cgtoffaleti@cabq.gov

Re: Application from City Council (O-09-91)

This is to clarify that the request is a text amendment to the Subdivision Ordinance, rather than to the Zoning Code as stated in the applicant's cover memo.