



**T**he **H**ENSLEY **E**NGINEERING **G**ROUP

January 1, 2024

Ron Bohannon  
Development Hearing Officer

Re: Project# PR-2023-006568 Application# SD-2023-00147 – PRELIMINARY PLAT  
REQUEST FOR REHEARING

Rehearing is a term without occurrence in the IDO or the Development Hearing Officer Rules of Procedure. This request is inappropriate, a violation of the Development Hearing Officer Rules of Procedure. However, the following should be considered the Applicants response to the Request for Rehearing.

Per the IDO “The Development Hearing Officer (DHO) A person or firm on contract with the City who makes decisions about subdivisions, vacations, and waivers based on zoning standards in the IDO and technical standards in the DPM” and is not a body delegated with policy decisions and therefore has no other matters to consider other than submitted applications. There is no application that is up for hearing and per the DHO Rules of Procedure “The DHO shall not conduct independent fact-finding investigations”. This also seems improper due to the DHO Rules of Procedure stating “an approval or denial is a final decision”.

This Preliminary Plat was approved on October 25, 2023, but the Notice of Decision was not issued and further approvals and permit applications have been improperly delayed. The IDO states “The Notice of Decision shall be posted on the City website as soon as practicable and not more than 3 business days after the final action on the matter by any decision making officer.” This request for rehearing has a heading of Official Notice of Decision and is signed by the Associate Planning Director and posted in the record on December 22, 2023. However, the DHO Development Dearing Officer Rules of Procedure state “Notices of Decision signed by the DHO will be posted on the DHO webpage within three (3) business days after final action.”

The IDO describes a Preliminary Plat as “a tentative plat of a proposed subdivision prepared in accordance with the specifications of this IDO and the DPM for presentation to the DHO for action. The DHO shall conduct a public hearing and make a decision on the preliminary plat. Per the IDO, as a preliminary approval, a Preliminary Plat is not considered a final decision that can be appealed.” The review and approval of the Preliminary Plat is to evaluate only the plat i.e. lot conformance, and it is not in any way a consideration for endorsement of any previous approvals. The approval does not include or infer any other review or approval for construction, and the DHO cannot decide on ability of the subdivision or individual lot to be engineered and constructed in conformance with applicable code. The review of proposed lot improvements is not a part of the process, and the tentative nature of a Preliminary Plat makes it a guidance decision on subdivision layout and conditioned on meeting subsequent requirements i.e. permit applications. Given this fact, placing Conditions of Approval on a Preliminary Plat seems improper. Per the DHO Rules of Procedure, the “DHO may accept conditions of approval for a plat” not a preliminary plat. If subsequent permit applications are not forthcoming for the Preliminary Plat, the action becomes void.

The request for rehearing states that Hydrology conditionally approved the grading and drainage plan “for action by the DHO.” The approval from Hydrology, representing the City Engineer, states “Grading Plan is approved for Work Order, Grading Permit, and for action by the Development Hearing Officer (DHO) on Preliminary/Final Plat”. The Grading Plan was submitted for the quoted approvals in accordance with Section 6-14(B)(1) 2 of the DPM.

The request for rehearing states the applicability of IDO 6-4(E)(3)(a), but it neglects the remainder of the section that states “and any conditions specifically applied to development of the property in a prior permit or approval affecting the property. The previous approval of the Grading Plan was of material effect to the property.

The request for rehearing states the applicability of IDO 6-4(E)(3) through 6-4(G). These sections are under 6-4(E) APPLICATION MATERIALS and 6-4(G) APPLICATION COMPLETENESS. Given that the application was deemed complete and accepted for action, these sections seem mute to the DHO.

The request for rehearing states “The applicant made no request for retaining or privacy walls to vary from the IDO required limit of 3 feet for the front and side yards”. Retaining walls do not require a variance. Retaining walls are regulated by section 14-16-5-7(F) of the IDO. Per that section, “Retaining walls shall have a maximum height as specified in Section 14-16-5-7(D) (Maximum Wall Height) unless a higher wall is approved by the City Engineer as necessary on a particular lot”. The section clearly states that the City Engineer by sole authority can approve retaining walls of any height. The Grading Plan including retaining walls was submitted for approvals in accordance with Section 6-14(B)(1) 2 of the DPM. Hydrology, representing the City Engineer, approved the plan. This is the only process by which the City Engineer approves retaining walls. While retaining walls might be considered as part of the Preliminary Plat approval process as the Grading Plan approval requirement, it is not within the DHO’s review and decision criteria for Preliminary Plat to evaluate the ability to obtain permits that may or may not be required.

The request for rehearing suggests that the Applicant is responsible for “incomplete submissions or providing inaccurate, false or misleading information”. This is a false and libelous implication, and it is a contradiction to how the applicant was lauded in the hearing for the complete disclosure of the conditions.

The request for rehearing states “applicant’s evidence and testimony regarding wall heights did not meet the applicant’s burden of showing compliance with required IDO standards”. Wall heights are not a part of this application, and the statement implies the DHO did not understand the evidence provided. The Applicant does not believe this to be the case. Per the Rules of Procedure, the DHO “shall be advised by the recommendations of the Development Facilitation Team. However, other than those from ABCWUA, the DHO can accept or reject these recommendations.

The Applicant met all the requirements for a Preliminary Plat approval, and it was granted that approval in accordance with the Development Hearing Officer Rules of Procedure. Per the Rules of Procedure “an approval ... is a final decision of the DHO.” This request for rehearing should not be considered, and the DHO Notice of Decision should be issued in accordance with the requirements of the IDO.

Sincerely,



Ron E. Hensley P.E.

[ron@thegroup.cc](mailto:ron@thegroup.cc)

## REFERENCES

### **Development Hearing Officer Rules of Procedure**

#### ARTICLE I: INTRODUCTION

1. Governance of Meetings and Hearings. These Rules of Procedure ("Rules") for the City of Albuquerque ("City") Development Hearing Officer ("DHO") shall control the conduct of business by the DHO.
2. Fact Finding Investigations. The DHO shall not conduct independent fact-finding investigations of any property that is the subject of a quasi-judicial hearing before the DHO.

#### ARTICLE III: DECISION

1. Final Decision. An approval or denial is a final decision of the DHO.
2. Notices of Decision. The DHO shall act on an application at the conclusion of the hearing. The DHO shall issue a written decision, which includes key findings of fact. This Decision shall be made a part of the record. Each material finding shall be supported by substantial evidence. Notices of Decision signed by the DHO will be posted on the DHO webpage within three (3) business days after final action.
3. Conditions of Approval. The DHO may accept conditions of approval for a plat if it would not result in any material redesign of the project.
6. The DHO shall be advised by the recommendations of the Development Facilitation Team (DFT) staff on compliance with the IDO and the DPM.

### **Integrated Development Ordinance**

5-7(B)(5) Retaining walls shall be required to follow standards in Subsections 14-16-5-7(B)(8) and 14-16-5-7(F).

5-7(D)(3) Exceptions to Maximum Wall Height, 5-7(D)(3)(a) Low-density Residential Development

2. For low-density residential development in or abutting a Residential zone district where wall height in any front or street side yard is restricted to 3 feet by Table 5-7-1, a request for a taller wall that meets the height and location standards in Table 5-7-2 shall require Permit – Wall or Fence – Major pursuant to Subsection 14-16-6-6(H)

5-7(F) RETAINING WALL STANDARDS

5-7(F)(1) Maximum Height 5-7(F)(1)(a) Retaining walls shall have a maximum height as specified in Section 14-16-5-7(D) (Maximum Wall Height) unless a higher wall is approved by the City Engineer as necessary on a particular lot.

Table 5-7-1: Maximum Wall Height - Taller walls may be approved for low-density residential development pursuant to Subsection 14-16-5-7(D)(3)(a).

6-4(M)(6)(a) For Decisions Requiring a Public Hearing and Policy Decisions (pursuant to Table 6-1-1), a Notice of Decision, including a list of any conditions attached to any permit or approval, shall be sent to each party to the matter and to any other person who has entered an appearance and requested a copy of the decision. The Notice of Decision shall be posted on the City website as soon as practicable and not more than 3 business days after the final action on the matter by any decision making officer or body other than the City Council. Notices of decision by the City Council must be posted within 10 calendar days of the final action. 6-5(F) PERMIT – WALL OR FENCE – MINOR 6-5(F)(1) Applicability This Subsection 14-16-6-5(F) applies to all applications to build a wall or fence that meets the standards in Section 14-16-5-7 (Walls and Fences)

6-6(H)(3) Review and Decision Criteria

An application for a Permit – Wall or Fence – Major for a wall in the front or street side yard of a lot with low-density residential development in or abutting any Residential zone district that meets the requirements in Subsection 14-16-5-7(D)(3)(g) (Exceptions to Maximum Wall Height) and Table 5-7-2 shall be approved if all of the following criteria are met.

6-6(H)(3)(a) The wall is proposed on a lot that meets any of the following criteria.

4. For a street side yard wall taller than allowed in Table 5-7-1, at least 20 percent of the properties with low-density residential development with a side yard abutting the same street as the subject property and within 330 feet of the subject property along the length of the street the lot faces have a street side yard wall or fence over 3 feet

6-6(L)(3)(a) A Preliminary Plat shall be approved if it complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.

**DPM**

Section 6-14(B)(1) 2. Identify all approvals being requested in conjunction with this submittal,