Notice of Decision
City Council
City of Albuquerque
November 13, 2023

AC-23-14 (VA-2023-00196) PR-2022-007712, SI-2023-00127 The Westside Coalition of Neighborhood Associations and Michael Voorhees appeal the Development Hearing Officer decision to approve a final plat, for all or a portion of Lot 5, Block 6 Volcano Cliffs Unit 26 & Lot 1, Block 2, Volcano Cliffs Unit 26 zoned MX-L & MX-M, located on Rosa Parks Rd. between Paseo Del Norte and Rosa Parks Rd. containing approximately 18.23 acre(s). (C-11)

Decision

On November 8, 2023, by a vote of 8 FOR 0 AGAINST the City Council voted to accept the withdrawal by the Applicant.

Excused: Benton

IT IS THEREFORE ORDERED THAT THIS MATTER IS WITHDRAWN.

Attachments

1. Land Use Hearing Officer's Findings and Recommendation
2. Action Summary from the November 8, 2023 City Council Meeting

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.

_____ Date: 11/13/2023
Pat Davis, President
City Council

Received by: Gabryella Williams Date: 11/13/2023
City Clerk's Office

CITY OF ALBUQUERQUE
LAND USE APPEAL UNDER THE IDO
BEFORE AN INDEPENDENT
LAND USE HEARING OFFICER

APPEAL NO. AC-23-14

VA-2023-00196; PR 2022-007712 and SD-2023-00127

Michael Voorhees, and
The Westside Coalition of Neighborhood Associations,

Appellants,

and,

Jubilee Development, LLC and Group II U26 VC, LLC,

Appellees-Applicants.

PROPOSED DECISION

I. INTRODUCTION

Under sections 5-4(C)(6) and 5-2(J)(2) of the IDO, "prior to any platting action," any development on lots 5-acres or larger that is "*adjacent"* to Major Public Open Space (MPOS) requires a Site Plan-EPC. The crux of this appeal turns on whether the Appellee-Applicants' proposed development is "adjacent" to the La Cuentista MPOS.

The Appellee-Applicants, Jubilee Development, LLC and Group II U26 VC, LLC (the

Applicants) sought and were granted final plat approval of an 18.23-acre development in a recent hearing before the Development Hearing Officer (DHO). It is undisputed that the Applicants did not ever obtain EPC approval of a Site Plan-EPC for the development. In this appeal, Appellants primarily allege that without a Site Plan-EPC, the final plat approval is invalid. The Appellants also raise numerous other issues of alleged error in this appeal, all of which are discussed below.

The Applicants and the city Planning Department staff, on the other hand, contend that a Site Plan-EPC was unnecessary. They argue that because the space separating the application site and the MPOS is a street intersection, the MPOS is insufficiently adjacent to satisfy the definition of adjacent under the IDO. The Applicants and city staff further argue that under their "strict" interpretation of the term "adjacent," a Site Plan-EPC is only required if the application site and the MPOS were separated by only "*one*" street rather than an intersection which is comprised of two streets.

After reviewing the record, listening to arguments of the parties, witness testimony, and cross-examination in an extended three-hour quasi-judicial appeal hearing, and after considering the applicable IDO provisions, I respectfully conclude that city planning staff's "strict" interpretation and application of the term "adjacent" in the IDO is erroneous and the Appellants' appeal on this issue should be sustained. Until the Applicants obtain EPC approval of a Site Plan-EPC, the platting application and approval are premature and should be denied.

Specifically, as detailed below, I find that city staffs' and the Applicants' narrow interpretation is inconsistent with the definition of "adjacent" and with its legislative purpose in the IDO, and it is inconsistent with the legislative intent of the City Council to protect major

public open space. On all other issues presented by Appellants in this appeal, I respectfully find that those issues are either not ripe, are mooted by the proposed findings below, or that they should be denied on their merits.

II. RELEVANT BACKGROUND

The relevant procedural background associated with the application site is multifaceted and entangled with various layers of approvals over the course of several years. In this appeal, the Appellants and the Applicants stipulated that the record should be supplemented to include records of those approvals. The parties also supplemented the record with written arguments and additional exhibits which by stipulation are also included in the record. Because of the numerous additions to the record, I have re-Bates stamped the record.[1]

In September 2017, the Development Review Board (DRB) approved the Applicants' application for a site plan, encompassing the then entire 18.79-acre site which is the subject of this appeal. **[R. 313]**. That site plan apparently encompassed three lots between Paseo Del Norte N.W. and Rosa Parks Road, along Kimmick Drive **[R. 313]**. At the time, the original site plan for the site was subject to the design regulations in the Volcano Cliffs Sector Plan which was subsequently repealed and replaced by the IDO **[R. 639]**.

The Applicants then sought a rezoning for 8.7 acres of the site from MX-L to MX-M which at the time encompassed the lot 1 (Tract 1-A in the 2022 amended site plan described below) **[R. 004]**. On October 10, 2019, the Environmental Planning Commission (EPC)

1. Throughout this recommendation, for clarity, when I reference the record, I will be referencing the re-Bates stamped record only.

approved the Applicants' rezoning application. **[R. 223]**.[2]

Significant to this appeal, on June 16, 2022, the EPC had approved a rezoning of 35-acres of land from R-1D to NR-PO-B which is considered under the IDO as MPOS land **[R. 011, 104]**. Under IDO, § 6-7(G)(1), the EPC is the final decision-maker in approving NR-PO-B zone map amendments and the rezoning that created the MPOS was effective on June 16, 2022, when the EPC approved the application. The rezoning resulted in newly created MPOS land directly caddy-corner to the application site at the south side of the intersection of Kimmick Drive, and Rosa Parks Road N.W. **[R. 011, 104]**.[3]

Then, on August 4, 2022, the Applicants applied to the DRB to amend the September 2017 site plan, submitted a proposed amended site plan, and also requested approval of a preliminary plat for the site **[R. 497]**. The application included inaccurate area maps from the Albuquerque Geographic Information System (AGIS), a network of advanced mapping layers of land uses, including existing zoning statuses of the lands within the city's municipal boundary. The AGIS maps did not show the newly zoned MPOS lands at the caddy-corner intersection of Kimmick Drive and Rosa Parks Road **[R. 032, 496, 500, 509]**. However, testimony in the appeal hearing (AC-23-14) shows that the DRB knew of the MPOS rezoning **[R. 927-928]**. On October 26, 2022, the DRB held its first hearing on the application **[R. 602-625]**. After deferring a decision, the DRB approved the application requests at its November

2. An EPC condition of the rezoning approval was that the Applicants' plat results in lot lines that coincide with the internal rezoning boundaries as required by IDO, 6-7(G)(2).

3. The evidence indicates that Consensus Planning was the agent for the city applicant in the rezoning that created the MPOS. Consensus Planning is also the agent for the Applicants, in the preliminary plat, amended site plan, and final plat applications in this matter.

9, 2022, hearing **[R. 628-672]**.[4] Although new MPOS lands were created at the south side of Kimmick Dr. and Rosa Parks Rd. NW intersection of the application site, the DRB had already concluded informally, outside of the public hearings, that the MPOS was not sufficiently adjacent to the application site **[R. 926-927].** In addition, the DRB and the Applicants did not address, acknowledge, or otherwise publicly discuss the inaccuracies in the AGIS zone maps submitted with the application. **[R. 628-672].**

On November 28, 2022, these Appellants and others filed a timely administrative appeal of the DRB's November 9, 2022, decision. An administrative Land Use appeal hearing was subsequently held and in a scheduled public hearing on March 6, 2023, the City Council accepted the proposed findings, denying the appeal.[5] The Appellants appealed the City Council's decision to the Bernalillo County District Court on April 3, 2023.[6] the District Court appeal to this day remains undecided.

Next, the record shows that on June 22, 2023, the Applicants filed an application to the Development Hearing Officer (DHO) for Major-Final Plat approval **[R. 029]**. Then, on July 12, 2023, the DHO held a public hearing on the application and subsequently approved the

4. The amendments also essentially replaced the design regulations that were adopted into the site plan from the Volcano Cliffs Sector Development Plan. In addition, because lands were also dedicated for additional right-of-way for Paseo Del Norte, the application site was reduced to 18.23 acres from 18.7 acres.

5. The city administrative appeal (AC-23-1) was about the amended site plan, not the preliminary plat. And issues about whether the La Cuentista MPOS was adjacent to the application site was not presented in that appeal.

6. *Westside Coalition of Neighborhood Associations and Michael Vorhees v. City of Albuquerque,* et al., No. D-202-CV-2023-02637.

final plat application in a written decision **[R. 068-092 and 026-027 respectively]**. This administrative appeal under the IDO was subsequently timely filed **[R. 017-025]**. An extended quasi-judicial administrative appeal hearing was held on October 4, 2023 **[R. 808].**

III. APPEAL ISSUES

In this appeal, Appellants presented nine (9) issues of error in the reviews and approvals of the amended site plan, the preliminary plat, and the final plat.[7] Appellants first contend that when the DRB reviewed and then finally approved the amended site plan and the preliminary plat, it lacked authority to conduct a quasi-judicial hearing and therefore the subsequent approval by the DHO is also invalid **[R. 022]**. As detailed below, I find that the DRB review process was flawed for other reasons. Appellants also contend that the final plat does not conform to the original 2017 site plan and therefore, the plats are both invalid **[R. 023]**. Notably, the 2017 site plan was amended on November 9, 2022, with the DRB's decision. The final plat must conform to the amended site plan, not the 2017 site plan. Appellants next contend that the Applicants presented "incorrect and misleading" evidence to the DRB regarding the zoning of the MPOS land **[R. 023]**. The evidence in the record supports this claim.

Regarding the DHO hearing, Appellants argue that the DHO erred because Appellants

7. Under the July 15, 2022, IDO in effect at the time, Appellants were unable to administratively appeal the preliminary plat. Although this appeal is from a decision of the DHO, because the IDO prevented Appellants from appealing the preliminary plat decision of the DRB, and because the preliminary plat and the final plat are substantially connected procedurally and factually (discussed below), the Appellants are raising the flaws in the preliminary plat approval now.

raised the above issues regarding the MPOS at the hearing and the DHO failed to address any of them in the written decision **[R. 023].** Appellants also claim that the DHO should have recused himself from hearing the applicant's final plat application because he allegedly has a bias against Appellant Michael Voorhees and/or a conflict of interest **[R. 023]**. Appellants further argue that the DHO decision is invalid because even though Mr. Voorhees requested a copy of the DHO's final decision, it was apparently not sent to him. **[R. 024]**. Next, Appellants suggest that because the preliminary plat approvals were appealed to the District Court, the final plat review and decision should have been stayed (deferred) by the DHO until the District Court appeal is resolved **[R. 023]**.

The last set of issues presented concern the MPOS land which is situated caddy-corner from the application site at the southeast side of the intersection of Rosa Parks Road and Kimmick Drive, NW. Appellants claim that the MPOS is "adjacent" to the application site and therefore a Site Plan-EPC must first be submitted and approved by the EPC before the preliminary and final plats could have been approved. Appellant also argue the DHO erred when he did not make any official findings on whether the MPOS is adjacent to the final plat application site. Finally, Appellants claim that city planning staff violated the IDO when they informally made a "declaratory like" decision behind closed doors to decide that the MPOS is not adjacent to the application site. They suggest that issue of adjacency and the decision-making to conclude that the MPOS was not adjacent to the application site should have been carried out in a public quasi-judicial setting or in the public hearings on the preliminary and final plats **[R. 022]**.

The Applicant-Appellees (Applicants) deny the Appellants' claims of error, but they

also take the position that based on IDO, § 6-4(V)(2), Appellant Michael Voorhees does not have standing to appeal the DHO's decision. The Applicants stipulate that the Westside Coalition of Neighborhood Associations (WSCNA) have standing to appeal, but they challenge whether the WSCNA leadership have approved the appeal.

IV. STANDARD OF REVIEW

A review of an administrative appeal under the IDO is a whole record review to determine whether the decision-maker's decision was fraudulent, arbitrary, or capricious under the IDO; or whether the decision is not supported by substantial evidence; or if in approving the application, the decision-maker erred in the facts, or in applying any applicable IDO provisions, policy, or regulation. IDO, § 6-4(V)(4). At the time the final plat application was submitted and reviewed, the July 2022 IDO was in effect; therefore, it is appropriate that the same IDO version also be applicable to adjudicate this administrative appeal.

V. DISCUSSION

The core issue in this appeal turns on the meaning of "adjacent" in the IDO and relates to whether the DRB and the DHO could lawfully approve the plats under the IDO without the Applicants first having obtained approval of a Site Plan-EPC. If the definition of "adjacent" under the IDO brings into its fold the subject MPOS lands, then the platting approvals by the DRB and the DHO are premature without a Site-Plan EPC. It is undisputed that the Applicants

have not applied for a Site Plan-EPC.[8] After the threshold issue of standing is addressed, the bigger issue regarding the adjacency question will be discussed in detail as it may be dispositive of the appeal. However, discussions of the other issues will follow.

A. Appellant Michael Voorhees has standing to appeal the DHO decision.

In response to this appeal, the Applicants through counsel argue that Mr. Voorhees lacks standing to appeal the DHO's decision because he does not reside or own property within 330-feet of the application site **[R. 208]**. See IDO, § 6-4(V)(2)(a)5 and the associated Table 6-4-2 for standing, which essentially requires an appellant to have a property interest within 330-feet of an application site. Mr. Voorhees did not dispute that he resides over 2,000 feet from the application site. It is clear that Mr. Voorhees lacks standing based on his proximity to the application site.

The Applicants also contend that Mr. Voorhees lacks standing arising from a "legal right" that is "specially and adversely affected by the decision" in this matter. IDO, § 6-4(V)(2)(a)4. I respectfully disagree. Mr. Voorhees' sworn testimony at the administrative appeal hearing demonstrates that as a resident of the Petroglyphs Estates he personally utilizes the nearby La Cuentista MPOS lands for recreation **[R. 825-826]**. Although, the enjoyment of someone else's private property is normally not a legal right Mr. Voorhees can claim for standing, in this case the decision implicates public open space. The La Quentista MPOS is "City-owned or managed property" and it is set aside "primarily for facilitating recreation" by the public. See IDO, § 7-1, Definitions, MPOS and Extraordinary Facility.

8. Note that the EPC did approve a site plan for the site in 2017; however, that site plan was replaced with an amended site plan when the DRB approved the Applicants' amended site plan and preliminary plat in November 2022.

Entwined in the objective of and purpose for creating major public open space is an implied interest or right for Albuquerque residents to lawfully use it. Certainly, under the United States Constitution, Mr. Voorhees has a constitutional First Amendment right to *lawfully* exercise free speech on public open space land. Similarly, at least for purposes of standing to have an interest in a decision that arguably impacts the La Cuentista MPOS, Mr. Voorhees, as a member of the public, has a somewhat analogous legal right to recreate on public lands that are specifically dedicated for that purpose. As § 6-4(V)(2)(a)4 demands, Mr. Voorhees' legal right to utilize the open space is arguably "specially and adversely affected" by the platting decisions in this matter. That is, because of the close proximity of the application site to the MPOS, it is conceivable and rational that the platting decisions do in fact impact the Mr. Voorhees' interest in that MPOS land—an interest to assure that the IDO regulations pertaining to MPOS are met. In addition, under the related earlier appeal (AC-23-1) which is now pending in the District Court, the Applicants and their same legal counsel stipulated that Mr. Voorhees' had standing in that matter which concerned the same application site **[R. 231].**

Accordingly, because the application site and the decision appealed has an obvious and sufficient connection to the MPOS, I find that Mr. Voorhees' legal right to make use of the MPOS, is *"specially affected by the decision*." Thus, Mr. Voorhees has standing under § 6-4(V)(2)(a)4.

There is no dispute that the WSCNA appellants have standing. The testimony of WSCNA President, Elizabeth K. Haley during the appeal hearing confirms that the WSCNA Executive Board approved the filing of the administrative appeal.

B. The DRB's review of the preliminary plat was flawed.

The record of the DRB's review of the amended site plan and the preliminary plat shows that the DRB and the Applicants did not *publicly* disclose or otherwise overtly acknowledge in as late as November 9, 2022, that Consensus Planning submitted with their application inaccurate zone maps of the area. The area zone maps that the Applicants did submit with their application did not show the rezoned 35-acres of new NR-PO-B (MPOS) zoned lands. Consensus Planning was the city's agent for the MPOS rezoning and is the agent in the platting and site plan application in this matter. Despite this fact, Consensus Planning Principal, Jackie Fishman testified that until the DRB brought it up at the hearing on the Applicants' application, she was unaware of the June 2022 rezoning that created 35-acres of new MPOS land near the application site **[R. 885-887]**. Ms. Fishman explained that she was unaware because the rezoning was not personally handled by her but by another employee of her firm, Consensus Planning **[R. 884-885]**.

Associate Planning Director Jolene Wolfley testified in the administrative appeal hearing that she knew there was a newly created MPOS caddy-corner to the application site **[R. 927-928]**.[9] Since it was determined informally (prior to the hearings) that the MPOS was not pertinent to the issue of whether it was adjacent to the application site, the matter was not substantively discussed at the preliminary plat hearings **[R. 929]**.

The Appellants take the position that Ms. Fishman should have known or did know of the June 2022 rezoning and that the inaccurate submission is more than a mistake. Specifically,

9. Ms. Wolfley was the Chairperson of the DRB when the DRB was tasked with reviewing the amended site plan and preliminary plat application.

Appellants argue that Ms. Fishman had to have known that the area zoning maps she submitted with the amended site plan and preliminary plat application were inaccurate since her firm represented the city in the MPOS rezoning. Appellants further contend that the inaccurate maps submitted with the application required the DRB to conclude that the application was either "incomplete" or that the submission of inaccurate maps was cause for the DRB to deny the application.

Irrespective of who knew what, it is a fact that the Applicants did submit inaccurate area zoning maps to the DRB with its application **[R. 032, 496, 500, 509]**. The maps submitted by the Applicants showed that the 35-acres of MPOS land was R-1D zoned land not NR-PO-B (MPOS). In addition, the record supports that, as a result of discretionary decision-making that occurred outside of a public hearing, the DRB considered that the inaccuracies in the application were unimportant to their decision-making under the IDO.

These multiple flaws were not harmless error. Although the inaccurate maps came from the AGIS network which apparently was not updated to reflect the June 2022 rezoning, because city DRB staff knew of the rezoning, it must have also known that the maps submitted with the application were inaccurate. The DRB had a duty under the IDO, § 1-7(C) to ensure that *"based on conditions that exist…when the application was accepted"* the application was in fact *"complete."* Inaccuracies in an application are tantamount to an incomplete application. Similarly, and perhaps more importantly, the DRB had a duty to the public to disclose the inaccuracy in its public hearing.

I find that the Applicants, through their agent, Consensus Planning, with minimal due diligence, should have known that their preliminary plat application maps were inaccurate. As

the agent for the MPOS rezoning, they were mailed notice of the rezoning decision a few months before the DRB application was submitted **[R. 807]**. I also find that the DRB had a duty to the public and to the Applicants to disclose in a public meeting what they knew about the inaccuracy.[10] Remaining silent about the whole matter is inconsistent with the fundamental principles of justice and the procedural due process due to the public and necessary in administrative hearings. See generally State *Ex Rel. Battershell v. City of Albuquerque*, 1989-NMCA-045. Thus, the DRB erred. However, as I describe below, I also find that the preliminary and final plats, were not properly before the DRB or the DHO in the first place.

C. The Applicants' and city planning staffs' interpretation of the definition of "adjacent" in the IDO is unreasoned, inconsistent, and erroneous.

Turning now to the crux of this appeal, the determination that a parcel of land is adjacent to MPOS under the IDO is consequential. If a site encompassing 5-acres or more is adjacent to MPOS, a Site Plan-EPC is required "*prior* to any platting action." Subsection 5-4(C) is headed "Compliance with Zoning Requirements" and its subsection 5-4(C)(6) states in full:

> In the PD and NR-SU zone districts, and **for development in any zone district on a site 5 acres or greater adjacent to Major Public Open Space, an approved Site Plan – EPC is required prior to any platting action**. In the PC zone district, an approved Framework Plan is required prior to any platting action. Subsequent platting must conform to the approved plans. (Emphasis added).

10. In the past, Planning Staff with the city have officially notified applicants of deficiencies in applications by sending an applicant a "deficiency Notice." Deficiency notices are a formal request that the applicants correct deficiencies found in applications. These deficiency notices are included in the records of applications. At the very least, this normally routine process should have occurred in this matter to advise the Applicants that the area zone maps they submitted are inaccurate and to resubmit accurate information.

Thus, if this provision is applicable to the application site, the preliminary and final plats should not have been approved without the Applicants first obtaining the EPC's approval of a Site Plan-EPC. There is no dispute that the application site is greater than 5 acres in size and that it comprises of the subdividing of lots. Setting aside the adjacency issue for a moment, the Applicants contend that the preliminary and final platting of the site is not "development" for purposes of IDO, § 5-4(C)(6) above. The Applicants are clearly wrong.

IDO, § 5-4 contains the general provisions for "promoting the public health, safety, and general welfare" through the regulation of subdivisions of land in the city. The definition of "development" in the IDO expressly includes *"any activity that alters…lot lines on a property."* IDO, Definition of Development, §7-1. It cannot be disputed that the Applicants' applications were in part to obtain approval to "alter lot lines" within the application site. Thus, the Applicants' platting applications meet the definition of both subdivision and development under the IDO. And although arguably the altering of lot lines was partly to fulfill an October 9, 2019, EPC condition for the rezoning at the application site, it was the Applicants who sought the rezoning amendment to rezone 8.7 acres of the site from MX-L to MX-M **[R. 004]**. Just because the submission of the preliminary plat was partly to satisfy an EPC condition, the EPC condition cannot be seized as a basis to argue that the platting was compulsory and is somehow not development under IDO, § 5-4(C)(6) as suggested in this appeal.

Moving now to whether the MPOS is adjacent to the application site, the definition of the term "adjacent" in the IDO states in full:

> **Adjacent**
> Those properties that are abutting or separated only by a street, alley, trail, or utility easement, whether public or private. See also Alley, Multi-use Trail, Private Way, Right-of-way, and Street.

IDO, § 7-1, p. 541.

Under New Mexico law, if an ordinance makes sense as it is written, language which is not there should not be read into it. *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5. In interpreting language of an ordinance, another rule of construction is that the entire ordinance is to be read as a whole and each part is to be construed in connection with every other part so as to produce a harmonious whole. *Burroughs v. Board of County Comm'rs*, 1975-NMSC-05, ¶ 14. Consequently, the "plain language" of the definition of adjacent is the "primary indicator of legislative intent." *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5. Applying these rules of statutory interpretation to this matter, it is clear that the interpretation that the city staff relied upon to determine that the application site is not adjacent to the MPOS is unreasonable.

Associate Planning Director Wolfley testified in the administrative appeal hearing that city staff believe that the IDO should be interpreted "strictly" with regard to the definition of "adjacent" **[R. 924]**. Meanwhile, in Planning Staff's strict interpretation, lands caddy-corner, separated only by an intersection of *two* streets is not considered adjacent to one another. City staff and the Applicants essentially take the position that the phrase *"separated only by a street"* in the definition of adjacent means that that MPOS and another parcel must be separated only by *"one"* street to be considered adjacent to one another.

Associate Planning Director Wolfley further testified that parcels of land caddy-corner to one another that are separated by only an intersection of two streets have only "one point in space" of "tangency" in which they are geometrically adjacent to one another **[R. 924]**. Evidently, in city staff's' assessment, the physical space of adjacency in the street intersection

of Kimmick Dr. and Rosa Parks Rd. is insufficient or too small to meet the definition of adjacent in the IDO. Implicit in this complicated interpretation is (1) a concession that, even if it is a small amount of physical space, there is adjacency between the MPOS and the application site, and (2) staff are reading into the IDO's definition that a certain unidentified measure of physical adjacency is necessary to satisfy the IDO's definition of the term "adjacent."

Notwithstanding that the strict interpretation is unreasoned, I find that even under the strict interpretation proffered by city staff and the Applicants in this appeal, the MPOS is adjacent to the application site. On this basis alone, it should have been determined by the DRB that the preliminary plat application was submitted prematurely because a Site Plan-EPC had not been applied for, much less approved.

Associate Planning Director Wolfley also testified that a strict interpretation is necessary because *"there's quite a bit of implication for a property owner if they are determined to be adjacent"* **[R. 924]**. I find this rationale irrelevant to interpreting IDO definitions. Potential impact on property rights is not a basis for city planning staff to decide whether provisions of the IDO should be ignored or not enforced. These are considerations normally associated with the enactment of ordinances, not their enforcement. However, I do find that protecting MPOS is a significant legislative intent and purpose for § 5-2(J)(2) and § 5-4(C)(6) of the IDO.

Furthermore, I find that not only is staffs' "strict" interpretation erroneous with the plain meaning of the IDO's definition of adjacent, but I also find that city staff abused their authority under the IDO when they determined under this strict interpretation that the measure

or quantum of physical adjacency required is too small to meet the IDO's definition. Briefly stated, it is obvious that the definition of adjacent in the IDO does not contemplate that there be a certain measure of physical adjacent space for properties to be considered adjacent to each other. It is an arbitrary and capricious interpretation because the definition of "adjacent" in the IDO does not have or contemplate any minimal measurement thresholds. Staff's interpretation violates basic rules of statutory construction. See *Burroughs v. Board of County Comm'rs*, 1975-NMSC-05, ¶ 14, and *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5.

In addition, staff's strict interpretation is problematic because it discounts or disregards other terms in the definition which must be harmonized with any interpretation. For example, in the definition, properties that are separated only by "utility easement" are also considered to be adjacent. However, under the city staffs' strict interpretation, if there is more than "one" utility easement that separates the properties at issue, or if the properties are separated only by two intersecting utility easements (both examples can be a regular occurrence), then the properties cannot be considered to be adjacent. As shown in the next subsection, the meaning of adjacent can easily be defined without resorting to adding words or reading subjective measurement proportions into the definition.

D. Under a plain reading of the IDO's definition of the term "adjacent," the application site is adjacent to the La Cuentista MPOS.

In the IDO's definition of adjacent, the word "a" in the phrase "*separated only by **a** street, alley, trail, or utility easement"* is grammatically used as an indefinite article. As an indefinite article, it operates to signal that the labels *"a street, alley, trail, or utility easement"* are descriptions of general groups of the nouns (street, alley, trail, and utility easement). The

labels are not referents of these nouns in the singular but *any* version of these nouns. In other words, grammatically, the phrase "separated only by *a* street, alley, trail, or utility easement" does not mean "separated by only ***one*** street, ***one*** alley, ***one*** trial, or ***one*** utility easement."

Furthermore, how "a street, alley, trail, or utility easement" are classified in the IDO cannot be lost in their meaning as they apply to the definition of adjacent in the IDO. These labels are nomenclature that are all classified in the IDO as public or private "right-of-way" of which is explicitly also unambiguously and distinctly referenced in the second sentence in the definitional language of the term "adjacent." This is integral to any interpretation of the term adjacent and cannot be ignored. Of particular importance is the second sentence of the definition of Adjacent. It states: *"See also Alley, Multi-use Trail, Private Way, Right-of-way, and Street."* Because these terms are expressly referenced in the definition, they are part of the definition, and these terms must be reconciled with any interpretation of the term "adjacent" in the IDO. The binding connection between the terms "Alley, Multi-use Trail, Private Way, Right-of-way, and Street" is that they are all considered public or private rights-of-way under IDO, § 7-1.

In the IDO, the definitions of "right-of-way" and "street" includes "public right-of-way." Public right-of-way is defined as:

> "Land deeded, reserved or dedicated by plat, or otherwise acquired by any unit of government for the purposes of movement of vehicles, bicycles, pedestrian traffic, and/or for conveyance of public utility services and drainage."

How the term "street" is defined in the IDO is also crucial. Under the IDO, "street" means:

> The portion of a public right-of-way or private way, from curb to curb (or from edge of paving to edge of paving if there is no curb, or from edge of

visible travel way to edge of visible travel way, if there is no paving), that is *primarily devoted to vehicular use.* (Emphasis added).

IDO, § 7-1, p. 600.

Turning back now to the definition of adjacent, the phrase "separated only by a street" in the definition is consistent with the grammatical use of the term as an indefinite article and it is consistent with the definition of "right-of-way." Put another way, "street" is a general description of public right-of-way "primarily devoted for vehicular use." In simple terms, land dedicated for vehicular use is considered street and vice versa. It is incontrovertible that street intersections are "primarily devoted to vehicular use" and are public right-of-way.

Only from giving meaning to all terms in the definitional language of "adjacent" can the correct meaning be properly interpreted, and the legislative intent identified. Thus, properties separated only by the referenced types of private or public right-of-way ("street, alley, trail, or utility easement") are considered adjacent to one another and specifically, the phrase "separated only by a street" refers to all parts of public right-of way; street encompasses the land primarily devoted to vehicular use which inevitably includes street intersections unless otherwise noted in the IDO.

Under this interpretation, words and unidentified measurement expanses of physical space are not read into the definition. Moreover, this interpretation, as it relates to MPOS, is consistent with the legislative intent in the IDO to protect MPOS. Simply stated, development separated "only by" the public right-of-way encompassing "street, alley, trail, or utility easement" must meet the additional IDO provisions (§ 5-2(J)(2)) designed to protect MPOS.

In applying the proper interpretation to the facts of this case, it is clear that what separates the MPOS land and the application site on the south-east side of the site is only public

right-of-way—the intersection of Kimmick Dr. and Rosa Parks Rd. The MPOS and the application site are in fact adjacent to one another and because of this simple fact, the Applicants should not have and cannot obtain platting approval without first obtaining approval of a Site Plan-EPC as required by IDO, § 5-4(C)(6).

E. Prior to all platting of the application site, the Applicants must first apply for a Site Plan-EPC.

To expeditiously resolve this appeal, the amended site plan, and the preliminary plat approval should be revoked and the final plat denied. After the June 2022 EPC rezoning, MPOS land became adjacent to the Applicants' site requiring a Site Plan-EPC under IDO, § 5-4(C)(6). The DRB and the subsequent DHO approvals were not only premature, but they violated IDO procedure and are invalid without a Site Plan-EPC.

Associate Planning Director Wolfley testified in the appeal hearing that if city staff had concluded that IDO, § 5-4(C)(6) was applicable, only a small "buffer in an arc" on the application site near the street intersection would be required to protect the MPOS **[R. 941]**. Respectfully, whatever is required cannot be a justification for circumventing IDO processes. Notwithstanding though, it is evident that the IDO requires more when development under § 5-4(C)(6) is adjacent to MPOS land. First, it is the EPC that will evaluate the site plan in a quasi-judicial hearing open to the public. Second, under § 5-2(J)(2)(b), the Applicants must design access, circulation, parking, and aesthetics, to minimize any impacts on the MPOS. With the clear understanding that the application site is adjacent to MPOS, design protections must be reviewed by the staff of the Open Space Division of the City Parks and Recreation Department as well as city Planning staff. Protection of the MPOS will be publicly discussed in terms of it being formally determined that it is adjacent to the application site. Moreover,

the EPC has authority under the IDO to set any other reasonable conditions necessary to accomplish the intent of protecting MPOS.

Next, the Appellants are correct that the Applicants do not have a vested right to the approved preliminary plat especially since it was based on inaccurate evidence and was approved in violation of IDO procedure. And whether the Applicants relied on the AGIS or not in their submission of the inaccurate maps, the Applicants' agents, with due diligence, should have known of the MPOS since they were also the agents for the city in creating the MPOS and were sent mailed notice of the EPC's approval **[R. 807].**

F. Unless the District Court orders a stay on the administrative processes, the administrative applications, their review, and administrative adjudication under the IDO should continue.

Appellants take the position in this appeal that the City should defer all decisions on the application site until the District Court finally resolves the issues in the District Court appeal. The Appellants concede that a City Council stay on the matter would be discretionary and is not required **[R. 122].** Unless the District Court issues an Order compelling the City to stay the application process, there is no compelling reason to defer a decision on this matter or to prevent the Applicants from following the correct application process.

G. The record of the DHO hearing.

Appellant Michael Voorhees believes that the DHO holds a grudge against him or has "personal animus" for him **[R. 124]**. He also contends that the DHO has an actual conflict of interest or that there is an appearance of a conflict of interest. I respectfully disagree that there is any evidence of animosity, a conflict, or an appearance of a conflict of interest.

Specifically, Appellant contends as the basis for the conflict that "several years ago" when the DHO (David Campbell) was the Planning Director for the City, Mr. Voorhees filed an appeal and, in that appeal, he made "numerous allegations of misconduct" (presumably against Mr. Campbell) **[R. 068-071]**. Appellant Voorhees also claims that he "met in person on two previous occasions and had extensive conversations" again presumably with Mr. Campbell **[R. 071-072]**.

In the DHO hearing, Mr. David Campbell responded, advising Mr. Voorhees that he could not recall either meeting with him and he could not recall the allegations Mr. Voorhees made against him several years ago **[R. 070-071]**. The DHO then responded to Mr. Voorhees' request that he recuse himself from hearing the application **[R. 072].** The DHO said:

> Okay. Thank you. Duly noted. I have -- I have no recollection of any of this that you're talking about and don't have a -- I think what you're saying is that this -- it doesn't relate to the case at issue here; is that correct?
> …
> All right. Thank you for raising that. And you say you have one other -- the DHO does not have a conflict on this, and there is no personal animus.
> …
> And I want – again, there are no personal grudge or animus against you for something that I have no recollection of.

[R. 070-071].

Establishing a conflict of interest or an appearance of a conflict of interest requires more than what is in this record. Other than the allegation from Appellant, there is no evidence whatsoever that the DHO holds any animosity for Mr. Voorhees, nor is there objective evidence of a conflict. Furthermore, there is no evidence that the DHO prejudged the facts of the Applicants' application. For a detailed discussion on what evidence is necessary to disqualify a tribunal See *Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-

031. The fact that Mr. Voorhees perceives that the allegations he made in a previous case "years ago" create an appearance of a conflict, does not in and of itself make it so. The allegations in that previous case have nothing to do with the facts in this matter. In fact, Mr. Campbell was not even a hearing officer when Mr. Voorhees complained of Mr. Campbell. In addition, there is no evidence of the truth of the allegations when Mr. Campbell was the Planning Director, and if there were, that would likely be insufficient to disqualify him from sitting in judgment on this matter. As stated above the evidentiary requirements under law are more nuanced to disqualify the DHO.

Appellants next contend that the DHO staff failed to send Appellant Voorhees a copy of the DHO's final written decision and therefore the decision should be reversed as a consequence. Appellants cite to the most recent iteration of the IDO effective July 27, 2023, § 6-4(M)(6) which essentially requires decision making bodies to, among other things, send *"each party to the matter and to any other person who has entered an appearance and requested a copy of the decision*." Notably, this language is not in the July 15, 2022, version of the IDO, which is applicable in this appeal. Although, anyone requesting a copy of a decision should be sent the decision, the error in this matter is harmless because Appellants, including Mr. Voorhees, filed a timely appeal of the DHO's decision.

VI. PROPOSED FINDINGS

Pursuant to IDO, § 6-4(V)(3)(d)5, I respectfully find that the below findings are warranted, supported by substantial evidence, and I recommend that they be adopted.

1. This is an appeal of a July 12, 2023, decision approving a final plat based on a

preliminary plat and amended site plan by the DHO.

2. Appellant WSCNA has standing to pursue this appeal under § 6-4(V)(2)(a)5.

3. Appellant Michael Voorhees has standing to pursue this appeal under § 6-4(V)(2)(a)4.

4. The DRB's November 9, 2022, decision approving the preliminary plat was not appealable under § 6-4(U)(1) of IDO update, effective July 15, 2022.

5. The DHO's July 12, 2023, decision approving the final plat is appealable under the July 15, 2022 IDO which was in effect when the final decision was made.

6. Pursuant to IDO, § 6-6(L)(3)(c), the final plat must conform to the preliminary plat.

7. Pursuant to IDO, § 6-6(L)(2)(g) the final plat and the preliminary plat are required to meet all applicable regulations and conditions of approvals, including previous approvals.

8. Pursuant to IDO, § 5-2(J)(2) and § 5-4(C)(6), prior to all platting of any development greater than 5-acres in size, a Site Plan-EPC is required when the proposed plat site is adjacent to any MPOS.

9. It is undisputed that the Applicants did not apply for or ever obtain Site-Plan EPC approval for development at the 18.23-acre application site.

10. On June 16, 2022, the EPC approved an application by the City to rezone 35 acres of land to NR-PO-B (MPOS). This MPOS is known as the La Quentista MPOS, and it is located between Kimmick Dr. NW and Ridgeway Dr. NW and on the south side of Rosa Parks Rd. NW.

11. The agent for the City in the rezoning application was Consensus Planning who is also the agent for the Applicants of the amended site plan, preliminary, and final plat

applications.

12. The La Quentista MPOS is situated caddy-corner to the Applicants' application site at the southwest intersection of Kimmick Dr. NW and Rosa Parks Rd. NW.

13. The La Quentista MPOS is adjacent to the Applicants' application site because it is separated from the Applicants' application site by only street public right-of-way.

14. The DRB erred in approving the amended site plan and preliminary plat in November 2022.

15. In its approval of the amended site plan and the preliminary plat, the DRB failed to acknowledge at its public hearing that the Applicants' application site is situated adjacent to the La Quentista MPOS as that term is defined in the IDO.

16. In addition, at some point in time prior to the two hearings on the amended site plan and preliminary plat (October 26, and November 9, 2022, hearings), the DRB unofficially concluded (not in the DRB public hearings) that the La Quentista MPOS was not adjacent to the application site and in doing so, they misinterpreted and misapplied the IDO.

17. The amended site plan and the preliminary plat do not account for the adjacent MPOS, and the amended site plan and preliminary plat do not in any manner demonstrate that the applicable IDO provisions of § 5-2(J)(2), are satisfied.

18. With the amended site plan and preliminary plat application, the Applicants submitted to the DRB inaccurate zone maps of the area which did not show the rezoned 35-acres as NR-PO-B zoned lands.

19. Because the DRB was aware of the EPC's previous rezoning, the DRB knew or should have known that the Applicants' area zone-map submission was inaccurate.

20. The DRB disregarded or otherwise did not make any public disclosure in its public hearings of the Applicants' inaccurate area zone map.

21. Without an approved Site Plan-EPC, as required by IDO, § 5-2(J)(2) and § 5-4(C)(6), the DRB did not have authority to approve the Applicants' preliminary plat.

22. Because the DRB did not have authority to approve the preliminary plat, the appropriate remedy is to revoke the preliminary plat.

23. Because there is no evidence in the amended site plan that the regulations for protecting MPOS have been satisfied under IDO, § 5-2(J)(2) and § 5-4(C)(6), the amended site plan should also be revoked.

24. Because the preliminary plat is factually and legally entwined with the final plat under the IDO, the decision approving the final plat should be reversed.

25. Contrary to Appellant Voorhees' claim in this appeal, the record of the DHO hearing on the final plat demonstrates that the DHO held no animosity for Mr. Voorhees.

26. Contrary to Appellants' claims, the DHO does not have a conflict of interest and there is not sufficient evidence of an appearance of one in this matter.

27. Unless the District Court orders a stay on all administrative proceedings related to the application site, which at this time there is no evidence of, this matter may run its course.

28. The amended site plan and the preliminary plat shall be revoked and the decision approving the final plat shall be reversed.

Respectfully Submitted:

Steven M. Chavez, Esq.
Land Use Hearing Officer

October 18, 2023

Copies to:

City Council
Appellants
Appellees/ Party Opponents
Planning Staff

Notice to the Parties regarding City Council rules.

When the Council receives the Hearing Officer's proposed disposition of an appeal, the Council shall place the decision on the agenda of the next regular full Council meeting provided that there is a period of at least 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to the Council through the Clerk of the Council regarding the Hearing Officer's decision and findings provided such comments are in writing and received by the Clerk of the Council and the other parties of record four (4) consecutive days prior to the Council "accept or reject" hearing. Parties submitting comments in this manner must include a signed, written attestation that the comments being submitted were delivered to all parties of record within this time frame, which attestation shall list the individual(s) to whom delivery was made. Comments received by the Clerk of the Council that are not in conformance with the requirements of this Section will not be distributed to Councilors.

City of Albuquerque

City of Albuquerque
Government Center
One Civic Plaza
Albuquerque, NM 87102

Action Summary

City Council

Council President, Pat Davis, District 6
Council Vice-President, Renée Grout, District 9

Louie Sanchez, District 1; Isaac Benton, District 2
Klarissa J. Peña, District 3; Brook Bassan, District 4
Dan Lewis, District 5; Tammy Fiebelkorn, District 7
Trudy E. Jones, District 8

Wednesday, November 8, 2023 **5:00 PM** **Vincent E. Griego Chambers**
One Civic Plaza NW
City of Albuquerque Government Center

TWENTY-FIFTH COUNCIL - FORTIETH MEETING

1. ROLL CALL

Present 9 - Brook Bassan, Isaac Benton, Pat Davis, Tammy Fiebelkorn, Renee Grout, Trudy Jones, Dan Lewis, Klarissa Peña, and Louie Sanchez

2. MOMENT OF SILENCE

Councilor Peña led the Pledge of Allegiance in English.
Councilor Bassan led the Pledge of Allegiance in Spanish.

3. PROCLAMATIONS & PRESENTATIONS

4. ADMINISTRATION QUESTION & ANSWER PERIOD

5. APPROVAL OF JOURNAL

October 16, 2023

6. COMMUNICATIONS AND INTRODUCTIONS

7. REPORTS OF COMMITTEES

Finance and Government Operations Committee - October 23, 2023

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

a. EC-23-376 City of Albuquerque Vision Zero Year-in-Review/Action Plan Update

A motion was made by Vice-President Grout that this matter be Receipt Be Noted. The motion carried by the following vote:

For: 8 - Bassan, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

Excused: 1 - Benton

b. EC-23-378 Approval of Outside Counsel for Workers Compensation Legal Services Agreement with YLAW, P.C.

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

For: 8 - Bassan, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

Excused: 1 - Benton

c. EC-23-379 Approval of the Farolito Senior Community Development Agreement with Greater Albuquerque Housing Partnership to Utilize HUD HOME Funds Towards the New Construction of a Senior Rental Housing Project

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

For: 8 - Bassan, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

Excused: 1 - Benton

d. EC-23-380 Authorization of Social Service Agreement with Youth Development Inc. to Provide Violence Intervention & Prevention Services to youth/young adults who are high risk of engaging in gun violence or violent crimes

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

For: 8 - Bassan, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

Excused: 1 - Benton

e. AC-23-14 (VA-2023-00196) PR-2022-007712, SI-2023-00127 The Westside Coalition of Neighborhood Associations and Michael Voorhees appeal the Development Hearing Officer decision to approve a final plat, for all or a portion of Lot 5, Block 6 Volcano Cliffs Unit 26 & Lot 1, Block 2, Volcano Cliffs Unit 26 zoned MX-L & MX-M, located on Rosa Parks Rd. between Paseo Del Norte and Rosa Parks Rd. containing approximately 18.23 acre(s). (C-11)

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

For: 8 - Bassan, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

Excused: 1 - Benton

9. ANNOUNCEMENTS

10. FINANCIAL INSTRUMENTS

11. GENERAL PUBLIC COMMENTS

12. APPEALS

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

a. EC-23-377 Mayor's Recommendation of Award to Fresquez Concessions Inc. for "Food and Beverage Concessions Program at the Albuquerque International Sunport"

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

For: 7 - Bassan, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

Against: 1 - Davis

Excused: 1 - Benton

14. FINAL ACTIONS

f. O-23-88 Repealing Chapter 9, Article 5, Part 1 ROA 1994, The Joint Air Quality Control Board Ordinance; Abolishing The Current Albuquerque-Bernalillo County Air Quality Control Board; Adopting Chapter 9, Article 5, Part 1 ROA 1994, The Joint Air Quality Control Ordinance; Creating The Albuquerque-Bernalillo County Air Quality Control Board (Lewis)

A motion was made by President Davis that this matter be Tabled. The motion carried by the following vote:

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

15. OTHER BUSINESS: {Reports, Presentations, and Other Items}

a. Executive Session relating to the matter of LaDella Williams, et al. v City of Albuquerque, which is subject to attorney-client privilege pertaining to threatened or pending litigation as permitted by Section 10-15-1.H(7), NMSA 1978

A motion was made by President Davis that they move into Executive Session. The motion carried by the following vote:

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

President Davis affirmed that matters discussed in executive session were limited to those specified in the motion for closure.

14. FINAL ACTIONS

f. O-23-88 Repealing Chapter 9, Article 5, Part 1 ROA 1994, The Joint Air Quality Control Board Ordinance; Abolishing The Current Albuquerque-Bernalillo County Air Quality Control Board; Adopting Chapter 9, Article 5, Part 1 ROA 1994, The Joint Air Quality Control Ordinance; Creating The Albuquerque-Bernalillo County Air Quality Control Board (Lewis)

A motion was made by President Davis that O-23-88 be removed from the table. The motion carried by the following vote:

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

A motion was made by President Davis that this matter be Amended. President Davis moved Amendment No. 1. President Davis withdrew Amendment No. 1.

A motion was made by Councilor Bassan that the rules be suspended for the purpose of extending the meeting to 12:00 a.m. The motion carried by the following vote:

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

f. O-23-88 Repealing Chapter 9, Article 5, Part 1 ROA 1994, The Joint Air Quality Control Board Ordinance; Abolishing The Current Albuquerque-Bernalillo County Air Quality Control Board; Adopting Chapter 9, Article 5, Part 1 ROA 1994, The Joint Air Quality Control Ordinance; Creating The Albuquerque-Bernalillo County Air Quality Control Board (Lewis)

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 2. The motion failed by the following vote:

For: 3 - Benton, Davis, and Peña

Against: 6 - Bassan, Fiebelkorn, Grout, Jones, Lewis, and Sanchez

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 3. The motion carried by the following vote:

For: 6 - Bassan, Davis, Grout, Lewis, Peña, and Sanchez

Against: 3 - Benton, Fiebelkorn, and Jones

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 4. The motion failed by the following vote:

For: 3 - Grout, Peña, and Sanchez

Against: 6 - Bassan, Benton, Davis, Fiebelkorn, Jones, and Lewis

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 5. The motion carried by the following vote:

For: 8 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Peña, and Sanchez

Against: 1 - Lewis

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

For: 5 - Bassan, Grout, Jones, Lewis, and Sanchez

Against: 4 - Benton, Davis, Fiebelkorn, and Peña

g. R-23-176 Establishing A Moratorium For The Albuquerque-Bernalillo County Air Quality Control Board To Act Under Chapter 9, Article 5, Part 1 ROA 1994, The Joint Air Quality Control Board Ordinance Until February 1, 2024 (Lewis)

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

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

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

For: 5 - Bassan, Grout, Jones, Lewis, and Sanchez

Against: 4 - Benton, Davis, Fiebelkorn, and Peña

a. O-23-87 Directing The Tax Revenue Generated By Legal Recreational Marijuana Sales To A Permanent Marijuana Equity And Community Reinvestment Fund For The Benefit, Health, Safety, Welfare, And Quality Of Life For Those Who Have Been Negatively Impacted By The Criminalization Of Marijuana (Peña)

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

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 2. The motion carried by the following vote:

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

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

For: 8 - Bassan, Benton, Davis, Fiebelkorn, Grout, Lewis, Peña, and Sanchez

Against: 1 - Jones

A motion was made by Councilor Lewis that the rules be suspended for the purpose of extending the meeting to 1:00 a.m. The motion carried by the following vote:

For: 8 - Bassan, Benton, Davis, Fiebelkorn, Grout, Lewis, Peña, and Sanchez

Against: 1 - Jones

b. O-23-89 Amending Sections §7-2-1-1 Through §7-2-1-3 Of The Transit System Ordinance, Creating A Zero-Fare Structure (Fiebelkorn, Davis, Peña)

A motion was made by Councilor Fiebelkorn that this matter be Passed. The motion carried by the following vote:

For: 6 - Bassan, Benton, Davis, Fiebelkorn, Jones, and Peña

Against: 3 - Grout, Lewis, and Sanchez

d. R-23-178 Suspending Administrative Appeals To Safe Outdoor Space Applications In Response To Court Injunction Restricting Removing Encampments From Public Land (Fiebelkorn)

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

For: 4 - Benton, Davis, Fiebelkorn, and Jones

Against: 5 - Bassan, Grout, Lewis, Peña, and Sanchez

A motion was made by Councilor Fiebelkorn that this matter be Passed. The motion failed by the following vote:

For: 4 - Benton, Davis, Fiebelkorn, and Jones

Against: 5 - Bassan, Grout, Lewis, Peña, and Sanchez

e. RA-23-3 Amending Article I, Sections 8(C) And 8(H); And Article III, Sections 4(A), 4(B), 24(12), And 24(13) Of The City Council Rules Of Procedure Relating To The Order Of Business And Public Comment On Quasi-Judicial Matters (Davis)

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

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

c. R-23-177 Designating Fund '305 Misc.' As The 'Housing Forward Fund' And Requiring The Administration To Provide An Annual Report (Benton)

A motion was made by Councilor Benton that this matter be Amended. Councilor Benton moved Amendment No. 1. The motion carried by the

following vote:

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

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

For: 9 - Bassan, Benton, Davis, Fiebelkorn, Grout, Jones, Lewis, Peña, and Sanchez

***h.** R-23-180 Approving And Authorizing The Acceptance Of Grant Awards From The Federal Emergency Management Agency (FEMA) And Providing For An Appropriation To The Department Of Finance And Administration For Fiscal Years 2024, 2025 And 2026 (Fiebelkorn, by request)

A motion was made by Councilor Fiebelkorn that this matter be Passed. The motion carried by the following vote:

For: 8 - Bassan, Benton, Davis, Fiebelkorn, Grout, Lewis, Peña, and Sanchez

Excused: 1 - Jones

***i.** R-23-181 Directing The City Of Albuquerque Transit Department And Rio Metro Regional Transit District To Conduct A Study For Considering Consolidation; Appropriating Funding For The Study (Benton)

A motion was made by Councilor Benton that this matter be Passed. The motion carried by the following vote:

For: 5 - Benton, Davis, Fiebelkorn, Grout, and Lewis

Against: 3 - Bassan, Peña, and Sanchez

Excused: 1 - Jones

***j.** R-23-182 Establishing Legislative And Budget Priorities For The City Of Albuquerque For The Second Session Of The 56th New Mexico State Legislature (Fiebelkorn, Peña, Bassan)

A motion was made by Councilor Fiebelkorn that this matter be Passed. The motion carried by the following vote:

For: 8 - Bassan, Benton, Davis, Fiebelkorn, Grout, Lewis, Peña, and Sanchez

Excused: 1 - Jones