IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

SANTA BARBARA MARTINEZTOWN NEIGHBORHOOD ASSOCIATION,
Appellant,

vs.

COURT OF APPEALS No. A-1-CA-42743
Second Judicial District Court
No: D-202-CV-2024-09120
District Court Judge: Beatrice J. Brickhouse

CITY OF ALBUQUERQUE, a New Mexico municipal corporation,
Appellee,
and

TIERRA WEST, LLC, agent for CROSS DEVELOPMENT,
Interested Parties.

APPELLANT'S DOCKETING STATEMENT

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I. NATURE OF THE PROCEEDING

This case is an appeal from a Rule 1-074, NMRA, decision by the Bernalillo County District Court, acting under appellate and original jurisdiction. The District Court denied Appellant's appeal of Appellee's approval of a zone map amendment (the "ZMA") from MX-M zoning to MX-H zoning and a related site plan (the "Site Plan") submitted by Interested Parties Tierra West, LLC, agent for Cross Development (herein "Cross") for a 55 ft. high, 48 bed hospital project (the "Project") located on approximately 3.0 acres at 1100 Woodward Place NE, Albuquerque (the "Subject Site"), in the Santa Barbara Martineztown neighborhood (the "SBMT Neighborhood"). This appeal involves various provisions of Appellee's Integrated Development Ordinance, being Albuquerque, N.M., Integrated Development Ordinance, Rev. Ordinances, ch. 14, art. 16, §§ 1-7, version effective July 2023 ("IDO"), the Albuquerque/Bernalillo County Comprehensive Plan updated in 2017 ("Comp Plan"), and state law including constitutional law.

II. DATE OF DECISION; TIMELINESS

The District Court's Opinion and Order was entered June 3, 2025. Appellant's Notice of Appeal was filed June 23, 2025, which was timely as within 30 days after the filing of the District Court's Opinion and Order.

III. STATEMENT OF THE CASE

The IDO became effective as of May 17, 2018, and enacted a legislative rezoning of the city. The 2018 IDO has been amended numerous times since its enactment. IDO Section 1-2, Authority, states in part: "In enacting this IDO, the City intends to comply with the provisions of State law on the same subject, and the provisions of this IDO should be interpreted to achieve that goal." Purposes of the IDO include to "ensure that all development in the City is consistent with the spirit and intent of any other plans and policies adopted by the City Council" (IDO Section 1-3(B)) and to "protect the quality and character of residential neighborhoods" (IDO Section 1-3(E)). The IDO as effective in 2018 zoned the Subject Site "MX-M" (IDO Section 2-4(C)) and the SBMT Neighborhood including the Subject Site was made subject to a Character Protection Overlay Zone for "Martineztown/Santa Barbara - CPO-7" ("CPO-7") (IDO Section 3-4(H)) which places a 26 ft. height limitation on buildings on mixed use sites less than 5 acres. There are residences and commercial establishments within the SBMT Neighborhood. The Subject Site is just north of the Embassy Suites hotel on Woodward Place NE. An Early College Academy/Career Enrichment Center is across Mountain Rd. to the north of the Subject Site. The Frontage Road and I-25 are to the east of the Subject Site. The parties disagree as to whether the Subject Site is located within 330 ft. of any residential zone.

Prior to enactment of the IDO, in 1997 Appellee granted Cross's predecessor in interest "Site Development Plan" approval for development on the Subject Site, being part of a "Site Plan for Subdivision" approval (the "1997 SDP") which authorized a subdivision and set out use and height standards for the subdivision. The 1997 SDP approval for the Subject Site was for "General Office"" with a height of 180 ft. A building permit for a "General Office" or other development apparently has not been requested or granted for the Subject Site and a "General Office" or other development has not been built on the Subject Site. Otherwise, the parcels of the 1997 SDP have been developed.

On January 4, 2024, Cross submitted an application ("First ZMA Application") to Appellee, to change the Subject Site's zoning from MX-M (Mixed-use – Medium Intensity Zone District) to MX-H (Mixed-use – High Intensity Zone District). For a January 30, 2024, facilitated meeting with the neighborhood, the zone change purpose was identified as "to allow a physical rehabilitation hospital to be developed on the subject, vacant property". Cross stated that the zone change "will benefit the surrounding neighborhood by furthering a preponderance of applicable Goals and Policies in the ABC Comp Plan". Appellant submitted a letter with arguments and exhibits in opposition. Appellee's Environmental Planning Commission ("EPC") held a hearing on February 15, 2024, at which the EPC approved the First ZMA Application.

Appellant appealed the first EPC decision to the City Council which referred the appeal (titled AC-23-11) to the Land Use Hearing Officer ("LUHO") for a hearing and recommendation to the City Council. On April 4, 2024, Cross submitted its Site Plan application under the proposed MX-H zoning to Appellee. An EPC hearing on the Site Plan application was set for May 16, 2024. The LUHO held its appeal hearing for AC-23-11 on May 15, 2015. Appellant argued that the EPC decision to grant the more intense zoning did not satisfy state law requirements for a zone change. Concerning application of Comp Plan policies, in response to argument about subjectivity in applying Comprehensive Plan policies as a basis for a zone change, the LUHO stated "The policies in the plan are -- honestly, can be used in any direction." Appellant argued that the zone change was "harmful to the neighborhood" under the IDO (as discussed below), and that the more intense MX-H zoning for the Subject Site was a "spot zone" under the IDO. The LUHO expressed concern about the IDO's "spot zone" provisions:

> But with this spot zone language, which is - - to me, it's just - - I can't wrap my head around this language at all. I mean, either of the three alternative criteria, I don't understand. I tried to understand them many times. I don't understand how to apply this. I don't know how it serves as a transition. I don't know how that works. I mean, a transition can be anything. And so there's no criteria to allow for analysis of what is a transition from the MX-H or MX-M zone.

Ron Bohannan, a principal of Cross' agent Tierra West, LLC, testified that he resigned the previous week as a Development Hearing Officer for Appellee and

that he had not been "in direct communication" with Appellee about the applications while he was a DHO. The LUHO ordered a remand of the First ZMA Application to the EPC. The LUHO stated in his written decision: "I find that the record clearly demonstrates that in approving the application, the EPC relied on material inaccurate and conflicting evidence that was submitted by the City Staff Planner".

Cross filed a second ZMA application ("Second ZMA Application") on July 3, 2024, for a "de novo submission due to LUHO remand". Appellant submitted a letter July 15, 2024, with exhibits, in opposition to the Second ZMA Application, setting out arguments that the zone change did not meet state law standards, that the ZMA from MX-M to MX-H would allow uses harmful to the neighborhood under the IDO, that the IDO's "more advantageous to the community" and "spot zones" standards were unreasonable, that MX-H zoning would be a "spot zone", that Cross did not have "vested rights" to the proposed development and that the CPO-7 26 ft. height restriction applies, and that the proceeding was biased and unfair. The EPC held the remand hearing for the Second ZMA Application and the Site Plan application on July 18, 2024 ("Second EPC Hearing"). Cross' agent stated "We are requesting the MX-H zone, because the MX-H zoning allows for a higher bed capacity which is essential for providing comprehensive rehabilitation facilities. Further, the increased capacity under MX-H zoning enables operational

efficiency by supporting the deployment of adequate medical staff equipment and medical program… As stated in the Staff report and our Justification letter, the proposed amendment would clearly facilitate the comprehensive plan, and would further a preponderance of goals and policies therein." Appellant through its President testified in opposition to the Application; Appellant restated its objections including objections based on permissive uses allowed in the MX-H zone which would harm the neighborhood, particularly creating traffic problems. After the remand hearing, the EPC approved the Second ZMA Application based mainly on conformance with 18 policies or goals of the Comp Plan and approved the Site Plan.

For the ZMA, the EPC found that "the applicant's policy based-based analysis does demonstrate that the request would clearly facilitate a preponderance of applicable Comprehensive Plan Goals and policies and therefore would be more advantageous to the community than the current zoning".

Concerning the "CPO-7" restriction, the EPC found:

> 6. The subject site is located within the Santa Barbara Martineztown Character Protection Overlay Zone (CPO-7).
>
> 7. The Pre-IDO Gateway Site Development Site Development Plan for Subdivision design guidelines prevail over the majority of the CPO-7 pursuant IDO section 14-16-1-10(A) which states that "Any use standards or development standards associated with any pre-IDO approval or zoning designation establish rights and limitations and are exclusive of and prevail over any other

provision of the IDO. Where those approvals are silent, provisions in this IDO shall apply ..."

Concerning the "permissive uses that would be harmful to the neighborhood" test, the EPC ruled:

> The zone change does not include permissive uses that would be harmful to adjacent property, the neighborhood, or the community, unless the Use-specific Standards in IDO §14-16-4-3 associated with that use will adequately mitigate those harmful impacts. The only two new permissive uses that would be allowed with the requested zone map amendment to MX-H are Adult Retail (not allowed due to proximity to the school to the north) and Self-Storage (impacts mitigated by a requirement for indoor storage units only). Although the IDO's Use-specific Standards for uses in the MX-H zone district would mitigate potentially harmful impacts associated with newly permissive uses, the subject site is controlled by the Gateway Center Site Development Plan for Subdivision (SDP). In this case, the SDP would mitigate harm on the surrounding land uses because it specifies allowable uses, land use scenario standards, development standards, and setbacks. The SDP only allows the "general Office" land use for the subject site.

Concerning whether the ZMA created a spot zone, the EPC held a lengthy and confusing discussion, ultimately holding:

> H. The zone change does not apply a zone district different from surrounding zone districts to one small area or one premises (i.e. create a "spot zone") or to a strip of land along a street (i.e. create a "strip zone") unless the change will clearly facilitate implementation of the ABC Comp Plan, as amended, and at least one of the following applies:
>
> 1. The area of the zone change is different from surrounding land because it can function as a transition between adjacent zone districts.

2. The site is not suitable for the uses allowed in any adjacent zone district due to topography, traffic, or special adverse land uses nearby.

3. The nature of structures already on the premises makes it unsuitable for the uses allowed in any adjacent zone district.

The request would not result in a spot zone because it would not apply a zone different from surrounding zone districts as evidenced by the existing MX-H zoned parcel directly east of the subject site, on the other side of Interstate 25, as well as south of Lomas Blvd. The record also reflects several similar medical and hospital uses in the surrounding area. The applicant has shown how the request would clearly facilitate a preponderance of applicable Comprehensive Plan goals and policies as shown in the response to Criterion A. The response to Criterion H is sufficient.

However, if the Commission had determined that it was a spot zone, the commission further finds that it would have been a justifiable spot zone.

Appellant filed its appeal of the Second EPC Decision (which included the ZMA and the Site Plan approval) on July 23, 2024 (these appeals became respectively AC-24-18 and AC-24-19). In its response to the appeals, Staff stated that the zone change would result in a "spot zone". Staff stated that the zone change request would facilitate development and a future rehabilitation hospital. Staff reviewed the history of the 1997 SDP. Staff provided its "policy-based analysis" based on Comp Plan provisions and stated that the ZMA clearly facilitates a preponderance of applicable Comp Plan provisions. Staff stated that the "more advantageous to the community" test was satisfied by the Comp Plan analysis. On September 18, 2024, at the LUHO hearing on AC-24-18 and AC-24-

19, Staff agreed that Staff applied the IDO zone change standards, not the minimum state law zone change standards; Staff was not aware of the minimum state law zone change standards which Appellant had argued were applicable. The LUHO, counsel for Appellant, and Ms. Renz-Whitmore of Appellee's Planning Department had the following exchange concerning the ZMA decision standards:

> MR. CHAVEZ: Let's not use this for arguing. Do you have more questions, Mr. Yntema?
>
> MR. YNTEMA: Yes, I do. So what is the planning department's criteria for determining more advantageous to the community for a site -- for a zone map amendment?
>
> MS. RENZ-WHITMORE: That would be the decision criteria for a zone map amendment. So the language in 67E3B is that it's more advantageous for the community as articulated by the ABC comp plan and other adopted city plans. So, the analysis that staff does to look at comprehensive plan goals and policies, if we can show again a preponderance of those goals and policies, then we read that as more advantageous to the community.
>
> MR. YNTEMA: How is that determined? Is there any more objective or more detailed criteria that you would apply under your comp plan analysis?
>
> MS. RENE-WHITMORE: I don't think it's more detailed than that. It's just a policy review and analysis presented to the EPC for their -- as a recommended finding that they accept or revise.
>
> MR. YNTEMA: Okay. Are you familiar with the Albuquerque Commons case, or the Fairway Village case about what the standard is for determining more advantageous to the community?
>
> MR. CHAVEZ: Mr. Yntema, they're not attorneys. They're planners. Arguably, a planer should understand the case, but they're not required to. They're land planners. Can we move on?

MR. YNTEMA: Well, I think it's relevant to ask whether these standards, and I guess you're answering, that these standards were not addressed or considered.

MR. CHAVEZ: No. I'm saying that they're not attorneys. And Albuquerque Commons is a pretty complicated case.

MR. YNTEMA: Let me read the law --

MR. CHAVEZ: If you can be more specific with the question. Maybe that will work.

MR. YNTEMA: The Albuquerque Commons case and the Fairway Village case state that in a case concerning more advantageous to the community, the proof in such a case would have to show at, a minimum, that, one, there's a public need for a change of the kind in question, and two, that need will be best served by changing the classification for the particular piece of property in question as compared with other available property. So my question to the planning department is are those standards considered by the planning department?

MS. RENZ-WHITMORE: Sir, I just heard of them today from you.

MR. YNTEMA: Excuse me?

MS. RENZ-WHITMORE: I just heard them for the first time today from you. So, we don't consider other available property or -- we go by the criteria in the IDO.

MR. YNTEMA: Okay. Thank you. I don't have any other questions.

The LUHO recommended denial of AC-24-18 and AC-24-19 in the Proposed Disposition. As to Appellant's issues, the LUHO found there was substantial evidence to support the EPC's decision based on Comp Plan policies as to "more advantageous to the community"; the ZMA was not a "spot zone" based

on MX-H zoned property on the other side of the I-25 Freeway which was "surrounding"; the 1997 SDP was a "prevailing prior approved site plan" which allows a 180 ft. building height, under IDO Section 1-10; the 1997 SDP had not expired; that the applicant had "vested rights" for a 180 ft. high building on the Subject Site; and there was substantial evidence in the record that the hospital use would not harm the area. The City Council on President Lewis's motions accepted the LUHO's Proposed Disposition on October 21, 2024. Appellant's appeal to District Court was filed on November 19, 2024. Following briefing, on June 3, 2025, the District Court ruled that the "more advantageous to the community" state law test applies only to a downzone (observing that a neighbor is not the intended beneficiary of those standards); that there was sufficient evidence to support conclusions that the hospital was needed and the particular property was best suited for the proposed use; that substantial evidence supported that the proposed hospital use was not "harmful to the neighborhood'; that the "more advantageous to the community" and "spot zone" test were not unconstitutionally vague; that the 1997 SDP building height standard of 180 ft. prevails over the CPO-7 limit of 26 ft.; and that Appellee provided due process to Appellant.

On December 19, 2024, Councilors Lewis and Baca introduced O-24-69, which proposed that the City Council limit the participation of neighborhood associations such as Appellant in planning and zoning matters. On January 6, 2025,

Appellee's City Council enacted O-2025-004 (O-24-69 as amended in the City Council meeting). Appellant raised in the District Court in its Statement of Appellate Issues filed January 20, 2025, the issue that the bias demonstrated by O-24-69 against neighborhood associations violates due process for neighborhood associations in quasi-judicial matters. The District Court did not consider O-24-69 in denying Appellant's appeal but did mention some provisions of O-24-69 and applicable law at p. 16 of its Opinion and Order entered June 3, 2025.

Several IDO provisions are relevant to this appeal.

IDO Section 2-4(C)(1) states the purpose of the MX-M zone to be:

> 2-4(C)(1) Purpose
>
> > The purpose of the MX-M zone district is to provide for a wide array of moderate-intensity retail, commercial, institutional and moderate-density residential uses, with taller, multi-story buildings encouraged in Centers and Corridors. Allowable uses are shown in Table 4-2-1.

IDO Section 2-4(D)(1) states the purpose of the MX-H zone to be:

> The purpose of the MX-H zone district is to provide for large-scale destination retail and high-intensity commercial, residential, light industrial, and institutional uses, as well as high-density residential uses, particularly along Transit Corridors and in Urban Centers. The MX-H zone is intended to allow higher-density infill development in appropriate locations. Allowable uses are shown in Table 4-2-1.

Relevant decision criteria of IDO Section 6-7(G)(3) for approving a zone change such as the ZMA include (3(c) is for "more advantageous to the

community"; 3(d) is for "permissive uses that would be harmful to the neighborhood"; and 3(h) is for "spot zoning"):

> 6-7(G)(3)(c)
> If the subject property is located wholly in an Area of Change (as shown in the ABC Comp. Plan, as amended) and the applicant has demonstrated that the existing zoning is inappropriate because it meets any of the following criteria:
>
> 1. There was typographical or clerical error when the existing zone district was applied to the property.
>
> 2. There has been a significant change in neighborhood or community conditions affecting the site that justifies this request.
>
> 3. A different zone district is more advantageous to the community as articulated by the ABC Comp. Plan, as amended (including implementation of patterns of land use, development density and intensity, and connectivity), and other applicable adopted City Plan(s).
>
> 6-7(G)(3)(d)
> The requested zoning does not include permissive uses that would be harmful to adjacent property, the neighborhood, or the community, unless the Use-specific Standards in Section 14-16-4-3 associated with that use will adequately mitigate those harmful impacts.
>
> 6-7(G)(3)(h)
> The zone change does not apply a zone district different from surrounding zone districts to one small area or one premises (i.e. create a "spot zone") or to a strip of land along a street (i.e. create a "strip zone") unless the change will clearly facilitate implementation of the ABC Comp Plan, as amended, and at least one of the following applies:

> 1. The area of the zone change is different from surrounding land because it can function as a transition between adjacent zone districts.
>
> 2. The site is not suitable for the uses allowed in any adjacent zone district due to topography, traffic, or special adverse land uses nearby.
>
> 3. The nature of structures already on the premises makes it unsuitable for the uses allowed in any adjacent zone district.

IDO Section 1-10(A)(2), concerning prior approved development standards, states:

> Any use standards or development standards associated with any pre-IDO approval or zoning designation establish rights and limitations and are exclusive of and prevail over any other provision of this IDO.

IDO Section 3-4(H)(4) (in CPO-7) imposes a maximum building height of 26 ft. in any mixed-use zone district (such as MX-M or MX-H) on project sites less than 5 acres.

IDO Section 4-3(C)(4) provides that a hospital in the MX-M zone is limited to no more than 20 overnight beds, and conditional use approval is required if the hospital is located within 330 ft. of any residential zone. These limitations do not appear to apply to hospitals in the MX-H zone.

IV. STATEMENT OF ISSUES PRESENTED BY THE APPEAL AND AUTHORITIES

A. Issue One. Do the minimum state law "downzone" zone change standards set out in *Albuquerque Commons Partnership v. City of Albuquerque*,

2008-NMSC-025, ¶ 30, 144 N.M. 99, 184 P.3d 411, for "more advantageous to the community" apply to the ZMA?

Appellant raised this issue before the EPC, the LUHO and the District Court.

Authorities:

1. *Albuquerque Commons Partnership v. City of Albuquerque*, 2008-NMSC-025, ¶ 30, 144 N.M. 99, 184 P.3d 411 (sets out standards for a "downzone" zone change based on being "more advantageous to the community": that at a minimum, the proof for a zone change based on the "more advantageous to the community" standard has to show that there is a public need for the change of kind in question, and that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

2. *Fairway Village Neighborhood Council, Inc. v. Board of Commissioners of Dona Ana County*, (unpublished), No. A-1-CA-40374, 2023 WL 7697092, ¶ 7 (N.M. Ct. App. Nov. 15, 2023) (applies the *Albuquerque Commons* minimum zone change standards in an "upzone" from residential to commercial).

3. *Ricci v. Bernalillo Cty. Bd. Of Cty. Comm'rs.,* 2011-NMCA-114, ¶ 2, 250 N.M. 777, 266 P.3d 646 (the county was not required to apply the *Albuquerque Commons* minimum decision criteria for a temporary two-year special use permit).

4. *Fasano v. Bd. of County Comm'rs of Washington County,* 264 Or. 574, 507 P.2d 23, 28 (1973), superceded by statute as stated in *Menges v. Bd. of County Comm'rs of Jackson County,* 44 Or. App. 603, 606 P.2d 681 (1980) (en banc) (cited in *Albuquerque Commons*, ¶ 30; applies the minimum "more advantageous to the community" standards to deny an upzone for a mobile home park).

B. Issue Two. Does the MX-H zoning for the Subject Site granted by the ZMA include a "permissive use that would be harmful to the neighborhood" as defined by the IDO?

Appellant raised this issue before the EPC, the LUHO and the District Court.

Authorities:

1. *New Mexicans for Free Enterprise v. The City of Santa Fe*, 2006-NMCA-007, ¶ 45, 138 N.M. 785, 126 P.3d 1149 (municipal ordinances are treated no differently than statutes for purposes of judicial review).

2. *City of Rio Rancho v. Logan*, 2008-NMCA-011, ¶¶ 7-8, 143 N.M. 281, 175 P.3d 949 (rules for construction of municipal ordinance).

3. *West Old Town N.A. v. City of Albuquerque*, 1996-NMCA-107, ¶ 26, 122 N.M. 495, 927 P.2d 529 (the City may not ignore or revise its stated policies and procedures for a single decision, no matter how well-intentioned the goal may be).

C. Issue Three. Is Appellee's IDO "more advantageous to the community" test for the ZMA, without minimum state law standards, unconstitutional unbridled discretion?

Appellant raised this issue before the EPC, the LUHO and the District Court.

Authorities:

1. *City of Santa Fe v. Gamble-Skogmo, Inc*., 1964-NMSC-016, 73 N.M. 410, 389 P.2d 13 (a legislative body may not vest unbridled or arbitrary power in an administrative agency but must furnish reasonably adequate standards to guide the administrative agency; the standards required to support a delegation of power by the local legislative body need not be specific and broad general standards are permissible so long as they are capable of reasonable application and are sufficient to limit and define discretionary powers).

2. *State ex rel. Holmes v. State Bd. of Fin.,* 1961-NMSC-172, ¶ 30, 367 P.2d 925 (it is not what has been done but what can be done under a statute that determines its constitutionality).

3. *Albuquerque Commons Partnership v. City of Albuquerque*, 2008-NMSC-025, ¶ 30, 144 N.M. 99, 184 P.3d 411 (sets out standards for a "downzone" zone change based on being "more advantageous to the community": that at a minimum, the proof for a zone change based on the "more advantageous to the community" standard has to show that there is a public need for the change of kind

in question, and that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

D. Issue Four. Is Appellee's "spot zone" test for the ZMA unconstitutional due to vagueness, uncertainty, and lack of adequate standards?

Appellant raised this issue before the EPC, the LUHO and the District Court.

Authorities:

1. *City of Santa Fe v. Gamble-Skogmo, Inc*., 1964-NMSC-016, 73 N.M. 410, 389 P.2d 13 (a legislative body may not vest unbridled or arbitrary power in an administrative agency but must furnish reasonably adequate standards to guide the administrative agency; the standards required to support a delegation of power by the local legislative body need not be specific and broad general standards are permissible so long as they are capable of reasonable application and are sufficient to limit and define discretionary powers).

2. *State ex rel. Holmes v. State Bd. of Fin.,* 1961-NMSC-172, ¶ 30, 367 P.2d 925 (it is not what has been done but what can be done under a statute that determines its constitutionality).

3. *State ex rel. Bliss v. Dority,* 1950-NMSC-066, ¶ 35, 55 N.M. 12, 225 P.2d 1007 (In the enactment of statutes, reasonable precision is required. Legislative enactments may be declared void for uncertainty if their meaning is so uncertain that the court is unable, by the application of known and accepted rules

of construction, to determine what the Legislature intended with any reasonable degree of certainty. But absolute or mathematical certainty is not required in the framing of a statute.

4. *State v. Laguna,* 1999-NMCA-152, ¶¶ 25–26, 128 N.M. 345, 992 P.2d 896 (an ordinance will be deemed to be unconstitutionally vague if it has one of two fatal characteristics: it fails to give people of ordinary intelligence a reasonable opportunity to know what activity is prohibited so as to allow them to conform their actions to the law, or it fails to provide explicit standards and thus invites police officers, prosecutors, judges, or juries to engage in arbitrary and discriminatory enforcement).

5. *Texas National Theatres, Inc. v. City of Albuquerque*, 1982-NMSC-004, ¶ 11, 97 N.M. 282, 639 P.2d 569 (ordinance or statute provisions may be unconstitutionally vague or uncertain).

E. Issue Five. Does Cross have "vested rights" to a 180 ft. high hospital development from the 1997 SDP?

Appellant raised this issue before the EPC, the LUHO and the District Court.

Authorities:

1. *Brazos Land, Inc. v. Board of County Commissioners of Rio Arriba County*, 1993-NMCA-013, 115 N.M. 168, 848 P.2d 1095 (two prongs that must be met to preclude retroactive application of a zoning ordinance; there must

be approval by the regulatory body and there must be substantial change in reliance thereon).

2. *Mandel v. City of Santa Fe*, 1995-NMCA-062, 119 N.M. 248, 894 P. 2d 1041 (developer which had submitted plan for development did not have a vested right in ordinance provision authorizing structures of a certain height, which was modified by a change in the ordinance establishing lower maximum heights during pendency of the plan and prior to approval).

3. *Matter of Sundance Mountain Ranches*, *Inc*., 1988-NMCA-052, ¶ 9, 107 N.M. 192, 754 P.3d 1211 (generally, issuance of a written approval for a proposed subdivision or building permit, together with a substantial change in position in reliance thereon, is required before vested rights arise).

4. *Andalucia Development Corp., Inc. v. City of Albuquerque*, 2010-NMCA-052, ¶ 21, 148 N.M.277, 234 P.3d 92 (in order to establish a vested right, a developer must prove two elements: 1) approval by the regulatory body and 2) a substantial change in position in reliance on that approval).

5. *Miller v. SF County BCC*, 2008-NMCA-124, ¶ 27, 144 N.M. 841, 192 P.3d 1218 (purchase of property is not sufficient reasonable reliance to establish "vested rights").

F. Issue Six: Did Appellee deny Appellant due process in approving the ZMA?

Appellant raised this issue as constitutional in the District Court. Appellant raised the issue of unfairness with the EPC and the LUHO.

Authorities:

1. *Mathews v. Eldridge,* 424 U.S. 319, 321, 335, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976) (due process is flexible in nature and may adhere to such requisite procedural protections as the particular situation demands; determination of what process is due in an administrative proceeding results from a balancing of (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail; in balancing these factors, the proceedings are considered as a whole).

2. *In re U S West Commc'ns, Inc.,* 1999-NMSC-016, ¶ 25, 127 N.M. 254, 980 P.2d 37 (cites the factors set out in *Mathews,* supra; in balancing these factors, the court considers the proceedings as a whole; due process is flexible in nature and may adhere to such requisite procedural protections as the particular situation demands).

3. *Shook v. Governing Body of the City of Santa Fe,* 2023-NMCA-086, 538 P.3d 466 (due process claims must be preserved in administrative proceedings, subject to the usual exceptions to preservation; cites *Mathews*, supra, for its due process balancing test; due process claims invoke the district court's original jurisdiction; Court of Appeals review of the constitutionality of an administrative action is de novo and requires review of the entire record of proceedings).

4. *N.M. Bd. Of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶ 27, 142 N.M. 248, 164 P.3d 947 (procedural due process requires a fair and impartial hearing before a trier of fact who is disinterested and free from any form of bias or predisposition regarding the outcome of the case).

5. *Maso v. State of N.M. Tax and Rev. Dept.*, 2004-NMCA-025, ¶¶ 16-17, 135 N.M. 52 (district court original jurisdiction is not limited to appellate review of the record; appellate jurisdiction does not preempt original jurisdiction where there were no adjudicatory proceedings below; to hold otherwise would effectively foreclose any due process challenges to the administrative process, which would impermissibly constrain the right of access to the courts).

6. *Paule v. Santa Fe County Board*, 2005-NMSC-021, ¶¶ 29, 30, 117 N.M. 240 (*any* judicial review of administrative action, statutory or otherwise,

requires a determination whether the administrative decision is arbitrary, unlawful, unreasonable, capricious, or not based on substantial evidence).

7. *Los Chavez County Ass'n v. Valencia County,* 2012-NMCA-044, ¶¶ 18, 22, 23, 277 P.3d 475 (the requirement of a neutral and detached judge is even more relevant at the quasi-judicial level, where other trial-like rules of administrative proceedings are relaxed; the presumption of bias is fatal to the due process rights of parties appearing before quasi-judicial administrative tribunals).

8. *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 199 NMCA-139, ¶ 46, 888 P.2d 475, 119 N.M. 29 (participation by one disqualified member may render passage of an enactment invalid).

9. *Siesta Hills Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-028, ¶ 20, 954 P.2d 102, 124 N.M. 670 (city officials must avoid voting on matters where their actions give rise to the appearance of impropriety).

VI. STATEMENT OF RECORD OR PROCEEDINGS

There were no District Court oral arguments in this Rule 1-074, NMRA, appeal, and therefore there are no audio or stenographic recordings of District Court hearings.

VII. PRIOR OR RELATED APPEALS

There are no prior court appeals for this matter. Related appeals (in District Court) which involve Appellee's O-24-69 (O-2025-004) and Appellee's following

O-25-73 (O-2025-011) are *North Valley Coalition et al. v. City of Albuquerque*, Bernalillo County District Court No. D-202-CV-2025-01536 and No. D-202-CV-2025-03910 (consolidated); and *Naeva et al. v. City of Albuquerque et al.*, Bernalillo County District Court No. D-202-CV-2025-04659.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Docketing Statement was mailed to:

District Court Clerk, Bernalillo County District Court, PO Box 488, Albuquerque, New Mexico 87103-0488

District Court Judge Beatrice J. Brickhouse, PO Box 488, Albuquerque, New Mexico 87103-0488

Lauren Keefe, Esq. and Andrew Coon, Esq., City of Albuquerque Legal, PO Box 2248, Albuquerque, New Mexico 87103-2248

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and was electronically filed through the electronic filing system for the Court of Appeals on July 1, 2025.

(Electronically filed)

/s/ Hessel E. Yntema III
Hessel E. Yntema III