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2ND JUDICIAL DISTRICT COURT
Bernalillo County
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KATINA WATSON
CLERK OF THE COURT
Marissa N Layne

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

SANTA BARBARA MARTINEZTOWN NEIGHBORHOOD ASSOCIATION,
Appellant,

v.

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

and

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

D-202-CV-2024-09120

OPINION and ORDER

This matter concerns Appellant Santa Barbara/Martineztown Neighborhood Association's appeal from the adverse decisions of Appellee City of Albuquerque in favor of Interested Party Cross Development (Cross). The request for hearing is denied. Following consideration of the arguments and authority presented by the parties, as well as the record in this matter, the Court affirms.

Facts and Background

This case originates from Cross's proposal of a Zone Map Amendment (ZMA) for the Subject Site located at 1100 Woodward Place NE, in Albuquerque, a 2.78-acre vacant track of land, from MX-M to MX-H, and Site Plan for a three-story, fifty-five-foot high, forty-eight-bed rehabilitation hospital (the Project), under the City's Integrated Development Ordinance (IDO). Appellant is a neighborhood association recognized by Appellee, and the Subject Site is within

Appellant's boundaries. **[RP 982]**

Cross's application site is part of a larger site plan for subdivision that encompasses approximately twenty-four acres of land previously approved by Appellee as the Gateway Center Site Plan for Subdivision (Gateway Center Plan), an approved site plan dating to March of 1994. **[RP 979]** When the Environmental Planning Commission (EPC) approved the Gateway Center Plan in 1994, the Plan was approved with specific development performance standards, including, among other things, for building height for each of the tracts within the entire subdivision, including Cross's application site. **[RP 979-80]** Following the 1994 approval of the Gateway Center Plan, the Plan was amended and approved by the Development Review Board in 1997. **[RP 980]** A site development plan was approved in 2000 for tracts south of the application site, within the Gateway Center Plan, upon which the Embassy Suites Hotel and the Tricore Laboratory currently sit, and for development of the "spine street in the Gateway Center Plan, now known as Woodward Place." **[*Id.*]**

Prior to the IDO, the application site was zoned SU-2 for C-3; when the IDO went into effect in 2018, it was converted to MX-M zoning for Mixed Use, Moderate Intensity. **[RP 980]** While a hospital use is permissive in the MX-M zone, under the IDO, such a hospital use in that zone is limited to no more than twenty overnight beds. **[*Id.*]**

Cross submitted its application for zone change from MX-M to MX-H in January 2024. **[RP 980-81]** The EPC approved Cross's zone change application the following month, Appellant appealed, a hearing was held on the appeal, and the matter was remanded to the EPC for further proceedings to rehear the application. **[RP 981]** In April 2024, Cross applied for a Major Amendment to the amended 1997 Gateway Center Site Plan for Subdivision, to apply to the

Subject Site, for a proposed Site Plan for the forty-eight bed rehabilitation hospital, contingent on approval of the zone change application. **[*Id.*]** In July 2024, the EPC reheard and reapproved the zone change application and, subsequently on the same day, heard and approved Cross's Site Plan for the forty-eight bed hospital. **[RP 982]** Appellant appealed both EPC decisions. **[*Id.*]**

The Land Use Hearing Officer issued its proposed disposition of appeal numbers AC-24-18 and AC 24-19, recommending that Appellee deny both appeals. **[RP 981; 971]** The Hearing Officer determined that the findings and decisions of the EPC were supported by substantial evidence, and that the EPC's interpretation and application of the IDO and relevant Comprehensive Plan polices were rational and reasonable. **[RP 979]** The Hearing Officer found that Appellant had not met its burden under the IDO, as Appellant did not show that the EPC erred in applying the IDO or any other basis under the IDO to support its challenges. **[*Id.*]**

On October 21, 2024, Appellee, in a nine-zero vote, accepted the Hearing Officer's recommendation and findings in AC-24-18 and AC-24-19. **[RP 2610; 2613]** Appellant filed the present timely appeal to this Court.

Discussion

Standard of Review

Rule 1-074(R) NMRA sets out the standard of review for this matter. Pursuant to the Rule, the Court must determine:

> (1) whether the agency acted fraudulently, arbitrarily, or capriciously;
> (2) whether based upon the whole record on appeal, the decision of the agency is not supported by substantial evidence;
> (3) whether the action of the agency was outside the scope of authority of the agency; or
> (4) whether the action of the agency was otherwise not in accordance with law.

Id. Appellant, as the party challenging the decisions, bears the burden of showing that

Appellee's decisions fall within the grounds for reversal provided by the Rule. *Cf. Fitzhugh v. N.M. Dep't of Labor*, 1996-NMSC-044, ¶ 25, 122 N.M. 173, 922 P.2d 555. "Substantial evidence supporting administrative agency action is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Oil Transp. Co. v. N.M. State Corp. Comm'n*, 1990-NMSC-072, ¶ 12, 110 N.M. 568, 798 P.2d. 169. "An administrative agency acts arbitrary or capriciously when its action is unreasonable, irrational, wilful, and does not result from a sifting process." *Id.* ¶ 20.

"In its review, the court must view the evidence in the light most favorable to the decision." *Paule v. Santa Fe Cnty. Bd. of Cty. Comm'rs*, 2005-NMSC-021, ¶ 32, 138 N.M. 82, 117 P.3d 240. This Court's review of Appellee's actions is undertaken with deference, and the Court "must uphold the zoning authority's decision if the decision is supported by substantial evidence." *Id.* The Court "may not substitute its judgment for that of the zoning authority and conclude that there is evidence supporting a different conclusion." *Id.* The Court gives "'substantial deference to'" Appellee's interpretation of its own ordinances. *High Ridge Joint Venture v. City of Albuquerque*, 1994-NMCA-139, ¶ 32, 119 N.M. 29, 888 P.2d 475 (quoting *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994)).

Appellant presents five issues for the Court's review under Rule 1-074, as well as the Court's original jurisdiction. First, whether Appellee failed to apply the correct state law decision criteria in approving the ZMA requested by Cross to change the zoning for the subject site; second, whether Appellee's decision that the ZMA was not "harmful to the neighborhood" was arbitrary and capricious or not in accordance with law; third, whether Appellee's "more advantageous to the community" and "spot zone" tests are unconstitutional due to vagueness, uncertainty, and lack

of adequate standards; fourth, whether the approved Site Plan violated Appellee's CPO-7 regulations; and fifth, whether, based on the whole record and subsequent events, Appellee denied Appellant due process in approving the ZMA and the Site Plan. Appellant provides record citations demonstrating that the issues were properly preserved.

1. Whether Appellee's ZMA and Site Plan Approval Are Invalid Under State Law

"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." IDO § 14-16-2-4(C)(1). Under IDO § 14-16-4-3(C)(4), a hospital in the MX-M zone is limited to twenty overnight beds. In comparison, MX-H district zoning's purpose "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." IDO § 14-16-2-4(D)(1). Appellant observes that the MX-M limitation on hospitals to twenty beds does not apply to MX-H zoning, which Cross agrees is the primary difference at issue, with Cross proposing its hospital with forty-eight beds as a permissive number in the MX-H zone.

Pursuant to IDO § 14-16-6-7(G)(3): "An application for a [ZMA] shall be approved if it meets the following criteria." IDO § 14-16-6-7(G)(3)(c) sets out the criteria for a ZMA "in an Area of Change," where "the applicant," such as Cross, "has demonstrated that the existing zoning is appropriate 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 the 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 Comprehensive Plan, as amended (including implementation of patterns of land use, development density and intensity, and connectivity), and other applicable adopted City Plan(s).

Further, IDO §14-16-6-7(G)(3)(d) provides: "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."

Appellant argues that Appellee's ZMA, a zoning change, should be reversed because Appellee based its decision on its "more advantageous to the community" criteria set out above and did not follow state law criteria for a zone change being "'more advantageous to the community,'" as required by *Albuquerque Commons P'ship v City Council of City of Albuquerque*, 2008-NMSC-025, ¶ 30, 144 N.M. 99, 184 P.3d 411 (quoted authority omitted). In that case, our Supreme Court directed that "[t]he proof in such a case would have to show, at a minimum, that '(1) there is a public need for a change of the kind in question, and (2) that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.'" *Id.* (quoted authority omitted).

The Court agrees with Appellee and Cross that *Albuquerque Commons* expressly applied to down-zoning of a property owner's parcel. *Id.* ("recognize[ing] that a municipality may be able to justify an amendment that downzones a particular property by demonstrating that the change is 'more advantageous to the community'") (quoted authority omitted). Here, as Cross and Appellee explain, there was an up-zoning of property, allowing additional permissive uses, not an involuntary downzone. *Cf. id.* ¶ 24 (describing "'downzoning'" as "rezoning to a more restrictive use") (quoted authority omitted). "The enhanced procedures that are required to accompany

proposed zoning changes directed at a small number of properties constitute the primary protection for the landowner." *Id.* ¶ 30. In the present matter, the challenge is by a neighbor seeking to enforce enhanced procedures, not the property owner, the intended beneficiary of such procedures. *Cf. id; Ricci v. Bernalillo Cty. Bd. of Cty. Comm'rs*, 2011-NMCA-114, ¶ 2, 150 N.M. 777, 266 P.3d 646 (concluding that the county was not required to apply the *Albuquerque Commons* criteria in its consideration of a special-use permit). Appellant also cites *Fairway Vill. Neighborhood Council, Inc. v. Bd. of Comm'rs of Dona Ana Cnty.*, No. A-1-CA-40374, 2023 WL 7697092, at *2 (N.M. Ct. App. Nov. 15, 2023) (concluding that the county relied exclusively on the "changed circumstances" test for an up-zone, without supporting facts, and further concluding that the county had not analyzed the *Albuquerque Commons* criteria, without addressing the down-zoning context). However, that unpublished decision is not binding precedent. *Cf., e.g., Romero v. City of Santa Fe*, 2006-NMCA-055, ¶ 27, 139 N.M. 440, 134 P.3d 131 ("Unpublished decisions are not meant to be used as precedent; they are written solely for the benefit of the parties.") (quoted authority omitted).

Appellant argues that the analysis applied below was inadequate for a zone change decision because it was subjective and could be used to justify any upzone or downzone. Appellee and Cross argue, and the Court agrees, that there is sufficient evidence in the record that the IDO criteria was satisfied.

Cross presented evidence that the property's MX-M zoning is insufficient because it limited a rehabilitation hospital's beds to twenty, where the needs of the community are greater, as by 2030, forty percent of Bernalillo County's population will be older adults. **[RR 1134]** The evidence showed that between 2010 and 2020, New Mexico's population of people over sixty-five

years of age increased by 43.7 percent, including people with chronic illnesses such as stroke, cancer and other conditions that require rehabilitation care, as compared with the population increase of 2.8 percent. **[RR 1127, 1134]** New Mexico has a high concentration of heart disease and stroke patients in need of rehabilitation care. **[RR 1134]** Individuals offered oral and written support for the application. **[*E.g.,* RR 236 (JT Mitchell Letter, stating that he lives downtown and there was a need for rehabilitation hospital services in the downtown area)]**

Regarding whether the particular property is best suited for the proposed use, Cross offered sufficient evidence below. Its civil engineer, Megan Vieren, testified that "acute trauma centers or surrounding hospitals," such as UNMH, Lovelace and Presbyterian, discharge patients to rehabilitation hospitals, and had informed her that there is "an immediate need for at least a hundred beds in addition to the existing facilities" "in the surrounding area." **[RR 946]** The site is within two miles of the three large hospitals, and proximity is "crucial" because rehabilitation patients in an emergency situation need to be readmitted back to the discharging hospitals. **[RR 947-48]** Vieren testified that the site selection team considered other locations in the Albuquerque area, including the west side and further north, but "[t]his is the only site that checked all of the boxes for this use, as other sites were not for sale, lacked infrastructure, or were too far from the discharging hospitals, observing that the west side had a lower density of residents over sixty-five. **[*Id.*]** She further explained that a forty-eight-bed facility is the minimum number to economically justify construction of a rehabilitation hospital. **[RR 949-50]**

2. **Whether Appellee's Action was Arbitrary and Capricious Under the "Harmful to the Neighborhood" Test**

Under IDO § 14-16-6-7(G)(3)(d), Cross's requested MX-H zoning must "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." Appellant argues that the EPC's decision, determining that the requested zoning does not include permissive uses that would be harmful to the neighborhood, **[RP 60]**, and Appellee's conclusion that "[o]ther than Appellant's allegations, there is insufficient evidence in the record that the MX-H zone or hospital use will harm the area," **[RP 1002]**, was arbitrary and capricious. Appellant thus must show that these determinations were "unreasonable, irrational, wilful, and [did] not result from a sifting process." *Oil Transp.* 1990-NMSC-072, ¶ 20.

Appellant explains that the "harmful to the neighborhood" test calls for an examination of permissive uses of the MX-H zone, then a determination as to whether an allowed permissive use, the forty-eight-bed hospital, would be harmful, and finally a determination concerning mitigation. Appellant recounts that its neighborhood has special protections under IDO § 14-16-6-3-4(H), "Martineztown/Santa Barbara—CPO-7," establishing Site Standards, Setback Standards, and Building Height Standards, such as a maximum building height of twenty-six feet for mixed-use zone districts such as MX-M, IDO § 14-16-6-3-4(H)(4)(a). Under IDO §14-16-6-4-3(C)(4), a hospital in the MX-M zone is limited to no more than twenty overnight beds.

Appellant argues that these regulations are designed to protect its neighborhood from new, more intense hospital uses, such as Cross's requested hospital use of forty-eight beds at a height of fifty-five feet. It further contends that the proposed rehabilitation hospital will harm the neighborhood due to traffic congestion, and sets the neighborhood up for further increased intensity uses. With regard to mitigation, Appellant argues that MX-H zoning removes the mitigation regulations, and that there are no mitigation measures that can be applied to a hospital

in an MX-H zone.

IDO § 14-16-1-10(A)(2) provides: "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." Appellant recounts that Appellee determined that "[t]he 1997 amended Site Plan for Subdivision qualifies under IDO § 1-10 as a prevailing prior City approved site plan and therefore [its] development standards override any conflicting provisions of the IDO including the CPO-7 height restriction." **[RP 2608]** Appellee determined that, "because the 1997 amended Gateway Center Plan did not expire and as a matter of law prevails as a prior approved site plan," its "building height standards are applicable to the application site, not the CPO-7 building height standards." **[RP 2608-09]**

Appellant contends that the 1997 Gateway Center Site Development Plan for Subdivision (SDP) shows that the Subject Site was approved for "general office" use of up to 180 feet in height, **[RP 176]**, and not for any hospital use, noted by the EPC, **[RP 51]**. It argues that, under these circumstances, Subsection 1-10(A)(2) cannot reasonably be interpreted to grandfather in hospital use of any height.

Appellee recounts that the EPC determined that "[t]he 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." **[RP 51]** The EPC found that "[t]he only two 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)." **[*Id.*]** It additionally determined that the SDP "would

mitigate harm on the surrounding land uses because it specifies allowable uses, land use scenario standards, development standards, and setbacks." **[*Id.*]**

Appellee acknowledges that Appellant provided testimony during the proceedings alleging potential harm resulting from traffic increases. **[RP 310-11 (Loretta Naranjo Lopez expressing concerns regarding traffic impacts in the area)]** However, it further observes that Cross responded to the concern, presenting a traffic study showing that the use would not be injurious or contribute to more accidents. **[RP 810]** Cross additionally "expanded the safety study to have a full traffic impact study, **[RP 913]**, and agreed to put in special signaling and striping, as well as "curb and gutter work" to reduce and eliminate a turn lane in order to slow traffic **[RP 929]**.

The Court concludes that Appellant has not demonstrated that Appellee's determinations were arbitrary or capricious with regard to the "harmful to the neighborhood" test. The determinations were supported by substantial evidence.

3. **Whether the "More Advantageous to the Community" and "Spot Zone" Tests are Unconstitutionally Vague, Uncertain, and Lack Adequate Standards**

Appellant argues that the IDO as applied with regard to these standards are unconstitutionally vague. *Cf. City of Santa Fe v. Gamble-Skogmo, Inc.*, 1964-NMSC-016, ¶ 19, 73 N.M. 410, 389 P.2d 13 (explaining "that a legislative body may not vest unbridled or arbitrary power in an administrative agency and must furnish reasonably adequate standards to guide it," and that standards "need not be specific," so "broad general standards are permissible 'so long as they are capable of reasonable application and are sufficient to limit and define [the agency's] discretionary powers'") (quoted authority omitted). Appellant contends that the eighteen policies and goals from the 2018 Comprehensive Plan are aspirational and general, and do not justify a

piecemeal zone change at the Subject Site. It argues that there is inadequate guidance as to how goals should be prioritized or applied geographically, asserting that CPO-7 and other restrictions should be given greater importance. Appellant contends that Appellee's application of its "more advantageous to the community" test was guided by the desire to facilitate the Site Plan for Cross's hospital rather than satisfaction of more objective standards. It argues that Appellee's "spot zone" provisions are vague, and the ZMA is a straight upzone to facilitate later approval of the proposed hospital, and that properties on the other side of the I-25 freeway should not be considered to be surrounding the site to avoid a determination that the proposed change is a spot zone.

As discussed above, Cross and Appellee observe that the IDO requires the applicant to demonstrate that a proposed zone is more advantageous to the community as set out in the ABC Comp Plan, which includes implementation of patterns of land use, development density and intensity, and connectivity, and other applicable plans, giving guidance. *Cf.* IDO §14-16-6-7(G)(3)(b)(3). Cross explains that the main goal of the Comp Plan is efficient development, near transportation and other infrastructure, to avoid "leap-frog" development that puts strain on the City's capital budget as well as to avoid traffic congestion, prioritizing infill and growth in more urban areas. Also as discussed above, the issues with locating the proposed rehabilitation hospital in other areas of the city where there are few roads, low densities, and less infrastructure would not be consistent with the Plan, while locating it downtown allows for densification of urban corridors favored by the plan. **[RP 985-88 (determining that the EPC's findings regarding the Comp Plan and policies was supported by substantial evidence, including permissiveness of hospital use in both MX-M and MX-H zones, with the difference being allowing twenty-eight more beds, the immediate area of the site was not inconsistent with hospital use, noting the**

eight-story hotel, four story laboratory, and other office uses adjacent, three major hospitals within a two-mile radius)]

The spot-zone analysis provides guidance by requiring that a proposed zone district not be different from surrounding zone districts unless it will clearly facilitate implementation of the ABC Comp Plan, and either "[t]he subject property is different from surrounding land because it can function as a transition between adjacent zone district," it "is not suitable for the uses allowed in any adjacent zone district due to topography, traffic, or special adverse land uses nearby," or "[t]he nature of structures already on the subject property makes it unsuitable for the uses allowed in any adjacent zone district." Regarding Appellant's argument that there does not appear to be any MX-H zoned property surrounding the Subject Site, Cross contends that the spot zone analysis should focus not on just adjacent properties, but surrounding properties. **[RP 2423 (finding that the MX-H zone is similar to, and only one zoning designation away from, the MX-M zone, there is MX-H zoning surrounding and close to the site, the hospital use is similar to and consistent with existing hospital uses close to the project, and the use and proposed zoning are appropriate transitions between the MX-M hotel uses south of the site and the school and residential uses to the north)]**

The Court agrees with Cross and Appellee that the tests are sufficiently clear with the guidance provided. Appellant has not demonstrated that the tests are unconstitutionally vague.

4. Whether CPO-7 Restrictions Apply to the Subject Site

A Site plan "shall be approved" if it, among other things, "complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any terms and conditions specifically applied to development of the property in a prior permit or approval affecting the

property." IDO §14-16-6-6(I)(3)(c). As stated above, the CPO-7 regulations for the Santa Barbara/Martineztown neighborhood limited the maximum building height to twenty-six feet in mixed-use zones on project sites. Appellant argues that Cross's Site Plan violates the CPO-7 height restriction. The Court rejects the argument. *Cf., e.g., Pub. Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012, ¶ 14, 444 P.3d 460 (explaining that agency decisions which require expertise in highly technical areas are accorded considerable deference); *High Ridge*, 1994-NMCA-139, ¶ 32 (explaining that courts will generally give substantial deference to a city's interpretation of its ordinances).

Appellee explains that the 180-foot height approval, a development standard for the Subject Property with pre-IDO approval, prevails over the CPO-7 height restriction. "Any approvals granted prior to the effective date of this IDO shall remain valid . . . ." IDO § 14-16-1-10(A)(1) As set out above: "Any use standards or development standards associated with any pre-IDO approval . . . establish rights and limitations and are exclusive of and prevail over any other provision of this IDO." IDO § 14-16-1-10(A)(2). Appellee determined that "[t]he 1997 amended Site Plan for Subdivision qualifies under IDO § 1-10 as a prevailing prior City approved site plan and therefore [its] development standards override any conflicting provisions of the IDO including the CPO-7 height restriction." **[RP 2608]** Appellee determined that, "because the 1997 amended Gateway Center Plan did not expire and as a matter of law prevails as a prior approved site plan," and its "building height standards are applicable to the application site, not the CPO-7 building height standards." **[RP 2608-09]** The Court agrees with Appellee's interpretation of the ordinances.

5. Due Process Claims

Finally, Appellant argues that Appellee did not provide it due process under the entire record, including subsequent events. Characterizing application of the IDO as applied to this matter as a labyrinth of complexity, uncertainty and obscurity, Appellant contends that it maximizes political piecemeal control and discretion and protects political decisions from effective judicial review. It recounts that Appellee essentially held four hearings before the EPC and Hearing Officer, asserting that staff advocated for the projects at all of the hearings, despite the fact that the applicant bears the burden of showing compliance with required standards, giving Cross four bites at the apple to make their case, deciding at the outset that approval was justified. The Court rejects Appellant's arguments. As Cross and Appellee observe, Appellant received proper notice and had opportunity to be heard and present evidence at all of the hearings. *Cf. Shook v. Governing Body of City of Santa Fe*, 2023-NMCA-086, ¶ 35, 538 P.3d 466 (explaining that "'[i]n administrative proceedings due process is flexible in nature and may adhere to such requisite procedural protections as the particular situation demands,'" and concluding that there was no due process violation, as "[r]esidents had multiple opportunities to testify, the ability to submit unlimited written comment, and advance knowledge about the points of Developer's presentation," and they "have specified neither . . . how the procedures they have requested would have further safeguarded their rights nor demonstrated that the process employed . . . created a risk of erroneous deprivation of their rights") (quoted authority omitted).

More specifically, Appellant argues that an EPC commissioner did not excuse himself although he is on the board of directors of an organization which expressed support for the project. **[*e.g.*, RP 236-38]** However, the City Council made the ultimate determinations in this matter. Appellant argues that the City Council majority has hostility towards neighborhood association

involvement in zoning matters, observing that Council President Lewis, with Councilor Baca, introduced a bill, an amended version which was approved in December of 2024, to reduce if not eliminate participation of such associations while intimidating potential appellants and upzoning major areas.[1] Appellant argues that this demonstrates Lewis's partiality when an association is a party, acknowledging that the new ordinance does not apply to the case. *Cf. High Ridge*, 1994-NMCA-139, ¶ 46 (declining to defer to the city's interpretation of the zoning code where, among other things, there was a dispute in the record as to whether a councilor was still a member of an involved neighborhood association when the association initiated its appeal, based on "authority to the effect that participation by one disqualified member renders a proceeding invalid, even though the disqualified member's vote was not needed for passage," because of the influence on other members); *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.'") (quoted authority omitted).

Because this new ordinance was not in effect during the proceedings, the Court does not consider it. Further, "an official is not required to recuse himself [or herself] simply because he [or she] has previously expressed support for a particular policy;" "[r]ather, a statement or position

[1] SAI, attachment (Council Bill O-24-69), § 2 (amending § 14-16-6-4(U)(2)(a)(5)(b) (standing for appeals requiring that "a Neighborhood Association must submit a petition in support of the appeal, signed by a majority of all property owners located within 660 feet of the application site, inclusive of all rights-of-way"); Subsection 6-4(U)(4)(d) ("The applicant failed to comply with notice requirements for neighboring property owners, except that alleged failure to notify a neighborhood association is not sufficient grounds to uphold an appeal or remand a decision for further consideration"); Subsection 6-4(U)(5)(b) ("For a LUHO appeal of an approval, if appellant loses they shall be responsible for paying the reasonable costs, including attorneys' fees of the appellee.").

is generally disqualifying only if it concerns the *specific* proposal or action that is before the tribunal." *Benavidez v. Bernalillo Cnty. Bd. of Cnty. Comm'rs*, 2021-NMCA-029, ¶ 35, 493 P.3d 1024 (remanding where a commissioner had made a public comment in an op-ed overtly supporting the matter under consideration); *cf., e.g., Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-031, ¶ 29, 123 N.M. 239, 938 P.3d 1384 ("Members of [administrative] tribunals are entitled to hold views on policy, even strong views, and even views that are pertinent to the case before the tribunal."). As Cross argues, *High Ridge* is distinguishable; a councilor in that case proposed the findings adopted, had circulated evidence not admitted into the record to other council members, was a former president of the neighborhood association, and his spouse had signed a petition opposing the development. 1994-NMCA-139, ¶ 46. In the present matter, all nine councilors voted to adopt the Hearing Officer's decisions, and there is no evidence that any councilor had a pecuniary or other interest in the case.

Conclusion

The Court must determine "whether the record supports the result reached, not whether a different result could have been reached." *Gallup Westside Dev., LLC v. City of Gallup*, 2004-NMCA-101, ¶ 11, 135 N.M. 30, 84 P.3d 78. The Court concludes that Appellant has not demonstrated any basis for reversal.

Appellee's decisions are **AFFIRMED**.

IT IS SO ORDERED.

BEATRICE J. BRICKHOUSE
DISTRICT COURT JUDGE

June 3, 2025

A copy of the foregoing document was e-filed on this 3rd day of June, 2025.

Bobbi Jo Walker, TCAA

D-202-CV-2024-09120