CITY OF ALBUQUERQUE
<u>LAND USE APPEAL UNDER THE IDO</u>
BEFORE AN INDEPENDENT
LAND USE HEARING OFFICER

<u>APPEAL NO. AC-24-15</u>
PR-2023-009363 SI-2023-01635 SI-2023-01638

Patrick Hauser, *et al*.,

Appellants.

Consensus Planning, agents for
City of Albuquerque/ New Mexico United,

Appellees/ Applicants.

PROPOSED DISPOSITION

INTRODUCTION
STANDING TO APPEAL
ISSUES PRESENTED
BACKGROUND
STANDARD OF REVIEW
DISCUSSION
PROPOSED DECISION
PROPOSED FINDINGS

I. INTRODUCTION

This is an appeal of an April 11, 2024, decision from the Environmental Planning Commission (EPC) who essentially approved an application for a multi-use, outdoor stadium on the Ballon Fiesta Park grounds. Because the Park is owned by the City of Albuquerque, Consensus Planning, Inc, was retained to prepare, file, and present the application to the EPC on behalf of the City and New Mexico United (the intended lessor of the stadium). Specifically, the Applicants sought to amend the Balloon Fiesta Park MDP to (1) eliminate existing

35 language in the MDP that prohibits an outdoor stadium; (2) modify the Balloon Fiesta Park
36 MDP and the associated Site Plan for Subdivision to include the proposed Outdoor Multi-Use
37 Stadium in the eastern area of the Park, where a multi-story parking structure was initially
38 permitted under the approved MDP; (3) modify the lighting standards in the MDP to allow for
39 stadium lighting; (4) replace a portion of the Park's existing outdoor recreation area with
40 surface parking; (5) expand the Park's size from 358-acres to 367.5 by adding 9.5 acres of
41 abutting City owned land to allow for an additional 750 new parking spaces. The Appellants
42 comprise eleven residents who reside in the residential neighborhoods to the west of the North
43 Diversion Channel. Additional Appellants include the Wildflower Neighborhood Association
44 (WNA), the Alameda North Valley Association (ANVA), the Maria Diers Neighborhood
45 Association (MDNA), and the North Edith Corridor Association (NECA) **[R. 27]**.

46 Although there are numerous Appellants, one appeal was filed alleging numerous
47 allegations. Generally, the Appellants claim that the EPC erred on the facts and misapplied the
48 IDO. Appellants also present several alleged errors of procedural due process as well as other
49 alleged procedural errors having to do with the EPC's hearing. Although the Appellants raised
50 numerous issues in their appeal, their appeal can be separated into three categories of
51 allegations—procedural errors, alleged substantive misapplication of the IDO, and objections
52 to the specific EPC findings. Each are discussed in this proposed disposition.

53 As explained in detail below, the EPC's findings and conclusions under the Integrated
54 Development Ordinance (IDO) are well supported by the substantial record in this matter.
55 Conversely, except for one issue concerning the Traffic Assessment in the record, the

56 Appellants have not met their burden of proof under the IDO to show that the EPC erred.[1]
57 Similarly, I further conclude that the EPC did not violate the Appellants' due process rights.
58 Additionally, Appellants' numerous and often repetitive complaints about the EPC's findings
59 in its Official Decision are equally without merit and do not meet the standard in the IDO for
60 sustaining them.

61 Finally, as proposed in the last section, I recommend that the City Council modify the
62 EPC's decision to include two recommendations from the Traffic Assessment study that are in
63 the record. Other than the proposed modification of the EPC decision, as shown in this
64 proposed disposition, I respectfully recommend that the City Council deny the appeal.

65

66 II. STANDING TO APPEAL

67 Because this is an appeal from a decision under the IDO, to have any appeal heard, IDO
68 § 6-4(V)(2) must be first satisfied by any appellants. It must be shown that the Appellants have
69 standing to appeal the EPC's decision. The Appellants contend that the eleven individual
70 Appellants and the four neighborhood associations satisfy § 6-4(V)(2)(a)5 because the
71 individual Appellants reside within 330 feet of the Park and the association boundaries are
72 within 330 feet of the Park if public right-of-way is excluded. **[R. 27]**. The Applicants through
73 Counsel did not dispute Appellants' contention, so I assume that the all Appellants have met
74 this burden. Thus, all the Appellants have standing to appeal the EPC's decision.

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1. As discussed below, the traffic engineers who performed the Traffic Assessment made some significant recommendations that the EPC did not address in its decision. Because of their significance regarding safety and welfare, I recommend that the City Council adopt these recommendations.

76 **III. ISSUES PRESENTED**

77 As indicated above, in this appeal, the Appellants have raised numerous allegations of
78 alleged error. The first six claims concern the process due in quasi-judicial hearings under the
79 law. The Appellants first claim that the "preapplication meeting between city planning staff
80 and the applicants' representatives violated the State Open Meetings Act. Appellants next
81 allege that because the EPC denied several requests from Appellants to defer the April 11,
82 2024, hearing for an additional 90-days, the EPC violated their due process rights **[R. 30]**.
83 Appellants next allege that EPC Commissioner Renn Halstead should have recused himself
84 from the vote; they claim that he had a conflict of interest with the application and because he
85 did not recuse himself, he violated the EPC Rules of Conduct and Appellants' due process
86 right to have the matter decided by a neutral decision-maker **[R. 31]**. Appellants also contend
87 that because the City is the applicant and the EPC is a City Commission, the quasi-judicial
88 hearing was not held by a neutral, unbiased tribunal **[R. 36-37]**. Next, Appellants contend that
89 the procedure utilized by the EPC for allowing Appellants to cross-examine witnesses was
90 ineffective and violated their due process rights **[R. 32-33]**. Next, Appellants contend that the
91 Applicants failed to properly notify all property owners within 100-feet of the Park as required
92 by IDO, § 6-4(K)(3)(a) **[R. 33-36]**. In the due process category of allegations, Appellants
93 finally contend that the EPC failed to hold a *de novo* hearing as instructed after an earlier EPC
94 decision, was remanded for notice deficiencies **[R. 38-39]**.

95 In this appeal, Appellants also make numerous substantive contentions regarding the
96 EPC's decision under the IDO, and the MDP. They contend that the City did not demonstrate
97 that it obtained approval from the City Parks and Recreation Advisory Board (PRAB) as
98 required by the IDO **[R. 41]**. They further claim that the EPC failed to "give serious

99 consideration" to Appellants' concerns of noise or to the existing problems with noise
100 enforcement at the Park **[R. 41-44]**. Appellants next claim that the EPC failed to consider the
101 environmental concerns that Appellants presented regarding traffic, pollution, trash, flooding,
102 fireworks, including the potential for methane gas leaking from the subsurface remains of a
103 landfill that once occupied part of the Balloon Fiesta Park grounds. Appellants also generally
104 believe that the existing studies are insufficient, and that a more substantive environmental
105 study was necessary. **[R. 44-48]**.

106 The appeal also includes vague challenges to nearly every one of the 40-plus
107 substantive EPC findings in the 19-page written decision **[R. 48-69]**. In these contentions,
108 Appellants are not alleging error, but instead they seem to be essentially voicing their
109 dissatisfaction with the underlying facts supporting the findings. These challenges are
110 discussed to some extent below. However, it must be pointed out, that not one of the challenges
111 to the EPC's findings meet the criteria in § 6-4(V)(4), which are the criteria under which the
112 appeal issues must be judged.

113

114 **IV. BACKGROUND**

115 Although the appeal record in this matter is over 1,600 pages in length, it is incomplete;
116 some documents are missing from the record. Despite that some documents are missing,
117 undisputed testimony in the appeal hearing helped clear up the discrepancies from what is
118 missing. That testimony was not disputed by any party. Thus, the missing documents are
119 harmless error.

120

121

122 **A. Previous Amendments effecting the Balloon Fiesta Park**

123 Because in this appeal, some of the Appellants have essentially alleged that the EPC
124 utilized the wrong IDO procedures for its evaluation of the text and site plan amendments, the
125 undisputed history of previous amendments to the Balloon Fiesta Park are relevant to address
126 this claim. The previous history of amendments to the MDP and to the site plan of the Park
127 through the years demonstrates that the process utilized by the EPC in evaluating the
128 application amendments and site plan in this matter was consistent with how major
129 amendments to the Park occurred previously.

130 Chronologically in time, the history reflects that in 1985, the City acquired what was
131 known as the decommissioned, 77-acre "Nazareth Landfill" site for the purpose of creating a
132 new site which became the Balloon Fiesta Park **[MDP, p.2]**. Over the years, the Park has
133 expanded from its 77-acre size to its current size—358-acres **[R. 958]**. In 1993, the City
134 Council adopted Resolution R-356 which changed the zoning and clarified permissive land
135 uses allowed at the Park including ballooning and related activities **[R. 998]**. In 1996, the EPC
136 considered and granted a zone map and sector development plan amendment on additional
137 land abutting the Park. Then, in 1998, the City Council created the Balloon Fiesta Park Master
138 Development Plan (MDP) **[R. 997]**. The MDP was the document that was intended to govern
139 any and all future development, management, and operations within the Park **[R. 997]**.
140 However, the record clearly demonstrates that the MDP was not intended to remain a static
141 document; the record shows that the MDP has been amended several times prior to the
142 proposed amendments in this matter. Similarly, the attendant site plan for the Park has also

143 been amended on numerous occasions, including through the EPC review process.[2] For
144 brevity, however, this history was not disputed, and these amendments are summarily listed
145 below by year.

146 - **1999 - 2000**. The Development Review Board (DRB) approved an amendment to
147 the site plan to allow for the Alameda Parking lot and approved a golf course
148 training center **[R. 999]**.

149 - **2000**. The EPC approved amendments to the MDP to coincide with previous site
150 plan amendments for construction of the Balloon Museum and access drive. An
151 administrative amendment that reconfigured the north Launch Field roads was also
152 approved **[R. 949-958]**. The record shows that the process utilized by the EPC to
153 evaluate the amendments is consistent with the evaluation process in this matter
154 **[R. 949-958]**.

155 - **2001**. An amendment to the site plan for subdivision and a site plan for building
156 permit for the Balloon Museum and National Museum of Nuclear Science and
157 History was approved. The MDP was also amended to clarify the lease area for
158 National Museum of Nuclear Science and History **[R. 999]**.

159 - **2007**. City Planning Staff approved an administrative amendment to demarcate
160 entry signs **[R. 999]**.

161 - **2012**. The EPC approved a site development plan amendment and MDP
162 amendment updating design standards, infrastructure and engineering upgrades,

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2. The record shows that some minor changes to the site plan were administratively approved **[R. 995, 999]**.

163 and landscaping components to the Park **[R. 959-981]**. Notably these amendments
164 included MDP text amendments and a new site plan for the Park evaluated by the
165 EPC under comparable IDO processes **[R. 959-981]**.

166 - **2014**. The EPC approved amendments to the height restrictions for specific
167 buildings in the Park **[R. 971-981, 999]**.

168

169 **B. Procedural history of the appealed application in this matter.**

170 It appears from the record that prior to the application process commencing in this
171 matter, on August 8, 2023, an "Adjacent Neighborhood Noise Impact Study" was completed
172 for the prospective stadium application **[R. 1089-1098]**.[3] In the meantime, a Lighting and
173 Illumination Study was also completed around the same time **[R. 1099-1113]**.

174 As with all applications concerning the IDO, under the IDO, the application process
175 routinely commences with a "pre-application meeting" and a "pre-submittal neighborhood
176 meeting." See IDO, § 6-4(C) and § 6-4(B), respectively. The record demonstrates that the
177 Applicants' agents met with City Planning Staff in the required pre-application meeting,
178 presumably to discuss the "applicable submittal requirements" under the IDO [R. 986].[4] See
179 IDO, § 6-4(C)(1).

180 After the pre-application meeting with city Planning Staff, on September 9, 2023, the
181 Applicants held an initial neighborhood facilitated meeting with neighborhood association

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3. This study and its recommendations will be discussed in detail below.

4. The pre-application meeting notes are missing from the record; thus, the date of the meeting is not known.

182 representatives and resident members **[R. 719, 876, 1121]**. Then, the Applicants submitted
183 their application to the city Planning Department on September 14, 2023 **[R. 984]**.

184 Apparently after the § 6-4(C) meeting and the initial § 6-4(B) meeting occurred, on
185 September 25, 2023, Deputy Planning Director, James Aranda issued a detailed memorandum
186 to the Applicants' agent that memorialized what studies and procedures were necessary under
187 the IDO **[R. 1013-1014]**. In the memorandum, Deputy Director Aranda determined that
188 because part of the site is on a decommissioned landfill, a sensitive lands analysis under IDO,
189 § 5-2(H) requires that a study for potential gas mitigation be performed for the areas over the
190 landfill that are not covered by existing asphalt **[R. 1014]**.[5] On October 3, 2023, the Applicants
191 met with the City Traffic Engineer to discuss whether any traffic studies would be necessary
192 **[R. 993]**. The Traffic Engineer concluded that a complete traffic impact study (TIS) is
193 necessary **[R. 994]**.

194 Thereafter, on October 5, 2023, the Applicants sent notice of the upcoming EPC
195 hearing to property owners within 100-feet of the Park, excluding right-of-way **[R. 1134]**.[6] In
196 the meantime, a detailed soil gas sampling was conducted at the Park site on October 18, 2023
197 **[R. 1021-1088]**. Then, on October 22, 2023, a meeting between the Applicants, the prospective
198 tenants of the proposed stadium, and members of the ANVA and the WNA met, presumably
199 to discuss the application **[R. 909]**. Another meeting to further discuss the application occurred

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5. The record includes a prior 2013 Gas Probe study that included venting recommendations **[R. 154]**. Note that Appellants have not argued that venting did not occur in accordance with the 2013 Study.

6. At least seven property owners were not included in that initial mailing and presumably did not receive notice which was the reason for the subsequent remand.

200 between the ANVA, WNA, MDNA, and NECA representatives on November 2, 2023 **[R.**
201 **1155]**.

202 Next, the record reflects that a detailed City Planning Staff Report was submitted to the
203 EPC on November 16, 2023 **[R. 876- 930]**. Then, the EPC held a considerably long hearing
204 before it finally approved the application on November 16, 2023.[7] These Appellants and
205 others filed a timely appeal. In the meantime, an initial Traffic Assessment of the projected
206 stadium automobile traffic, specifically on the site's gateway access roads, was performed by
207 Lee Engineering on January 16, 2024 **[R. 247-286]**.

208 A Land Use, quasi-judicial appeal hearing was held on February 16, 2024. At the appeal
209 hearing all parties stipulated that notice under IDO, § 6-4(K)(3) was defective because some
210 property owners who qualify for notice under the IDO were not sent notice of the November
211 16, 2023, EPC hearing. The matter was remanded to the EPC for a *de novo* hearing and re-
212 notification to all qualifying property owners and neighborhood associations was required
213 along with a new EPC hearing **[R. 234-235]**.

214 Subsequently, the record shows that a *de novo* EPC hearing was rescheduled for March
215 21, 2024 **[R. 203]**. Based on a new list of properties and owners, on February 28, 2024, the
216 Applicants resent new notices for the pending *de novo* EPC hearing **[R. 288-310]**. In addition,
217 the record shows that the Applicants updated the posted signs at the site to reflect the March
218 21, 2024, meeting date **[R. 203]**. Another facilitated meeting between the Applicants and the
219 affected four neighborhood associations took place on March 4, 2024 **[R. 338-343]**.

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7. The November 16, 2023, EPC hearing minutes are not in this record. However, they can be found with the previous appeal of AC-23-22.

220 The record includes dozens of letters of support and letters of opposition to the stadium
221 **[R. 346-394]**. Apparently, because many Appellants and the Applicants requested a deferral
222 of the March 21, 2024, EPC hearing, during the hearing, the EPC agreed to continue the matter
223 and reschedule the hearing to be held on April 11, 2024 **[R. 203]**. Although, the March 26,
224 2024, EPC hearing Minutes are not included in this record, the parties were questioned about
225 these facts during the appeal hearing, and it was undisputed that the EPC gave actual notice of
226 the rescheduled April 11, 2024, to anyone who attended the March 21, 2024, hearing. This is
227 permissible under New Mexico law. See, *Bennett v. City Council for the City of Las Cruces*,
228 1999-NMCA-015, ¶ 8-9. At the appeal hearing, the Applicants also testified that the signs
229 posted at the application site were also updated to reflect the new hearing date.

230 On April 11, 2024, the EPC held a special, nearly 9-hour long quasi-judicial rehearing
231 on the application **[R. 732-875]**. At the hearing's conclusion, the EPC voted to approve the
232 application, made numerous findings and set conditions in a 20-page written decision [**R. 71-**
233 **92]**. This timely appeal was filed on April 26, 2024 **[R. 23-70]**.

234

235 **V. STANDARD OF REVIEW**

236 The IDO provides for how appeals under the IDO are to be evaluated. Review of an
237 appeal under the IDO is a whole record review to determine whether a decision appealed is
238 fraudulent, arbitrary, or capricious; or whether the decision is not supported by substantial
239 evidence; or if the requirements of the IDO, a policy, or a regulation were misapplied or
240 overlooked [IDO, § 6-4(V)(4)]. The Land Use Hearing Officer (LUHO) has been delegated
241 the authority by the City Council to make findings and to propose a disposition of an appeal,

242 including whether the decision should be affirmed, reversed, or otherwise should be modified
243 to bring the decision into compliance with the standards and criteria of the IDO.

244 In addition, of particular significance for the issues presented in this appeal, in an
245 administrative, quasi-judicial appeal, the standard for judging how the EPC interpreted any
246 particular provision, rule, standard, or policy is a question of whether the interpretation is
247 reasonable and rational under the evidence in the record, and not whether there is substantial
248 evidence that may exist to support Appellants' interpretation of the facts. *Huning Castle*
249 *Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-123, ¶ 15.

250 If the EPC's findings and its decision are rational such that "a reasonable mind can
251 accept them as adequate" considering the regulations that apply, that decision will be accorded
252 deference. *Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-456 020, ¶
253 17. With these significant appellate review principals and considerations in mind, the
254 substantive merits of the appeal are discussed next.
255

256 **VI. DISCUSSION**

257 **A. Alleged Due Process Violations.**

258 **i. The Preapplication meeting did not violate the Open Meets Act.**

259 In this appeal, the WNA Appellants through their counsel claim that the "internal
260 determinations" by city Planning Staff violates the New Mexico Open Meeting Act (OMA).[8]

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8. The Wildflower Neighborhood Association is represented by Counsel, H. Yntema, who submitted a detailed written argument with an exhibit. The 54-page document, dated July 1, 2024, was added to the record of this appeal.

261 Presumably, the "internal determinations" is a reference to the mandatory pre-application
262 meeting that occurred in this matter.[9] Th WNA Appellants claim that this process violates the
263 Open Meetings Act. Briefly, the OMA of NMSA 1978, §§ 10-15-1 to 10-15-4, is generally
264 known as a "sunshine law" that specifically requires certain public business to be conducted
265 in full public view, so that the *actions* and deliberations of public bodies can be openly
266 discussed and generally open to the public. NMSA 1978, § 10-15-1(A) states very clearly that
267 the OMA is applicable to "public bodies" as well as "the formation of public policy or the
268 conduct of business by vote."

269 Individual city Planning Staff who meet with applicants in preapplication meetings are
270 unmistakably not considered a "public body" who form policy, or who conduct business by
271 vote. In addition, what occurs in a preapplication meeting is described in IDO § 6-4(C)(1). It
272 states:

> 273 The purpose of a pre-application meeting is to provide an opportunity
> 274 for an applicant and City staff to discuss applicable submittal
> 275 requirements and procedures; the scope, features, and potential impacts
> 276 of the proposed development on surrounding neighborhoods and
> 277 infrastructure systems; the consistency or inconsistency of the proposed
> 278 application with the ABC Comp Plan, as amended; applicable
> 279 requirements and standards in this IDO; and applicable requirements
> 280 and standards in the DPM and to identify primary contacts for the
> 281 applicant and staff.

282

283 IDO § 6-4(C)(1). It is clear from IDO § 6-4(C)(1), that the pre-application meeting is not
284 intended to be a meeting to decide the substantive merits of an application. It is an

9. The WNA Appellants did not provide any dates or details about what they considered to be the "internal determination," and their attorney was unavailable for the appeal hearing. Despite the advisement of his unavailability, counsel for the WNA did not request a continuance or a deferral of the appeal hearing.

285 administrative, routine ministerial process designed to, and utilized to, create efficiency in the
286 application evaluation process; to assure that applicants understand, and will follow the
287 numerous steps in the IDO before the application can be presented for a decision; it is to give
288 clear guidance about notifying neighborhood associations, property owners, to identify and
289 discuss *existing* applicable IDO provisions that need to be satisfied. IDO, § 6-4(C)(1) does not
290 on its face contemplate that policy is formulated during pre-application meetings.

291 On its face, IDO § 6-4(C)(1) is presumptively outside what can be considered a meeting
292 that falls within the purview of the OMA. Appellants have not demonstrated that city Planning
293 Staff took any action to evaluate through a deliberative process the substantive merits of the
294 application in this matter during the mandatory pre-application meeting that took place.
295 Without evidence to support their claims, Appellants theory fails.

296

297 **ii. The EPC did not abuse its discretion when it did not grant Appellants'**
298 **request for a 90-day deferral so that Appellants could possibly obtain**
299 **sound measurement evidence that were allegedly taken at the Park.**

300

301 In their appeal, Appellants next contend that when the EPC refused to defer the April
302 11, 2024, hearing, the EPC violated their due process rights.[10] Appellant believe that because
303 the City had not turned over documents they requested under the Inspection of Public Records
304 Act (IPRA) statute, they were placed in a disadvantage during the hearing. Appellants also
305 believe that because the EPC did not rule on their request for a deferral, the EPC violated due
306 process **[R. 29-30]**.

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10. Note that the Appellants also requested a 90-day deferral of the appeal hearing. At the appeal hearing, however, Appellants withdrew their request.

307 Specifically, Appellants have requested from the city, documents related to sound
308 measurements that City agencies apparently obtained at the Park, and Appellants surmise that
309 the data allegedly collected is relevant to the application and to the appeal. Appellants have
310 not included their request for these measurements in the record.

311 Certainly, in administrative quasi-judicial hearings such as the one the EPC held in this
312 matter, due process under law is applicable. *Archuleta v. Santa Fe Police Dep't ex rel. City of*
313 *Santa Fe*, 2005-NMSC-006, ¶ 31. The process due implicates the right to be heard and an
314 opportunity to present and rebut evidence. The Applicants' counsel laid out the legal test for
315 evaluating what process is due in administrative, quasi-judicial hearings **[L. Wells, Ltr., July**
316 **9, 2024, p. 4]**. The United States Supreme Court held that the test includes balancing:

317 (1) the private interest that will be affected by the official action; (2)
318 the risk of an erroneous deprivation of such interest through the
319 procedures used, and the probable value, if any, of additional or
320 substitute procedural safeguards; and (3) the government's interest,
321 including the function involved and the fiscal and administrative
322 burdens that the additional or substitute procedural requirement
323 would entail.
324

325 *Mathews v. Eldridge*, 424 U.S. 319, p. 332. The New Mexico Supreme Court in *In re Comm'n*
326 *Investigation Into 1997 Earnings of U.S. West Commc'ns, Inc.*, 1999-NMSC-016, ¶ 26,
327 adopted the *Mathews v. Eldridge* test, and elaborated that the entire proceedings must be
328 evaluated to balance the factors to determine if due process had been violated.

329 In this case, Appellants seem to suggest that the alleged sound measurements taken by
330 City Staff are indispensable because the measurements can be used to rebut the sound
331 measurements produced in the Adjacent Neighborhood Noise Impact Study (Noise Impact

Study) in the record. However, Appellants have not shown how noise measurements at the Park grounds might be helpful to rebut the Noise Impact Study.

I find that any measurements of existing conditions at the Park (without the stadium) would have no bearing on the measurements performed in the Noise Impact Study. This is because the sound measurement data sets obtained through the Noise Impact Study are not sound measurements of noise or sound emanating at the Park as the Park currently exists. The Noise Impact Study is essentially an expert's analyses of acoustical models of sound from inside the stadium which is also based on three-dimensional modeling by the stadium's project architect **[R. 1090]**.

The evidence in the Noise Impact Study shows that the stadium is particularly designed to absorb and quell sound (to a great extent) from leaving the stadium **[R. 738]**. Because the Park is relatively flat terrain and lacks the significant sound barriers that the stadium design includes, any sound measurements taken at the park is not comparable to sound modeled from the stadium. Thus, sound measurements from the Park are not relevant and were not relevant in the application of a stadium. Therefore, any sound measurements sought through IPRA of existing conditions are not indispensable and Appellants' right to present relevant evidence was not violated.

Moreover, The fact that the EPC chose not to address a deferral at its April 11, 2024, hearing, ignores that the EPC already granted a 30-day deferral at the March 11, 2024, hearing. Just because the EPC did not again defer its hearing is not evidence that the EPC deprived Appellants of a fair hearing. Appellants have not shown that the EPC abused its discretion or otherwise contravened any of the *Mathews v. Eldridge* factors.

iii. There are insufficient facts in the record to support that EPC Commissioner Halstead prejudged the application.

Next, Appellants take the position that EPC Commissioner, Renn Halstead was not impartial; that he should have recused himself from participating in the April 11, 2024, hearing and vote. Under New Mexico law, judges and administrative tribunals as triers of fact cannot have a stake in the outcome; they must be neutral, impartial, and free from bias when judging matters. In this matter, the EPC clearly performed its duties as a quasi-judicial tribunal when it judged and decided on the stadium application before it. IDO, § 6-3(C), and § 6-6(I).

In quasi-judicial proceedings, "enhanced procedural protections for affected parties, including a fair and impartial tribunal" is required. *Benavidez v. Bernalillo Cnty. Bd. of Comm'rs*, 2021-NMCA-029, ¶ 17 (internal quotation marks omitted) (emphasis added). The New Mexico Supreme Court offered more guidance on the matter; it held:

> [a]t a minimum, a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case. In addition, our system of justice requires that the appearance of complete fairness be present. The inquiry is not whether the Board members are actually biased or prejudiced, but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him.

Reid v. New Mexico Board of Examiners in Optometry, 1979-NMSC-005, ¶ 7.

In *Las Cruces Professional Fire Fighters v. City of Las Cruces*, 1997-NMCA-031, the New Mexico Court of Appeals intimated that quasi-judicial tribunals are oftentimes comprised of citizens in the community who can be affected by the matters before them. In doing so, the Court recognized that "Members of tribunals are entitled to hold views on policy, even strong views, and even views that are pertinent to the case before the tribunal. *Reid* does not hold to the contrary."

384 Id. ¶ 29. Significant to the undisputed facts in this appeal, the Court further elaborated that "[b]ias
385 can take different forms. Whether a bias is disqualifying depends upon the *nature* of the bias"
386 alleged. Id. (Emphasis added). Finally, in *AFSCME v. Board of Cnty Comm'rs of Bernalillo Cnty.*,
387 2015-NMCA-070, ¶ 10, the New Mexico Court of Appeals pronounced in unequivocal terms that
388 "*a prior commitment*" with regard to the "adjudicative facts that are in issue" may be a basis for
389 disqualification. See id. ¶ 24. (Emphasis added).

390 It is a stipulated fact that Commissioner Renn Halstead sits on the executive committee
391 of an organization called Generation Elevate New Mexico. It is also a stipulated fact that the
392 Generation Elevate New Mexico organization gave its public support for the stadium proposal
393 encompassed in the application that was before the EPC **[R. 1344]**. The record further shows
394 that Commissioner Halstead did not disclose that he sits on the executive committee of
395 Generation Elevate New Mexico at or before the hearing. Furthermore, the record shows that
396 along with six other EPC commissioners, Commissioner Halstead did in fact vote to approve
397 the application **[R. 869]**.

398 The Applicants submitted an affidavit in the appeal record from Salvator Perdomo,
399 another member of the executive committee of Generation Elevate that presumably is the same
400 committee on which Commissioner Halstead sits **[R. Ltr., L. Wells, 07-09-24, attached Ex.]**.
401 In the June 10, 2024 affidavit, the affiant, Mr. Perdomo, attests that Commissioner Halstead
402 did not attend the April 3, 2024, executive committee meeting at which a vote was taken to
403 support the stadium project, nor did he participate in the vote. *Id.* The Appellants did not
404 dispute this evidence.

405 There is no doubt that after the Generation Elevate vote was taken, Commissioner
406 Halstead should have disclosed to the public and to his fellow EPC commissioners that he sits

407 on an executive committee of the Generation Elevate New Mexico organization. Although no
408 evidence was submitted by either party regarding what Commissioner Halstead knew about
409 the executive committee vote that he did not participate in, it is not an unreasonable inference
410 that he had some knowledge that his committee publicly supports the stadium project. There
411 is a letter of support for the project from Generation Elevate in the EPC's record **[R. 648]**. Not
412 disclosing his association was a poor decision. At the very least, the public had a right to know
413 more about the association. Not disclosing it only ferments distrust with the public.

414 Inappropriate as it was, however, one cannot merely assume under the law and under
415 the facts in this matter that Commissioner Halstead's failure to disclose the association is
416 anything more than a very bad decision. Speculation on bias is what the above-mentioned
417 extensive law seeks to prevent. There are insufficient objective facts in the record to impute
418 Generation Elevate's support for the project onto Commissioner Halstead.

419 There are no facts, only speculation, to support the implication alleged by Appellants
420 that Generation Elevate' support for the stadium establishes that Commissioner Halstead has
421 prejudged the application. Conversely, the Appellants have not shown objectively that
422 Commissioner Halstead prejudged or similarly supported the application as the executive
423 committee has. Under these facts, to make more of the association would be based on
424 supposition and under law, the executive committee's support for the stadium is insufficient
425 to impute onto Commissioner Halstead.

426 The evidence shows that Commissioner Halstead did not attend the meeting or
427 participate in the vote of the executive committee. These facts were not rebutted. Appellants
428 rely on the association only and offer conjecture that the association membership on the
429 executive committee means more than what they have objectively shown.

430 Alleged prejudice on the part of the decision-maker "must be evident from the record
431 and cannot be based on speculation or inference." *AFSCME v. Board of Cnty Comm'rs of*
432 *Bernalillo Cnty.*, 2015-NMCA-070, ¶ 10. The Applicants are correct as a general matter, that
433 EPC Commissioners as members of the community, are not required to be "so insulated from
434 their community as to require them to be detached from all issues coming before them." *Siesta*
435 *Hills Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-028, ¶ 20. There is no actual
436 conduct from Commissioner Halstead in which Appellants have shown that objectively
437 demonstrates, or in which an objective reasonable inference (without conjecture) can be made
438 that demonstrates, that Commissioner Halstead was biased, made a "prior commitment" of
439 support for the application or had prejudged the application. Under these facts, Commissioner
440 Halstead's recusal from voting or from otherwise participating in the evaluation of the
441 application was not required under law. In addition, under these facts, the failure to disclose
442 the association is not grounds to remand the matter once again.

443

444 ***iv. The EPC, as a quasi-judicial tribunal, did not have a conflict of interest***
445 ***to evaluate the application.***

446
447 Another issue presented by Appellants regarding the process due in quasi-judicial
448 administrative hearings, is an argument that the EPC as a whole is biased. Appellants' theory
449 is that because the land for the stadium is owned by the City and one of the applicants in this
450 matter is the City of Albuquerque, the EPC as a City tribunal cannot possibly be a neutral
451 decision-maker **[R. 984, 36]**.

452 Appellants' hypothesis for this theory hinges on pure conjecture. It is an unreasonable
453 presumption that all City departments and tribunals, whether quasi-judicial or not, think with

454 one mind as Appellants seem to suggest in their theory. Taking Appellants' theory to its
455 furthest extent would mean that because a State District Court Judge is a state employee, a
456 State District Court judge is presumptively not impartial in any lawsuit against the State
457 government in State District Court.

458 Appellants theory is nonsensical and irrational and ignores that there is a presumption
459 in the law that adjudicators, including quasi-judicial decision-makers, perform their duties with
460 honesty and integrity. See *Jones v. N. M. State Racing Comm'n*, 1983-NMSC-089, ¶ 13, 100
461 N.M. 434, 671 P.2d 1145. Moreover, the EPC as a quasi-judicial tribunal acts independently
462 of the City as a government. It duty is to evaluate an application under the IDO based on facts
463 and on the IDO (or other regulation of the city) and the Comprehensive Plan. See EPC "Rules
464 of Practice and Procedure" (Rules)**,** Art. II, § 7. Overcoming this presumption requires
465 objective facts, not mere supposition. Appellants have not shown with any objectivity or facts
466 that the EPC as a tribunal is somehow biased or has in fact prejudged the application.
467

468 ***v. The lease agreement between the City of Albuquerque and New Mexico***
469 ***United is not evidence of EPC bias.***
470
471 Appellants next suggest that the lease agreement the City entered into, or will enter
472 into, with New Mexico United Soccer indicates that the City, and therefore the EPC, by
473 association, are "partners**" [R. 37]**.[11] Appellants further suggest that this "partnership"
474 indicates bias in the application review process. Appellants misconstrue the agreement, what
475 it means, and what the law requires.

---

11. The record does not include a lease agreement.

476 It is undisputed that the agreement to enter into any lease is contingent on a number of
477 occurrences, including that the Stadium has been approved for construction. Appellants have
478 not shown how these facts equate to EPC bias. The EPC is well-insulated from these issues.
479 The EPC is a nine-member citizen board nominated by City Council members and appointed
480 by the Mayor with the advice and consent of the City Council. The EPC is not a department of
481 the government administration. Again, the EPC is an independent commission that acted in a
482 quasi-judicial function when it evaluated the application in this matter. Appellants have not
483 presented any evidence showing that a city lease agreement for the stadium land somehow
484 creates or caused the EPC to be biased in evaluating the application.

485

486 ***vi. Under the circumstances, the manner of cross-examination allowed in the***
487 ***EPC hearing did not violate due process.***
488
489 Next on Appellants' list of what they contend are due process violations, is an allegation
490 that in the EPC's April 11, 2024, hearing, the EPC failed to allow for effective cross-
491 examination of testifying witnesses. Appellants also generally claim that some questions were
492 not answered by the person who the questions were directed at for answers. Further, Appellants
493 contend that "the forms were required to be submitted the day before the hearing" and the
494 email address to return the forms was not online before the hearing commenced **[R. 32]**.
495 However, what occurred before the hearing is not relevant to an inquiry of cross-examination
496 at the hearing itself. The inquiry revolves around how cross-examination occurred at the
497 hearing, not before the hearing.
498 There are no New Mexico cases directly on point about whether an administrative,
499 quasi-judicial tribunal such as the EPC may allow for cross-examination through written

500 questions. The precise question that must be answered is: Was the manner in which the EPC
501 allowed for cross-examination reasonable under the circumstances and did it violate the due
502 process rights of the Appellants?

503 We start with the clear understanding that cross-examination is an integral part of the
504 quasi-judicial process. See in general, *State ex rel. Battershell v. City of Albuquerque*, 1989-
505 NMCA-045. This is because:

506 > In conducting quasi-judicial hearings an administrative body is not
507 > required to observe the same evidentiary standards applied by a court,
508 > nevertheless administrative adjudicatory proceedings involving
509 > substantial rights of an applicant must adhere to fundamental principles
510 > of justice and procedural due process

511

512 *State ex rel. Battershell v. City of Albuquerque*, 1989-NMCA-045, at ¶ 17. However, in the U.S.
513 Supreme Court case of *Morrissey v. Brewer*, 408 U.S. 471, p. 408., the Court held that "due process
514 is flexible, and calls for such procedural protections as the particular situation demands." Id. The
515 Court intimated that depending on the circumstances, cross-examination in quasi-judicial hearings
516 can take different forms. The *Morrisey* analysis was expressly adopted in *State ex rel. Battershell.*

517 In *State ex rel. Battershell,* the New Mexico Court of Appeals echoed and
518 acknowledged that the extent of "flexibility" is determined by the circumstances involved in
519 the hearing. *Battershell*, ¶ 18. The *Battershell* Court looked to the city's zoning code in effect
520 at the time which specifically allowed the tribunal to place "reasonable limitations on the
521 number of witnesses heard, and on the nature and length of their testimony and questioning."
522 The Court suggested that this language was appropriate, as long some reasonable form of
523 cross-examination was allowed.

524 Under the EPC's Rules of Practice and Procedure, the EPC's Chair has discretion to
525 "limit repetitive, irrelevant or inappropriate testimony, evidence and cross examination

526 presented at a public hearing." **[Rules, Art. II, § 6.B]**. In addition, these Rules provide for a

527 manner of cross-examination identical to what took place in the hearing on the stadium

528 application. **[Rules, Art. III, § 2.D]**. Specifically, it states:

529 Cross-examination shall be afforded to anyone with standing in
530 accordance with the Rules. Persons with standing desiring to question
531 any other person who has testified during the hearing shall sign a list
532 maintained by EPC staff and complete the *cross-examination request*
533 *form*, a sample of which appears in the Appendix of the Rules.
534
535 **[Rules, Art. III, § 2.D]**. (Emphasis added).
536
537 It is undisputed that the EPC fashioned a procedure for cross-examination permissible

538 under its own Rules, that required people to submit written cross examination questions at the

539 end of the public comment portion of the hearing **[R. 735-736]**.[12] People who attended the

540 virtual Zoom hearing were placed on notice of this process when the hearing commenced **[R.**

541 **735-736]**. A City Attorney advised all parties at the EPC hearing about how cross-examination

542 would proceed with written questions **[R. 735-736]**. It is further undisputed that Appellants

543 had access to these forms during the testimony phase of the hearing.[13] And, it is undisputed

544 that the EPC hearing lasted almost nine hours.

545 After the EPC heard several hours of testimony from 44 interested persons, the record

546 reflects that it took a 10-minute recess to allow time for people to submit, via email, cross-

547 examination questions on the prescribed form presumably provided by Planning Staff **[R.**

---

12. The problems with submitting these forms before the hearing commenced has no bearing on the actual cross-examination that was reserved for after the testimony. There are no facts presented that Appellants could not submit cross-examination questions during this period.

13. The forms are available online with the EPC Rules of Practice and Procedure. Moreover, the fact that Appellants attempted to submit questions the day before demonstrates that the forms were available to them during the hearing.

548 **814]**.[14] This is significant, because it is reasonable to assume that because the forms were
549 available, Appellants could have drafted questions on the forms during testimony that was
550 taking place, just as attorneys might do during a trial. During the recess, forms were collected
551 via email. Again, the assistant city attorney repeated the instructions about the cross-
552 examination procedure just before the testimony phase ("public comment" phase) started **[R.**
553 **757-758]**. Then again, according to the instructions given on the record by an assistant city
554 attorney, after the ten-minute recess concluded, no more forms would be accepted if they were
555 not received within the recess **[R. 815]**.

556 After the 10-minute recess, the EPC Chair advised the public that the EPC would take
557 an hour recess so that the chair can review the cross-examination questions and efficiently read
558 the questions to the person that the questions are directed at **[R. 818]**. The recorded minutes
559 show that 36 cross-examination questions were submitted and read into the record **[R. 818-**
560 **840]**. The record also shows that the Chair referred each question to the intended witness
561 during the cross-examination.[15] The Appellants' claim that some witnesses did not respond to
562 the questions addressed to them is not supported by the record. A close reading of the minutes
563 shows that the Chair carefully read each question one at a time and ensured that each question
564 was directed to the appropriate witness for answers **[R. 818- 840]**.[16] Additionally, when the

---

14. Apparently, because the hearing was virtual, on a Zoom format, the prescribed form was also streamed and available online during the hearing **[R. 815]**.

15. In their written argument, Appellants claim that the EPC Chairman misdirected a specific question "that was intended for "EHD" to Jackie Fishman with Consensus Planning **[R. 43]**.

16. Although the Chair allotted one hour for cross examination, it is clear from the minutes that he allowed cross-examination for much longer to make sure all questions were asked and answered **[818-840].**

565 witnesses' responses were unclear, the Chair asked follow-up questions. **[R. 818- 840]**. The
566 record also supports that the Chair gave each witness adequate time to answer the cross-exam
567 questions **[R. 818- 840]**.

568 These facts demonstrate that the EPC did not violate its own Rules of Procedure, but it
569 in fact adhered to them. Therefore, I find that because the hearing was so long and because
570 over 40 people testified, the manner of cross-examination under these circumstances was
571 efficient and did not transgress the procedural safeguards Appellants suggest were violated.

572
573 ***vii. The record reveals that notice of the EPC remanded hearing to all***
574 ***persons qualified under the IDO, including to affected neighborhood***
575 ***associations, was accomplished.***
576
577 In the first appeal, all parties stipulated that notice to property owners within 100-feet
578 of the application site, excluding public right-of-way was defective—some property owners
579 were not mailed notice as required by the IDO. As a consequence, the appeal was remanded
580 back to the EPC so that the process of notification could be repeated, but effectively, and so
581 that a new (*de novo*) hearing would be held as if the EPC had not held one before **[R. 234-**
582 **235]**. The purpose of the *de novo* remand was to remedy the notice deficiency so that everyone
583 who qualifies for notice could have an *opportunity* to attend the new EPC hearing or otherwise
584 have their voices heard.

585 Appellants in this appeal again make the identical argument that they made regarding
586 notice in the previous appeal; Appellants claim again that the same property owners who were
587 not previously notified of the first, February 16, 2024, EPC hearing, were again missed in the
588 re-notification process **[R. 33-37]**. Yet, Appellants did not present any evidence to support
589 their contention.

590 The Applicants argue that “Appellants are confusing or intentionally conflating notice
591 regarding the November 2023 EPC hearing with notice regarding the EPC hearing on remand”
592 **[L. Wells, Ltr., July 9, 2024, p. 12]**. The Applicants also argue that not only were all required
593 notices sent to property owners who qualify for mailed notice under the IDO, but the City
594 Planning Staff verified that these notices were effectuated accurately.

595 The record shows that City Staff performed a door-to-door canvass to assure that no
596 one was missed who qualifies under IDO, § 6-4(K)(3) **[R. 238]**. The canvassing campaign
597 was expressly adopted as a finding in the EPC's Official Decision **[R. 17, Fndg. 17]**. In its
598 Official Notification of Decision (Decision), Finding number 17, states:

> 599 Following the LUHO hearing, agents representing the applicants sent
> 600 notifications to all property owners residing within the 100-foot buffer
> 601 zone, utilizing both property owner addresses and, if different, the site
> 602 address. Notifications were distributed to properties situated along the
> 603 east side of Edith Boulevard that fell outside the buffer, property owner
> 604 addresses identified by the appellants as necessitating notification but
> 605 located outside the buffer, and other neighboring property addresses.
> 606
> 607 On March 1st, the City Parks and Recreation Department carried out a
> 608 canvassing operation, delivering notification letters to all property sites
> 609 within the buffer along the east side of Edith Boulevard. Consensus
> 610 Planning provided confirmation to the Planning Department on March
> 611 4th, attesting to the completion of all requisite notification.

612
613 **[R. 77-78]**. This finding was not disputed by Appellants. The Appellants have not supported
614 their theory of ineffective notice the second time-around with any evidence. The record
615 includes more than substantial evidence that demonstrates notice to qualified property owners
616 was sent and that the follow-up canvassing verified that IDO, § 6-4(K)(3) was fully satisfied
617 **[R. 288-310]**.

618

619 ***viii. Despite Appellants' claims, the appeal record shows that the EPC***
620 ***followed the remand instructions.***
621
622 In the last of Appellants' due process claims in this matter, Appellants claim that the
623 application process did not commence *de novo* as instructed in the remand. Appellants theory
624 is confusing, but it seems that Appellants believe that the Applicants, Planning Staff, and the
625 EPC were instructed in the remand to restart the application process with a new application so
626 that "a fresh review of all available evidence both for and against the proposed plan" would be
627 performed **[R. 38]**. Appellants also apparently believe that because the EPC "did not
628 acknowledge or refute any of the opposition sworn testimony provided at the April 11th
629 hearing," the EPC violated the remand instructions **[R. 38]**. Although unclear, apparently,
630 Appellants are suggesting that the EPC was given instructions on how to evaluate the merits
631 of the Appellants' claims.
632 Appellants' first contention that the remand instructions required that the Applicants
633 reapply anew is not what was instructed in the remand. The precise purpose for the remand
634 was to renotify property owners who qualify for notification, including neighborhood
635 associations so that anyone who qualifies for notice learns about the new hearing date and
636 time. Said another way, a new EPC hearing was necessary because some property owners did
637 not receive notice of the previous hearing. There were no instructions requiring the Applicants
638 to submit a new application. Because the defect concerned notice, an instruction requiring
639 reapplication would be an unnecessary, wasteful, and an inefficient instruction and procedure.
640 On the second theory, Appellants read too much into the remand instructions. In
641 remanding the matter for a new hearing, I expressly and purposefully advised the parties that
642 the substantive merits of the appeal arguments regarding the application would not be

643 discussed or evaluated **[R. 235]**. The instructions included clear language that the merits of
644 the appeal would not be considered until the notice deficiency was corrected and all persons
645 have an opportunity to be heard in a new EPC hearing **[R. 235]**. How the EPC chose to judge
646 hold its hearing is within the Chair's reasonable discretion. I find that the remand instructions
647 were followed.

648

649 **B. The Balloon Fiesta Park is not by any definition an "extraordinary facility" as**
650 **this term is defined in the IDO. Therefore, the EPC was not required to consult**
651 **with the Metropolitan Parks Advisory Board and/or the Open Space Advisory**
652 **Board as Appellants argue.**

653

654 In their appeal, Appellants argue that under City Ordinance § 14-13-3-2(5), the EPC
655 erred because it did not seek recommendations from the Metropolitan Parks Advisory Board
656 and/or the Open Space Advisory Board (Advisory Boards) regarding the proposed
657 amendments to the Park site plan and the MDP **[R. 40-41]**. The record shows that the EPC
658 did not obtain any formal recommendations from these agencies.

659 The Applicants, and City Planning Staff take the position that the Ballon Fiesta Park
660 does not meet the definition of an extraordinary facility in the IDO, and therefore
661 recommendations from the Advisory Boards are unnecessary. I agree. The Park or the stadium
662 are clearly not extraordinary facilities as that term is defined in the IDO.

663 The IDO includes five distinctive classes of what can be included in or as "open space."
664 See IDO, § 7-1, p.584. In the IDO, an extraordinary facility is precisely defined as a:

> 665 Facility ***within*** Major Public Open Space, not including trails, fencing,
> 666 signs, incidental parking lots, access roads, or infrastructure not visible
> 667 on the surface, that is ***primarily for*** facilitating recreation, relaxation,
> 668 and enjoyment of the outdoors and that requires additional review by
> 669 the Open Space Advisory Board and EPC pursuant to the Rank 2 Major
> 670 Public Open Space Facility Plan. Extraordinary Facilities may include

671 utility structures, WTFs, or buildings. See also Open Space Definitions
672 for Major Public Open Space.
673
674 IDO, § 7-1, p.584. (Emphasis added).

675 This definition is clear and unambiguous. An extraordinary facility is something that is
676 *"within"* Major Public Open Space (MPOS) and it is "primarily for facilitating recreation,"
677 and may include "utility structures, WTFs, or buildings." So, for the stadium to be considered
678 an extraordinary facility, I must be "within" or on MPOS. The definition in the IDO for MPOS
679 is:

680 City-owned or managed property that is ***zoned NR-PO-B*** or City-
681 managed property that is ***zoned NR-PO-C***, including the Rio Grande
682 State Park (i.e. the Bosque), Petroglyph National Monument, and
683 Sandia foothills. These are typically greater than 5 acres and may
684 include natural and cultural resources, preserves, low-impact
685 recreational facilities, dedicated lands, arroyos, or trail corridors. The
686 Rank 2 Major Public Open Space Facility Plan guides the management
687 of these areas. For the purposes of this IDO, Major Public Open Space
688 located outside the city municipal boundary that is mapped as Open
689 Space in the ABC Comp Plan still triggers Major Public Open Space
690 Edge requirements for properties within the city adjacent to or within
691 the specified distance of Major Public Open Space.
692
693 IDO, § 7-1, p.584. (Emphasis added).

694 Under the IDO's definition for MPOS, all designated MPOS land is zoned either NR-
695 PO-B or NR-PO-C. It is undisputed that the Balloon Fiesta Park has a zone designation of
696 NR-PO-A **[R. 81]**. Thus, because the Balloon Fiesta Park is not zoned for MPOS, it cannot be
697 MPOS as that term is defined in the IDO. Because the Balloon Fiesta Park is not MPOS, it
698 cannot be or encompass an extraordinary facility as that term is defined. Thus, the EPC did
699 not err when it did not seek recommendations from the Advisory Boards.

700

701

C. The WNA Appellants' argument that the MDA text amendments are essentially a zone-change is a theory that is without support in the IDO.

The WNA Appellants argue that because stadiums are prohibited under the exiting MDA, any text amendment that introduces a new use such as a stadium is commensurate to a zone-change **[H. Yntema Ltr., July 1, 2024, p. 1]**. This argument lacks support in the IDO and it is without merit.

First, it is indisputable that the MDA is a Rank 3 Plan under the IDO. Amendments to Rank 3 plans are not comparable to zone-changes under the IDO. See IDO, § 6-3(C). There is a distinctive process for evaluating amendments to Rank 3 plans and there is an entirely separate, distinctive process for evaluating zone-changes in the IDO. Second, the zone district of the Balloon Fiesta Park is NR-PO-A **[R. 81]**. A stadium as a *"sports field"* is unmistakably a permissive use in the NR-PO-A zone district and therefore in the Balloon Fiesta Park. Thus, a zone-change to allow for the stadium would be superfluous since it is already allowed in the existing zone.

Next, Appellants claim that what is colloquially known as the 20% rule under State law is applicable in this matter. See NMSA, 1978, § 3-21-6(C). On its face the 20% rule in NMSA, 1978, § 3-21-6(C) applies to zone-changes and only under unique circumstances that are not present in this matter. However, because the amendments in the application do not implicate changing the NR-PO-A zone, this statutory provision is expressly inapplicable in this matter.

D. Issues raised about noise at the Park.

The concern for mitigating noise impacts has emerged as one of the primary issues for Appellants in this appeal. In fact, most of the testimony from those opposing the stadium

727 focused on noise emanating from the Park and the potential for increased noise with the
728 addition of a stadium. Preventing noise levels that exceeds established limits in the City's
729 Noise Control Ordinance (Noise Ord.) appears to be a problem that Appellants claim has not
730 been adequately considered by the EPC. Appellants also loosely claim that the city does not
731 enforce its Noise Ord. at the Park.[17]

732 Appellants point to the MDP's language regarding how noise is controlled at the Park.
733 In the MDP noise at the Park must comply with the standards in the City's Noise Control
734 Ordinance **[MDP, p.79]**. Yet, Appellants argue, enforcement of the City's Noise Control
735 Ordinance is not an answer to noise emanating from the stadium because the City's Noise
736 Control Ordinance expressly exempts stadiums from its limitations and enforcement.

737 Appellants are correct that there are exceptions to where the City's Noise Control
738 Ordinance, (Ord. §§ 9-9-1 through 9-9-12) applies. Specifically, it is undisputed that the noise
739 limits established in the Noise Ord. "do not apply to sounds generated at any stadium" **[Noise
740 Ord., § 9-9-12]**.[18]

741 The fact that stadiums are exempt from the City Noise Ord. is not evidence that the
742 EPC disregarded concerns of noise at the proposed statdium. The record reflects the opposite
743 conclusion. Because stadiums are exempt from the Noise Ord., the record shows that the

---

17. Notably, enforcement of the Noise Ord. is not within the scope of the decision of the EPC nor is it within the purview of this appeal.

18. A thorough reading of the entire Noise Ord. shows that one of the primary purposes of the limitations established in the Noise Ord. is to prevent sustained noise especially during the nighttime hours.

744 Applicants and the EPC placed great emphasis in the overall analyses of noise emanating from
745 the stadium.

746 The applicants retained architects, engineers, and noise experts to work together in
747 constructing a stadium facility that mitigates noise from leaving the stadium to the maximum
748 extent that is practical under the budget constraints of the stadium. The massive evidence in
749 the record shows that the proposed site plan's new landscaping elements around the stadium,
750 the design, facing, positioning, and the precise location of the stadium in the Park revolve
751 around the mitigation of noise, lighting, and traffic **[R. 744]**. Appellants' argument altogether
752 disregards this mountain of evidence in the record.

753 The record includes an Adjacent Neighborhood Noise Impact Study (Noise Study) in
754 which the focus was to analyze noise from the stadium, as it has been designed, to accurately
755 predict the "amount of sound radiating from the proposed stadium location" **[R. 1089-1098]**.
756 The expert who performed the study used these elements to predict the levels noise will reach
757 the closest residential neighborhoods **[R. 1089-1098]**. The acoustical prediction modeling in
758 the Noise Study shows that because of the elements in the site plan, including the design of the
759 stadium, and the direction it faced, it is predicted with reasonable accuracy that the three closest
760 neighborhoods, will not be exposed to sound (from the stadium) that exceeds the limits
761 established in the City's Noise Ordinance **[R. 1098]**.[19] Specifically, it was concluded that the
762 *"[p]redictions show that amplified sound within the stadium will not exceed the noise*
763 *ordinance regulations between 7:00 am and 10:00 pm.*" [R. 1095].

---

19. The three residential neighborhoods are separated from the stadium by 2,550 feet to 2,800 feet distances.

764 Yet, without any supporting facts or scientific proof whatsoever, Appellants speculate
765 that because the Noise Study was based on computer generated modeling, it cannot be
766 accurate. This claim is without merit. The Noise Study was performed by Jack Covert, a
767 certified technology specialist-design specialist (CTS-D). I take administrative notice that a
768 CTS-D specialist certification is a prestigious specialized accolade in the field and industry of
769 audiovisual engineering studies.

770 The modeling was based on science and included the following methodology:

> 771 Two distinct broad spectrum, direct sound pressure level measurements
> 772 were taken in each of the sensitive neighborhood areas for the specific
> 773 stadium variations. One measurement focused on the low frequencies
> 774 between 100 Hz and 400 Hz, and a second measurement was taken
> 775 considering the mid to high frequency range of 400 Hz through 8000
> 776 Hz.
> 777
> 778 In general, the “sub-low” or bass audio frequencies in the 20 Hz to 100
> 779 Hz range generated by an amplified sound system within the stadium
> 780 tend to radiate from their source (the sub-woofers). They cannot be
> 781 contained in an open-air venue because sub-low frequencies require
> 782 mass to stop the sound waves, (concrete, sand filled CMU barriers, etc.).
> 783 These frequencies will dissipate as they travel through the air in a
> 784 spherical manner. The predicted reduction of this low frequency noise
> 785 may be calculated over time and distance using physical calculations
> 786 that consider the strength of the source, and the distance from the point
> 787 of the measurement. This may be calculated by creating sample LF
> 788 noise sources in the stadium at different listening points and confirming
> 789 these by taking sample measurements within each neighborhood under
> 790 test.
> 791

792 **[R. 1094]**.

793 As indicated above Mr. Covert concluded that the closest residential neighborhood will be
794 exposed to sounds that do not exceed what is allowed in the Noise Ord. Other than their
795 meritless contentions about computer modeling in general, these results were not rebutted.

796 As for the EPC, the record minutes of the EPC hearing are entwined with considerable
797 testimony about the stadium’s design for the mitigation of noise for the purpose of managing

798 higher sound frequencies inside the stadium. Furthermore, the unrebutted testimony showed
799 that the partial canopy roofing designed for the stadium as well as the proposed landscaping
800 of trees on the west and east of the site will further reduce noise **[R. 738-744]**.[20]

801 Appellants argue anecdotally about the existing conditions without the stadium; they
802 contend that *existing* noise at the Park likely exceeds 55dB because over 2,000 feet away in
803 the residential neighborhoods, the noise is sometimes deafening and upsetting to their daily
804 lives. Appellants surmise that if the noise is this bad without the stadium, it will likely worsen
805 when the stadium is constructed.

806 Again, the existing conditions were not at issue before the EPC. The application and
807 specifically the stadium was at issue. In addition, enforcement of the Noise Control Ordinance
808 is also not within the control of the EPC. Appellants' theory is misguided because the
809 substantial evidence in the record shows that the *existing* relatively flat terrain of the Balloon
810 Fiesta Park as well as the lack of vertical structures or barriers at the Park substantially
811 contribute to the propagation of sound waves generated during events. These events are
812 obviously not within the confines of a stadium. Ms. Jackie Fishman, a Principal with
813 Consensus Planning, Inc., the agents for the Applicants, summed up for the EPC the stadium's
814 design and how it will impact sound compared to the existing Park. Ms. Fishman testified
815 that:

> 816 The key difference here is the stadium will sit in what is essentially a
> 817 bowl, with natural and constructed massing that will absorb sound and
> 818 block light from escaping the confines of the stadium. As such, we
> 819 believe the stadium use and creative design that our design team came

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20. Notably the addition of a canopy over the southern seating area of the stadium was a recommendation from Jack Covert which was later included in the stadium's design **[R. 748, 1095]**.

> up with is consistent with the intent of the master development plan and goals and policies in the comprehensive plan.

[R. 743]. I find that the existing noise problems at the Park cannot be realistically compared to the noise radiating or emanating from inside the stadium as it is designed. I also find that there is substantial evidence in the record to support that the Applicants and the EPC did not disregard the Appellants' concerns about noise. Moreover, Appellants' allegations regarding the exiting conditions at the Park, even if true, are not a basis to sustain an appeal under the IDO. See IDO, § 6-4(V)(4).

E. Despite Appellants' claims, the IDO does not require an Environmental Impact Study.

Appellants next generally claim that the EPC erred because an environmental impact study was not performed or submitted with the application. Yet, Appellants failed to identify any IDO provisions that requires such a study in this matter. Appellants, again, have not met their burden under IDO, § 6-4(V)(4) which essentially requires that appellants demonstrate that the EPC erred in applying the IDO or in interpreting the facts. See Section V above.

Although, Appellants fail to show that an environmental impact study was necessary, a brief discussion regarding some of the general issues Appellants have raised regarding their environmental concerns is in order. First, Appellants claim that flooding or potential overflow of the AMAFCA North Diversion Channel is a concern since it is so close to the stadium site **[R. 44-45]**. Next, Appellants presume that there will be fireworks shows at the stadium and they are concerned how fireworks at the stadium might impact them **[R. 45]**. Appellants are also concerned with how moving utility easements at the Park to allow for the stadium might impact the area **[R. 46]**.

846 Again, general concerns about these matters is not a legitimate basis to support an
847 appeal under the IDO. Their concerns cannot translate or be considered as EPC error. Appeals
848 require proof that the EPC erred in some articulable manner in evaluating the application
849 before them. This deserves emphasis: In administrative, quasi-judicial appeals, the standard
850 for judging a decision reached by an administrative tribunal is a question of whether the
851 decision does not comport with the law or facts and whether it is supported by substantial
852 evidence. It is not whether there is substantial evidence that may exist to support what
853 Appellants believe was not adequately resolved. See, *Huning Castle Neighborhood Ass'n v.*
854 *City of Albuquerque*, 1998-NMCA-123, ¶ 15. Appellants have not established that the EPC
855 erred regarding the general concerns of flooding, fireworks, or moving power lines.
856 Appellants have not even shown how these general concerns are relevant to the application.

857 Appellants also generally contend that a sensitive lands analysis was required to be
858 performed in this matter, and they suggest in their arguments that it was not completed **[R.46]**.
859 It is not clear from Appellants written appeal if they believe a sensitive lands analysis must be
860 performed on the entire 367.5-acre site or just in the area in which the City Planning Staff
861 identified as sensitive lands. Notwithstanding, the record clearly reflects that early in the
862 application process, City Planning Staff specifically required that the Applicants perform a
863 sensitive lands analysis, but only for lands that were deemed sensitive under the IDO **[R. 1013-**
864 **1014]**.[21]

21. The record shows that initially, Staff discerned that a sensitive lands analysis was unnecessary, but in September 2023, City Planning Staff reassessed the issue and determined that the analysis was required for certain targeted areas at the Park **[1013-1014]**.

The term “Sensitive Lands” has specific meaning under the IDO and is well-defined. Lands that are deemed sensitive for development in the IDO are arroyos, escarpments, floodplains and special flood hazard areas, irrigation facilities, large trees, bedrock outcroppings, riparian areas, significant archeological sites, steep slopes, and wetlands. See IDO, § 7-1, Definitions. The precise purpose of a sensitive lands analysis is to “minimize the impacts of development *on*” or near these areas defined as sensitive lands. IDO, § 5-2(A). (Emphasis added). If proposed development is not specifically on a defined sensitive land feature, but if it impacts the sensitive lands, the IDO still requires a sensitive lands analysis. IDO, § 5-2(A) through (C).

In this case, regarding a sensitive lands analysis, Deputy Planning Director James Aranda concluded:

> C. There are sensitive lands (Steep Slopes, Arroyo & flood zone) on and around the NW portion of Balloon Fiesta Park, however, the site of the future stadium is a developed parking lot that avoids these sensitive lands.
>
> D. Pursuant to the IDO Subsection 14-16-5-2(H), sensitive lands also include Landfill Gas Buffer areas. The landfill buffer of the former Nazareth Landfill encroaches onto the site of the future stadium. Therefore, a Sensitive Lands Analysis is required.
>
> i. All development within a landfill gas buffer requires a Landfill Gas Mitigation Approval pursuant to Subsection 14-16-6-4(S)(5) to ensure that potential health and safety impacts are addressed.

[R. 1014].

The Sensitive Lands Analysis is not in the record of this appeal, there is considerable and substantial evidence in the record that demonstrates that it was completed and that its results were followed or will be followed. Although the analysis is not in the record a summary of the Sensitive Lands Analysis is in the record **[R. 905-906]**. Apparently, because much of

895 the sensitive areas are located under existing asphalt or pavement, only a portion of the site

896 requires a sensitive lands analysis **[R. 905]**. In the Summary, it is recommended that:

> 897 Along the east and south edges of the Multi-Use Stadium, where the
> 898 seating bowl meets the existing escarpment, there will be slope
> 899 stabilization, minor regrading, and retaining work. These efforts will
> 900 enhance the escarpment's condition, ensuring long-term viability and
> 901 safe public access. Planted berms, sidewalks, occupiable terraces, and
> 902 accessible ramps will be constructed, creating safe and accessible
> 903 walking paths connecting visitors from the top of the escarpment down
> 904 to the field level.

905

906 **[R. 905]**. [22]

907 These improvements normally occur at the building permit stage. In addition, as a

908 specific condition of the EPC's approval, the Applicants must satisfy IDO, § 6-4(S)(5) by

909 coordinating with the Environmental Services Division of the City to assure that:

> 910 The final design and installation of landfill gas mitigations will be
> 911 performed. Conditional EPC approval as related to landfill gas
> 912 mitigation concerns appear to be a reasonable approach for development
> 913 at this site.

914

915 **[R. 89, EPC Decision, Condition 10]**.

916

917 I find nothing in the IDO that was violated by how the Applicants, or the EPC evaluated

918 or handled the sensitive lands in this matter. Conversely, the Appellants have not presented any

919 evidence that the EPC contravened the IDO regarding the evaluation and protection of sensitive

920 lands.

921

922

---

22. The Summary also reveals that the Gondola Gulch road (an internal dirt road in the Park) will be significantly improved and realigned to prevent stormwater infiltration from onsite and offsite runoff. In addition, along the east edge of the improved east end parking lot, retaining and stabilization improvements will be made to prevent erosion **[R. 905]**.

923 **F. Traffic Issues.**

924 On October 3, 2023, the City Traffic Engineer met with the Applicants' agent and
925 concluded that a Traffic Impact Study (TIS) was necessary for the proposed stadium use **[R.**
926 **992-994]**. Then on January 16, 2024, the Lee Engineering group performed a Traffic
927 Assessment for the stadium **[R. 246-286]**.[23] The summary of the Traffic Assessment for the
928 stadium use indicates that existing trip generation from actual traffic counts of soccer games
929 at Isotope Park are approximately 1,900 trips (ingress and egress). The Assessment further
930 demonstrates that Balloon Fiesta Park can handle a processing rate of 2,000 automobile ingress
931 and egress trips per hour **[R. 247]**. The Assessment is based on rerouting traffic in Balloon
932 Fiesta Park through four major intersections (gateway intersections), including:

933 • Alameda Blvd and Balloon Museum Dr.
934 • Alameda Blvd and San Mateo Blvd.
935 • Alameda Blvd and Southbound Pan American Frontage Rd.
936 • Roy Ave/Tramway Blvd and Southbound Pan American Frontage Rd.
937
938 **[R. 251]**.

939 Lee Engineering also performed level of service (LOS) evaluations, and distribution of trips
940 on each intersection based on real traffic count data and concluded that each intersection's
941 LOS will not significantly be altered by the new stadium traffic **[R. 252-283]**. The engineers
942 further concluded that because stadium games begin after normal peak periods in which
943 automobile traffic is at its heaviest, LOS of the intersections will not fail **[R. 284]**.

---

23. Notably a Traffic Assessment is not a TIS, however, this was not challenged by the Appellants, and I reasonably presume that, based on the data files in the Assessment, the results and recommendations would be the same if in fact a TIS was performed at this stage in the process.

944 However, the Lee traffic engineers also concluded that their Traffic Assessment
945 shows that *"a more extensive and larger traffic control plan [than what is currently in place]*
946 *would be required for stadium events anticipated to generate maximum attendance"* **[R. 285]**.
947 The Engineers further found that without such a plan, the result would be "long queues" that
948 could potentially spill back into the intersections **[R. 285]**. It was recommended that to prevent
949 this from occurring:

> 950 For maximum attendance events, the second available eastbound lane
> 951 of Balloon Fiesta Pkwy should be opened to allow two lanes of traffic
> 952 to proceed from the parking lots to the Southbound Pan American
> 953 Frontage Rd and make dual right turns. Officer control will likely be
> 954 necessary at all study intersections. However, the maximum
> 955 attendance traffic is not so intense as to necessitate the closure of
> 956 Alameda Blvd to normal through traffic.

957

958 **[R. 286].**

959 Appellants argue in this appeal that these recommendations were ignored by the EPC.
960 I agree that the recommendations were not addressed, and that the EPC should have addressed
961 them. The Lee Engineering recommendations impact the public health and welfare and should
962 have been considered and adopted into the decision. Instead, the traffic focal issue at the EPC's
963 hearing remained only on the fact that the streets and intersections can handle the increased
964 stadium traffic. The City traffic engineers also failed to offer any comment on these seemingly
965 rather significant recommendations from Lee Engineering **[R. 931-932]**.

966 I find that in all fairness to the Appellants, because the crux of these recommendations
967 impacts the health, and welfare, these recommendations should have been acknowledged and
968 meaningfully adopted by the EPC. In the IDO:

> 969 The LUHO *may recommend* that the City Council affirm, reverse, or
> 970 *otherwise modify the lower decision to bring it into compliance* with

971 the standards and criteria of this IDO, applicable City regulations,
972 and any prior approvals related to the subject property.
973
974 IDO, § 6-4(V)(3)(d)5. (Emphasis added). Thus, under IDO, § 6-4(V)(3)(d)5, I respectfully
975 recommend that the City Council adopt the above referenced recommendations of Lee
976 Engineering as part of its findings in this matter.
977

978 **G. Other than the failure regarding the traffic recommendations, the Appellants**
979 **have not met their burden of proof to demonstrate that the EPC erred in any**
980 **of its findings under the IDO, or in the facts, or under the Comprehensive Plan.**
981

982 In what can be characterized as the second half of their appeal, Appellants challenge
983 almost every finding that the EPC made **[R. 49-69]**. In all, Appellants challenge 30 EPC
984 findings in its Official Decision. The Applicants, however, take the position that these 30
985 challenges amount to merely serial disagreements with, or objections to, the findings. The
986 Applicants further contend that Appellants' have not demonstrated that the EPC erred in any
987 of the findings. I respectfully agree. Appellants have not met their burden of prove with any
988 of the findings that they challenge.

989 I have painstakingly reviewed each of the contentions Appellants have expressed with
990 all 30 findings and sub-part findings. Each challenge is based on Appellants' characterization
991 of how they see the facts. As indicated numerous times above, in appeals from administrative
992 decisions, "the question is not whether substantial evidence exists to support the opposite
993 result, but rather whether such evidence supports the result reached." See, *Huning Castle*
994 *Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-123, ¶ 15. I find that there is
995 substantial evidence in the record to support the EPC's findings.

996 In its Official Decision, the EPC made 26 findings that included an additional 25 sub-
997 findings regarding the proposed text amendments in the application **[R. 71-79]**. In addition,
998 the EPC made another 27 findings and 26 sub-findings regarding the site plan for subdivision
999 and proposed site plan in the application **[R. 79-88]**. Although, Appellants' multiple concerns
1000 with the EPC's findings lack substance for evaluating them under IDO, § 6-4(V)(4) (criteria
1001 for evaluating appeals) for efficiency and brevity, Appellants' concerns with the findings are
1002 generally discussed next.
1003

1004 ***i. Master Development Plan Text Amendment Findings***.

1005 Appellants challenges to EPC Findings 6, 7, 11, 12, 14, and 15 of the text amendment
1006 findings are essentially objections with how the EPC characterized certain facts in the record.
1007 Appellants failed to show that these findings are not consistent with the IDO and or with the
1008 Comprehensive Plan.

1009 Appellants' objections to Findings 18, 19, 20, and 21 is that the Findings do not
1010 acknowledge that some neighborhood association representatives did not attend the facilitated
1011 meetings. Yet, in these Findings, the EPC only expressly acknowledged that the meetings
1012 occurred and therefore satisfied the IDO. The fact that the facilitated meetings occurred and
1013 that neighborhood associations were notified of the meetings is what is significant under the
1014 IDO and in the Findings. Association representatives cannot be forced to attend these meetings,
1015 and if any association representatives failed to attend, even when notice was sent to them, their
1016 lack of attendance is not considered a violation of the IDO. As indicated above, the record
1017 shows that the all the affected neighborhood associations were in fact invited to at least one
1018 facilitated meeting and the meeting occurred. Thus, the EPC did not err in these findings.

1019 Although Appellants include EPC Finding 25 in their list of findings that they
1020 challenge, I cannot discern what the challenge is from their written appeal **[R. 79]**. If
1021 Appellants are claiming the EPC erred because it did not grant a 90-day deferral at the April
1022 11, 2024, hearing, that issue has been discussed above.

1023 Appellants next generally claim that because “no condition [ ] requires the stadium and
1024 operators to comply with the established Park regulations and guidelines approved by the
1025 Balloon Park Commission” the conditions of the EPC’s approval of the MDP amendments
1026 “are grossly inadequate” **[R. 55]**. Appellants failed to articulate why they believe, under the
1027 IDO, it is necessary that the Balloon Park Commission approve anything regarding the
1028 application. As shown above in Section VI.B above, there are no requirements in the IDO that
1029 require the Balloon Commission to approve the application.

1030

1031 ***ii. Appellants’ challenges to the EPC Site Plan Findings***.

1032 Appellants’ challenges to the EPC findings related to the Site Plan similarly lack clarity
1033 and substance and are fundamentally Appellants’ dissent to how the EPC characterized facts
1034 in the record. These challenges do not allege error under the IDO or under the Comprehensive
1035 Plan. EPC Site Plan Finding 6 is an acknowledgement that the City Parks and Recreation
1036 Department (Parks Dept.) is responsible for overseeing the Balloon Fiesta Park. Appellants
1037 oppose this finding because they believe in the past, the Parks Dept. has “not demonstrated a
1038 willingness” oversee the Balloon Fiesta Park **[R. 55-56]**. Regardless of what Appellants
1039 believe, the finding is accurate—the Parks Dept. oversees the Balloon Fiesta Park, and
1040 Appellants did not show otherwise **[MDP, p. 32]**.

1041 Appellants' contentions with EPC Site Plan Findings 7, 10, 12, and 15, are similarly
1042 based on Appellants' collective, but subjective objections to them because they disagree with
1043 them--error is not alleged. Appellants' objections are not supported with objective facts and
1044 Appellants have now shown how the findings contravene the IDO, the Comprehensive Plan or
1045 otherwise are erroneous **[R. 56-61]**.

1046 Appellants claims regarding EPC Site Plan Findings 17, 18, 19, and 20, are merely
1047 repetitive claims that certain neighborhood association representatives did not attend the
1048 facilitated meetings **[R. 61-62]**. Appellants serial contentions are irrelevant because, again,
1049 the record confirms that all affected neighborhood associations were sent notice of the
1050 facilitated meetings and of the EPC re-hearing. Whether certain persons chose not to attend
1051 the meetings is not relevant under the IDO.

1052 Appellant's claim regarding EPC Site Plan Finding 24 is a repetitive argument that the
1053 EPC should not have held its April 11, 2024, hearing on the application, but instead, it should
1054 have granted Appellants' 90-day deferral request **[R. 62]**. As repeated above, despite the
1055 request, the EPC did not err when it held its hearing when it did.

1056 EPC Site Plan Finding 26 is the EPC's acknowledgement that the Applicants have
1057 offered to "develop a good neighbor agreement" **[R. 88]**. The record supports that the Finding
1058 is factually accurate. A "good neighbor agreement" was in fact offered by the Applicants at
1059 the EPC hearing **[R. 746]**. Thus, the finding is not erroneous.

1060 At the April 11, 2024, EPC hearing, the Applicants' agent testified that representatives
1061 with New Mexico United Soccer would agree to a good neighbor agreement to allow for better
1062 communication between the lessor (NM United Soccer) and the neighborhood associations **[R.**

746]. Ms. Jackie Fishman, the Applicants' agent characterized the commitment in the following manner:

> And then, lastly, this slide just lists the meetings that have been held by the project team. There have been a lot of meetings. We continue to make a commitment to neighborhood outreach and ongoing communication. New Mexico United and the city agree to work in good faith with the neighbors and neighborhoods and other stakeholders to develop a good neighbor agreement, which there is precedent in the city for, and I've been involved in two of those on behalf of the city. A good neighbor agreement would outline additional operational and relational items between the facility uses and stakeholders.

[R. 746].

Appellants' displeasure with the finding is not relevant for purposes of sustaining their appeal. I find that the finding, which merely acknowledges the offer of a good neighbor agreement does not violate the IDO or the MDP. Since Appellants have not shown, or alleged that the Finding is erroneous, Appellants' challenge to it, like their challenges to the other above referenced findings should be denied.

H. The lease agreement between the City and NM United Soccer was not before the EPC; it is not within the province, reach, or scope of the IDO or the EPC in its decision, and it cannot be considered in this appeal.

Although the issue of a lease was discussed under a different issue above, Appellants bring up the lease again. This deserves a brief discussion again. Appellants specifically claim in their appeal that because the City Council approved a lease agreement for the stadium's use before the EPC considered the application, the lease agreement is void or somehow represents a conflict of interest **[R. 69-70]**. However, there are facts in the record that clearly demonstrate that a lease was made contingent on EPC approval of the application as well as on other conditions precedent which were memorialized in a memorandum.

1092 Notwithstanding Appellants' misapplication of law in their legal conclusion, a lease
1093 agreement was not before the EPC because it was not part of the application process under the
1094 IDO. Whether a lease agreement is effective or not is an irrelevant issue in the evaluation of
1095 the application that was before the EPC. Similarly, the extent of the lease or its terms are
1096 irrelevant matters under the IDO and cannot be considered in this appeal.

1097

1098 **VII. PROPOSED FINDINGS**

1099 In conclusion, after hearing the appeal, poring over the record as well as the written
1100 arguments of the parties, the IDO, the MDP, as well as applicable parts of the Comprehensive
1101 Plan, and after evaluating the appeal issues, I respectfully recommend that, except for one issue
1102 presented, the City Council should deny the appeal. As discussed above in Section IV.E, I
1103 respectfully recommended that the City Council modify the EPC's Decision by adopting two
1104 new conditions that the EPC should have considered. These two conditions of approval are in
1105 Finding number 21 below. I further recommend that the appeal be denied. I also respectfully
1106 recommend that the City Council adopt the below listed findings. Each individual proposed
1107 finding is supported by <u>substantial evidence</u> in the record, the IDO, the MDP, or in the
1108 Comprehensive Plan.

1109 1. The Appellants filed a timely appeal under the IDO.

1110 2. The Appellants have standing to appeal the April 11, 2024, decision of the EPC.

1111 3. A quasi-judicial appeal hearing at which the Appellants were given an opportunity
1112 to argue and present their appeal, bring witnesses to testify, and cross examine witnesses, was
1113 held on July 12, 2024.

1114 4. The Pre-application meeting between Planning Staff and the Applicants' agents

1115 was a ministerial process that is required under the IDO, and the Open Meetings Act is
1116 inapplicable to that meeting.

1117 5. The EPC did not violate Appellants due Process rights or otherwise abuse its
1118 discretion when it did not grant a 90-day deferral at its April 11, 2024, hearing.

1119 a. Appellants' request was based on alleged outstanding IPRA requests for
1120 sound measurements at the Balloon Fiesta Park.

1121 b. Appellants did not demonstrate that the alleged sound measurements that
1122 they sought are indispensable or even relevant in the application evaluation
1123 by the EPC.

1124 c. Sound measurement data at the existing Park have no bearing on the Noise
1125 Impact Study in the record because the Noise Impact Study concerned the
1126 impact of sound emanating from inside a stadium which was designed by
1127 architects to considerably diminish sound leaving the stadium.

1128 d. The hearing had been deferred on March 21, 2024.

1129 6. At the April 11, 2024, hearing, the EPC held a nearly 9-hour hearing on the
1130 application.

1131 7. Under the facts in the record, Commissioner Renn Halstead did not have a conflict
1132 of interest, nor was it shown that his association with Generation Elevate New Mexico rose to
1133 an appearance of a conflict of interest.

1134 a. The facts in the record shows that Generation Elevate New Mexico supports
1135 the stadium application.

1136 b. EPC Commissioner Renn Halstead sits on an executive committee of
1137 Generation Elevate New Mexico.

1138 c. Commissioner Halstead did not participate in the executive committee vote

1139 to support the stadium.

1140 d. There are no objective facts in the record that show Commissioner Halstead

1141 made a prior commitment regarding the application or that he prejudged the

1142 application.

1143 e. It is not reasonable, without conjecture, to impute the support of Generation

1144 Elevate onto Commissioner Halstead under these facts.

1145 8. As an independent tribunal of the City, it was not a conflict of interest for the EPC

1146 to judge the application in a quasi-judicial hearing.

1147 a. The fact that one of the applicants is the City of Albuquerque, and the

1148 application site is owned by the City, these facts are insufficient as a basis

1149 to conclude that the EPC is a biased city tribunal.

1150 b. Appellants allegations of EPC bias as a tribunal are supported only by

1151 speculation and conjecture.

1152 9. The method of cross-examination utilized by the EPC was adequate under the

1153 circumstances and under law for quasi-judicial administrative hearings.

1154 a. There is no evidence in the record to support Appellants' contention that

1155 some cross-examination questions were not answered by the witnesses that

1156 were asked to answer the question(s).

1157 b. The record demonstrates that all cross-examination questions submitted to

1158 the EPC were asked and answered.

1159 c. The manner of cross-examination is expressly permitted under the EPC's

1160 Rules.

1161 10. The record shows that the EPC satisfied the remand instructions.

1162 11. The record shows that notice to neighborhood associations was fully satisfied.

1163 12. The record shows that notice to property owners within 100-feet of the Balloon
1164 Fiesta Park, excluding all public right-of-way was fully satisfied.

1165 13. The Balloon Fiesta Park is not an extraordinary facility under the IDO and
1166 therefore the EPC did not have to consult with or obtain approval of the application from the
1167 Metropolitan Parks Advisory Board or from the Open Space Advisory Board.

1168 14. Appellants claims regarding noise from the stadium are not supported by the
1169 record.

1170 a. The Noise Impact Study in the record demonstrates with reasonable
1171 accuracy that amplified sound within the stadium will not exceed the City's
1172 Noise Ordinance regulations between the hours of 7:00am to 10:100pm.

1173 b. Appellants did not present any evidence to rebut the Noise Impact Study
1174 conclusion.

1175 15. The text amendments to the MDA are not comparable to a zone-change.

1176 16. The EPC did not change the existing zone district of the Balloon Fiesta Park.

1177 a. The Balloon Fiesta Park is in a NR-PO-A zone district.

1178 b. A stadium use is a permissive use in the NR-PO-A zone district.

1179 17. Under the IDO, an Environmental Impact Study was not required to be performed
1180 or submitted with the application.

1181 18. The evidence in the record supports that a Sensitive Lands Analysis was
1182 performed and requires several improvements which will occur at the building permit stage.

1183 19. The record supports that the landfill gas mitigation requirements in the IDO will
1184 be satisfied.

1185 20. A Traffic Assessment was performed by Lee Engineering.

1186 a. Appellants did not challenge the Traffic Assessment.

1187 b. Appellants contend that the EPC should have adopted the recommendations
1188 for traffic mitigation measures in the Traffic Assessment as conditions of
1189 approval.

1190 c. The EPC, the Applicants, or Planning Staff failed to address any of the traffic
1191 mitigation recommendations in the Traffic Assessment.

1192 d. The traffic mitigation recommendations concern health and safety issues
1193 regarding traffic mitigation.

1194 e. The EPC should have adopted the recommendations in the Traffic
1195 Assessment when it approved the application.

1196 21. It is recommended that the following conditions of approval (recommendations in
1197 the Traffic Assessment) be adopted by the City Council:

1198 a. For maximum attendance events, the second available eastbound lane of
1199 Balloon Fiesta Pkwy should be opened to allow two lanes of traffic to
1200 proceed from the parking lots to the Southbound Pan American Frontage Rd.
1201 and make dual right turns, and

1202 b. Officer control will likely be necessary at all study intersections. However,
1203 the maximum attendance traffic is not so intense as to necessitate the closure
1204 of Alameda Blvd to normal through traffic.

1205 22. Other than with the recommendation in the Traffic Assessment, the Appellants

1206 have not met their burden of proof to demonstrate that the EPC erred in any of its findings

1207 under the IDO, or in any of the facts, or under the Comprehensive Plan.

1208 23. The Appellants' challenge to the lease agreement between the City and the lessors

1209 is without merit.

1210 a. The legitimacy of any lease agreements regarding the stadium are outside

1211 the purview and scope of the IDO, the EPC, and this appeal.

1212 24. The appeal shall be denied.

1213 25. The EPC's decision shall be approved with the added condition that the

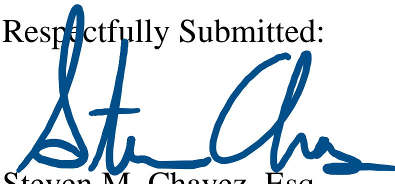
1214 recommendations restated in Finding 21 above shall be incorporated to the decision as

1215 additional conditions of approval.

1216

1217 Respectfully Submitted:

1218



1219 Steven M. Chavez, Esq.
1220 Land Use Hearing Officer
1221 July 25, 2024

1222 Copies to:
1223 City Council
1224 Appellants
1225 Appellees/ Party Opponents
1226 EPC
1227 Planning Staff
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1236
1237 Notice Regarding City Council Rules Under IDO, § 6-4(V)(3)(e)

1238 When the Council receives the Hearing Officer's proposed disposition of an appeal, the Council shall place
1239 the decision on the agenda of the next regular full Council meeting provided that there is a period of at least
1240 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to
1241 the Council through the Clerk of the Council regarding the Hearing Officer's decision and findings provided
1242 such comments are in writing and received by the Clerk of the Council and the other parties of record four
1243 (4) consecutive days prior to the Council "accept or reject" hearing. Parties submitting comments in this
1244 manner must include a signed, written attestation that the comments being submitted were delivered to all
1245 parties of record within this time frame, which attestation shall list the individual(s) to whom delivery was
1246 made. Comments received by the Clerk of the Council that are not in conformance with the requirements
1247 of this Section will not be distributed to Councilors.
1248