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

AC-24-20,
AC-24-21,
AC-24-22,
AC-24-23,
AC-24-24,

VA-2024-00219, PR-2022-006844,
BP-2024-10295, BP 2024-15349, BP-2024-15353

Edward Garcia, Danny Senn, Carol Johnson,
Frank T. Cloak, and Martin Vigil,

Appellants,

and,

Rembe Urban Design + Development and
Rembe Silver Lofts, LLC,

Appellees.

PROPOSED DISPOSITION

I. INTRODUCTION

Five separate Appellants filed five separate appeals of an administrative decision from City Planning Department Staff who approved a site plan for building permit. The appeals are consolidated for efficiency because they all concern a single application, application site

property, and decision. The Appellants are Edward Garcia, Danny Senn, Carol Johnson, Frank T. Cloak, and Martin Vigil. Because there are five separate appeals of the same decision, five records were created.[1] The applicants and landowners of the application site property are Rembe Urban Design & Development, and Rembe Silver Lofts, LLC (hereinafter, "Rembe" or "applicants").

The administrative decision appealed concerns a site plan for building permit for a 4-story building, encompassing approximately 26,834 square feet for 34 residential dwelling units, and 1,832 square feet for commercial space, on a .58-acre tract located at 1623 and 1701 Central Avenue NW. **[R. 088]**. The project site also includes 28 onsite parking spaces for the residential uses and four offsite parking spaces for the commercial use(s) **[R. 88-89]**.

In their appeals, the Appellants are challenging the height and setback of the apartment building. Appellants also believe that because the property's only access to the parking spaces for the development access to the property will be from 16th Street, it violates the CPO-3 regulations for parking access. They further contend that the development will congest 16th Street with more automotive use than the street can handle. Appellant Vigil specifically argues that the administrative review and approval process lacked transparency in various manners.

After reviewing the record and the applicable IDO provisions, and after listening to arguments and testimony in a quasi-judicial appeal hearing, I find that the record shows that Planning Staff erred under the IDO when they approved the development. Specifically, Staff misinterpreted and misapplied the CPO-3 regulations pertaining to property parking access.

1. Except for the appeal forms and individual written appeal arguments associated with each appeal, the factual record for each of the five appeals are essentially identical. References to the record in this disposition are references to the AC-24-20 record only.

IDO, § 3-4(D)(5)(a)2.b is the IDO provision regarding parking access, and it is a mandatory, clear, and unambiguous provision in the CPO-3 regulations that definitively applies to the applicants' property; it requires that "primary vehicular access" to the property "shall" be from Central Avenue. Despite Planning Staff's efforts to justify the violation, the application site property does not in fact have "primary vehicular access from Central Avenue; it is from 16th Street, in violation of the IDO. The relevant background of the application and review processes accompanied by a detailed discussion follows.

II. RELEVANT BACKGROUND

As stated above, the application site comprises .58 acres of land (Hereinafter, "property" "development" or "application site") and it is clearly within the Character Protection Overlay Zone-3, Downtown Neighborhood Area (CPO-3) defined in the IDO **[R. 02-03]**. The property is zoned MX-M (Mixed-Moderated Intensity Use) **[R. 105]**. The South frontage of the property abuts Central Avenue SW. The rear, North side of the property abuts two, R-1 zoned tracts as well as the endpoint of 16th Street. The East and West sides of the property abut MX-M zoned properties.

The site plan for building permit includes a four-story building encompassing mixed uses; 19,814 square feet are for 34 residential dwelling units; and 1,832 square feet is apparently reserved for commercial use(s) **[R. 076]**. The record shows that the applicants have executed a shared parking agreement for four offsite parking spaces that are necessary under

the IDO for the commercial space at the application site property **[R. 409-412]**.[2] These four offsite parking spaces will be at the Country Club Plaza mixed-use development located at 1700 Central Avenue SW, directly across the street from the application site property **[R. 412]**. It is important to note that the offsite provision of parking is not required; all that is required under the CPO-3 is that *access* for the commercial uses occur from Central Avenue. Because the development is designed without any driveway access from Central, the applicants elected to provide the necessary parking offsite.

The site plan for building permit also includes 28 onsite automobile parking spaces for the 34 residential uses, as well as required landscaping and open space **[R. 076]**. Notably, 16th Street is the only vehicular parking ingress and egress onto and from the 28 parking spaces at the application site property **[R. 076]**. This is the crux issue of this appeal.

Procedurally, the record reflects that the applicants submitted a conceptual sketch plan of a development proposal to City Planning Staff in the Spring of 2022 of which was reviewed by Planning Staff in April 2022 **[R. 103, 481-485]**. As early as May 2022, Planning Staff began receiving emails from Appellant Vigil who raised various concerns regarding the application site, including the applicants' proposal showing the property's single access from 16th Street; Mr. Vigil also requested information about how to "register solar rights" for his residential property which is located in an MX-M zone and abuts the application site property

2. Because the CPO-3 regulations prohibit access of "non-residential" development from 15th Street, 16th Street, and Fruit Avenue at the property, the four offsite parking spaces for the small commercial use component of the development on the property satisfies that provision of the CPO-3 regulation.

on the East side **[R. 111]**.[3]

Meanwhile, the applicants requested that the City Zoning Enforcement Officer (ZEO) determine whether the IDO allows automobile access to the proposed commercial space from 16th Street and Fruit Avenue **[R. 56]**. The ZEO responded, informing the applicants that they were prohibited from utilizing 16th Street for access to the (non-residential) commercial space **[R. 56]**. Then on February 28, 2023, the applicants applied to the Development Hearing Officer (DHO) for Preliminary Plat approval **[R. 163]**. Apparently, the applicants proposed a replat of the application site to consolidate property tracts 107-B, 107-C and 106-A, as well as vacate an abandoned ditch easement, all to form the .58-acre application site property **[R. 170]**. Next, the record shows that the DHO held a public hearing on the application and after reviewing the application, approved it on March 22, 2023 **[R. 357-358]**.

Although the DHO's replat decision wasn't appealed, the Appellants in this matter began sending multiple emails to Planning Staff in May 2023; these emails essentially objected to the applicants' use of 16th Street for the primary automobile access to the proposed apartment building development proposed on the property **[R. 203-212]**. The Appellants also requested that the Planning Staff require the applicants to perform a traffic impact study for the use **[R. 203-212]**.[4] On July 23, 2023, Deputy Planning Director, James Aranda responded

3. Although in his appeal, Appellant Vigil claims that Planning Staff "ignored" his communications, a close review of the record shows that Planning Staff did not ignore Mr. Vigil's multiple email communications; each time information was requested, Planning Staff responded.

4. Notably, the appeal record contains multiple emails about the project from the Appellants as well as contemporaneous responses by Planning Staff.

to the multiple emails and specifically to the request for a traffic study **[R. 215]**.[5]

Appellants believe that Planning Staff should have required the applicants to perform a traffic impact study on how the vehicular traffic from the 34 dwelling at the application site will impact 16th Street. However, the evidence in the record clearly shows that 34 apartments will not generate the peak period traffic numbers that are minimally required to warrant a traffic study **[R. 298]**. The Appellants did not present evidence to dispute the traffic engineer's assessment. As an issue in the appeals, I find that the Planning Staff and traffic engineers did not err in concluding that a traffic study is not warranted.

The next relevant evidence in the record shows that during the month of March 2024, at least three of the Appellants sent Planning Staff several emails requesting information about the review and appeal process, as well as a request for a facilitated meeting under the IDO **[R. 297-333]**.[6] Within days, Planning Staff responded to this new set of serial emails, advising the Appellants about the review process and the procedures involved in requesting a facilitated meeting **[R. 297-333]**. Meanwhile, on March 20, 2024, City Planning Staff received the Rembe application for site plan and building permit approval **[R. 310]**.

On April 19, 2024, the applicants submitted a proposed Traffic Circulation Layout (TCL) for the onsite parking of the 28 onsite parking spaces for the residential uses and for the

5. The email objections and request for a traffic study continued through 2023 into 2024. The record shows that City Principal Traffic Engineer, Ernest Armijo, also responded to a number of January 2024 email requests for a traffic study **[R. 273-274]**.

6. In some of the email requests, at least one Appellant, after requesting a facilitated meeting also advised Planning Staff of his plans to file a lawsuit regarding the application **[R. 332-333]**.

offsite parking of the commercial space at the site **[R. 426]**.[7] Presumably to satisfy the CPO-3 prohibition for "non-residential" parking access from 16th Street, on June 7, 2024, the applicants submitted an executed shared parking agreement for four offsite parking spaces for the property's proposed commercial space **[R. 092--097]**. After the executed shared parking agreement was submitted to Planning Staff, the application was formally deemed complete on June 7, 2024 **[R. 001]**.

Then on June 11, 2024, City Traffic Engineer Ernest Armijo reviewed the proposed TCL and approved it with conditions **[R. 426]**. On July 18, 2024, Planning Staff approved the site plan for building permit application **[R. 13]**. All four appeals were timely filed thereafter. All the Appellants have standing to file the appeals based on their residential proximities to the application site property. See IDO, § 6-4(V), Table 6-4-2.

In these consolidated appeals, the Appellants first contend that allowing automobile access to and from the apartment building *only* from 16th Street will adversely impact 16th Street and the residential neighborhood around it. They further argue that the single access from 16th Street violates the CPO-3 regulation pertaining to primary vehicular access. Although Appellants believe that a TIS is necessary, as indicated above, a TIS is not warranted. There is clearly substantial evidence in the record supporting the decision to not require a TIS, which will not be further discussed herein. Next, Appellants claim that the zero setback of the building on the West and East sides of the proposed building violate the IDO. Appellants also

7. Under IDO, CPO-3 § 3-4(D)(5)(a)2.b among other limitations discussed in detail below, for properties along Central Avenue that are West of 14th Street, there is a prohibition for "access to *non-residential* development from 15th Street and 16th Street, and Fruit Avenue." (Emphasis added).

believe that the four-story building height violates the Neighborhood Edges provisions of the IDO. Finally, Appellants generally argue that Planning Staff acted arbitrarily and capriciously because a facilitated meeting was "refused."[8]

III. APPEAL REVIEW STANDARD UNDER THE IDO

The IDO addresses how appeals under the IDO are to be evaluated. Review of an appeal under the IDO is a whole record review to determine whether a decision appealed is fraudulent, arbitrary, or capricious; or whether the decision is not supported by substantial evidence; or if the requirements of the IDO, a policy, or a regulation were misapplied or overlooked. See IDO, § 6-4(V)(4). The Land Use Hearing Officer (LUHO) has been delegated the authority from the City Council to hold quasi-judicial hearings on appeals, make proposed findings, and propose to the City Council a disposition of an appeal, including whether the appealed decision should be affirmed, reversed, or otherwise should be modified to bring the decision into compliance with the standards and criteria of the IDO.

In reviewing appeals, if the record and decision is found to be supported with substantial evidence and the decision appealed is not otherwise erroneous, the appeal should be denied under IDO, § 6-4(V)(4). Under New Mexico law, substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 1994-NMSC-126, ¶ 21.

8. There is no evidence in the record that a facilitated meeting was refused by Planning Staff and Appellants have not shown that they satisfied the IDO criteria of § 6-4(K) regarding a facilitated meeting, and therefore Appellants have not met their burden of proof on this issue.

IV. DISCUSSION

A. The side zero-foot set back of the building structure in the site plan is permissible under the IDO.

The building footprint in the site plan was approved with a zero-foot setback on the West and East sides of the application site **[R. 076]**. The Appellants claim that because the North side of the application site abuts an R-1 zone, that under IDO, § 3-4(D)(3)(c), the building setbacks for all sides of the building structure in the site plan should have setbacks of at least ten feet.[9] The Appellants are plainly wrong in how they are interpreting the relevant IDO provisions regarding how setbacks are applied under the IDO.

First, the record substantiates that the combined three tracts that encompass the application site property abuts MX-M zones on the West and East sides **[R. 04, 105]**. The zero setbacks of the building on the property are only on the sides that are abutting the MX-M zones on the East and West sides. And on the North side, the building structure is more than 130 feet away from the R-1 zones and 16th Street **[R. 105]**. And, on the South side, the application site abuts Central Avenue **[R. 105]**.

Next, there is no dispute that the application site is within the mapped area boundary of what is designated as the Downtown Neighborhood Area, CPO-3 in the IDO **[R. 157]**. Under the setback standards of the CPO-3 regulations in IDO, § 3-4(D)(3)(c), zero side, minimum interior setbacks are permissive if the property abuts an MX-L or MX-M zone. See, IDO, § 3-

9. Appellants also argue that the setbacks on the existing building structure on the application site is nonconforming and cannot be expanded. Appellants' argument regarding a nonconformity of the existing structure on the application is immaterial and inapplicable to the site plan; any existing structures on the site planed property will be razed and replaced with the new development. The new building will not be a nonconforming structure.

4(D)(3)(c)2. That means, a building structure can be constructed on the lot line next to a MX-L or an MX-M zone tract of land. Notably, Appellant Vigil owns the tract of land that abuts the application site on the East side. However, Appellant's property is zoned MX-M **[R. 105]**.

However, Appellant Vigil generally argues that because a single-family residential dwelling sits on his MX-M zoned land, the 10-foot setbacks for lots abutting an R-1 zone in IDO, § 3-4(D)(3)(c)2.c apply instead of the zero setbacks for an MX-M zone. Appellant is incorrect, The applicable provisions of the CPO-3 relating to what minimum setbacks are necessary applies to abutting zones, not land uses.

Again, the facts clearly show that the zero lot line of the proposed building in the site plan abuts an MX-M zone on both the East and West sides; and on the South side where the application site abuts R-1 zoned tracts (and 16th Street), the building will be well over 130-feet from the R-1 zones **[R. 076]**. Thus, Planning Staff did not err in approving site plan with side zero lot line setbacks on the East and West sides of the proposed development.

B. Appellants' contention that the four-story building height violates the Neighborhood Edges provisions of the IDO is unfounded.

Appellants next claim that the four-story height of the proposed mixed-use building at the application site property violates the IDO. Specifically, Appellants argue that because the proposed mixed-use building is closer than 50-feet from Appellant Vigil's residential dwelling unit, the Neighborhood Edges regulations require that the mixed-use building height be 30-feet not a height of 48-feet. Again, Appellants are misinterpreting the relevant IDO regulations.

The Neighborhood Edges regulations of the IDO are encompassed in § 5-9(A) through (D) and are expressly intended to protect residential uses ***in*** residential zones. IDO, § 5-9(A)

states that its purpose is:

> intended to preserve the residential neighborhood character of established low-density residential development **in any Residential zone district** on lots adjacent to any Mixed-use or Non-residential zone district.

(Emphasis added). See IDO, § 5-9(A). See also § 5-9(B)(1) which reinforces that a lot must be zoned R-A, R-1, R-MC, or R-T to be protected under the Neighborhood Edges regulatory framework. Thus, although the proposed four-story, mixed-use building abuts the East property line and is within a under six feet of Appellant Vigil's residential dwelling, because Appellant Vigil's lot is zoned MX-M, the regulations of the Neighborhood Edges are inapplicable to his lot. The only Residential zones in the area are the R-1 zoned lots on that abuts the North side, and they are over 130-feet from the proposed mixed-use building. Thus, the proposed mixed-use building in the application site plan does not violate the Neighborhood Edges regulations of the IDO.

C. Because primary vehicular access to and from the property is designed to be from 16th Street and not from Central Avenue, the site plan clearly violates the CPO-3 parking access regulations.

All five Appellants challenged Planning Staff's decision approving the solitary vehicular driveway access to the property's onsite parking for the proposed development from 16th Street. The Appellants contend that the location of the property under the CPO-3 regulations requires that *primary* vehicular access to the 28 onsite parking spaces must be from Central Avenue, not from 16th Street as shown in the site plan. They argue, at a minimum, this means that there must also be a driveway from Central Avenue to the 28 onsite parking spaces. The Appellants further argue that the solitary driveway access to the property from 16th Street

will create an adverse condition for two-way travel on 16th Street and to the residents on the block. As discussed in detail below, I must find that the single driveway access to and from the property from 16th Street is a striking violation of the IDO under § 3-4(D)(5)(a)2.b.

The IDO has thirteen area Character Protection Overlay Zones. See, IDO Table 1, § Part 14-16-3. Each zone has very specific and distinctive regulations legislatively enacted to "preserve areas with distinctive characteristics" for their respective "recognized neighborhood identity and character." See § 3-4(A), Purpose. In addition, under the IDO, Overlay Zones have a high ranking and "prevail over other IDO regulations to ensure protection for designated areas." See § 7-1 Definition of Overlay Zones. See also, § 1-8(A)(1) which expressly states that "the regulations of the Overlay zone prevail" over any conflicting, less, or more restrictive regulations in the IDO.

There is no dispute that the application site property is located within the CPO-3 boundary area and therefore the CPO-3 regulations are applicable to the property. For properties facing or abutting Central Avenue in the CPO-3 area, the CPO-3 regulations have differing regulations for parking access to and from properties that are located West and East of 14th Street. For properties that face Central Avenue and that are located East of 14th Street, "access from Central Avenue is prohibited." See, IDO, CPO-3, § 3-4(D)(5)(a)2.a. This provision is inapplicable to the property because the application site property in this appeal is located West of 14th Street.

For the applicants' property and for all others that face Central Avenue and that are located West of 14th Street, "***primary vehicular access***" to and from these properties "***shall be***" from Central Avenue. In addition, for these properties West of 14th Street that face Central

Avenue, all access to *non-residential* development "shall be" only from Central Avenue. The "Parking Access" provisions of the CPO-3 state in full:

> 2. Parking Access
>
> Primary vehicular access **to and from properties** facing Central Avenue **shall be provided as follows**.
>
> a. For properties east of 14th Street, primary vehicular access from Central Avenue is prohibited.
>
> b. For properties west 14th Street, ***primary vehicular access shall be from Central Avenue***. Access to non-residential development along Central from 15th Street, 16th Street, and Fruit Avenue is prohibited.

IDO, § 3-4(D)(5)(a)2. (Emphasis added).

In general, when read together, these CPO-3 parking access regulations demonstrate a legislative intent to *reduce* vehicular traffic (on Fruit Avenue, 15th and 16th Streets) created by new development on properties facing Central Avenue West of 14th Street in the CPO-3 area. That means, reducing access to properties facing Central Avenue that are West of 14th Street requires that there be driveway access to the property from Central Avenue. It need not be the only access, but it must be the primary vehicular access to and from these properties. That is the plain meaning of the above referenced provisions, and specifically of IDO, § 3-4(D)(5)(a)2.b.

Despite the fact that the application site plan was designed so that there will be no vehicular access driveway from Central Avenue to the 28 automobile parking spaces on the application site, the applicants and Planning Staff argue that the plan still complies with § 3-4(D)(5)(a)2. They rationalized that although there is no driveway access onto the property from Central Avenue to the 28 onsite parking spaces, Central Avenue still provides "primary

vehicular access" to and from the property in the form of off-street parking and street drop-off for deliveries, both from Central Avenue.

Other than the four offsite parking spaces at the Country Club Plaza across the street on Central Avenue that are reserved for the 1,800 square feet of commercial space at the application site property, the record does not include any evidence whatsoever as to how Central Avenue will in fact be utilized as "*primary vehicular access to and from*" the application site development as required in IDO, § 3-4(D)(5)(a)2. Conversely, there are no facts in the record that demonstrate that the exclusive onsite access from 16th Street is not what common sense shows it is—the *only* vehicular access to and from the property for all the residential uses on the property, not Central Avenue.[10] As indicated above, the facts show that the 28 onsite parking spaces for the roughly 74% of the land uses on the property are exclusively accessed from 16th Street only **[R. 076]**.[11] This is undisputed evidence in the record.

Putting Staff's rationalization aside for the moment, the applicants rationalized the glaring discrepancy by pointing out that not providing primary vehicular access to the development from Central Avenue encourages pedestrian access on Central Avenue.

10. Notably, along with the four offsite parking spaces across the street for the commercial use(s), there is a 22-foot-long parking space reserved **only** for compliance with and use for the Americans with Disability Act (ADA) and disabled persons. The space is on Central Avenue, directly in front of the proposed building in the site plan **[R. 073]**. Utilization of this space for anything other than access for disabled persons likely violates law.

11. The facts show that the land uses on the property are as follows: approximately74% of the land uses are residential, approximately 7% for commercial uses, and approximately 19% are reserved for shared space **[R. 076]**.

Certainly, pedestrian accessibility of Central Avenue is a strong and worthy goal in the Comprehensive Plan that should be considered in developments along Central Avenue.[12] Notwithstanding this general goal, the CPO-3 regulations cannot be overlooked or disregarded as a justification to encourage pedestrian access under the Comprehensive Plan.

To state it succinctly, general goals of the Comprehensive Plan cannot override specific regulations of the IDO. Under New Mexico law, the Comprehensive Plan is not intended to have the force of law in the same way that the IDO does. See *Dugger v. City of Santa Fe*, 1992-NMCA-022, ¶ 26 (The State legislature intended city master plans to be advisory in nature). See also, *West Bluff Neighborhood Ass'n v. City of Albuquerque*, 2002-NMCA-075, ¶ 19 (Comprehensive Plans do not have the force of law or are equal to zoning ordinances). There can be no dispute that the IDO is an ordinance, and its regulations cannot be disregarded to encourage pedestrian access to the property.

Although the **facts** in the record do not support the nebulous theory that Central Avenue will provide primary vehicular access to and from the proposed development, Planning Staff also suggested in the appeal hearing that the language in § 3-4(D)(5)(a)2.b is vague about what the term "primary vehicular access" refers to. They believe § 3-4(D)(5)(a)2.b can mean that primary vehicular access to and from a site could be accomplished with offsite parking and drop-offs along Central Avenue. Even if § 3-4(D)(5)(a)2.b is vague (which it is not), Staff's theory turns a blind eye to the facts in the record that 16th Street is the only driveway access to *all* the parking for *all* the primary uses on the property. Their theory also disregards the

12. There are undoubtedly other manners of encouraging pedestrian access to the property without violating the CPO-regulations.

legislative intent embodied in § 3-4(D)(5)(a)2 to reduce traffic on Fruit Avenue, 15th and 16th Streets, West of 14th Street. However, before discussing Staff's suggestion that § 3-4(D)(5)(a)2 is vague and open to various interpretations, a brief discussion is in order of how municipal ordinance regulations are interpreted under basic principles of New Mexico Law.

In construing the IDO or any other ordinance, the Courts employ the same rules of construction as are employed when construing State statutes. See *Burroughs v. Board. of County Comm'rs,* 1975-NMSC-051, ¶ 13. The first rule is that the "plain language" of an ordinance is the "primary indicator of legislative intent." *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5. That is, in interpreting an ordinance, a reviewing body must "give the words used [in the ordinance] their ordinary meaning unless the [Council] indicate a different intent." Id. This means, that if an ordinance makes sense as it is written, one should not "read into an ordinance language which is not there." Id. The New Mexico Supreme Court has clearly held that "[z]oning regulations should not be extended by construction beyond the fair import of their language and they cannot be construed to include by implication that which is not clearly within their express terms." *High Ridge Hinkle Joint Venture*, ¶ 6. Therefore, under this basic rule of construction laid out above, one must first conclude that the language of § 3-4(D)(5)(a)2.b is vague or ambiguous before it can be found to be subject to various interpretations.

In good conscious, I have to respectfully disagree that § 3-4(D)(5)(a)2.b is vague in its meaning. I find that § 3-4(D)(5)(a)2.b is not vague or ambiguous. Its language is plain, direct, and clear. In addition, the intent to reduce traffic on 16th Street, West of 14th Street is also clear. Section § 3-4(D)(5)(a)2 is unequivocal that West of 14th Street, "**primary vehicular access to**

and from properties facing Central Avenue shall be…from Central Avenue."[13] See both § 3-4(D)(5)(a)2 and 2.b. If this language does not refer to driveway access, it would make little sense and it would contravene the clear legislative intent embodied in the language.

Although the language of § 3-4(D)(5)(a)2 is clear and unambiguous, I also find that Staff's contrary interpretation and rationalization is at odds with the clear *facts* in the record. First, Staff's rationalization and broad interpretation of the term "primary vehicular access" as it relates to the parking access regulations in the CPO-3, essentially renders the restriction for parking access in § 3-4(D)(5)(a)2.b completely meaningless and superfluous. In other words, Staff's overly broad interpretation of § 3-4(D)(5)(a)2.b creates a proverbial exception that makes the underlying purpose of § 3-4(D)(5)(a)2.b pointless.

As stated above, the underlying purpose behind the parking access regulations in § 3-4(D)(5)(a)2 is clearly to ***reduce*** (not proscribe it altogether) vehicular access through 15th Street, 16th Street, and Fruit Avenue for new development facing Central Avenue. That's why *primary vehicular access* must be from Central Avenue and not from Fruit Avenue, 15th and 16th Streets for properties facing Central Avenue, West of 14th Street. And that's why "access to non-residential development along Central from 15th Street, 16th Street, and Fruit Avenue is either prohibited or must be the primary access. Under § 3-4(D)(5)(a)2, West of 14th Street, Fruit Avenue, 15th and 16th Streets are therefore, protected from being utilized as primary vehicular access for new development that faces Central Avenue.

13. Under the third rule of statutory construction, if multiple sections of an ordinance are involved, they must be read together so that "all parts are given effect." *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 6.

Under Staff's broad interpretation, even though all onsite vehicular access to the application property is exclusively through a protected street (16th Street), Staff ignores this fact and creates a theoretical fiction to get around the restriction; that even though the onsite 28 parking spaces cannot be accessed through Central Avenue, Central Avenue is still the primary vehicular access to the property.[14] It is a fiction because there are no facts in the record to support the theory. It also defies common sense. In addition, there is no indication in the record that Staff performed any analysis of the feasibility of how Central Avenue will in fact serve as primary vehicular access without a driveway into the property and without causing adverse conditions for other motorists on Central Avenue. There are detailed regulations in the IDO for off-street loading and on-street parking and there is no evidence in the record that Planning Staff applied these regulations to what they abstractly contend will occur on Central Avenue. See IDO, § 5-5, Parking and Loading.

Without evidence in the record regarding as to how "primary vehicular access" to the property is accomplished from Central Avenue without a driveway (considering the contrary evidence that shows 16th Street is the solitary driveway to all the onsite parking), I find Planning Staff's defense of the decision to approve the site plan unconvincing and unsupported by substantial evidence in the record. To be clear, I find that there is more than substantial evidence in the record showing that Central Avenue is in fact not the primary vehicular access for the property and that 16th Street is the exclusive, and therefore, the primary vehicular access to the property.

14. Despite that what Staff seem to suggest likely would create adverse traffic conditions on Central Avenue, Staff failed to provide any supporting facts on how their theory actually functions.

Because of all the reasons above, Staff's defense of its approval of the site plan for building permit as it relates to § 3-4(D)(5)(a)2.b is erroneous. Its approval of the site plan with primary vehicular access from 16th Street unmistakably violates the clear and unambiguous language of § 3-4(D)(5)(a)2.b; primary vehicular access to the property must be from Central Avenue not 16th Street. Thus, under § 6-4(V)(4), the site plan for building permit approval is contrary to the IDO. As a consequence, I respectfully recommend that the application be denied.[15]

V. PROPOSED FINDINGS

Based on the analyses provided above, I respectfully recommend that the City Council grant the appeals on the single issue presented by all five Appellants—noncompliance with IDO, CPO-3, § 3-4(D)(5)(a)2.b. Thus, the Planning Staff's approval of the site plan for building permit should be denied. I respectfully submit that the following proposed findings are all supported with substantial evidence in the record and in the IDO.

1. The Appellants filed timely appeals under the IDO of the Planning Staff's administrative decision.

2. The Appellants have standing to appeal the ZHE decision in this matter.

15. In the alternative, as a strict condition of approval of the site plan, I respectfully advise the City Council that it could require that the applicant redesign the building to allow for a driveway from Central Avenue to the 28 onsite parking spaces. Such a condition would satisfy the IDO, CPO-3 parking access regulations.

3. A quasi-judicial appeal hearing at which each of the Appellants were given an opportunity to present arguments, bring witnesses to testify, and cross examine witnesses, was held on October 15, 2024.

4. The Appellants presented various appeal issues, including that the proposed site plan for building permit violates setback provisions in the IDO, violates height standards in the IDO, violates parking access requirements in the IDO.

5. Appellants also believed that a traffic impact study is necessary for the proposed uses in the site plan, and that the applicants and Planning Staff ignored their requests for a facilitated meeting.

6. There is substantial evidence in the record that the site plan for building permit does not violate setback standards in the IDO.

7. There is substantial evidence in the record that the site plan for building permit does not violate height standards in the IDO.

8. There is substantial evidence in the record supporting the decision that a traffic impact study is not warranted; therefore, the City Planning Staff and traffic engineers did err or otherwise abuse their discretion in not requiring a TIS.

9. The Appellants have not met their burden of proof regarding the criteria of IDO, § 6-4(K) for a facilitated meeting.

10. For all properties facing Central Avenue West of 14th Street, IDO, CPO-3, § 3-4(D)(5)(a)2.b unambiguously requires that "primary vehicular access to and from" the properties "shall be from Central Avenue" and "Access to non-residential development along Central from 15th Street, 16th Street, and Fruit Avenue is prohibited."

11. The property in the site plan for building permit is a property that faces Central Avenue and is West of 14th Street.

12. The site plan for building permit further shows four offsite parking spaces on a property across the street on Central Avenue exclusively reserved for the 1,832 square feet of commercial uses within the application site property.

13. The site plan for building permits shows 22-square feet of on-street parking on Central Avenue that is reserved exclusively for ADA parking at the application site property.

14. The site plan for building permit shows and provides for a single vehicular access driveway from 16th Street (ingress and egress) to the onsite 28-parking spaces for the proposed developments on the property.

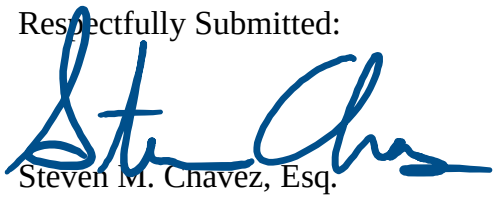
15. Substantial evidence in the record shows that primary vehicular access to and from the property application site is in fact designed to be through 16th Street and not to and from Central Avenue.

16. The single driveway vehicular access to and from the property from 16th Street violates IDO, § 3-4(D)(5)(a)2.b.

17. City Planning Staff erred in approving the site plan for building permit without driveway access from Central Avenue top the property.

18. All five Appellants met their burdens of proof under IDO § 6-4(V)(4) on the single issue presented regarding the site plan for building permit's non-compliance with IDO, CPO-3, § 3-4(D)(5)(a)2.b.

Respectfully Submitted:



Steven M. Chavez, Esq.
Land Use Hearing Officer
October 29, 2024

Copies to:
City Council
Appellants
Appellees
City Planning Staff

Notice Regarding City Council Rules

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