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Notice of Decision
City Council
City of Albuquerque
August 21, 2024

AC-24-15 PR-2023-009363 / SI-2023-01635 (Major Amendment to the Balloon Fiesta Master Development Plan and Site Plan) and PR-2023-009363 / SI-2023-01638 (Site Plan - EPC) Pat Hauser and interested parties appeal the Environmental Planning Commission (EPC) decision to Approve a Major Amendment to the Balloon Fiesta Park Master Development Plan / Site Plan for Subdivision and a new Site Plan - EPC for all or a portion of Tracts A-1 through G-1, Plat of Tracts A-1 through H-1, I-1-A & I-2-A, Tract I-A-A, Plat of Tracts A-1 through H-1, I-1-A & I-2-A, and a fraction of Lot 2, located in NE ¼ NE ¼ Sec 11, T11N, R3E, a/k/a Tracts F & G, Heirs of Filiberto Gurule Tract, located at Balloon Fiesta Park, between Paseo del North Boulevard NE and Roy Avenue NE, approximately 370 acres (B-17-Z, C-16-Z & C-17-Z)

Decision

On August 19, 2024, by a vote of 8 FOR and 1 AGAINST, the City Council voted to accept the LUHO recommendation and findings.

For: Baca, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, Sanchez
Against: Bassan

IT IS THEREFORE ORDERED THAT THIS APPEAL IS DENIED, THE EPC'S DECISION IS UPHELD, AND THE APPLICATION IS APPROVED, SUBJECT TO THE ADDITIONAL TRAFFIC MITIGATION MEASURES RECOMMENDED BY THE LAND USE HEARING OFFICER.

Attachments

1. Land Use Hearing Officer's Findings and Recommendation
2. Action Summary from the August 19, 2024 City Council Meeting

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

Dan Lewis, President
City Council

Date: 8/21/2024

Received by:
City Clerk's Office

Date: 8/21/2024

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

APPEAL NO. AC-24-15
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

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

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

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

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

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

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

II. STANDING TO APPEAL

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

III. ISSUES PRESENTED

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

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

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

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

IV. BACKGROUND

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

A. Previous Amendments effecting the Balloon Fiesta Park

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

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

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

- **1999 - 2000**. The Development Review Board (DRB) approved an amendment to the site plan to allow for the Alameda Parking lot and approved a golf course training center **[R. 999]**.
- **2000**. The EPC approved amendments to the MDP to coincide with previous site plan amendments for construction of the Balloon Museum and access drive. An administrative amendment that reconfigured the north Launch Field roads was also approved **[R. 949-958]**. The record shows that the process utilized by the EPC to evaluate the amendments is consistent with the evaluation process in this matter **[R. 949-958]**.
- **2001**. An amendment to the site plan for subdivision and a site plan for building permit for the Balloon Museum and National Museum of Nuclear Science and History was approved. The MDP was also amended to clarify the lease area for National Museum of Nuclear Science and History **[R. 999]**.
- **2007**. City Planning Staff approved an administrative amendment to demarcate entry signs **[R. 999]**.
- **2012**. The EPC approved a site development plan amendment and MDP 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]**.

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

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

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

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

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

After the pre-application meeting with city Planning Staff, on September 9, 2023, the 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.

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

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

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

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

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

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

Subsequently, the record shows that a *de novo* EPC hearing was rescheduled for March 21, 2024 **[R. 203]**. Based on a new list of properties and owners, on February 28, 2024, the Applicants resent new notices for the pending *de novo* EPC hearing **[R. 288-310]**. In addition, the record shows that the Applicants updated the posted signs at the site to reflect the March 21, 2024, meeting date **[R. 203]**. Another facilitated meeting between the Applicants and the 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.

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

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

V. STANDARD OF REVIEW

The IDO provides for 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 [IDO, § 6-4(V)(4)]. The Land Use Hearing Officer (LUHO) has been delegated the authority by the City Council to make findings and to propose a disposition of an appeal,

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

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

VI. DISCUSSION

A. Alleged Due Process Violations.

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

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

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.

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

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

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

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

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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.

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

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

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

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

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

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

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

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

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

In this case, Appellants seem to suggest that the alleged sound measurements taken by City Staff are indispensable because the measurements can be used to rebut the sound 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."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

v. The lease agreement between the City of Albuquerque and New Mexico United is not evidence of EPC bias.

Appellants next suggest that the lease agreement the City entered into, or will enter into, with New Mexico United Soccer indicates that the City, and therefore the EPC, by association, are "partners**" [R. 37].**[11] Appellants further suggest that this "partnership" indicates bias in the application review process. Appellants misconstrue the agreement, what it means, and what the law requires.

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11. The record does not include a lease agreement.

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

vi. Under the circumstances, the manner of cross-examination allowed in the EPC hearing did not violate due process.

Next on Appellants' list of what they contend are due process violations, is an allegation that in the EPC's April 11, 2024, hearing, the EPC failed to allow for effective cross-examination of testifying witnesses. Appellants also generally claim that some questions were not answered by the person who the questions were directed at for answers. Further, Appellants contend that "the forms were required to be submitted the day before the hearing" and the email address to return the forms was not online before the hearing commenced **[R. 32]**. However, what occurred before the hearing is not relevant to an inquiry of cross-examination at the hearing itself. The inquiry revolves around how cross-examination occurred at the hearing, not before the hearing.

There are no New Mexico cases directly on point about whether an administrative, quasi-judicial tribunal such as the EPC may allow for cross-examination through written

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

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

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

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

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

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

presented at a public hearing." **[Rules, Art. II, § 6.B]**. In addition, these Rules provide for a manner of cross-examination identical to what took place in the hearing on the stadium application. **[Rules, Art. III, § 2.D]**. Specifically, it states:

> Cross-examination shall be afforded to anyone with standing in accordance with the Rules. Persons with standing desiring to question any other person who has testified during the hearing shall sign a list maintained by EPC staff and complete the *cross-examination request form*, a sample of which appears in the Appendix of the Rules.

[Rules, Art. III, § 2.D]. (Emphasis added).

It is undisputed that the EPC fashioned a procedure for cross-examination permissible under its own Rules, that required people to submit written cross examination questions at the end of the public comment portion of the hearing **[R. 735-736]**.[12] People who attended the virtual Zoom hearing were placed on notice of this process when the hearing commenced **[R. 735-736]**. A City Attorney advised all parties at the EPC hearing about how cross-examination would proceed with written questions **[R. 735-736]**. It is further undisputed that Appellants had access to these forms during the testimony phase of the hearing.[13] And, it is undisputed that the EPC hearing lasted almost nine hours.

After the EPC heard several hours of testimony from 44 interested persons, the record reflects that it took a 10-minute recess to allow time for people to submit, via email, cross-examination questions on the prescribed form presumably provided by Planning Staff **[R.**

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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

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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].**

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

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

vii. The record reveals that notice of the EPC remanded hearing to all persons qualified under the IDO, including to affected neighborhood associations, was accomplished.

In the first appeal, all parties stipulated that notice to property owners within 100-feet of the application site, excluding public right-of-way was defective—some property owners were not mailed notice as required by the IDO. As a consequence, the appeal was remanded back to the EPC so that the process of notification could be repeated, but effectively, and so that a new (*de novo*) hearing would be held as if the EPC had not held one before **[R. 234-235]**. The purpose of the *de novo* remand was to remedy the notice deficiency so that everyone who qualifies for notice could have an *opportunity* to attend the new EPC hearing or otherwise have their voices heard.

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

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

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

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

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

viii. Despite Appellants' claims, the appeal record shows that the EPC followed the remand instructions.

In the last of Appellants' due process claims in this matter, Appellants claim that the application process did not commence *de novo* as instructed in the remand. Appellants theory is confusing, but it seems that Appellants believe that the Applicants, Planning Staff, and the EPC were instructed in the remand to restart the application process with a new application so that "a fresh review of all available evidence both for and against the proposed plan" would be performed **[R. 38]**. Appellants also apparently believe that because the EPC "did not acknowledge or refute any of the opposition sworn testimony provided at the April 11th hearing," the EPC violated the remand instructions **[R. 38]**. Although unclear, apparently, Appellants are suggesting that the EPC was given instructions on how to evaluate the merits of the Appellants' claims.

Appellants' first contention that the remand instructions required that the Applicants reapply anew is not what was instructed in the remand. The precise purpose for the remand was to renotify property owners who qualify for notification, including neighborhood associations so that anyone who qualifies for notice learns about the new hearing date and time. Said another way, a new EPC hearing was necessary because some property owners did not receive notice of the previous hearing. There were no instructions requiring the Applicants to submit a new application. Because the defect concerned notice, an instruction requiring reapplication would be an unnecessary, wasteful, and an inefficient instruction and procedure.

On the second theory, Appellants read too much into the remand instructions. In remanding the matter for a new hearing, I expressly and purposefully advised the parties that the substantive merits of the appeal arguments regarding the application would not be

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

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

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

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

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

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

> utility structures, WTFs, or buildings. See also Open Space Definitions for Major Public Open Space.

IDO, § 7-1, p.584. (Emphasis added).

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

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

IDO, § 7-1, p.584. (Emphasis added).

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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

[R. 1094].

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

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

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

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

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

> The key difference here is the stadium will sit in what is essentially a bowl, with natural and constructed massing that will absorb sound and block light from escaping the confines of the stadium. As such, we 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]**.

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

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

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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

the sensitive areas are located under existing asphalt or pavement, only a portion of the site requires a sensitive lands analysis **[R. 905]**. In the Summary, it is recommended that:

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

[R. 905]. [22]

These improvements normally occur at the building permit stage. In addition, as a specific condition of the EPC's approval, the Applicants must satisfy IDO, § 6-4(S)(5) by coordinating with the Environmental Services Division of the City to assure that:

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

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

I find nothing in the IDO that was violated by how the Applicants, or the EPC evaluated or handled the sensitive lands in this matter. Conversely, the Appellants have not presented any evidence that the EPC contravened the IDO regarding the evaluation and protection of sensitive lands.

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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]**.

F. Traffic Issues.

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

- Alameda Blvd and Balloon Museum Dr.
- Alameda Blvd and San Mateo Blvd.
- Alameda Blvd and Southbound Pan American Frontage Rd.
- Roy Ave/Tramway Blvd and Southbound Pan American Frontage Rd.

[R. 251].

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

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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.

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

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

[R. 286].

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

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

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

> the standards and criteria of this IDO, applicable City regulations, and any prior approvals related to the subject property.

IDO, § 6-4(V)(3)(d)5. (Emphasis added). Thus, under IDO, § 6-4(V)(3)(d)5, I respectfully recommend that the City Council adopt the above referenced recommendations of Lee Engineering as part of its findings in this matter.

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

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

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

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

i. Master Development Plan Text Amendment Findings.

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

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

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

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

ii. Appellants' challenges to the EPC Site Plan Findings.

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

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

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

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

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

At the April 11, 2024, EPC hearing, the Applicants' agent testified that representatives with New Mexico United Soccer would agree to a good neighbor agreement to allow for better 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.

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

VII. PROPOSED FINDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Commissioner Halstead did not participate in the executive committee vote to support the stadium.

d. There are no objective facts in the record that show Commissioner Halstead made a prior commitment regarding the application or that he prejudged the application.

e. It is not reasonable, without conjecture, to impute the support of Generation Elevate onto Commissioner Halstead under these facts.

8. As an independent tribunal of the City, it was not a conflict of interest for the EPC to judge the application in a quasi-judicial hearing.

a. The fact that one of the applicants is the City of Albuquerque, and the application site is owned by the City, these facts are insufficient as a basis to conclude that the EPC is a biased city tribunal.

b. Appellants allegations of EPC bias as a tribunal are supported only by speculation and conjecture.

9. The method of cross-examination utilized by the EPC was adequate under the circumstances and under law for quasi-judicial administrative hearings.

a. There is no evidence in the record to support Appellants' contention that some cross-examination questions were not answered by the witnesses that were asked to answer the question(s).

b. The record demonstrates that all cross-examination questions submitted to the EPC were asked and answered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. A Traffic Assessment was performed by Lee Engineering.

a. Appellants did not challenge the Traffic Assessment.

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

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

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

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

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

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

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

22. Other than with the recommendation in the Traffic Assessment, the Appellants have not met their burden of proof to demonstrate that the EPC erred in any of its findings under the IDO, or in any of the facts, or under the Comprehensive Plan.

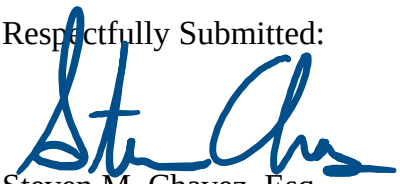
23. The Appellants' challenge to the lease agreement between the City and the lessors is without merit.

a. The legitimacy of any lease agreements regarding the stadium are outside the purview and scope of the IDO, the EPC, and this appeal.

24. The appeal shall be denied.

25. The EPC's decision shall be approved with the added condition that the recommendations restated in Finding 21 above shall be incorporated to the decision as additional conditions of approval.

Respectfully Submitted:



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

Copies to:
City Council
Appellants
Appellees/ Party Opponents
EPC
Planning Staff

Notice Regarding City Council Rules Under IDO, § 6-4(V)(3)(e)

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

City of Albuquerque

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

Action Summary

City Council

Council President, Dan Lewis, District 5
Council Vice-President, Renée Grout, District 9

Louie Sanchez, District 1; Joaquín Baca, District 2;
Klarissa J. Peña, District 3; Brook Bassan, District 4;
Nichole Rogers, District 6; Tammy Fiebelkorn, District 7;
Dan Champine, District 8

Monday, August 19, 2024 **5:00 PM** **Vincent E. Griego Chambers**
One Civic Plaza NW
City of Albuquerque Government Center

TWENTY-SIXTH COUNCIL - FOURTEENTH MEETING

1. ROLL CALL

Present 9 - Joaquín Baca, Brook Bassan, Dan Champine, Tammy Fiebelkorn, Renée Grout, Dan Lewis, Klarissa Peña, Nichole Rogers, and Louie Sanchez

2. MOMENT OF SILENCE

President Lewis led the Pledge of Allegiance in English.
Councilor Bassan led the Pledge of Allegiance in Spanish.

3. PROCLAMATIONS & PRESENTATIONS

4. ADMINISTRATION QUESTION & ANSWER PERIOD

5. APPROVAL OF JOURNAL

August 5, 2024

6. COMMUNICATIONS AND INTRODUCTIONS

7. REPORTS OF COMMITTEES

Finance and Government Operations Committee - August 12, 2024

Deferrals/Withdrawals

b. AC-24-14 PR-2024-009946, RZ-2024-00014: University Heights Neighborhood Association appeals the Environmental Planning Commission (EPC)

decision to Approve a Zoning Map Amendment from R-ML to MX-L for all or a portion of Lots 23 and 24, Block 2, University Heights Addition, located at 201 & 203 Harvard Drive SE, between Silver Avenue SE and Lead Avenue SE, approximately 0.34 acres (the "Subject Site") (K-16-Z)

A motion was made by President Lewis that this matter be Postponed to September 16, 2024. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

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

a. EC-24-176 Mayor's re-appointment of Ms. Frances P. Armijo to the Housing & Neighborhood Economic Development Committee

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

b. EC-24-177 Lease at 4904 4th Street NW

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

c. EC-24-178 Authorization to Supplement a Professional Technical Agreement with Engender, Inc., to Provide Substance Use Treatment

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

d. EC-24-179 Legal Department’s Quarterly Litigation Report for the 3rd Quarter of FY 2024 (Greater than 10,000)

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

e. EC-24-181 Authorization to Supplement a Professional Technical Agreement with Albuquerque Behavioral Health to Provide Substance Use Treatment

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

f. EC-24-182 Revenue & Expense Report for Third Quarter Fiscal Year 2024

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

g. EC-24-187 Approval of the Risk Fourth Supplemental Agreement to add funds for Outside Counsel Legal Services between YLaw P.C. and the City of Albuquerque

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

h. EC-24-188 Year-end Status Report on Fiscal Year 2024 Objectives

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

i. OC-24-15 2023 1st Half CPOA Semi-Annual Report

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

j. OC-24-16 2023 2nd Half CPOA Semi-Annual Report

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

***k.** OC-24-18 Approving And Authorizing The Filing Of A Grant Application For The New Mexico Tourism Department's Route 66 Centennial Grant Program, For Fiscal Year 2025 Through Fiscal Year 2026

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

l. O-24-32 Amending Chapter 14, Article 23 Related To Processes Associated

With The Demolition Of Buildings Or Structures (Bassan, by request)

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

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

b. EC-24-183 Lease Agreement between Commissioner of Public Lands and the City of Albuquerque and Sublease Agreement between the City of Albuquerque and the Board of the New Mexico School for the Blind and Visually Impaired ("NMSBVI")

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

9. ANNOUNCEMENTS

10. FINANCIAL INSTRUMENTS

***a.** R-24-73 Making Findings In Connection With The Inspiration Public Improvement District's Resolution Authorizing The Issuance And Sale Of Special Levy Revenue Bonds; Ratifying And Approving The Issuance And Sale Of The Inspiration Public Improvement District Special Levy Revenue Bonds, Series 2024, As Substantially Consistent With The Requirements Of City Ordinance Enactment No. 0-2003-12 And City Council Resolution No. R-20-33, Enactment No. R-2020-038 (Sanchez, by request)

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

11. APPEALS

a. AC-24-15 PR-2023-009363 / SI-2023-01635 (Major Amendment to the Balloon Fiesta Master Development Plan and Site Plan) and PR-2023-009363 / SI-2023-01638 (Site Plan - EPC) Pat Hauser and interested parties appeal the Environmental Planning Commission (EPC) decision to Approve a Major Amendment to the Balloon Fiesta Park Master Development Plan / Site Plan for Subdivision and a new Site Plan - EPC for all or a portion of Tracts A-1 through G-1, Plat of Tracts A-1 through H-1, I-1-A & I-2-A, Tract I-A-A, Plat of Tracts A-1 through H-1, I-1-A & I-2-A, and a fraction of Lot 2, located in NE ¼ NE ¼ Sec 11, T11N, R3E,

a/k/a Tracts F & G, Heirs of Filiberto Gurule Tract, located at Balloon Fiesta Park, between Paseo del North Boulevard NE and Roy Avenue NE, approximately 370 acres (B-17-Z, C-16-Z & C-17-Z)

A motion was made by President Lewis to Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:

For: 8 - Baca, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

Against: 1 - Bassan

12. GENERAL PUBLIC COMMENTS

14. FINAL ACTIONS

a. O-24-21 C/S Amending Article 12 Of Chapter 13 Of The Revised Ordinances Of Albuquerque ("The Albuquerque Minimum Wage Ordinance") (Rogers, by request)

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Champine that the rules be suspended for the purpose of extending the meeting to 11:15 p.m. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

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

For: 3 - Baca, Fiebelkorn, and Rogers

Against: 6 - Bassan, Champine, Grout, Lewis, Peña, and Sanchez

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

a. EC-24-180 Interim IPRA "backlog" report

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

c. EC-24-185 Report of All Grant Applications for January-June 2024

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

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

14. FINAL ACTIONS

b. O-24-35 Amending Chapter 2, Article 2, Of The Intergovernmental Relations Ordinance To Include New Language For Preparing The City's Federal And State Priorities Legislation (Bassan and Grout)

A motion was made by Councilor Bassan that this matter be Postponed to September 4, 2024. The motion carried by the following vote:

For: 8 - Baca, Bassan, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

Against: 1 - Champine

There being no further business, this City Council meeting adjourned at 11:06 p.m.