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

APPEAL NO. AC-26-08

PR-2021-005222; ZMA-2026-00012 (Appeal)
ZMA-2026-00008 (Zoning Map Amendment – EPC)

SAWMILL COMMUNITY LAND TRUST,

Appellant,

and

TITAN DEVELOPMENT, through its agent
CONSENSUS PLANNING, INC.,

Applicant-Appellee.

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I. INTRODUCTION AND SUMMARY OF DECISION

Appellant Sawmill Community Land Trust ("SCLT" or "Appellant") appeals the decision of the City of Albuquerque's Environmental Planning Commission (EPC) approving a Zoning Map Amendment for approximately 4.1 acres located at 1050 18th Street NW, at the intersection of Bellamah Avenue NW and 18th Street NW (the "subject site"). On June 18, 2026, on a vote of

5 to 2, the EPC changed the zoning of the subject site from NR-BP (Non-residential – Business Park) to MX-H (Mixed-use – High Intensity), based on Staff Findings 1 through 16 **[R. 014, 160-161]**. The Applicant-Appellee, Titan Development, sought the amendment to facilitate the eventual redevelopment of an existing warehouse and office building into multi-family dwellings **[R. 014]**. A site plan is not part of the zone change application. The material facts are undisputed.[1]

SCLT does not oppose redevelopment of the subject site, and it does not contend that the existing warehouse use must continue. What SCLT opposes is the zone district the Applicant-Appellee requested and the EPC approved. SCLT contends that MX-H permits a building too tall and too intense for this location, that MX-M would have been the appropriate district, that the decision conflicts with goals and policies of the Comprehensive Plan directed at protecting neighborhood character, that the amendment creates a spot zone rather than a "transition" zone, and that the surrounding streets cannot absorb the traffic that redevelopment will generate **[R. 008-011]**.

I reviewed the record in full and held a quasi-judicial appeal hearing on October 7, 2026, at which the Appellant, the Applicant-Appellee, and Planning Staff were afforded an opportunity to testify, cross-examine testimony, present argument, and supplement the record. Based on that review and hearing, I respectfully recommend that the City Council deny the appeal and affirm the EPC's decision approving the application. As discussed in detail below, the EPC's decision is well supported by substantial evidence in the record, and I find no error in how the EPC applied the Review and Decision Criteria of IDO, § 6-7(G)(3), to the facts. Further, the Appellant has not met

[1] The application for the Zoning Map Amendment was submitted on May 7, 2026, and Planning Staff expressly determined that it "is subject to the regulations and processes of the IDO effective as of May 6, 2026" **[R. 041]**. See also Project Memo 1, stating that "[t]he IDO Amended as of May 6, 2026, will be used to review this request" **[R. 095]**. Under IDO, § 1-7(C), an application is reviewed and decided based on the requirements in effect when it was accepted as complete by the City Planning Department. The IDO amended as of May 6, 2026, therefore governs this application and this appeal. Because the application was submitted one day after that effective date, I state the point expressly.

its burden of proof under the IDO to sustain the appeal on any of the issues presented. What follows is a discussion of the relevant factual and procedural history, a discussion of the standard of appellate review, and a detailed discussion of the facts and the IDO criteria applicable to the issues the Appellant raises.

Two matters merit emphasis at the outset. First, one premise of the appeal is factually incorrect. In its appeal, SCLT states that MX-H permits a building height of 72 feet **[R. 010]**. The maximum height allowed in the MX-H zone district at this location is 68 feet, and that maximum applies only within 100 feet of the lot line **[R. 004, 151]**. Beyond that 100-foot band, in the core of the site, neither MX-H nor the MX-M district that SCLT prefers sets any maximum height. However, along the boundaries of the site, height is further limited by standards that apply whatever the zone district. These standards are 30 feet within 100 feet of the adjacent R-1 Protected Lots to the east under the Neighborhood Edges standards, and 15 feet within 25 feet of the front lot line under CPO-12. The real difference between MX-M and MX-H is therefore twenty feet of height within the 100-foot band along the remaining lot lines.

Second, two commissioners voted against the request because, in their own judgment, MX-H is more intense than this location can comfortably support **[R. 158-159]**. That is a reasonable position, and it was aired at length and genuinely considered at the hearing. A disagreement among commissioners about the wisdom of a zone change is not, however, a legal defect in the decision that the majority reached. As explained below, the applicable standard under New Mexico law is a question of whether the majority's decision was rational and supported by substantial evidence in the whole record, not whether every commissioner agreed with it.

II. RELEVANT BACKGROUND

There is no dispute on the relevant background facts in this appeal. The subject site comprises approximately 4.1 acres and is currently developed with a warehouse and office building serving a wholesale distributor of specialty building products **[R. 014, 015]**. The existing structure was built in approximately 1987 under M-1, Light Manufacturing zoning **[R. 015]**. In 1996, the City adopted the Sawmill/Wells Park Sector Development Plan, which rezoned the property S-I (Sawmill Industrial) **[R. 015]**. That Sector Development Plan was repealed in 2018 when the IDO took effect, and the S-I zoning was converted to NR-BP **[R. 015]**.

The subject site lies wholly within an Area of Change as designated by the Albuquerque/Bernalillo County Comprehensive Plan (Comp. Plan), and it is within the Sawmill/Wells Park Community Metropolitan Redevelopment Area, the Central Albuquerque Community Planning Area, and the Sawmill/Wells Park Character Protection Overlay zone, CPO-12 **[R. 015, 016; R. 003]**. It is also located within one-quarter mile of the Rio Grande Boulevard Major Transit Corridor Area **[R. 015]**.

Chronologically, the application for the Zoning Map Amendment was submitted on May 7, 2026 **[R. 041]**. Planning Staff reviewed the application, referred it to thirteen City and outside agencies, and gave notice to the Sawmill Area Neighborhood Association, which the Office of Neighborhood Coordination identified as the association within 660 feet of the subject site, and to other property owners within 100 feet of the subject site **[R. 022, Fndgs. 14 and 15; R. 122-125]**. No agency objected to the amendment on the merits; several agencies identified matters that would attach to any future development, including drainage and flood control review, water and sewer capacity review, and coordination with PNM regarding existing easements **[R. 123-125]**. These

matters, however, are standard concerns for all development and are dealt with at the site planning stage of development.

City Planning Staff recommended approval of the zone change and proposed sixteen EPC findings addressing the Review and Decision Criteria of IDO, § 6-7(G)(3) **[R. 014-022]**. The EPC held a public quasi-judicial hearing on the application on June 18, 2026 **[R. 127-161]**. Staff presented its report and recommendation, and the Applicant-Appellee's representative presented the justification for the request **[R. 128-140]**. Five members of the public spoke **[R. 141-147]**. The Chair then offered the opportunity for cross-examination, and no one accepted the offer **[R. 148]**. Staff and the Applicant-Appellee gave closing statements, the commissioners discussed the request at length, and the EPC voted 5 to 2 to approve the amendment based on Staff Findings 1 through 16 **[R. 148-161]**. The Notice of Decision issued the same day **[R. 013-023]**.[2]

The Notice of Decision advises that the deadline to appeal was July 3, 2026 **[R. 023]**. SCLT filed its Notice of Appeal on July 3, 2026, and the Planning Director reports the appeal as timely submitted on that date **[R. 002, 007-012]**. I find that the appeal is timely filed under IDO, § 6-4(U)(3)(a)1.

In its appeal, SCLT asserts that the EPC acted arbitrarily and capriciously **[R. 008]**. Specifically, SCLT contends that the approved zoning permits a building of five to six stories where all immediately adjacent properties are limited to two or three stories; that the decision conflicts with Comprehensive Plan Goal 4.1 (Character), Policy 4.1.3 (Placemaking), and Policy 9.2.1 (Compatibility); that the amendment is a spot zone rather than a transitional zone; that the existing infrastructure lacks adequate capacity under IDO, § 6-7(G)(3)(e); that the justification

[2] The Chair expressly offered the opportunity for cross-examination to "those community members with standing" and no one accepted the offer **[R. 148]**. Nothing in this proposed disposition turns on that fact, but it forecloses any suggestion that the EPC's hearing denied any party an opportunity to be heard.

rests on the property's location on a major street under § 6-7(G)(3)(f) and on economic considerations under § 6-7(G)(3)(g); and that traffic on 18th Street NW and Bellamah Avenue NW has become a serious problem **[R. 003-005, 008-011]**. SCLT asks that the zone district be MX-M rather than MX-H, or in the alternative that I remand the matter to the EPC **[R. 011]**.[3]

The relevant and material documents in the record include:

1. The Planning Director's Interoffice Memorandum to the President of the City Council dated August 11, 2026, summarizing the appeal and Planning Staff's response to each issue raised **[R. 001-006]**;
2. SCLT's Notice of Appeal **[R. 007-012]**;
3. The EPC's Notice of Decision dated June 18, 2026, containing Findings 1 through 16 **[R. 013-023]**;
4. The EPC Staff Report and its attachments, including the Applicant-Appellee's justification letter, the zone district comparison tables, the agency comments, and the public notice documentation **[R. 024-125]**;
5. The verbatim minutes of the EPC's June 18, 2026 hearing **[R. 126-161]**; and
6. The arguments and testimony presented at the October 7, 2026 appeal hearing.[4]

Other than the Comp. Plan and the Sawmill/Wells Park Community Metropolitan Redevelopment Area Plan (MRA Plan), no additional evidence (factual or otherwise) is required in order to apply the applicable IDO provisions to the issues presented and render a proposed disposition of this matter to the City Council.

[3] I note that the basis of a remand rests on the fact that the record includes minor factual errors regarding height. I find that these errors are harmless principally because, despite the errors, the EPC discussed the correct height in its open deliberations at the hearing. These harmless errors are discussed below.

[4] Both parties presented supplemental arguments in exhibits which were accepted into the record. The exhibits were not new evidence, only argument, and they do not change my analysis of this matter, but they are in the record.

III. STANDARD OF REVIEW

A review of an appeal under the IDO is a whole record review. The criteria for review are set forth in IDO, § 6-4(U)(4)(a), which provides that the appeal shall be adjudicated based on "whether the decision-making body or the prior appeal body made one of the following mistakes:"

> 1. The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.
> 2. The decision being appealed is not supported by substantial evidence.
> 3. The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

IDO, § 6-4(U)(4)(a).

As stated above, SCLT asserts that the EPC's decision was arbitrary and/or capricious and should be reversed **[R. 003]**. Under New Mexico law, arbitrary and capricious action is action taken that "is unreasonable or without a rational basis, when viewed in light of the whole record." *Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission*, 2003-NMSC-005, ¶ 17. Moreover, it is action taken "without proper consideration in disregard of the facts and circumstances." *Perkins v. Department of Human Services*, 1987-NMCA-148, ¶ 20. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 1994-NMSC-126, ¶ 21.

Interpretation of the IDO is a question of law reviewed de novo under the rules of construction applicable to statutes. *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶¶ 4-5; *Smith v. Bernalillo Cnty. Bd. of Cnty. Comm'rs*, 2005-NMSC-012, ¶ 18. Plain language is the primary indicator of intent, words are given their ordinary meaning, terms that the City Council did not include in the IDO are not implied or inserted to change its meaning, and the

IDO is read as a whole so that every applicable part is given effect. *Hinkle*, 1998-NMSC-050, ¶¶ 5-6; *Smith*, 2005-NMSC-012, ¶ 19.

Of particular significance in this appeal, in an administrative, quasi-judicial appeal the standard for judging how the EPC interpreted and applied the IDO's provisions and standards, or the policies of the Comprehensive Plan is whether the interpretation is reasonable and rational under the evidence in the record, and not whether substantial evidence may exist to support the Appellant's interpretation. *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 is accorded deference. *Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, ¶ 17.

The burden of proof does not shift on appeal. Under IDO, § 6-4(E)(3), an applicant "bears the burden of providing a sound justification for the requested decision, based on substantial evidence," and under § 6-4(U)(3)(a)3 that burden remains with the party bearing it below. It is therefore the Appellant's burden in this appeal to demonstrate that one of the mistakes enumerated in § 6-4(U)(4)(a) occurred.

The Land Use Hearing Officer (LUHO) is an independent hearing officer and has been delegated the authority by the City Council to hold quasi-judicial appeal hearings regarding appeals under the IDO, to make findings exclusively on the record of the decision appealed as supplemented by any evidence allowed at the hearing, and to recommend that the City Council affirm, reverse, or otherwise modify the lower decision to bring it into compliance with the standards and criteria of the IDO, applicable City regulations, and any prior approvals related to the subject property. See IDO, § 6-4(U)(3)(d)6 and 7. Where the LUHO determines that a matter should be remanded, the LUHO may order the remand without approval by the City Council, setting forth the reasons for the remand and the matters to be reconsidered. IDO, § 6-4(U)(3)(d)8.

Applying these standards, I first address standing under the IDO and then the substantive issues raised by SCLT in this appeal.

IV. DISCUSSION

As described above, three bodies of regulation and policy documents govern this appeal. The first is IDO, § 6-7(G)(3), which sets out the Review and Decision Criteria that an application for a Zoning Map Amendment must satisfy. The second is the Comp. Plan, and the third is the MRA Plan, which the EPC considered in applying the IDO criteria. Before reaching the substantive merits, I address the Appellant's standing to appeal, the appearance-of-record requirement, and whether a remand is necessary.

A. The Appellant has standing to appeal and satisfied the appearance-of-record requirement of IDO, § 6-4(U)(2)(b).

SCLT asserts standing to appeal the EPC's decision as a property owner on the basis of proximity to the subject site under IDO, § 6-4(U)(2)(a)5 and Table 6-4-2 **[R. 002]**. Under Table 6-4-2, a property owner other than the applicant has standing to appeal a Zoning Map Amendment if the owner's property lies within 330 feet of the subject property, measured from the nearest lot line. SCLT states, and no party disputes, that it owns, leases, maintains, and holds property rights in approximately thirty-three acres of land immediately adjacent to the subject site to the west **[R. 008, 012]**. Immediately adjacent property is plainly within 330 feet. I therefore find that SCLT has standing to appeal under § 6-4(U)(2)(a)5 and Table 6-4-2.[5]

[5] SCLT is a non-profit community development corporation and a property owner. It is not a neighborhood association. The Office of Neighborhood Coordination identified the Sawmill Area Neighborhood Association as the association within 660 feet of the subject site, and that association was separately notified **[R. 022, Fndg. 14]**. The petition requirement of IDO, § 6-4(U)(2)(a)5.b—a petition signed by property owners or tenants of a majority of Bernalillo County Assessors' lots within 660 feet of the subject property—applies only to neighborhood associations and has no application to SCLT.

Under the IDO applicable to the appeal, standing also requires an appearance of record. IDO, § 6-4(U)(2)(b)1 provides that for Decisions Requiring a Public Hearing and Policy Decisions pursuant to Table 6-1-1, "the appellant must have made an appearance of record to have standing to appeal, except in cases where an appellant is alleging improper notice." A Zoning Map Amendment – EPC is a Policy Decision decided under § 6-7(G). An appearance of record may be made, among other ways, through "[v]erbal comments made by the eventual appellant or appellant's agent provided at a public hearing about the subject case during the review process before the relevant decision-making body." IDO, § 6-4(U)(2)(b)2.c.

The record establishes that representatives of SCLT spoke at the EPC's June 18, 2026 hearing **[R. 141-147]**. Planning Staff expressly so found: "The appellant made an appearance of record through verbal comments at the EPC hearing on June 18, 2026" **[R. 002]**. I therefore find that SCLT satisfied the appearance-of-record requirement of § 6-4(U)(2)(b), and that SCLT has standing to prosecute this appeal.

B. A remand is unnecessary.

At the appeal hearing, as a potential remedy, SCLT requests that the case be remanded to the EPC to clarify mistakes on the record. The record does contain mistakes, and the ones that matter concern building height. The first concerns the height allowed in the MX-H zone district. SCLT's Notice of Appeal states that MX-H allows a building height of 72 feet, or five to six stories **[R. 010]**. That figure is incorrect. MX-H allows a maximum of 68 feet within 100 feet of the lot line, with no stated maximum beyond that distance **[R. 004]**. SCLT's own representative stated the 68-foot figure correctly at the hearing **[R. 144]**.

The second concerns the existing NR-BP zoning. Finding 13H of the Notice of Decision states that the current allowable maximum height for NR-BP at the subject site is 65 feet, "which

is nearly equivalent to the 68 feet maximum height allowable within 100 feet of the lot line" under MX-H **[R. 022]**. Staff made the same comparison at the hearing **[R. 133, 151]**. Sixty-five feet is the base-zone maximum for NR-BP, but that figure does not account for CPO-12, which caps NR-BP at 35 feet at the subject site **[R. 004, 153]**. See also § 3-4(M)(4). Measured against the height actually allowed today, the zone change raises the allowable height within 100 feet of the lot line from 35 feet to 68 feet, not from 65 feet to 68 feet. The hearing transcript contains other misstatements of the same kind. At one point Staff described the MX-H height beyond 100 feet from the lot line as 68 feet **[R. 151]**, when the IDO sets no maximum there **[R. 004, 154]**. In confirming the increase from 35 to 68 feet, Staff also referred to the MX-H limit as 65 feet **[R. 154]**. Apart from these height errors, the record contains a few typographical and clerical errors in case captions, case numbers, and acreage **[R. 001, 007, 013, 022, 024, 099, 126]**.

None of these errors requires a remand. The EPC did not decide this case on a mistaken understanding of the height at issue. When Commissioner Likar asked whether the zone change would take the subject site "from 35 to 68" feet, Staff confirmed that it would, and that CPO-12 currently caps NR-BP at 35 feet **[R. 154]**. Staff also confirmed that CPO-12 sets no height limit for MX-M or MX-H **[R. 153]**, and the Planning Department explained that beyond 100 feet from the lot line, height is technically unlimited under either MX-M or MX-H **[R. 154]**. The commissioners then debated the 68-foot limit directly **[R. 159]**. The correct figures were therefore before the EPC when it voted, and the incomplete comparison in Finding 13H does not reflect a misunderstanding by the EPC of what the zone change would allow. The 72-foot figure appears only in SCLT's Notice of Appeal, which was filed after the EPC's decision and could not have affected it. The height limits that actually apply at the subject site are addressed in Section C below. The typographical and clerical errors are likewise immaterial. None bears on any finding the EPC made under IDO, § 6-7(G)(3), and SCLT does not contend that any of them misled it, affected

notice, or prevented any party from participating. To the contrary, SCLT appeared and spoke at the hearing **[R. 141-147]**. An error that neither affects the outcome of the decision nor prejudices a party's ability to participate is harmless. None of these errors establishes any of the grounds for appeal under IDO, § 6-4(U)(4)(a), and none requires the EPC to reconsider any matter under § 6-4(U)(3)(d)8. I therefore find that these errors are harmless.

Nor is a remand warranted for any other reason. SCLT submitted no new evidence that changes the relevant facts, and it identifies no gap in the record that requires the EPC to reconsider its decision. While the EPC's findings contain no direct statement regarding the purpose of the MX-H zone at the site under IDO, § 2-4(D)(1), specifically its "appropriateness," I find that the decision is well supported by the record.

The parties do not dispute the material facts. What they dispute is whether the EPC correctly applied the IDO's review and decision standards to those facts, and that question can be answered from the existing record. The record of the EPC's proceedings is complete, and nothing in it needs further development by the EPC before that question can be decided.

Because the height misstatements and clerical errors in the record are harmless, and because the record is complete and sufficient to decide the issues raised in this appeal, I find that a remand under IDO, § 6-4(U)(3)(d)8 is unnecessary, and that this appeal can be disposed of on the record before me.

C. The maximum height allowed in the MX-H zone district at this site is 68 feet within 100 feet of the lot line, not 72 feet; the core of the site has no stated maximum under either MX-H or MX-M; and standards that apply regardless of the zone district further limit height at the subject site.

SCLT's central concern in its appeal is building height. Its Notice of Appeal states that the approved zoning permits a building of five to six stories and describes the height allowed as 72 feet **[R. 010]**. As stated above in Section IV.B, that is incorrect. Under IDO, Table 5-1-2, the

citywide maximum building height in the MX-H zone district is 68 feet, and that maximum applies *within* 100 feet of the lot line on all sides **[R. 004, 151]**. Beyond 100 feet from the lot line, Table 5-1-2 sets no maximum height in MX-H—but the same is true of the MX-M zoning that SCLT prefers, and of the existing NR-BP zoning before the overlay limit discussed below is applied **[R. 152]**.[6]

This feature of the zone district tables in IDO, Table 5-1-2 drives much of the concern in this appeal, and because of the complexity of layers involved it deserves a full explanation. The 68-foot limit in the MX-H district does not apply across the whole subject site. It applies to the portions of a building within 100 feet of a lot line, which on a 4.1-acre site is a band running around its perimeter. For simplicity, the interior of the site, the area more than 100 feet from every lot line, is what I refer to as the core of the subject site. Within this core, Table 5-1-2 sets no maximum building height. Read alone, the base zone standards would allow a building in the core to rise above 68 feet with no stated limit **[R. 151-152]**. However, at the appeal hearing the Applicant-Appellee, through its agent Consensus Planning (James Strozier), stipulated that, because of the construction materials that will be used in any future development of the site, building height even in the core will not exceed 68 feet **[LUHO hearing]**.[7]

Aside from the Applicant-Appellee's stipulation, two points follow, and both bear directly on SCLT's argument. First, unlimited height in the core is not unique to MX-H. The MX-M zone district that SCLT asks for is structured the same way under the IDO for its core. The MX-M zone limits height to 48 feet within 100 feet of the lot line and sets no maximum beyond that distance

[6] At the EPC hearing, Staff twice stated the MX-H maximum as 65 feet within 100 feet of the lot line **[R. 154]**. IDO, Table 5-1-2, sets the citywide MX-H maximum at 68 feet. The misstatement is immaterial to the analysis, and the correct figure of 68 feet appears elsewhere in the record **[R. 004, 151]**.

[7] A certified transcript is not available at the time of writing this proposed disposition.

[R. 152]. Whatever risk SCLT sees in unlimited height at the core would exist equally under the district SCLT prefers. The choice between MX-M and MX-H therefore does not decide how tall a building in the core may be. It bears only on how tall a building may be within the 100-foot band along the lot lines: 48 feet or 68 feet. Second, the core does not stand alone. The 100-foot band surrounds it on every side, and the standards discussed next further confine what height may be placed on the site.

Height at the subject site is also governed by standards that apply regardless of the underlying zone district. It is undisputed that the site is adjacent to lots zoned R-1 to the east. Under the Neighborhood Edges standards of IDO, § 5-9, any portion of a primary or accessory building within 100 feet of the nearest Protected Lot property line "shall step down to a maximum height of 30 feet." IDO, § 5-9(C)(1). This limitation was confirmed at the hearing and applies to the eastern edge of the subject site whatever the zone district **[R. 004, 153, 154]**.[8]

The practical effect of the Neighborhood Edges safeguard on this site is significant. Along the eastern side of the subject site, where it faces the R-1 Protected Lots, the 68-foot MX-H limit does not control. The 30-foot step-down does, and it reaches every portion of a building within 100 feet of the nearest Protected Lot property line. No building on the subject site may rise above 30 feet anywhere within that distance of the R-1 lots to the east, whether the site is zoned MX-H, MX-M, or NR-BP. Vice-Chair Carver, who voted against the request, said at the hearing that he was glad this limitation had been placed on the record **[R. 158-159]**, and the Applicant-Appellee stated its willingness to work with the adjacent property owners on the treatment of the eastern

[8] The post-appeal Planning Staff memorandum cites the Neighborhood Edges standard as "IDO § 16-14-5-9(c)(1)" **[R. 003]**. The correct citation is IDO, § 14-16-5-9(C)(1). Protected Lots are defined at § 5-9(B)(1) as lots in any R-A, R-1, R-MC, or R-T zone district containing low-density residential development.

edge **[R. 155-156]**. The step-down is not discretionary. It will be applied to any site plan proposed for the subject site.

The subject site also lies within CPO-12. Under IDO, § 3-4(M)(5)(c)1, in Mixed-use and Non-residential zone districts within that overlay, "[n]o portion of any building within 25 feet of the front lot line shall exceed 15 feet in height." In addition, under the IDO, building height bonuses do not apply in any Overlay zone. See IDO, § 3-4(M)(4)(d); § 3-1(C). On the subject site as presently zoned, the overlay caps NR-BP at 35 feet; the overlay establishes no maximum for MX-M or MX-H. IDO, § 3-4(M)(4)(b); **[R. 153, 154]**.

Taken together, these standards produce a building envelope at the subject site that is far more restrained than the phrase "no maximum height" suggests. Under MX-H as applied here, no portion of a building within 25 feet of the front lot line may exceed 15 feet; no portion within 100 feet of the nearest Protected Lot to the east may exceed 30 feet; no portion within 100 feet of any other lot line may exceed 68 feet; and no height bonus is available to raise any of those limits. Only the core, beyond all of those bands, is without a stated maximum. Even there, practical limits remain. The Applicant-Appellee's stated intent is a five-story building using the State building code's allowance for five-story wood frame construction **[R. 045, 136]**, and any building actually proposed must pass through site plan review, including traffic scoping, drainage and flood control review, water and sewer capacity review, and coordination with PNM regarding existing easements **[R. 005, 123-125, 157]**. Those requirements do not set a number in feet, but they will govern what can actually be built in the core. It also bears repeating that the Applicant-Appellee has agreed to limit height in the core to 68 feet.

The remaining difference, then, is between MX-M, which permits 48 feet within 100 feet of the lot line, and MX-H, which permits 68 feet within that same distance. IDO, Table 5-1-2; **[R. 151-152]**. That twenty-foot difference is real, and it was the subject of genuine debate among the

EPC commissioners. The record reflects that the difference exists in practical terms because the State building code now permits five-story wood frame construction that did not exist when these zone districts were written, and that the Applicant-Appellee seeks the additional height in order to build a five-story rather than a three-story building **[R. 045, 136]**. Choosing a zone district that accommodates the intended building form is a legitimate reason to request one district rather than another, and I find that the EPC did not act arbitrarily or capriciously in approving it.

SCLT further points out that the properties immediately adjacent to the subject site are limited to 48 feet **[R. 010]**. That is accurate as to the PD development to the north and the MX-M zoning to the west **[R. 022, Fndg. 13H]**. It is not, however, the whole picture. The record establishes that four separate properties zoned MX-H, together comprising more than 7.3 acres, already exist within one-quarter mile of the subject site, and that three of those four properties lie within 750 feet of it **[R. 005, 022]**. The adjacent NR-LM property to the south carries an allowable maximum height of 65 feet **[R. 022]**. The area is not uniformly low-rise; it contains a genuine mix of heights and intensities. On this record the EPC had substantial evidence from which to find that adding one more MX-H property to that mix does not introduce a building height foreign to the area.[9]

D. Because the subject site lies wholly within an Area of Change, the requirement in IDO, § 6-7(G)(3)(b) is inapplicable, and the EPC correctly applied § 6-7(G)(3)(c).

SCLT's Notice of Appeal quotes IDO, § 6-7(G)(3)(b), and SCLT argues that the EPC failed to demonstrate that the new zone district would reinforce or strengthen the established character

[9] Finding 13H records that maximum height for the PD development to the north is 48 feet and 48 feet for the property zoned MX-M to the west **[R. 022]**. The property to the north is additionally restricted to 48 feet by an approved Site Plan, Project # 1005354 **[R. 004]**. SCLT's Notice of Appeal attributes the 48-foot limit on its own land to the MX-M zone district **[R. 010]**, which is correct as to the property to the west.

of the surrounding area **[R. 010]**. Respectfully, that provision has no application to this request. By its own terms, § 6-7(G)(3)(b) applies only "[i]f the subject property is located partially or completely in an Area of Consistency (as shown in the ABC Comp Plan, as amended)." The record clearly establishes that the subject site is located wholly within an Area of Change **[R. 015, 019]**. The applicable provision is § 6-7(G)(3)(c), which applies where the subject property "is located wholly in an Area of Change" and requires that the applicant demonstrate the existing zoning is inappropriate because it meets any of three stated criteria, including that:

> 1. There was a typographical or clerical error when the existing zone district was applied to the property.
> 2. There has been a *significant change* in neighborhood or community conditions affecting the site that justifies this request.
> 3. A different zone district is *more advantageous* to the community as articulated by the ABC Comp Plan, as amended (including implementation of patterns of land use, development density and intensity, and connectivity), and other applicable adopted City plan(s).

IDO, § 6-7(G)(3)(c)1, 2, and 3 (emphasis added).

The EPC found that the second and third provisions are satisfied. In Finding 13C of its decision, the EPC expressly concluded that "[t]here have been significant changes in neighborhood and community conditions that affect the site that can justify this request, and the request could be more advantageous with thoughtful, context-driven development" **[R. 020, Fndg. 13C]**. These findings are well supported by the evidence in the record.

The record shows that the existing NR-BP zoning descends from the early industrial character of the area, expressed first in M-1 Light Manufacturing zoning and then in the S-I zoning applied by the 1996 Sector Development Plan **[R. 015, 020]**. The City designated the area as blighted and in need of private investment through the Metropolitan Redevelopment Area plan and adopted Tax Increment Financing for the district in 2006 **[R. 015, 155]**. Since the 2000s, the area

has brought in hotels, a food hall, galleries, breweries, artist studios, and multi-family housing, and the repurposed 1930s lumber warehouse has become the Sawmill Market **[R. 015, 155-156]**. The EPC also noted that the 2024 Central Albuquerque Community Planning Area Assessment advocated for greater housing density, permanently affordable and transitional housing options, and more mixed uses **[R. 015, Fndg. 4; R. 020; R. 123]**. Because the City Council accepted, rather than adopted, that Assessment, I do not rely on it in this proposed disposition, and the changed conditions described above are sufficient on their own. These are changed conditions, and on this record, the EPC could reasonably conclude that a non-residential business park district no longer fits a property in the middle of that transition, and that a mixed-use district is more advantageous to the community as the Comp. Plan articulates it. That conclusion is entitled to deference under law. *Huning Castle Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-123, ¶ 15.

E. The EPC correctly found that the request furthers a preponderance of the applicable Goals and Policies of the Comprehensive Plan and the Sawmill/Wells Park MRA Plan under IDO, § 6-7(G)(3)(a).

SCLT contends that the decision conflicts with Comprehensive Plan Goal 4.1 (Character), Policy 4.1.3 (Placemaking), and Policy 9.2.1 (Compatibility), and, in substance, that MX-H does not protect the established Sawmill community because it permits buildings taller and more intense than those around it **[R. 003-005, 008-011]**. SCLT also relies on the MRA Plan, including the community preferences documented in its market study, as evidence that the community wishes to preserve the area's original scale. These arguments arise under IDO, § 6-7(G)(3)(a), which requires that a proposed zone change be "consistent with the health, safety, and general welfare of the City as shown by furthering (and not being in conflict with) a preponderance of applicable Goals and Policies in the ABC Comp Plan, as amended, and other applicable plans adopted by the City."

Two features of § 6-7(G)(3)(a) frame the analysis. First, it asks whether the request furthers a preponderance of the applicable Goals and Policies, not whether it furthers every one of them to the degree an opponent would prefer. The Comp. Plan's goals pull in more than one direction, and weighing them is the task the IDO assigns to the EPC. Its weighing is entitled to deference so long as it is reasonable and rational on the record. *Huning Castle Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-123, ¶ 15. Second, the community-character goals SCLT relies on must be read together with the Plan's other goals, including those that direct growth to areas like the subject site. The same Plan, in Goal 5.6 and Policy 5.6.2, directs "growth and more intense development to Centers, Corridors, industrial and business parks, and Metropolitan Redevelopment Areas where change is encouraged" **[R. 038]**. The subject site is both in an Area of Change and in a Metropolitan Redevelopment Area. The EPC found that the request furthers Goal 4.1, Policies 4.1.3 and 4.1.4, Goals 5.2 and 5.6, Policies 5.2.1 and 5.6.2, and Policy 9.2.1, and that it presents no significant conflict with the Comprehensive Plan **[Fndgs. 7, 8, 9, and 13A; R. 037-039, 043-044]**.

Goal 4.1 calls on the City to "[e]nhance, protect, and preserve distinct communities," and Policy 4.1.3 calls on it to "[p]rotect and enhance special places in the built environment that contribute to distinct identity and sense of place" **[R. 037]**. The EPC found that the request furthers both because it would enhance and preserve the emerging higher-density, mixed-use community to the north, west, and south of the site, would not introduce new harmful uses, and would allow uses similar to or less intense than the existing mixed-use development of the adjacent Sawmill Market area **[R. 037; Fndg. 7]**. That finding reflects the Sawmill area as the record describes it. SCLT reads the community more narrowly, contending that it includes the single-family homes on the R-1 lots adjacent to the site's eastern edge and that MX-H zoning would not protect them. The adjacent R-1 homes are not left unprotected. Under the Neighborhood Edges standards, no

portion of a building within 100 feet of those Protected Lots may exceed 30 feet, whatever the zone district. IDO, § 5-9(C)(1) **[R. 004, 153, 154]**.

In addition, as discussed in Section D above, the MX-H zoning applies to part of a former industrial area that the City designated as blighted and has spent three decades deliberately redeveloping into a mixed-use, mixed-income neighborhood. Both goals pair protection with enhancement, and the EPC could reasonably conclude that converting a business park warehouse site to residential use enhances that community.

SCLT's argument that MX-H does not protect the community also overlooks where the protection the Plan contemplates actually comes from. The EPC found, under Policy 4.1.4, that existing neighborhoods are protected through the IDO's Use and Development Standards and other City regulations that will govern any future development **[R. 037]**. As discussed in Section C above, those standards apply here whatever the zone district: no portion of a building within 100 feet of the R-1 Protected Lots to the east may exceed 30 feet, no portion within 25 feet of the front lot line may exceed 15 feet, and no height bonus is available within CPO-12. This important point was confirmed at the appeal hearing, at which the Applicant-Appellee's agent, James Strozier, and Senior Staff Planner Megan Jones testified that the bonuses are inapplicable at this site.

The R-1 lots to the east lie in an Area of Consistency **[R. 034]**, and the Neighborhood Edges step-down is the mechanism by which the IDO carries out Goal 5.6's direction that development near Areas of Consistency reinforce their character. Policy 9.2.1, for its part, encourages housing development that "enhances neighborhood character, maintains compatibility with surrounding land uses, and responds to its development context . . . with appropriate densities, site design, and relationship to the street" **[R. 039]**. The EPC found that the request furthers that policy while candidly noting that site design cannot be analyzed or guaranteed because no site plan is before it **[R. 039; Fndg. 9]**. The EPC accurately considered that site design and its relationship

to the street are evaluated when a site plan is proposed. At the zone change stage, the question is whether the district permits housing that can meet the policy, and MX-H does.

The MRA Plan points in the same direction. The MRA Plan is incorporated into the record **[Fndg. 4]**, and its adopted goals are to enhance the Sawmill/Wells Park area as a mixed-income community by providing a permanent mix of affordable and market-rate homes; to foster a commitment to lifelong learning and opportunities for the celebration of cultural diversity; to create a walkable and livable community; and to create community-scale work, business, and wealth-building activities. The subject site lies within the MRA Plan's Cultural/Commercial Corridor Sub-area, which the Plan identifies for a mix of uses **[R. 043, 124]**.

The amendment permits housing on a site where the existing NR-BP zoning does not allow it, adjacent to SCLT's own permanently affordable housing, and within walking distance of the Sawmill Market, the museums on Mountain Road, and the Rail Trail **[R. 034-035]**. The Metropolitan Redevelopment Agency, which administers the MRA Plan, reviewed the request, stated that it aligns with the goals of the MRA Plan, and supported it **[R. 124]**. On this record, the EPC could reasonably find that the request furthers the MRA Plan's adopted goals **[R. 043-044; Fndg. 13A]**.

That leaves the distinction between the MRA Plan's adopted goals and the community preferences recorded in its market study, on which SCLT appears to rely. The MRA Plan documents the community's concerns about gentrification and the concentration of undesirable uses, and a shared vision to maintain the area's original scale and character **[R. 042-043]**. Those statements are valuable context for understanding how the Plan's goals were formed, and they deserve respect. They are not, however, the goals the City adopted in the MRA Plan. IDO, § 6-7(G)(3)(a) measures a zone change against "applicable Goals and Policies" of the Comprehensive Plan and "other applicable plans adopted by the City." The adopted goals of the MRA Plan are the

four stated above. A market study, the background findings, and the recorded wishes of participants informed those goals, but treating them as independent standards would add to § 6-7(G)(3)(a) a requirement the City Council did not include. Terms that the City Council did not place in the IDO are not implied or inserted to change its meaning. See *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶¶ 5-6.

A market study also, by its nature, describes market conditions and preferences at the time it was prepared. The record shows that conditions in the Sawmill area have changed substantially since the MRA Plan was adopted in 2005 and updated in 2006 **[R. 015, 020]**. Finally, even the community vision described in the Plan did not call for preserving scale alone. It paired that aim with "appropriate scale mixed use opportunities," and it expressly contemplated housing that "permanently conserve[s] low-income options while also offering market rate units," including apartments **[R. 043]**. The vision SCLT invokes therefore does not foreclose the multi-family housing that MX-H would permit.

For these reasons, I find that the EPC reasonably determined that the request furthers a preponderance of the applicable Goals and Policies of the Comprehensive Plan and the MRA Plan, and that it is not in significant conflict with them. SCLT has not shown that the EPC erred in applying § 6-7(G)(3)(a), and SCLT's disagreement with how the EPC weighed those policies does not make the decision arbitrary, capricious, or unsupported by substantial evidence.

F. The Zoning Map Amendment does not apply a zone district different from the surrounding zone districts to one small area and therefore does not demonstrably create a spot zone under IDO, § 6-7(G)(3)(h).

SCLT next contends that whatever the EPC's findings call it, the practical effect of this amendment is a spot zone **[R. 009]**. However, spot zones are not unusual in Albuquerque, and they are not presumptively unlawful. IDO, § 6-7(G)(3)(h) states in relevant part:

> The Zoning Map Amendment does not apply a zone district different from surrounding zone districts to one small area or one premises (i.e., create a "spot zone") or to a strip of land along a street (i.e., create a "strip zone") *unless* the requested zoning will clearly facilitate implementation of the ABC Comp Plan, as amended, and at least 1 of the following applies.
>
> 1. The subject property is different from surrounding land because it can function as a transition between adjacent zone districts.
> 2. The subject property is not suitable for the uses allowed in any adjacent zone district due to topography, traffic, or special adverse land uses nearby.
> 3. The nature of structures already on the subject property makes it unsuitable for the uses allowed in any adjacent zone district.

IDO, § 6-7(G)(3)(h) (emphasis added).

This provision works in two steps. The first question is simple: does the zone change give one small area or one property a zone district that is different from the districts around it? If not, there is no spot zone, and the analysis stops there. Only if the answer is yes do we look at the "unless" clause and its three exceptions.

Here, the EPC found that the threshold is not crossed. Its Finding 13H states that "[t]he Zoning Map Amendment does not apply a zone district different from surrounding zone districts," because the subject site sits "in an area with a notable diversity of zone districts; within 1,320-foot radius (¼ mile) of the subject site, there [sic] properties are zoned PD, NR-LM, MX-H, MX-M, MX-L, MX-T, R-ML, R-T, R-1, and NR-PO-C," and because "the existing MX-H zoning consists of four lots covering more than 7.3 acres," so that "MX-H and the permissive land uses are already established in the nearby surroundings" **[R. 022]**.

Substantial evidence supports that finding, and it resolves the spot-zone question. Spot zoning happens when one property is given a zone that sets it apart from a neighborhood that is otherwise zoned the same way. See *Bennett v. City Council for the City of Las Cruces*, 1999-NMCA-015, ¶ 17. That is not this neighborhood. Within a quarter mile of the site there are ten

different zone districts. MX-H is already one of them: four separate lots, totaling more than 7.3 acres, are zoned MX-H, and three of those lots are within 750 feet of the subject site.

The EPC also found that the amendment removes from the subject site several permissive uses generally regarded as more intense or less compatible with a residential area—among them adult entertainment, a helipad, large retail, a paid parking lot, a car wash, a kennel, and a blood services facility—while adding residential and community uses **[R. 017, 020, 022]**. In short, rather than singling out one property for a use or intensity at odds with everything around it, the amendment reduces the intensity of the uses allowed on the site and adds the housing the MRA Plan calls for. That is not the kind of change the spot-zone provision is meant to guard against.

I note one point on which SCLT and the EPC's findings are closer than the appeal suggests. SCLT attacks the characterization of the subject site as a "transition" zone **[R. 009, 011]**. Finding 13H does not rest on that characterization; to the contrary, it states expressly that the site is "not a transition between R-1 and the more intense uses of MX-H" **[R. 022]**. Because the EPC found that no spot zone is created at all, the "unless" clause of § 6-7(G)(3)(h) and its transition alternative are never reached, and SCLT's argument on that point is directed at a finding the EPC did not make. On this record I cannot find that the EPC's rejection of the spot-zone argument was arbitrary, capricious, or unsupported by substantial evidence. The EPC examined the zoning pattern within a quarter mile of the site, identified the specific districts and acreage present, compared the uses allowed under NR-BP with those allowed under MX-H, and applied the provision according to its terms **[R. 017, 020, 022]**. A decision reached that way rests on the facts in the record and a rational reading of the IDO, which is the opposite of action taken without a rational basis or in disregard of the facts and circumstances.

G. The EPC's finding that existing infrastructure has adequate capacity under IDO, § 6-7(G)(3)(e) is supported by substantial evidence, and the absence of a traffic impact study is not a defect in the decision.

SCLT next argues that 18th Street NW and Bellamah Avenue NW already carry too much traffic, that neither is a major roadway, and that no traffic study was performed before the amendment was approved **[R. 010-011, 144-147]**. SCLT frames the issue under IDO, § 6-7(G)(3)(e) **[R. 004]**. That subsection is satisfied where the City's existing infrastructure and public improvements meet any of four alternative criteria, the first of which is that they "[h]ave adequate capacity to serve the development made possible by the change of zone."

The EPC found that existing infrastructure at the subject site includes streets, sidewalks, utility facilities, sewer and water system facilities, and street lighting, and that drainage and flood control review may be required for any future redevelopment **[R. 021, Fndg. 13E]**. Staff from thirteen local agencies commented and none objected to the amendment on capacity grounds; the Albuquerque Bernalillo County Water Utility Authority and PNM identified upgrades and easement adjustments to be addressed as conditions of future development approval rather than as obstacles to the amendment **[R. 022, Fndg. 15; R. 123-125]**. That is substantial evidence supporting Finding 13E.[10]

As for the absence of a traffic study, the record establishes that a traffic impact study is required at the development stage, not for a zone change standing alone. Specifically, Planning Staff advised the EPC that traffic impact is studied when a site plan is proposed for a particular use, a Traffic Scoping Form is not required for a zone change request, and a traffic impact study

[10] The EPC rested its determination on criterion 1 of § 6-7(G)(3)(e), that existing infrastructure has adequate capacity **[R. 021, Fndg. 13E]**. I note that criterion 3 of the same subsection—adequate capacity when the applicant fulfills its obligations under the IDO, the DPM, and/or an Infrastructure Improvements Agreement—furnishes an additional basis on this record, given the traffic scoping, traffic circulation layout, and grading and drainage obligations that attach at the site plan stage of future development, all of which were discussed in the record by Staff at the EPC hearing **[R. 157]**.

may be required for future development pursuant to the Development Process Manual and IDO, § 5-2(E)(2)(c) **[R. 005]**. The Applicant-Appellee confirmed on the record that it will be required to address the need for a traffic study through the traffic scoping process, and it will prepare and submit a traffic circulation layout as part of the site plan process for any new project at the location **[R. 157]**. It also stated on the record that it would participate in and support an area-wide traffic analysis if the City undertakes one for this part of Sawmill **[R. 156]**.

Said another way, the IDO sets an explicit sequence to follow, under which the zone district question is decided first and the site-specific engineering questions are decided later, when there is an actual project to evaluate. The EPC did not ignore traffic; it discussed the subject at length in its hearing **[R. 149, 153, 156-159]**. The Appellant's concerns about traffic are legitimate concerns, but they are directed at speculative development that has not yet been proposed, and they do not establish that the EPC erred in applying § 6-7(G)(3)(e) to the application before it.

H. The EPC had no authority to substitute MX-M on its own, and it correctly found that the MX-H zone request satisfies the major-street and economic-considerations requirements of IDO, § 6-7(G)(3)(f) and (g).

By its own account, SCLT's preference is for MX-M rather than MX-H **[R. 011]**. Several commissioners asked the same question at the hearing, and Staff explained that the two districts are substantially similar in the uses they permit and differ principally in maximum building height **[R. 152-153]**. Staff further explained that a change of the request to MX-M would require the Applicant-Appellee to voluntarily change its request because the EPC's authority in reviewing an application is essentially to either approve it or deny it **[R. 150-151]. This is correct** under New Mexico law. At a minimum, New Mexico law would require a substantially different process before the EPC could, on its own initiative and without the landowner's consent, approve a zone

district other than the one the landowner requested. See generally *Albuquerque Commons Partnership v. City Council*, 2008-NMSC-025. In that situation, the burden would shift to the City to justify the zone change, and the landowner would be entitled to notice before any attempt to change the zone unilaterally. See also generally *West Old Town Neighborhood Ass'n v. City of Albuquerque, 1996-NMCA-107,* ¶¶ 21-26. The Applicant-Appellee stated on the record that it was not interested in changing the request and that "[w]e would like to move forward with the request that we've made. We are not interested in changing it" **[R. 156]**.

The EPC's task under the IDO is to decide the application actually before it. Nothing in the IDO permits the EPC to substitute a zone district other than the one requested because a commissioner, a neighbor, or an appellant would have preferred it, and Commissioner Aragon correctly identified the point at the hearing when he observed that the Commission's purpose and authority are "to hear the case in front of us, and not create a new case, or… try to change it for the applicant" **[R. 153]**. Which zone district to request is the applicant's decision to make, subject to the requirement that the request it makes satisfy the criteria of the IDO.

SCLT also invokes two further issues under the IDO to claim that the EPC erred **[R. 004-005]**. The first is § 6-7(G)(3)(f), which requires that the applicant's justification "is not completely based on the property's location on a major street." SCLT contends that the justification relies on the property's location on a major street, while also emphasizing that neither 18th Street NW nor Bellamah Avenue NW is a major roadway **[R. 004, 010-011, 144-147]**.

The EPC found that the subject site is not located on a major street and that its location is not the justification for the request; rather, the justification rests on the area's redevelopment history and on the goals and policies of the Comprehensive Plan, the MRA Plan, and the Central Albuquerque Community Planning Area **[R. 021, Fndg. 13F]**. That finding is supported by the record. SCLT's own point that the adjacent streets are not major roadways supports the EPC's

finding rather than undermining it. A justification cannot rest completely on a location the property does not have.

The second is § 6-7(G)(3)(g), which requires that the applicant's justification "is not based completely or predominantly on the cost of land or economic considerations." SCLT contends that the justification rests on economic considerations **[R. 004-005]**. The point raises a legitimate question. The record shows that the Applicant-Appellee seeks the additional height of MX-H in order to build a five-story rather than a three-story building **[R. 045, 136]**, and the EPC itself acknowledged that economics play a role. The EPC found that economic considerations "do play a role in the request for the higher intensity MX-H zone district vs MX-M since it is more cost effective to build denser housing," but that the justification is not based completely or predominantly on the cost of land, and that the Applicant-Appellee adequately demonstrated that the request facilitates a variety of applicable Comprehensive Plan goals and policies without significantly conflicting with them **[R. 021, Fndg. 13G]**. That is the correct legal standard. The provision asks whether economic considerations are the complete or predominant basis for the request, not whether they play any role at all. In my experience on appeals, every application for a zone change has an economic dimension; if § 6-7(G)(3)(g) ruled out every request in which cost played any part, the words "completely or predominantly" would mean nothing. When an ordinance makes sense as written, it must be applied as written, without ignoring any of its words. *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5. The EPC applied the standard as written, and its finding is supported by substantial evidence.

I. The dissenting votes of two commissioners reflect a reasonable disagreement about intensity and do not render the majority's decision arbitrary or capricious.

SCLT's position, both before the EPC and in this appeal, is that MX-H allows more height and intensity than this location can support and that MX-M is the appropriate district **[R. 008-011]**.

Two members of the EPC shared that concern and voted to deny the application for MX-H zoning. Commissioner Archuleta, who described watching the area develop for more than fifty years, stated that he had concerns with the height and the density, that he believed there should be "some intensity" but not "the highest intensity," and that he did not believe the area was equipped to handle the density MX-H permits **[R. 158]**. Vice-Chair Carver, who represents the district, stated that he was "very supportive of increasing the amount of housing, and… increasing density," that he was glad the Neighborhood Edges limitation was placed on the record, and that he was nonetheless uncomfortable with the 68-foot height and would have supported MX-M **[R. 158-159]**. Their concerns were heard, discussed at length, and are part of the record.

A vote of 5 to 2, with commissioners on both sides stating reasons, shows that the request presented a genuinely close policy question. It does not show that the majority acted without a rational basis. Again, the applicable standard is not whether every commissioner agreed with the zone change. It is a question of whether the EPC's decision was rational, reasonable, and supported by substantial evidence in the whole record, and whether the EPC applied the IDO criteria correctly. *Huning Castle Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-123, ¶ 15; *Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, ¶ 17. Reasonable commissioners reviewed the same evidence and reached different conclusions about how much height and intensity this corner of the Sawmill area should carry. Disagreement of that kind is an ordinary and healthy feature of a quasi-judicial zoning proceeding. It is not a legal defect, and it does not by itself convert the majority's decision into an arbitrary or capricious one.

J. The Appellant's remaining points are directed at the site plan process and do not alter the outcome.

SCLT suggests that future development at the subject site should take access from a planned extension connecting to 12th Street rather than through Bellamah Avenue NW and 18th

Street NW, and that further high-intensity rezoning in the area should await the area-wide vehicular and pedestrian mobility study SCLT intends to commission **[R. 011, 144, 146]**. Both are reasonable points for SCLT to raise, and both belong to the site plan process, where the circulation pattern for a specific development is worked out with City Planning and Transportation staff on the basis of a traffic scoping form and, where warranted, a traffic impact study. Neither is a ground under IDO, § 6-4(U)(4)(a) for reversing a Zoning Map Amendment that satisfies the criteria of § 6-7(G)(3). Notably, the Applicant-Appellee has stated on the record its willingness to work with the adjacent property owners on the treatment of the eastern edge and to participate in an area-wide traffic analysis **[R. 155-156]**.

K. Costs and fees under IDO, § 6-4(U)(5)(b).

Under the IDO applicable to this appeal, the LUHO is responsible for making findings regarding costs and fees. IDO, § 6-4(U)(5)(a) provides that for an appeal to the City Council related to an application that was denied, all parties are responsible for their own costs and fees. The legal efficacy of these fee provisions is outside my authority as the LUHO. By contrast, IDO, § 6-4(U)(5)(b) states:

> For an appeal to City Council related to an application that was approved, if the appellant loses their appeal, they shall be responsible for paying up to $1,000 for the reasonable costs and fees of the appellee.
>
> 1. A finding on the reasonableness of any costs and fees shall be made by the LUHO. The finding shall be based on the following factors:
>
> a. The conduct of the parties during the appeal, and whether that conduct was in bad faith, or malicious.
>
> b. The objective reasonableness of the claims and defenses asserted by the parties.

IDO, § 6-4(U)(5)(b).

The application in this matter was approved, not denied, and for the reasons stated above I conclude that the Appellant should not prevail. Subsection (b), and not subsection (a), therefore

governs. The amount is capped at $1,000 and is no longer fixed; the IDO requires a reasonableness finding on the two stated factors. On the first factor, I find that the conduct of all parties during this appeal was in good faith. There is no evidence of bad faith or malicious conduct by any party. SCLT participated in the EPC proceeding, stated its position candidly, and expressly disclaimed any objection to a zone change for the subject site. On the second factor, I find that although SCLT's claims do not prevail, and although one premise of its appeal was factually mistaken as to the height MX-H allows, its claims were objectively reasonable rather than frivolous. SCLT is an immediately adjacent landowner with a substantial and legitimate interest in the intensity of development next to its own, the twenty-foot difference between MX-M and MX-H is a real difference, and two members of the EPC shared SCLT's view of that difference.

The Applicant-Appellee did not submit documentation of its costs and fees or recommend an amount to be assessed. Weighing both factors, and because there is no evidence of bad faith by any party, SCLT is a non-profit organization, and the issues SCLT raised were fairly debatable, I find that a *de minimis* assessment is reasonable. I respectfully recommend that if the City Council denies the appeal, it assess costs and fees against the Appellant in the amount of $1.00 to satisfy § 6-4(U)(5)(b).

V. PROPOSED FINDINGS

Below are proposed findings I respectfully recommend that the City Council adopt. Each finding is supported by substantial evidence in the record as indicated above.

1. The decision appealed is the decision of the Environmental Planning Commission dated June 18, 2026, approving ZMA-2026-00008, a Zoning Map Amendment changing the zoning of approximately 4.1 acres at 1050 18th Street NW from NR-BP to MX-H, based on Staff Findings 1 through 16.

2. The Appellant's appeal was timely filed under IDO, § 6-4(U)(3)(a)1.

3. The Appellant is a property owner whose property lies immediately adjacent to, and therefore within 330 feet of, the subject site, and the Appellant has standing to appeal under IDO, § 6-4(U)(2)(a)5 and Table 6-4-2.

4. The Appellant made an appearance of record through verbal comments of its representatives at the EPC's June 18, 2026 hearing, and therefore satisfies IDO, § 6-4(U)(2)(b).

5. A quasi-judicial appeal hearing was held on October 7, 2026, at which the Appellant, the Applicant-Appellee, and City Planning Staff were allowed to present evidence, present witnesses, cross-examine testimony, and make arguments.

6. A remand under IDO, § 6-4(U)(3)(d)8 is unnecessary. The Appellant submitted no new evidence that changes the relevant facts, and the record is sufficient for a disposition of this appeal. The misstatements of building height in the record, including the 72-foot figure for MX-H in the Notice of Appeal **[R. 010]** and the comparison of a 65-foot NR-BP limit to the 68-foot MX-H limit in Finding 13H **[R. 022]**, are harmless because the EPC was correctly informed at the hearing that the zone change would raise the allowable height within 100 feet of the lot line from 35 feet to 68 feet **[R. 153-154]**. The few typographical and clerical errors in the record are also harmless **[R. 001, 007, 013, 022, 024, 099, 126]**. They did not affect notice, any party's participation, or any finding under IDO, § 6-7(G)(3), and they do not warrant a remand.

7. The maximum building height allowed in the MX-H zone district at the subject site is 68 feet within 100 feet of the lot line, and not 72 feet as stated in the Appellant's Notice of Appeal. Beyond 100 feet from the lot line, in the core of the subject site, neither MX-H nor MX-M establishes a maximum height. However, at the appeal hearing, the Applicant-Appellee, through its agent, stipulated that the maximum height of any development at the site shall not exceed 68 feet.

8. The Neighborhood Edges standard of IDO, § 5-9(C)(1) independently limits building height to a maximum of 30 feet within 100 feet of the nearest property line of the Protected Lots zoned R-1 to the east of the subject site, regardless of the underlying zone district.

9. Under IDO, § 3-4(M)(5)(c)1, no portion of any building within 25 feet of the front lot line of the subject site may exceed 15 feet in height, and building height bonuses do not apply within CPO-12. Together with the Neighborhood Edges standard and the 68-foot MX-H limit within 100 feet of the lot line, these standards confine building height along every edge of the subject site, and any building proposed for the core remains limited to 68 feet as represented by the Applicant-Appellee through its agent.

10. Four properties zoned MX-H, comprising more than 7.3 acres, already exist within one-quarter mile of the subject site, three of them within 750 feet, and ten distinct zone districts are present within one-quarter mile of the subject site.

11. The subject site is located wholly within an Area of Change under the Comprehensive Plan.

12. In Finding 13C, the EPC found that there have been significant changes in neighborhood and community conditions affecting the site that justify the request and that a different zone district could be more advantageous. That finding satisfies IDO, § 6-7(G)(3)(c) and is supported by substantial evidence. That evidence includes the designation of the area as blighted and in need of private investment through the Sawmill/Wells Park Community Metropolitan Redevelopment Area Plan and the adoption of Tax Increment Financing for the district in 2006. It also includes the hotel, food hall, and multi-family development that has since occurred in the area.

13. In Findings 7, 8, 9, and 13A, the EPC found that the request furthers a preponderance of the applicable Goals and Policies of the Comprehensive Plan, including Goal 4.1, Policies 4.1.3 and 4.1.4, Goals 5.2 and 5.6, Policies 5.2.1 and 5.6.2, and Policy 9.2.1, and the adopted goals of

the Sawmill/Wells Park Community Metropolitan Redevelopment Area Plan, and is not in significant conflict with them. Those findings satisfy IDO, § 6-7(G)(3)(a) and are supported by substantial evidence.

14. The EPC's Finding 13H, that the Zoning Map Amendment does not apply a zone district different from the surrounding zone districts and therefore does not create a spot zone under IDO, § 6-7(G)(3)(h), is supported by substantial evidence in the record. Because no spot zone is created, the "unless" clause of § 6-7(G)(3)(h) and its three alternatives are inapplicable.

15. There is substantial evidence in the record that the requested zoning does not include permissive uses that would be harmful to adjacent property, the neighborhood, or the community, and in fact removes from the subject site several permissive uses of greater intensity, including adult entertainment, a helipad, large retail, a paid parking lot, a car wash, a kennel, and a blood services facility. IDO, § 6-7(G)(3)(d).

16. The EPC's Finding 13E, that the City's existing infrastructure and public improvements have adequate capacity to serve the development made possible by the change of zone, satisfies IDO, § 6-7(G)(3)(e)1 and is supported by substantial evidence.

17. A traffic impact study is not required before a Zoning Map Amendment may be approved. A Traffic Scoping Form and, where warranted, a traffic impact study, a traffic circulation layout, and a grading and drainage plan are required at the site plan stage for a specific proposed development. The application and decision appealed did not encompass a site plan for the subject site.

18. The EPC's Findings 13F and 13G, that the justification for the request is not completely based on the property's location on a major street and is not based completely or predominantly on the cost of land or economic considerations, apply the correct standards under IDO, § 6-7(G)(3)(f) and (g), and these findings are supported by substantial evidence.

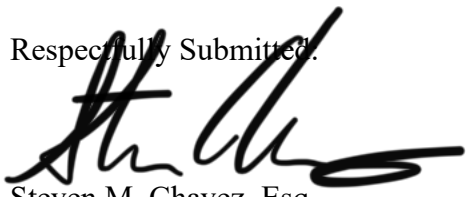
19. The dissenting votes of two commissioners reflect a genuine and reasonable disagreement about the degree of intensity appropriate for the subject site. That disagreement does not render the majority's decision arbitrary or capricious.

20. The Appellant did not meet its burden of proof under the IDO to sustain the appeal. The Appellant did not demonstrate that the EPC acted fraudulently, arbitrarily, or capriciously; that the EPC's decision is not supported by substantial evidence; or that the EPC erred in applying the requirements of the IDO. IDO, § 6-4(U)(4)(a).

21. The decision of the EPC approving ZMA-2026-00008 should be affirmed, and the appeal should be denied.

22. Because the application appealed was approved and the Appellant does not prevail, IDO, § 6-4(U)(5)(b) applies, and IDO, § 6-4(U)(5)(a) does not. The conduct of all parties during this appeal was in good faith, and no party acted in bad faith or maliciously. The Appellant's claims, although unsuccessful, were objectively reasonable and were not frivolous. The Applicant-Appellee did not submit documentation of its costs and fees or recommend an amount. Because no party acted in bad faith, the Appellant is a non-profit organization, and the issues raised were fairly debatable, costs and fees should be assessed against the Appellant under § 6-4(U)(5)(b) in the *de minimis* amount of $1.00.

Respectfully Submitted:



Steven M. Chavez, Esq.
Land Use Hearing Officer
N.M. State Bar No. 8938

October 15, 2026

Copies sent via email to:
Office of the City Council

Sawmill Community Land Trust, Appellant
Titan Development and Consensus Planning, Inc., Applicant-Appellee
Alan Varela, City Planning Director
Megan Jones, Principal Planner
Catherine Heyne, Planner

Notice Regarding City Council Rules

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