



City of Albuquerque

PLANNING DEPARTMENT

Richard J. Berry, Mayor

Interoffice Memorandum

January 28, 2014

To: Ken Sanchez, President, City Council

From: Suzanne Lubar, Director

Subject: O-13-63 - Project# 1001620 - 13EPC-40153 The Environmental Planning Commission (EPC) forwards a recommendation of NOT ADOPTING THE PROPOSED TEXT AMENDMENT to the City Council to amend Section 14-16-4-4 (A) of the Zoning Code regarding the Appeal Process. Carrie Barkhurst, Staff Planner

Request & Scope

This City Council-initiated request is to modify the appeal process as related to Zone Map Amendments. The existing language in Zoning Code §14-16-4-4 (A), Appeal-Jurisdiction, will be replaced with the amended language. At the January 9, 2014 hearing, the Environmental Planning Commission voted to forward a recommendation of not adopting the proposed text amendment to the City Council.

Purpose & Background

The intent and purpose of the proposed amendments is to create consistency among all appeal process for all land development requests by allowing appeals of Zone Map Amendments to be heard by the Land Use Hearing Officer (LUHO). The record and the LUHO recommendation could then be reviewed by the City Council and then accepted or rejected.

Currently, zone changes are the only Environmental Planning Commission (EPC) decision that, upon appeal, does not go to the Land Use Hearing Officer (LUHO) for a recommendation before being heard by City Council. The City Council directs the LUHO to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. The Appeal Process regulations also establish that, "in any matter heard by the Council without the Land Use Hearing Officer, the Council may choose to have a Hearing Officer take testimony and make recommendations." (§14-16-4-4(I)). The regulation is not clear as to why the City Council would rely on a different Hearing Officer for zone map amendments only. The proposed text amendment would create consistency in the appeal process for all cases heard and decisions made by the EPC. City Council would remain as the final decision-making body.

EPC's Recommendation

The EPC discussed the benefits of a hearing officer, who is a land use expert that evaluates the merits of the case as it relates to the law. The current process proceeds directly to City Council, who may not have the same legal and land use background or expertise. Despite this acknowledgement, the EPC focused on the potential unintended consequences of the proposed text amendments, and the EPC unanimously voted to recommend denial to the City Council. The Commissioners find that the City Council's current process of accepting the LUHO's recommendation without taking further testimony removes the opportunity to directly be heard by the decision-makers. They adopted a finding that states: "The proposed text amendment would abridge the due process rights of parties with standing to have an objective and meaningful hearing by the City Council in its role as the ultimate Land Use authority of the City."

The Planning Department believes that the benefits of a hearing officer who is a land use expert, in addition to establishing consistency in the land use appeal process, is essential to providing a predictable and efficient process to appellants and appellees, alike. The Planning Department does not agree with the EPC that using the Land Use Hearing Officer abridges the due process rights of appellants or appellees because evidence will be gathered and reviewed by an experienced hearing officer and subsequently reviewed by the Council in order for the Council to determine whether to accept or reject the LUHO's recommendation. If the City Council is concerned about the need for additional due process, the City Council might consider hearing brief presentations from both the appellant and appellee about whether the City Council should accept or reject the LUHO's recommendation. This could occur through changes to Council's Rules of Procedure or within this Zoning Code text amendment.

Conclusion

Staff concludes that the proposed text amendment to the Appeal Process of the Zoning Code furthers applicable Goals and Policies and the overarching intent of the City Charter, the Comprehensive Plan and the Zoning Code. However, the Environmental Planning Commission (EPC) unanimously voted to recommend not adopting the proposed text amendment.

Recommended:

 27 Jan 2014
Russell Brito Date
Urban Design & Development Manager

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13EPC-40153**

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**Environmental
Planning
Commission**

**Agenda Number: 4
Project Number: 1001620
Case #: 13EPC-40153
January, 9 2014**

Staff Report

Agent	Planning Department
Applicant	City of Albuquerque
Request	Amend Zoning Code §14-16-4-4(A) ROA 1994, Appeal, to remove the exception that requires Zone Map Amendments to be heard only by City Council
Location	City-wide

Staff Recommendation

That a recommendation of APPROVAL of 13EPC-40153 be forwarded to the City Council, based on the Findings on page 6.

***Staff Planner
Carrie Barkhurst***

Summary of Analysis

This request is for a text amendment to §14-16-4-4, the Appeal Section of the Zoning Code. The EPC's role is to make a recommendation to the City Council regarding these amendments.

The proposed text amendment would amend sub-section A, Jurisdiction, to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council.

The City Council uses the LUHO to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.

The request generally furthers the intent of the City Charter and the Zoning Code.

The request was announced in the Neighborhood News and posted on the Planning Department website. Staff has not received any inquiries or comments as of this writing.

The request is very limited in scope. Staff recommends that an Approval recommendation be forwarded to the City Council.

City Departments and other interested agencies reviewed this application from 12/2/2012 to 12/13/2012.
Agency comments used in the preparation of this report begin on Page 8.

I. INTRODUCTION

Request

This request is for a text amendment to §14-16-4-4(A) ROA 1994, Appeal, Jurisdiction, of the City's Comprehensive Zoning Code. The purpose of the proposed text amendment is to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council. The proposed text amendment would apply City-wide. This request is considered legislative in nature.

Environmental Planning Commission (EPC) Role

The EPC is a recommending body with review authority. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision regarding these text amendments.

Purpose/Intent

The intent of the amendment is to modify Section 14-16-4-4(A)(2)(a) of the Zoning Code as follows: "Appeal of the following actions is to the City Council through the Land Use Hearing Officer: (a) Any action which is authorized by the Zoning Code and is made by the Planning Commission [~~- except a zone map amendment, the appeal of which shall be heard only by the City Council and not by the Land Use Hearing Officer -~~]."

Currently, zone changes are the only Environmental Planning Commission (EPC) decision that, upon appeal, does not go to the Land Use Hearing Officer (LUHO) for a recommendation before being heard by City Council. The City Council uses the LUHO to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. The Appeal Process regulations also establish that, "in any matter heard by the Council without the Land Use Hearing Officer, the Council may choose to have a Hearing Officer take testimony and make recommendations." (§14-16-4-4(I)). The regulation is not clear as to why the City Council would rely on a different Hearing Officer for zone map amendments only. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.

History

This section of the zoning code was last amended in 2008, related to a neighborhood appeal of a Certificate of Appropriateness to the Landmarks and Urban Conservation Commission (LUCC). At that time, only the applicant had standing to appeal a decision to the LUCC according to the Zoning Code; however, the LUCC Rules of Procedure allowed any aggrieved party to initiate an appeal. In response to this inconsistency, City Council initiated amendments to the LUCC Ordinance, §14-12-10, to expand the right to appeal LUCC staff decisions to include any aggrieved parties. The Appeal procedures of the Zoning Code, §14-16-4-4, were also amended allow for and/or clarify the following: submission of written information, recommendations and use of a hearing officer, and existing language (O-08-6/08EPC-40009). These amendments did not change the Appeals Jurisdiction section of the Zoning Code, §14-16-4-4(A), which is the subject of this proposed amendment.

II. PROPOSED TEXT AMENDMENTS

Below is the proposed text amendment, shown with "strikethrough" text.

§14-16-4-4 Appeal.

(A) Jurisdiction.

- (1) Appeal of declaratory rulings as to the applicability of the Zoning Code by the Zoning Enforcement Officer, or any action which is authorized by the Zoning Code and is made by the Planning Director is to the City Council through the Land Use Hearing Officer. Appeal of decisions of the Zoning Hearing Examiner is to the Board of Appeals. Upon denial of a Certificate of Appropriateness by the Mayor or Planning Director under the terms of § 14-16-2-25 or § 14-16-2-28 of this Zoning Code, the matter will be remanded to the Landmarks and Urban Conservation Commission for further consideration, if the applicant requests such remand within 15 days of denial.
- (2) Appeal of the following actions is to the City Council through the Land Use Hearing Officer:
 - (a) Any action which is authorized by the Zoning Code and is made by the Planning Commission [~~- except a zone map amendment, the appeal of which shall be heard only by the City Council and not by the Land Use Hearing Officer -~~];
 - (b) Denial of an application for the HO Historic Overlay Zone or UCO Urban Conservation Overlay Zone by the Landmarks and Urban Conservation Commission;
 - (c) A decision on a special use permit by the Landmarks and Urban Conservation Commission;
 - (d) Appeals of a decision of the Board of Appeals; and
 - (e) Appeals of a decision of the Development Review Board.
- (3) Once an appeal is filed, no prior decision rendered by the Zoning Enforcement Officer, the Zoning Hearing Examiner, the Planning Director, the Planning Commission, the Board of Appeals, the Development Review Board, or Landmarks and Urban Conservation Commission upon which the appeal is based may be unilaterally withdrawn, changed or modified by any of the above as they have lost jurisdiction to act on the matter.

The proposed amendment removes the requirement that a zone map amendment must only be heard by City Council. City Council has delegated review authority to the Land Use Hearing Officer (LUHO) for appeal of any other cases heard by the EPC as well as other boards and commissions.

Currently, the City Council may choose to use a Hearing Officer in cases that are not automatically processed through the LUHO, although this is not typically done. The only unintended consequence of this change is that appeals of zone map amendments may take longer to reach final conclusion. However, the proposed amendment provides a consistent practice across the board for appeals that are decided by City Council.

III. ANALYSIS OF APPLICABLE ORDINANCES, PLANS AND POLICIES

Note: Policy citations are in regular text; *Staff analysis is in bold italics.*

A) Charter of the City of Albuquerque

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

Article I, Incorporation and Powers

"The municipal corporation now existing and known as the City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. *The purpose of this Charter is to provide for maximum local self government.* A liberal construction shall be given to the powers granted by this Charter." (emphasis added)

Article IX, Environmental Protection

"The Council (City Commission) in the interest of the public in general shall protect and preserve environmental features such as water, air and other natural endowments, ensure the proper use and development of land, and promote and maintain an aesthetic and humane urban environment. To affect these ends the Council shall take whatever action is necessary and shall enact ordinances and shall establish appropriate Commissions, Boards or Committees with jurisdiction, authority and staff sufficient to effectively administer city policy in this area."

The use of a Hearing Officer to take testimony and make recommendations to the City Council for all appeal actions is an authority that City Council already has, under §14-16-4-4(I) of the Zoning Code. Allowing the Land Use Hearing Officer (LUHO) to take testimony and make recommendations to the City Council in appeals of zone map amendments is consistent with the Council's authority to effectively administer city policy and regulations and is an exercise in local self-government (City Charter, Article I). This change is also consistent with the City Council's mandate to ensure the proper use and development of land and (City Charter, Article IX).

B) Comprehensive City Zoning Code

Authority and Purpose (summarized): The Zoning Code is Article 16 within Chapter 14 of the Revised Code of Ordinances of Albuquerque, New Mexico, 1994 (often cited as ROA 1994). The administration and enforcement of the Zoning Code is within the City's general police power authority for the purposes of promoting the health, safety, and general welfare of the public. As such, the Zoning Code is a regulatory instrument for controlling land use activities for general public benefit.

Role of Land Use Boards (aka Amendment Procedure, summarized): The City Council is the zoning authority for the City of Albuquerque and has sole authority to amend the Zoning Code. Through the City Charter, the City Council has delegated broad planning and zoning authorities

to the Environmental Planning Commission (EPC). The EPC is advisory to the City Council regarding proposed text amendments to the Zoning Code.

The proposed text amendment generally furthers the Zoning Code goal of promoting the health, safety and welfare of the citizens because it provides consistency for all land use and development appeal processes. The proposed text amendment will ensure that City Council has the benefit of a Land Use Hearing Officer to take testimony and review the facts of the case prior to the full Council hearing of the case.

C) Albuquerque/Bernalillo County Comprehensive Plan

The Comprehensive Plan, the Rank I planning document for the City, contains goals and policies that provide a framework for development and service provision. The Plan's goals and policies serve as a means to evaluate development proposals and requests for text amendments such as this.

In this case, the proposed text amendment is very limited in scope. Staff does not find any goals or policies that apply to the proposed amendments to allow the Land Use Hearing Officer to take testimony and make recommendations to the City Council for zone map amendments.

IV. CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION

Few agency comments were submitted. Long Range Planning Staff noted that the proposed change to the zoning code will facilitate a better appeal process. Cases will arrive at City Council with a more detailed record; this will give the decision making body a breadth and depth of information that is always available. None of the commenting agencies indicated opposition or concern regarding the proposed text amendments.

The pre-hearing discussion meeting was held on December 18, 2013. Agency comments begin on page 8.

V. NEIGHBORHOOD/PUBLIC CONCERNS

The proposed text amendments were posted on the Planning Department's main web page. Staff sent a brief article to Office of Neighborhood Coordination (ONC) Staff for inclusion in the December/January 2014 issue of the Neighborhood Newsletter (see attachment). As of this writing, Staff has not received any inquiries or comments regarding the proposed amendment.

VI. CONCLUSION

The proposed text amendment to Zoning Code §14-16-4-4(A) ROA 1994, Appeal, Jurisdiction, is to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council.

Currently, zone changes are the only Environmental Planning Commission (EPC) decision that, upon appeal, does not go to the Land Use Hearing Officer (LUHO) for a recommendation before being heard by City Council. The City Council uses the LUHO to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.

The proposed text amendment, which would apply City-wide, was announced in the Neighborhood News and posted to the Planning Department's main web page. Staff has not received any inquiries or comments as of this writing.

The EPC's role is to make a recommendation to the City Council. Staff finds that the proposed text amendment generally furthers the intent of the City Charter and the Zoning Code. Staff recommends that an approval recommendation, with a condition, be forwarded to the City Council.

FINDINGS – 13EPC-40153, JANUARY 9, 2014, ZONING CODE TEXT AMENDMENT

1. The request is for a text amendment to §14-16-4-4(A) ROA 1994, Appeal, Jurisdiction, of the City's Comprehensive Zoning Code. The purpose of the proposed text amendment is to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council.
2. The proposed text amendment is to Zoning Code which is an ordinance of general application. The proposed text amendment would apply City-wide, so the request is considered legislative in nature.
3. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning Code are incorporated herein by reference and made part of the record for all purposes.
4. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendment. The City Council is the City's Zoning Authority and will make the final decision. The EPC is a recommending body.
5. The City Council uses the Land Use Hearing Officer (LUHO) to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. Currently, zone changes are the only EPC decision that, upon appeal, does not go to the LUHO for a recommendation before being heard by City Council.
6. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.
7. Intent of the City Charter: Changing provisions to the ROA 1994, specifically the Comprehensive Zoning Code, to allow City Council to use Land Use Hearing Officer in appeals of zone map amendments is consistent with the Council's authority to effectively administer city policy and regulations and is an exercise in local self-government (City Charter, Article I). This change is also consistent with the City Council's mandate to ensure the proper use and development of land (City Charter, Article IX).
8. Intent of the Zoning Code (§14-16-1-3): The proposed text amendment generally furthers the Zoning Code goal of promoting the health, safety and welfare of the citizens because it provides consistency for all land use and development appeal processes. The proposed text amendment

will ensure that City Council has the benefit of a Land Use Hearing Officer to take testimony and review the facts of the case prior to their hearing of the case.

9. All commenting Agencies and City Departments had no objections to the proposed amendment.
10. An announcement of the proposed text amendment was posted on the Planning Department's main web page and announced in the January/February 2014 issue of the Neighborhood News, published by the Office of Neighborhood Coordination (ONC). As of this writing, Staff has not received any inquiries or comments from members of the public.

RECOMMENDATION – 13EPC-40153, JANUARY 9, 2014, ZONING CODE TEXT AMENDMENT

That a Recommendation of APPROVAL of Case 13EPC-40153, to amend the text of the Zoning Code §14-16-4-4, Appeals, be forwarded to the City Council, based on the preceding Findings.



***K. Carrie Barkhurst
Planner***

cc: City of Albuquerque, City Council, Attn: Chris Melendrez, P.O. Box 1293, Abq. NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Abq. NM 87102

Attachments

Agency Comments
Application Form
City Council Bill O-13-63 – proposed text amendments
Section 14-16-4-4 of the Comprehensive Zoning Code

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Enforcement - No comments received

Office of Neighborhood Coordination

Citywide

12/2/13 – Article for the Dec13/Jan14 “Neighborhood News” newsletter for NA/HOA/Coalition notification – siw

12/4/13 – Received article from Carrie Barkhurst - siw

The following was published in the Neighborhood News:

Text Amendment to the Zoning Code Related to Appeal Regulations

City Councilor Trudy Jones sponsored a resolution to amend the appeal regulations in the Zoning Code (Bill O-13-63). This amendment will apply city-wide.

The intent of the amendment is to modify Section 14-16-4-4(A)(2)(a) of the Zoning Code as follows: “Appeal of the following actions is to the City Council through the Land Use Hearing Officer: (a) Any action which is authorized by the Zoning Code and is made by the Planning Commission [~~- except a zone map amendment, the appeal of which shall be heard only by the City Council and not by the Land Use Hearing Officer -~~].”

Currently, zone changes are the only Environmental Planning Commission (EPC) decision that, upon appeal, does not go to the Land Use Hearing Officer (LUHO) for a recommendation before being heard by City Council. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.

The Environmental Planning Commission will consider these amendments on January 9, 2014. The hearing begins at 8:30 a.m. in the basement hearing room at Plaza del Sol, 600 2nd Street NW. The amendment will then be forwarded to the City Council with the Planning Commission’s recommendation. The City Council will consider the amendment at a future date.

This application can be reviewed at the City Planning Department offices in downtown Albuquerque at the Plaza del Sol building. If you would like to provide comments to the Environmental Planning Commission, contact Carrie Barkhurst at 924-3879, or kcbarkhurst@cabq.gov. Comments should be received at least 48 hours in advance of the public hearing on January 9th.

Long Range Planning

The proposed change to the zoning code will facilitate a better appeal process. Cases will arrive at City Council with a more detailed record; this will give the decision making body a breadth and depth of information that is always available.

CITY ENGINEER

Transportation Development Services

Reviewed, no comments.

Hydrology

Reviewed, no comments.

DEPARTMENT OF MUNICIPAL DEVELOPMENT

Transportation Planning

Reviewed, and no comments regarding on-street bikeways or roadway system facilities.

Traffic Engineering Operations - No comments received

Street Maintenance - No comments received

WATER UTILITY AUTHORITY/UTILITY SERVICES

No adverse comment.

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division - No comments received

Environmental Services Division - No comments received

PARKS AND RECREATION

Planning and Design - No comments received

Open Space Division - No comments received

POLICE DEPARTMENT/PLANNING

No Crime Prevention or CPTED comments concerning the proposed Amendment to Zoning Code or Subdivision Regulatory Text at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division - No comments received

FIRE DEPARTMENT/PLANNING - No comments received

TRANSIT DEPARTMENT

No comments.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY - No comments received

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Amendment to Zoning Code for Appeals Process; Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

The City of Albuquerque proposes a City-Wide amendment to allow zoning appeals to be heard by the Land Use Hearing Officer (LUHO) before going to the full Council for acceptance or rejection of the LUHO recommendation. APS does not oppose this proposal.

MID-REGION COUNCIL OF GOVERNMENTS - No comments received

MIDDLE RIO GRANDE CONSERVANCY DISTRICT - No comments received

NEW MEXICO DEPARTMENT OF TRANSPORTATION

The NMDOT has no objections to amend the zone code.

PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM has no comments based on information provided to date.



Supplemental Form (SF)

SUBDIVISION	S	Z	ZONING & PLANNING
<input type="checkbox"/> Major subdivision action	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Annexation
<input type="checkbox"/> Minor subdivision action	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Zone Map Amendment (Establish or Change Zoning, includes Zoning within Sector Development Plans)
<input type="checkbox"/> Vacation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Adoption of Rank 2 or 3 Plan or similar Text Amendment to Adopted Rank 1, 2 or 3 Plan(s), Zoning Code, or Subd. Regulations
<input type="checkbox"/> Variance (Non-Zoning)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SITE DEVELOPMENT PLAN	P	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> for Subdivision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> for Building Permit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Administrative Amendment/Approval (AA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> IP Master Development Plan	D	<input type="checkbox"/>	<input type="checkbox"/> Street Name Change (Local & Collector)
<input type="checkbox"/> Cert. of Appropriateness (LUCC)	L	A	APPEAL / PROTEST of...
STORM DRAINAGE (Form D)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Decision by: DRB, EPC, LUCC, Planning Director, ZEO, ZHE, Board of Appeals, other
<input type="checkbox"/> Storm Drainage Cost Allocation Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102.
Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any): City of Abq. Planning Dept PHONE: 924-3860
ADDRESS: P.O. Box 1393 FAX: 924-3339
CITY: Albuquerque STATE NM ZIP 87103 E-MAIL: _____

APPLICANT: City of Albuquerque PHONE: _____
ADDRESS: (Same as above) FAX: _____
CITY: _____ STATE _____ ZIP _____ E-MAIL: _____

Proprietary interest in site: none List all owners: _____

DESCRIPTION OF REQUEST: Amend zoning Code section 14-16-4-4(A)(2) ROA 1994. Appeal to remove the exception that requires zone m amendments to be heard only by the City Council.

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. City-wide Block: _____ Unit: _____
Subdiv/Addn/TBKA: _____
Existing Zoning: _____ Proposed zoning: _____ MRGCD Map No _____
Zone Atlas page(s): _____ UPC Code: _____

CASE HISTORY:

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_Z_, V_, S_, etc.): _____

CASE INFORMATION:

Within city limits? ☒ Yes Within 1000FT of a landfill? ☐
No. of existing lots: _____ No. of proposed lots: _____ Total site area (acres): _____
LOCATION OF PROPERTY BY STREETS: On or Near: City-wide
Between: _____ and _____

Check if project was previously reviewed by: Sketch Plat/Plan ☐ or Pre-application Review Team(PRT) ☐ Review Date: _____

SIGNATURE Catalina Lehner DATE _____
(Print Name) Catalina Lehner Applicant: ☐ Agent: ☐

FOR OFFICIAL USE ONLY

<input type="checkbox"/> INTERNAL ROUTING	Application case numbers	Action	S.F.	Fees
<input checked="" type="checkbox"/> All checklists are complete	<u>BEIC 40153</u>	<u>AZC</u>	_____	\$ <u>2</u>
<input checked="" type="checkbox"/> All fees have been collected	_____	_____	_____	\$ _____
<input checked="" type="checkbox"/> All case #s are assigned	_____	_____	_____	\$ _____
<input checked="" type="checkbox"/> AGIS copy has been sent	_____	_____	_____	\$ _____
<input type="checkbox"/> Case history #s are listed	_____	_____	_____	\$ _____
<input type="checkbox"/> Site is within 1000ft of a landfill	_____	_____	_____	\$ _____
<input type="checkbox"/> F.H.D.P. density bonus	_____	_____	_____	\$ _____
<input type="checkbox"/> F.H.D.P. fee rebate	_____	_____	_____	\$ _____


Hearing date January 9, 2014

Staff signature & Date

Project # 1001020

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Suzanne Lubar, Acting Director, Planning Department
FROM: Jon K. Zaman, Director, Council Services 
SUBJECT: Bill No. O-13-63
DATE: November 20, 2013

The attached ordinance was introduced by the City Council on November 18, 2013. We are requesting you submit this Zoning Code text amendment to the Environmental Planning Commission for a hearing as soon as possible. The intent of this amendment is to allow zoning appeals to be heard by the Land Use Hearing Officer (LUHO) before going to the full Council for acceptance or rejection of the LUHO recommendation.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
Carmen Marrone, Planning Department
File O-13-63

CITY of ALBUQUERQUE

TWENTIETH COUNCIL

COUNCIL BILL NO. O-13-63 ENACTMENT NO. _____

SPONSORED BY: Trudy E. Jones

ORDINANCE

1 AMENDING CHAPTER 14, ARTICLE 16, PART 4, SECTION 4(A)(2) ROA 1994 TO
2 REMOVE THE EXCEPTION IN THE APPEALS PROCESS THAT REQUIRES
3 ZONE MAP AMENDMENTS TO BE HEARD ONLY BY THE CITY COUNCIL AND
4 NOT BY THE LAND USE HEARING OFFICER.

5 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
6 ALBUQUERQUE:

7 SECTION 1. Section 14-16-4-4(A)(2) ROA 1994 is amended as follows:

8 “(2) Appeal of the following actions is to the City Council through
9 the Land Use Hearing Officer:

10 (a) Any action which is authorized by the Zoning Code and is
11 made by the Planning Commission [~~except a zone map amendment, the~~
12 ~~appeal of which shall be heard only by the City Council and not by the Land~~
13 ~~Use Hearing Officer~~];

14 (b) Denial of an application for the HO Historic Overlay Zone or
15 UCO Urban Conservation Overlay Zone by the Landmarks and Urban
16 Conservation Commission;

17 (c) A decision on a special use permit by the Landmarks and
18 Urban Conservation Commission;

19 (d) Appeals of a decision of the Board of Appeals; and

20 (e) Appeals of a decision of the Development Review Board.”

21 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
22 clause, word or phrase of this ordinance is for any reason held to be invalid
23 or unenforceable by any court of competent jurisdiction, such decision shall
24 not affect the validity of the remaining provisions of this ordinance. The
25 Council hereby declares that it would have passed this ordinance and each

1 section, paragraph, sentence, clause, word or phrase thereof irrespective of
2 any provision being declared unconstitutional or otherwise invalid.”
3 SECTION 3. COMPILATION. The ordinance amendment prescribed by
4 SECTION 1 shall be incorporated in and made part of the Revised Ordinances
5 of Albuquerque, New Mexico, 1994.
6 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days
7 after publication by title and general summary.
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§ 14-16-4-4 APPEAL.**(A) Jurisdiction.**

- (1) Appeal of declaratory rulings as to the applicability of the Zoning Code by the Zoning Enforcement Officer, or any action which is authorized by the Zoning Code and is made by the Planning Director is to the City Council through the Land Use Hearing Officer. Appeal of decisions of the Zoning Hearing Examiner is to the Board of Appeals. Upon denial of a Certificate of Appropriateness by the Mayor or Planning Director under the terms of § 14-16-2-25 or § 14-16-2-28 of this Zoning Code, the matter will be remanded to the Landmarks and Urban Conservation Commission for further consideration, if the applicant requests such remand within 15 days of denial.
- (2) Appeal of the following actions is to the City Council through the Land Use Hearing Officer:
 - (a) Any action which is authorized by the Zoning Code and is made by the Planning Commission except a zone map amendment, the appeal of which shall be heard only by the City Council and not by the Land Use Hearing Officer;
 - (b) Denial of an application for the HO Historic Overlay Zone or UCO Urban Conservation Overlay Zone by the Landmarks and Urban Conservation Commission;
 - (c) A decision on a special use permit by the Landmarks and Urban Conservation Commission;
 - (d) Appeals of a decision of the Board of Appeals; and
 - (e) Appeals of a decision of the Development Review Board.
- (3) Once an appeal is filed, no prior decision rendered by the Zoning Enforcement Officer, the Zoning Hearing Examiner, the Planning Director, the Planning Commission, the Board of Appeals, the Development Review Board, or Landmarks and Urban Conservation Commission upon which the appeal is based may be unilaterally withdrawn, changed or modified by any of the above as they have lost jurisdiction to act on the matter.

(B) Application.

- (1) Administrative appeals shall be filed at the office of the Planning Department. Any zoning decision which can be appealed under the terms of division (A) above is final unless appeal is initiated by application to the city on prescribed forms within 15 days of the announced decision. The date of determination is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday, or holiday as listed in § 3-1-12, the next working day is considered as the deadline for filing the appeal. Appeals of declaratory rulings to the City Council are not subject to the time limits on making an appeal as set forth above. Written decisions shall be issued by the Planning Department no later than five working days after an oral decision has been rendered.
- (2) The following persons shall have the right to file appeals of city planning, zoning and land use decisions:
 - (a) Where the decision appealed is a special exception, persons who were parties or could have been parties at the Zoning Hearing Examiner's hearing.
 - (b) Any person may appeal declaratory rulings by the Zoning Enforcement Officer.

- (c) Where the decision appealed is a conditional use for retail sale of alcoholic drink for consumption off premises where the portion of the building used for such business is within 500 feet of a residential zone, any person who owns a property interest within 500 feet of the subject site (excluding public right-of-way).
 - (d) In other cases, persons who own a property interest within 300 feet of the subject-site (excluding public right-of-way); and organized neighborhood associations (as provided in § 14-16-4-2(B)(2)(d)) if the boundaries of the association include any part of the subject-site or any land within 600 feet thereof (excluding public right-of-way).
 - (e) Any person who demonstrates a personal or pecuniary interest or property right adversely affected by the decision, which right or interest is more than merely nominal or remote.
- (3) In prosecuting or defending an appeal any person may be represented by an attorney, any other representative or may appear for him or herself. An attorney or other representative must have written authorization from the person being represented. Any attorney, other representative or person appearing for himself or herself must abide by orders of the appellate body and preserve appropriate decorum.
 - (4) Applications for an appeal shall clearly articulate the reasons for the appeal; appellants shall specifically cite and explain one or more alleged errors:
 - (a) In applying adopted city plans, policies, and ordinances in arriving at the decision;
 - (b) In the appealed action or decision, including its stated facts;
 - (c) In acting arbitrarily or capriciously or manifestly abusive of discretion.
 - (5) A permit dependent on a decision described in division (A) of this section shall not be issued until an appeal is decided or the time for filing the appeal has expired without an appeal being filed; however, if public hearing produces no objection of any kind to approval of an application, which application is approved, the deciding entity may allow issuance of a building permit before 15 days if the applicant agrees in writing to return the building permit if an appeal is duly filed. The appeal of a decision by the Planning Director to issue a building permit shall not result in the automatic revocation of the permit. The holder of the permit shall be on notice that the building permit may be withdrawn.

(C) Acceptance.

- (1) The City Council, upon accepting an appeal, shall refer the appeal to the Land Use Hearing Officer for a hearing. The Land Use Hearing Officer may place reasonable limitations on an appeal hearing at the beginning of the hearing in question. The Land Use Hearing Officer shall hear the appeal in accordance with rules adopted by the Council and shall enter a recommendation regarding the appeal after making appropriate findings of fact. The Land Use Hearing Officer may accept new evidence into the record. If the Land Use Hearing Officer's recommendation is that the appeal should be remanded, the Land Use Hearing Officer shall set forth the reason(s) for the remand and the matters to be reconsidered. The Land Use Hearing Officer shall forward the recommendation and findings to the Council within five days of the recommendation. The Council shall place the Land Use Hearing Officer's recommendation, including findings, on the agenda of the next regular full Council meeting at which land use, planning and zoning matters are heard following receipt of the Land Use Hearing Officer's recommendation. At the Council meeting, the Council shall vote whether to accept or reject the Land Use Hearing Officer's recommendation and findings. The

Council may accept a portion of the Land Use Hearing Officer's recommendation and findings and reject the remainder. A motion to reject or accept the Land Use Hearing Officer's recommendation and findings must be approved by a majority of the membership of the Council. If the Land Use Hearing Officer's recommendation is rejected or if a majority of the Council fails to either accept or reject the recommendation, the appeal shall be scheduled before the full Council no earlier than the next regular meeting of the full Council at which land use matters are heard. If only a portion of the Land Use Hearing Officer's recommendation and findings are rejected, only that portion shall be scheduled for hearing before the Council. The Council may accept new evidence. Prior to the Council hearing a matter, following the rejection of a LUHO recommendation, the LUHO hearing shall be transcribed and made a part of the record before the City Council.

- (2) The City Council may remand an appeal to the Planning Commission, Board of Appeals, Development Review Board, Planning Director or Landmarks and Urban Conservation Commission for rehearing and decision if it finds that rehearing would be likely to serve public policy and resolve the appeal. If the City Council remands an appeal to the Planning Commission, Board of Appeals, Development Review Board, Planning Director or Landmarks and Urban Conservation Commission, the Council shall state key findings of fact on which that action is based.
 - (3) The Planning Commission, Board of Appeals, Development Review Board or Landmarks and Urban Conservation Commission shall hold a public hearing and make a decision relative to all appeals sent to it initially or remanded to it by the City Council as set forth elsewhere in this Zoning Code.
 - (4) No public advertising or announcement of appeals is required beyond that specified in division (E)(4) of this section.
 - (5) The City Council may approve the withdrawal of an appeal if it has received a written request to this effect from the appellant.
- (D) **Fee.** A filing fee of \$55 to cover reasonable expenses shall accompany each appeal application. When an application is withdrawn, the application fee shall not be refunded. There shall be no filing fee on an appeal of the Planning Commission, the Board of Appeals, Development Review Board, Planning Director or the Landmarks and Urban Conservation Commission, on a decision remanded to it by the City Council.

(E) **Hearing and Decision.**

- (1) An appeal to the Board of Appeals shall have a public hearing opened within 45 days of the expiration of the appeal period and concluded within 75 days of the expiration of the appeal period; however, the appellate body may for good cause determine that the appeal hearing should be deferred beyond the 75-day period. An appeal to the City Council shall be introduced into the Council within 45 days of the expiration of the appeal period, the hearing opened within 60 days of the expiration of the appeal period, and concluded within 90 days of the expiration of the appeal period; however, the Council may for good cause determine that the appeal should be deferred beyond the 90-day period.
- (2) The general procedure for an appeal hearing is as follows:
 - (a) The appellate body, including the Land Use Hearing Officer, may hold a hearing on the entire record sent to it and reverse, affirm, or modify the decision appealed.

- (b) If it appears to the appellate body that some additional evidence is necessary for the proper disposition of the matter, it may allow evidence to be taken.
 - (c) The appellate body may remand the matter for reconsideration; if the appellate body remands the appeal, it shall state specifically the matters to be reconsidered and the reasons for remand on which that action is based.
 - (d) The presiding officer and the Land Use Hearing Officer may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination.
 - (e) Staff of the appellate body, other than employees of a city division which is the appellant or the appellee, may upon request of a member of the appellate body communicate with that member at any time and by any means; copies of any written materials shall be distributed to all parties. In addition to appearing before the body, any party to an appeal may provide written argument to the appellate body by submitting it through the staff of that body. The written argument shall not include new evidence and shall be submitted at least five days before the next hearing on the appeal with copies provided to any neighborhood association entitled to notice in the case and to all parties. Any appellate body may, by rule or regulation, increase the five day period. There should be no other communication, outside a hearing, with a member of an appellate body concerning a pending appeal. Any other communication that does occur shall be disclosed by the member of the appellate body who receives the communication.
 - (f) The appellate body hearing the appeal shall take action on the appeal at the conclusion of the hearing, and shall state and adopt key findings of fact. Appellate bodies other than the City Council shall adopt their findings immediately after taking action on the appeal. The City Council may, after taking action on the appeal, adopt findings at the conclusion of the hearing or at the next scheduled meeting of the City Council, provided a councillor who did not participate in the action taken on the appeal may not participate in the action to adopt the findings.
- (3) Special, additional appeal procedures apply when the matter is an appeal of a special exception or a zone map amendment:
- (a) All testimony at the hearing shall be under oath or affirmation.
 - (b) No member of the appellate body shall inspect the site with any party to the appeal or his representative.
- (4) The Planning Director shall give written notice of an appeal, together with a notice of the date, time, and place of hearing to the applicant, a representative of the opponents, if any are known, and the appellant.
- (5) Vote needed:
- (a) 1. When the Planning Commission has voted a change in zoning regulation and this action is appealed to the City Council, a majority of all members of the City Council is required to defeat an appeal and change the zoning regulation if the appeal is signed by each of the equitable owners of record of land comprising at least:
 - a. Twenty percent of the land proposed for change in zone; or

- b. Twenty percent of the land not proposed for zone change but within 100 feet, excluding public right-of-way, of the land proposed for change in zone.
 2. It is the burden of the persons asserting the applicability of this division (a) to show that it applies through clear and convincing evidence.
 - (b) Unless division (a) above applies, a majority of all members of the City Council is required to reverse a determination by the Planning Commission, the Board of Appeals, the Development Review Board, the Planning Director or the Landmarks and Urban Conservation Commission.
 - (c) A simple majority of the Planning Commission or the Board of Appeals is required to reverse a determination of the city staff.
 - (d) For the purpose of this division (E), CHANGE IN ZONING REGULATION means one of the following:
 1. Change in the identity of the mapped zones;
 2. Initial adoption of sector development plans or site development plans; or
 3. Amendment of such plans if and only if:
 - a. The land uses permitted would be changed;
 - b. A limitation as to maximum total floor area within the plan area would be changed by 10% or more;
 - c. Building height at a given place within the plan area would be changed by 10% or more and would be over 26 feet high; or
 - d. The permitted number of dwelling units would be changed.
 - (6) If, in deciding an appeal, the City Council amends the zone map, the new zone must be one whose uses and density are within what is allowed in the proposed zone which has been advertised.
 - (7) In acting on an appeal, the city reserves for all its appellate bodies, including the Land Use Hearing Officer, the portion of the city's zoning authority which allows the city to decide appeal based on the preponderance of the evidence, to reweigh the evidence in the record, and to accept supplementary evidence when appropriate. However, a city appellate body may adopt rules barring new evidence.
- (F) **Judicial Review.** The remedy for parties dissatisfied with the action of the City Council shall be in accordance with state law. The review shall be limited to the record made on the public hearings held pursuant to this Zoning Code.
- (G) The Council shall adopt regulations setting forth the qualifications of the Land Use Hearing Officer.
- (H) If the Land Use Hearing Officer has a conflict of interest regarding a particular appeal or a party to that appeal, the appeal shall be heard by the Council.

- (I) In any matter heard by the Council without the Land Use Hearing Officer, the Council may choose to have a Hearing Officer take testimony and make recommendations.
- (J) Any city appellate body, including the City Council and Land Use Hearing Officer, for a given case, may suspend any applicable procedural rule if doing so does not adversely impact any party's rights.

('74 Code, § 7-14-45) (Ord. 80-1975; Am. Ord. 86-1976; Am. Ord. 6-1977; Am. Ord. 31-1977; Am. Ord. 21-1978; Am. Ord. 38-1978; Am. Ord. 22-1980; Am. Ord. 53-1980; Am. Ord. 100-1980; Am. Ord. 69-1981; Am. Ord. 72-1981; Am. Ord. 68-1983; Am. Ord. 4-1984; Am. Ord. 75-1985; Am. Ord. 49-1987; Am. Ord. 73-1989; Am. Ord. 45-1990; Am. Ord. 38-1991; Am. Ord. 9-1992; Am. Ord. 16-1992; Am. Ord. 54-1992; Am. Ord. 59-1993; Am. Ord. 29-1995; Am. Ord. 23-2001; Am. Ord. 30-2002; Am. Ord. 20-2003; Am. Ord. 8-2005; Am. Ord. 1-2007; Am. Ord. 33-2008)

Editor's note: The ordinance history for the following sections appears after § 14-16-4-99.

CITY OF ALBUQUERQUE

PLANNING DEPARTMENT

URBAN DESIGN & DEVELOPMENT DIVISION

600 2nd Street NW, 3rd Floor, 87102

P.O. Box 1293, Albuquerque, NM 87103

Office (505) 924-3860 Fax (505) 924-3339



OFFICIAL NOTIFICATION OF DECISION

January 10, 2014

The City of Albuquerque
Planning Department
PO Box 1293
Albuquerque, NM 87103

Project# 1001620

13EPC-40153 Zoning Code Text Amendment

PO Box 1293

Albuquerque

New Mexico 87103

REQUEST:

City of Albuquerque Planning Department, agent for City of Albuquerque, requests an amendment to the Zoning Code §14-16-4-4, Appeals, Jurisdiction, which applies City-wide.

Staff Planner: Carrie Barkhurst

On January 9, 2014, the Environmental Planning Commission (EPC), voted to RECOMMEND NOT ADOPTING THE PROPOSED TEXT AMENDMENT of Project 1001620, 13EPC-40153, a request for a Zoning Code Text Amendment, based on the following Findings and Conditions:

FINDINGS:

www.cabq.gov

1. The request is for a text amendment to §14-16-4-4(A) ROA 1994, Appeal, Jurisdiction, of the City's Comprehensive Zoning Code. The purpose of the proposed text amendment is to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council.
2. The proposed text amendment is to Zoning Code which is an ordinance of general application. The proposed text amendment would apply City-wide, so the request is considered legislative in nature.
3. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning Code are incorporated herein by reference and made part of the record for all purposes.

OFFICIAL NOTICE OF DECISION

Project #1001620, 13EPC-40153

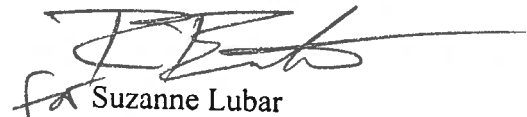
January 9, 2014

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4. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendment. The City Council is the City's Zoning Authority and will make the final decision. The EPC is a recommending body.
5. The City Council uses the Land Use Hearing Officer (LUHO) to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. Currently, zone changes are the only EPC decision that, upon appeal, does not go to the LUHO for a recommendation before being heard by City Council.
6. The proposed text amendment would abridge the due process rights of parties with standing to have an objective and meaningful hearing by the City Council in its role as the ultimate Land Use authority of the City.
7. All commenting Agencies and City Departments had no objections to the proposed amendment.
8. An announcement of the proposed text amendment was posted on the Planning Department's main web page and announced in the January/February 2014 issue of the Neighborhood News, published by the Office of Neighborhood Coordination (ONC). As of this writing, Staff has not received any inquiries or comments from members of the public.

PROTEST: It is not possible to appeal EPC Recommendations to City Council; Rather, a formal protest of the EPC's Recommendation can be filed within the 15 day period following the EPC's decision, which is by **JANUARY 24, 2014.**

Sincerely,


Suzanne Lubar
Planning Director

SL/KCB/mc

cc: City of Albuquerque, City Council, Attn: Chris Melendrez, P.O. Box 1293, Abq. NM 87102
Jim Strozier, 302 Eighth St NW, Albuquerque, NM 87102

2. Prior to application submittal to the DRB, the applicant shall meet with the staff planner to ensure that all conditions of approval are met.
3. Conditions per the recommendations of the CITY ENGINEER, MUNICIPAL DEVELOPMENT and NMDOT:
 - A. Site plan shall comply and be in accordance with all applicable City of Albuquerque requirements, including the *Development Process Manual* and current ADA criteria.
4. The Site Development Plan shall comply with the General Regulations of the Zoning Code, the Subdivision Ordinance, and all other applicable design regulations, except as specifically approved by the EPC.
5. In the event the New Mexico International Charter School, located in Building 1, Hope Plaza, changes location or no longer needs the playground, the playground equipment, furniture, fencing, shed and any other structures shall be removed within 60 days of the change.
6. The Site Development Plan for Building Permit becomes the controlling document for the site. The playground must be built as shown. Changes to the playground layout can be approved administratively.
7. Fencing facing Alameda Boulevard shall be vinyl coated, to enhance view preservation and be more visually appealing.

MOVED BY COMMISSIONER PETERSON
SECONDED BY COMMISSIONER MULLEN

MOTION PASSED 8-0

4. Project# 1001620
13EPC-40153 Zoning Code Text
Amendment

City of Albuquerque Planning Department, agent for
City of Albuquerque, requests an amendment to the
Zoning Code §14-16-4-4, Appeals, Jurisdiction, which
applies City-wide.
Staff Planner: Carrie Barkhurst

STAFF PRESENTING CASE:
Carrie Barkhurst

PERSONS PRESENT TO SPEAK IN REFERENCE TO THIS REQUEST:

Russell Brito, COA Planning Department
Jenica Jacobi, COA Legal Department
Jim Strozier, 302 Eighth St NW, Albuquerque, NM 87102

CHAIR NICHOLLS: I think we're ready for agenda item #4, Ms. Barkhurst.

MS. BARKHURST: Yes, thank you Mr. Chair and Commissioners. This is agenda item #4, Project 1001620, 13EPC-40153. The request is for Text Amendments to the City's Zoning Code, Section 14-16-4-4, which is the appeals regulations. The primary intent of this proposed legislation is to create consistency in the appeal process for all cases that are heard by the EPC and other land development review boards. The proposed text amendment would apply city wide and the request is legislative in nature.

A summary of the proposed amendments is to amend subsection A, jurisdiction to remove the exception that appeals of the Zone Map Amendments or Zone Changes cannot be heard by the Land Use Hearing Officer, the LUHO, prior to being heard by City Council. Currently zone changes are the only EPC decision that upon appeal does not go to the LUHO for a recommendation before being heard by City Council. Appeals of decisions made by the Land marks and Urban Conservation Commission, the Board of Appeals and the Development Review Board all go to the LUHO to be heard prior to going to City Council.

The City Council uses the LUHO to take public testimony, to review the complete record and to make a recommendation to City Council based on the facts of the case. This proposed text amendment would create consistent on the appeal process for all cases heard by the EPC and other land use development boards. With these proposed change, City Council will remain the final decision making body.

The request generally furthers the intent of the City Charter and the Zoning Code. Allowing the Land Use Hearing Officer to take testimony and make recommendations to the City Council in appeals of Zone Map Amendments is consistent with Council's authority to effectively administer City Policy and regulations; this is an exercise in local self-government.

The proposed changes also consistent with the City Council's mandate to ensure the proper use and development of land. The proposed amendment will ensure that City Council has the benefit of a Land Use Hearing Officer to take testimony and review facts of the case prior to the full council hearing of the case.

The Planning Department has notified the public through a Legal Ad in the newspaper, emailed to neighborhood representatives and posting on the City's website. Staff has not received any comments or questions related to this proposed text amendment.

The EPC's role here is to make a recommendation to City Council. In regarding Project 1001620, 13EPC-40153 staff recommends approval or I'm sorry recommends that a Recommendation of Approval be forwarded to City Council. I now stand for any questions.

CHAIR NICHOLLS: Commissioners? Commissioner Griebel, I'm sorry McCoy.

COMMISSIONER MCCOY: I guess a two part question thank you. I guess this request appears to have originated with the City Council and the reading of your report the unintended consequence of extending the time frame on an appeal was noted. Was my first part of the statement correct and do you have an idea what the difference in time frame might be if this were approved?

MS. BARKHURST: Mr. Chair, Commissioner McCoy I did not that that would be one possible outcome that for this one type of case the time line could be extended. My reading of the Zoning Code if you read the entire appeals section, which is in the packet the City Council at this time, can choose to have a hearing officer take testimony prior to their hearing of a zone change. And so they've never taken advantage of that and I believe that City Council just wanted to make it consistent so that it was defined to be the same hearing officer that hears other land use development cases. So.... The extra time it could be it could be nothing if if they had chosen to select a different hearing officer other than the LUHO it could be the identical time frame or it maybe a couple weeks longer. Maybe Mr. Brito has a little bit more idea about the time line than I do.

MR. BRITO: Mr. Chair, Commissioner McCoy I see the potential for lengthening the process if the Council decided to reject a Land Use Hearing Officer recommendation and to schedule it for a full hearing at a later council date. Most of the time we've seen the City Council accept the Land Use Hearing Recommendation, which does not extend the time period, but that potential exists with this change, but in my history I don't see that happening very often.

MS. JACOBI: Chairman, Commissioners I'd also note that the Land Use Hearing Officer has rules of procedure that the Council's approved. So he's required to hold his hearing within a certain amount of time and I think that maybe two weeks from what I've seen on a case recently. It only takes about a month from introduction for a case to get to the full City Council. What I'm a little uncertain of right now because currently a zone change would go through the LUPZ Committee before going to the full Council. If we're going to the LUHO in lieu of that I'm not sure that there would actually be any delay. I don't know if there's any reason that they would send it to both the LUHO and the LUPZ subcommittee. And so given that we'd be going to the LUHO instead of LUPZ, I actually think that process moves faster in my opinion.

CHAIR NICHOLLS: Commissioner Peterson.

COMMISSIONER PETERSON: Thank you Mr. Chairman. It's not a question, but I just wanted to make sure that I get continent time when the time comes. In your discretion I'm happy to get into it now, given that it's a legislative matter.

CHAIR NICHOLLS: Why don't you go ahead?

COMMISSIONER PETERSON: Okay. Thank you Mr. Chairman. I would respectfully urge everyone to vote for a recommendation against this and I think especially since it's legislative matter it's not inappropriate to you know share some personal experiences with this process.

In the last few years I've appealed a couple of things. I think technically three things from the EPC and in one of them it was a process that I... well both of them ended up being heard by the Land Use Hearing Officer and then going onto Council. In one circumstance I was allowed to actually be heard by Council and another circumstance I was not allowed to be heard by Council. And I want to emphasis how frustrating the latter process is.

When you have, you know property rights that you are trying to get or that you feel are being taken away from you and you are not allowed to even be heard by what is the ultimate land use body of the City, I think is contrary to law. I mean our New Mexico Law requires that we get a meaningful and object hearing hearing and an opportunity to be heard that's part of our due process. So if you get up to the City Council and you're not even allowed to be heard? That I don't know is appropriate and I think it's illegal and I do not think that the City Council can delegate that through a Hearing Officer. They can have a hearing before hand that will result in a recommendation as it does now, but I think ultimately they have to give the person who is aggrieved the opportunity to be heard and what's suggested here would actually decrease that. The way the law is right now, the way our code is right now at least you get that on a zoning matter. I personally feel you should get it on all quasi-judicial matters.

So I think this is going in the wrong direction. And then to say that the person that's aggrieved can then you know appeal to District Court I don't think is appropriate, because you know maybe it could have been resolved at the administrative level. So you know even without getting into the technical weeds of the law if you just think about it that you know if something's being taken away from you and you don't even get a chance to be heard by the people that have the ultimate authority to take it away from you that doesn't feel fair. Thanks.

CHAIR NICHOLLS: Yes.

MS. JACOBI: Thank you Chairman, Commissioners I just wanted to make sure that the Commissioners understood the process that Commissioner Petersons' referring to. After the LUHO make a recommendation it goes to the City Council. They have the opportunity to except or reject. In that process they do not take additional testimony, there is no public comment including from the applicant and so I want you to know that's part of the process. If they accept the recommendation then the matter is over. If they reject the recommendation then at the following Council meeting, there would have to be a full blown hearing where everyone would have an opportunity to comment, testify, present evidences, but if the LUHO's recommendation is accepted there really... there's no... there's no further evidence testimony at that point and that's how the process works.

COMMISSIONER PETERSON: Mr. Chairman may I make a clarification please?

CHAIR NICHOLLS: Thank you.

COMMISSIONER PETERSON: I thought that the way the process is currently is if it is a zoning matter that even though there's no new evidences that could be introduced that's the the appellant would actually get to be heard you know have an opportunity like the applicant does here at the EPC to be heard by the EPC... be heard by the Council, is that correct?

MS. JACOBI: Chairman, Commissioners right now if it's a zone change it goes up through LUPZ and then to Council and then there's testimony on it.

COMMISSIONER PETERSON: Yes, that's what I meant.

MS. JACOBI: Anything that goes to the LUHO goes through the process that I described and so I wanted to make sure that the Commissioners understood the LUHO process is different. And I think that's consistent with what you were describing as your experience.

COMMISSIONER PETERSON: Okay, not to confuse the issue, but I seems to remember what I went through and this was for you know the appeal ... the Carlisle thing that I brought up several times is that I thought I went to the LUHO, I thought he made a recommendation and then, but then my attorney was actually actually got time at the City Council as did I think staff. I may be remembering it wrong maybe I didn't go through the LUHO, but the point is I was ultimately able to be heard by City Council and I feel like that's what the amendment here would take away and that's why I recommend against it. Thanks.

CHAIR NICHOLLS: Further discussion? Commissioner. Commissioner Mullen

COMMISSIONER MULLEN: Could someone help with my clarification or give me clarification further on this and this is in regards to Commissioner Peterson's concerns about this and I'm not as familiar with the process and so I just want to make sure I understand. If a recommendation is brought up from LUHO to the City Council and LUHO has taken testimony from the applicant and others at a prior hearing, is that entire case presented to the City Council or is it merely the recommendation. You know, what kind of credence is given at the City Council meeting understanding that you know still... Commissioner Petersons concerned about the applicant. He or She is not firsthand able to testify, but how full is the investigation of that recommendation?

MS. JACOBI: Thank you Chair, Commissioners. The entire record goes to the City Council and the including the hearing before the LUHO with his recommendation, which is incredibly detailed, but I think the point being made is that your opportunity as an applicant to argue your case is really in front of the LUHO and then it's more of a transcript recommendation that gets filtered to Council. It is correct that this would limit your ability to present directly to Council on appeal.

COMMISSIONER MULLEN: And so with all due respect to Council, it's not fully presented at Council. They've had the opportunity to review it prior to their meeting and the assumption is they made a full review of the application or of the recommendation?

MS. JACOBI: Yes that's correct. They would have before them the application, EPC Record, the LUHO's Recommendation, the LUHO record, they would have a complete packet and that maybe discussed in parts amongst themselves, but no new evidence or argument is taken before a decision is made either to uphold or reject the LUHO's recommendation.

COMMISSIONER MULLEN: Thank you.

CHAIR NICHOLLS: Yes go ahead.

COMMISSIONER FLOYD: This is Commissioner Floyd. Process wise I mean right now Council has the discretion to appoint a Land Use Hearing Officer on this type of case. How does that process work? Is there a time delay because it's not standard? At what point does that trigger where they have the opportunity to make that decision and where do things go from there?

MR. BRITO: Mr. Chair, Commissioner Floyd I don't believe that the City Council has taken advantage of the hearing officer option for zone change appeals. So I can't say how long it has taken or how long it might take, but if when introduced at the City Council that comes up as an option. They would probably have to make a motion to send it to a hearing officer and then schedule that hearing officer

hearing and which could delay a recommendation hearing at the City Council possible up to a month or longer, but because it hasn't been used I don't think we have any specific time frame for that.

COMMISSIONER FLOYD: Alright.

CHAIR NICHOLLS: Let me just weigh in some comments from the Chair. I have had some experience good, bad and ugly before the LUHO. What I would like to be sure that we have on record here today is that certainly the one that's... I've been used to dealing with Steve Chavez, from Los Lunas as Counsel pointed out is extremely detailed. He goes through that records, the questions that are asked are directly related to the law and I think his opinion and his findings of fact certainly the ones that I've read recently are are excellent.

So the question I think that is really before us is Is that a better way to go having someone who is a land use expert review the case in its entirety to that point and then make recommendations/findings to Council compared to Council ... perhaps not giving it the better weight that it ... a legal land use legal expert might give and I think that's where I'm sort of coming down. When I saw this case coming up I thought, yes it's about time because it does unify the process right through, which I think is essential. I do understand completely what Commissioner Peterson is saying, but I don't believe that anything going before the Land Use Hearing Officer would deny him in anyway shape or form due process. That's just my non-legal thought.

COMMISSIONER FLOYD: Another questions for staff related to that. My understanding is that the Land Use Hearing Officer technically is not supposed to ... he review the evidence that's already on record, that there should not be any new testimony at that level. Is that true generally?

MS. JACOBI: Chair, Commissioners I mean ideally all the evidence has be put on at the first level, but I think it's pretty routine that if there's new evidence that it may be considered by the LUHO. Part of that would be why was this evidence not considered, not presented earlier, but he does put people under oath and collects evidence as well as arguments. So it's a full... hearing.

COMMISSIONER FLOYD: I guess my question and I know that that's kind of procedurally how things... but my understanding is that the ordinance is that he ... it goes on appeal to him and that he should be looking at the record that's already laid down as it came through us or whatever other Commission coming to and that there should not be new evidence or new testimony at that point similar to an appeal in District Court for example. I mean maybe you could speak to the ordinance there...

MS. JACOBI: I think that's 99% of what goes on, but when there is that 1% that comes up that... either you have Pro Se Litigants who weren't familiar with the process or sometimes circumstances change between the initially hearing and the LUHO's hearing that that can and should be brought up and that he as a hearing officer can give it the weight that it deserves, because the rules of evidence are a little bit lax in the administrative as opposed to court process.

CHAIR NICHOLLS: And if I might... I'm sorry Commissioner Peterson, go ahead.

COMMISSIONER PETERSON: Thank you Mr. Chairman I was just gonna say that I think the question that you define is really poignant in what we need to consider. The way I come down on it is I think that the relationship between the LUHO and the Council is very similar to how we might think of our relationship with the staff. Now similar to the LUHO being a land use expert, if you look at the

staff that's here today they're land use experts they do it you know for a living all the time. People on this Commission we all have our certain skills, but I wouldn't call us land use experts similar to the LUHO and the Council, but if we take what the Council put before us and we recommend it it would be as if applicants come and bring in a case and they get to talk to staff and staff make a recommendation, but then the applicant is not allowed to come before us. Now I'd say most cases we probably agree with staff recommendation, but plenty I don't and I think it's very fundamentally that that applicant gets to stand at that podium and gets their 5 or 10 minutes to what have you and to have that taken away from an aggrieved citizen and not have that opportunity at the City Council is what I really recommend against, because ... maybe you're given a lot of fairness at the Land Use Hearing Officer, but her Land Use Hearing Officer's ultimately not the one with the authority. There should be an opportunity to be heard by the body with the ultimate authority. Thanks.

COMMISSIONER GRIEBEL: Mr. Chair.

CHAIR NICHOLLS: Commissioner Griebel.

COMMISSIONER GRIEBEL: Thank you. One thing I was looking in the history and I didn't see this specifically or maybe I'm not catching it here, but do you know why this particular exception was made? I mean what makes Zone Map Amendments different than the rest of the process. Why was it singled out as having a different route to the City Council? I don't mean to stump you, 'cause if there's no history on it so be it.

MR. BRITO: Mr. Chair, Commissioner Griebel I was around when then Land Use Hearing Officer process was established by the City Council. And the reasons that they established a Land Use Hearing Officer was so that they could get an expert review of the facts including policy and testimony and then get an analysis and recommendations that the Council could either except or reject after their review of the record. Still giving them the opportunity to reject a recommendation and hear it themselves essentially a second hearing with the same information from the record below. The Council at the time when they adopted the changes to the appeal processes did single out the Zone Change Appeals to have those go straight to them, because I believe they were concerned that the zone changes had a little bit more weight in terms of entitlements through Land Use Law changes, which are zone changes and that they felt that they needed to hear directly from applicants and appellants to make an informed decision.

What I've seen through is that we've had decisions made by the City Council for example that are 180 degrees opposite of what the Planning Commission approved, because either they had a very different read of policy application for a particular site or particular situation and/or new information came up that the Planning Commissioner was not prevue too when the decision was made at this level. And through this change Planning Staff and the Department believe that the Land Use Hearing Officer will be able to give full consideration not only to appellants testimony and applicants testimony, but also to the applicability of goals and policies and whether or not the Planning Commission applied those correctly when review a Zone Map Amendment justification per R270-1980. It's not unlike other laws where you know after a period of time the decision makers feel that it's time to revisit them or reconsider specific language and I believe that's the case with this proposed text amendment.

COMMISSIONER GRIEBEL: So I guess just a sort of a follow up statement and I'll allow staff to comment on it, but it seems to me that the issue is whether or not you should have an opportunity to be heard at Council. And I would agree with Commissioner Peterson that that should be an opportunity

that somebody who's rights are being aggrieved as a matter of substantive due process, but I guess my concern is that might exceed our scope certainly with respect to what's on the table here, but I wonder could we include a recommendation that we believe the Council should offer an opportunity to be heard on the record as it exists at that point by an applicant who is ... perhaps you could limit it to an aggrieved party for efficiency sake, seems like that might strengthen the Council's action at that level. Could we include some sort of recommendation to that effect? While also recommending that this exception, which in my mind doesn't have any rational basis to be different than all the other actions they'd be considering be stricken from the list of things that go directly to Council.

Generally I think it does make sense for a hearing officer to sort through the evidence and apply the regs. And their expertise and come up with a well-reasoned recommendation and I don't know why this would be different. I also agree with Commissioner Peterson that an aggrieved party should be heard by the body who's ultimately going to be taken certain rights away. So... if you have any comment?

MR. BRITO: Thank you. This proposed change does not limit the Council's ability to reject a LUHO Recommendation and determine that they do want to hear the case themselves, but what it does do it gives them the opportunity to delegate their hearing authority to Land Use Hearing Officer, a land use expert, who can sort through the testimony, the evidence, the applicable goals and policies, etc. and package them in in a similar way that Site Development Plan Appeals are heard and recommended by the Land Use Hearing Officer. So it eases the burden on, it could ease the burden on the City Council a bit, because as Ms. Jacobi noted the Land Use Hearing Officer is very thorough, very detailed and may deal deeper into an issue or an appeal than the City Council as an entire body may at a first public hearing, but they still have the opportunity to review the record and and note that well we don't agree with the Land Use Hearing Officer or there maybe things that he missed, we're going to hear it ourselves; They still have that opportunity.

COMMISSIONER FLOYD: Mr. Chair before we get to deep into our discussion, I'm wondering if there's a member of the public that's signed up to speak on this. Not to put anyone on the spot.

MR. STROZIER: Thank you Mr. Chairman, Commissioners. Jim Strozier 302 Eighth Street NW and I still swear to tell the truth. We'll I was curious to sit in on your discussion on this and I think my opinion similar to the Chairman's comments is I've been through that process a number of times and I really I'm actually am a big proponent of the LUHO in terms of that hearing officer being able to sort through the facts and and that process. I do also agree though with Commissioner Peterson and his concern and I don't know if ... I don't think there's a mechanism right now for an aggrieved party to request that they reject or have a hearing at the Council level. It's sort of it goes from the LUHO to Council and then the Council as appellants you're you know you aren't communicating with that process. I don't know that there's a mechanism right now for anyone to request that the Council reject that offer, maybe there is. I'm not familiar with that part of it, but I do like the idea of addressing the issue at hand being whether or not the LUHO is able to hear Zoning, Zone Change, Zone Map Amendments and I think that's a good idea and I would certainly support that consistent with the staff's recommendation.

Also as Commissioner Griebel mentioned whether there's the ability for the Planning Commission to also suggest additional process if you will that would allow someone to have a hearing if need be before the ultimate land use authority would just the City Council. So those are those are my thought. I've always been extremely impressed with the LUHO's and that maybe because it's it's happens to be Steven Chavez who is the LUHO. I've always been impressed with the work that he's done and the

decisions and the way he conducts his hearings and the findings that he produces. So I'm a big fan of that process and I do think it works well and I would be in favor of having Zone Map Amendments also go through that process, but recognizing Commissioner Peterson's concern. And maybe there's a way for this Commission to suggest something like that as it goes up. Thank you.

CHAIR NICHOLLS: Commissioner McCoy.

COMMISSIONER MCCOY: I guess a comment versus a question. My initial question Ms. Barkhurst was based upon my particular understanding is a participant in the Albuquerque community. I'm all in favor of consistency. I am not in favor of increased costs, which is always the result of increased time in this process. As I listen to staff, I listen to the other Commissioners and Mr. Strozier I think there's probably merits on either side of this, but I find myself asking two questions that tend to make me not want to support this.

Number one what has changed in our world to require this? I think I may have heard that perhaps it is the City Councilors that have changed through their thought process, but maybe more important from my perspective, is it currently broken? I don't believe that it is and I can hear on one hand this not increasing time, because of a lucky draw. I certainly see the merits to a land use professional putting forth some testimony to the City Council, but it seems like this just adds one more layer. The City Council under the current wording will get the benefit of the EPC and the Planning Department Staff Reports seems to me like there is just not a lot more information that the LUHO could provide.

I'm seeing increased costs, another step in the process potentially and I don't hear any compelling reason from my perspective to add either one of those.

CHAIR NICHOLLS: Commissioner.

COMMISSIONER MULLEN: Thank you Mr. Chair. In response to Commissioner McCoy, this is not for every application; that we're only dealing with appeals where there is already an assumption of a disagreement or you know someone's not happy with the end result or something was missed. So I think that's one of the points that has me thinking more deeply about this. If this was injected as just a with every zoning change that had to go from us to LUHO to City Council I would agree with kind of an egregious additional step, but the fact that this is during an appeals process, it does seem to argue. And I'm not clear where I'm coming down on the the side. I'm kind of responding to your thoughts on this that there does seem to be some type of vetting or additional or professional analysis needed when it's appeals, because it's already saying whatever we came to is perhaps not in the agreement of all parties.

CHAIR NICHOLLS: Commissioner Gonzalez.

COMMISSIONER GONZALEZ: yeah, I just... let me see... well I think that I agree with what Commissioner Peterson is saying for the reason that I think this Commission has in some ways lost a little bit of its direction. We're a Planning Commission, not a Zoning Commission and the reason that I say that is because we you know zoning is the instrument through which planning obviously how the rubber meets the road. The City Council is the ultimate planning body as the entity that's supposed to be deciding which way our city goes needs to hear when a zoning change, and that's why they originally wrote it that way and that's why it should stay that way. They do need to hear testimony. Now if there were a way as Commissioner Griebel has said if we wanted to recommend such a thing

that regardless of whether they accept or reject LUHO's recommendations perhaps that's you know perhaps that's a possibility, but I whole heartedly agree with Commissioner Peterson that this is something where people need to be able to speak directly to the City Council as they're making decisions that are going to impact parties. That's it.

CHAIR NICHOLLS: let me just ask if I may Commissioner Peterson to help me out a little bit here. Under the current process you have appealed to City Council a matter, the way it stands at the moment am I right in believing that at that point it is usually review to the City Council by one of our former Commissioners, Melendrez and just to preface the whole case and then is it always the fact that the two parties are brought up to speak before the Council?

COMMISSIONER PETERSON: Thank you Mr. Chairman. A zoning matter now... yes the process you just described is correct in that to build on what Commissioner McCoy said in addition to the records that goes up Councilors also get a a summary from City Council Attorney, I think is our former Commissioner now it's been Bruce Thompson in the past sometimes. So he or she presents a summary of the matter to the City Council. Even though that attorney does things other than land use I would say that what she or he does is largely land use, since that's partly what the city does. And I forget the second part of your ques.... Oh yes and then they bring up the two parties that those that the appellant gets to present and then I believe the City also gets to present, the city staff, present and then my recollection of my most recent occasion was that for instance some neighbors who had been opposed to the application also got to be heard.

So although there might be a you know unjustified rumor that I tend to favor property rights, this door swings both ways too that you know a lot of times applicants could be the neighbors and you know would you want them to be able to be heard by the City Council as well.

CHAIR NICHOLLS: So maybe Commissioner Peterson we're coming down to an issue of due process here.

COMMISSIONER PETERSON: Yeah and Mr. Chairman of the... I'll try to make this the very last things I say, but my one last point is that I just don't think that there's any way to legitimately uncouple a bodies right to make a decision and their obligation to get a hearing. I mean I think that's the ultimate cake and eat it too that the Council would be doing here is that... we still want the right to make the ultimate decision, but gonna have someone else give the hearing that's supposed to do the due process and I don't think they come apart. Thanks.

CHAIR NICHOLLS: Commissioner Floyd.

COMMISSIONER FLOYD: Perhaps reiterating some of Commissioner McCoy's points, but speaking more bluntly because

COMMISSIONER GONZALEZ: You're kind of short. (laugh)

COMMISSIONER FLOYD: I mean I think the real issues the real drive behind this is we would all like City Council to make better decisions on land use issues. Maybe the assumption is if you know if they get another intermediate you know and more legal opinion in between us and them that now they'll make better land use decision. I have no faith in that. Early on in my time with the Commission, you know I've watched as cases moved up from us to them and you know there were cases where we had

pretty iron clad findings and conditions, our staff had done a good job, the commission had done a good job of vetting it, we had full testimony all the things that are proposed as of advantage of this you know, we don't limit testimony as a commission? We allow as much testimony as as a land use hearing officer would.

I think we have as good a staff you know as you know to get us to a place that the land use hearing officer, and perhaps he's more of an expert, but the truth is I've seen cases we've put up there where we as a commission vote unanimously or very close to it and it's a very seemingly clear cut if your follow the Comprehensive Plan, the Sector Development Plans, kind of the legal frame work side of the issue, it's very cut and dry it goes up to City Council, they're feeling political pressure on the other side and they ignore all that. I've even seen it through the extent that a case comes up and Council Bruce Thompson you know the Council say's here's where we're going you develop findings to justify this case and he responds to them, I can't find findings to justify what you want to do. And so... and then they still vote for it.

So with that understanding ... So putting a LUHO in between that when they're legal counsel, our legal counsel, the commissioners who are recommended by them on this commission have all weighed in on one direction, we put one more person in there and all of a sudden they're going to make better decisions? I don't think so. I think the issue is at Council. It's not in these intermediate steps. So I agree with Commissioner McCoy's basic point that is it really going to make it better? No, because it's not addressing the real issue.

CHAIR FLOYD: Commissioner Gonzalez.

COMMISSIONER GONZALEZ: I just wanted to add once again, because I really do agree with what Commissioner Peterson and what Commissioner Floyd and I wanted to say that one last time.... (laugh).

COMMISSIONER FLOYD: Oh wait are we recording? (laugh)

COMMISSIONER GONZALEZ: The the idea that that issues of this importance would be filtered through and officer when they're supposed to be the four commissions and the four councils to me is the end point of why I wouldn't agree with this process. There... it's just I think that's obviously why it was put in place and whether they new that they were being smart when they did it. And you know I hear what Commissioner McCoy is saying also about adding other layers, which we're very good at doing and trying to cover, you know cover out butts as we go through the city government process, but this to me is just it's just such a clear case of a person needs their day before the Council period. And not some however brilliant a technocrat one officer going through and deciding... I understand that the City Council will still ultimately decide, but there is that day in court that due process thing and I don't see how you can get around that.

CHAIR NICHOLLS: Commissioner Peck.

COMMISSIONER PECK: Thank you Mr. Chairman. I'm kind of echoing a lot of my fellow commissioners, but going to Commissioner McCoy's point of adding another layer, I think you know we sometimes get the bid on not being business friendly and I think something like this just adding another layer making it a little more complicated is another one of those we're not business friendly and I think we need to get out of that. So I can't support this either.

COMMISSIONER PETERSON: Mr. Chairman.

CHAIR NICHOLLS: Commissioner Peterson.

COMMISSIONER PETERSON: I'm prepared to make a motion whenever you would like.

CHAIR NICHOLLS: Is there any further discussion before we hear the motion? Hearing none, Commissioner Peterson.

COMMISSIONER PETERSON: Thank you Mr. Chairman. In the matter of case # 13EPC-40153, Zoning Code Text Amendment, I move that the Planning Commission provide a recommendation of not adopting the proposed text amendment subject to findings 1 – 5 as set forth in the staff report, finding #6 to be reworded to read as follows: A proposed text amendment would abridge the due process rights of parties withstanding to have an objective and meaningful hearing by the city Council in its role as the ultimate land use authority of the city. And then further with findings as proposed in the staff report #'s 9 and 10.

CHAIR NICHOLLS: Commissioner Peterson are you keeping 7 & 8?

COMMISSIONER PETERSON: No Mr. Chairman I would propose not adopting findings 7 & 8.

CHAIR NICHOLLS: We have a motion and a second. Any further discussion? Hearing none, those in favor say 'AYE'. Those against say 'NO'. Motion passes unanimously.

FINAL ACTION TAKEN:

NOW, THEREFORE, BE IT RESOLVED THAT the Environmental Planning Commission (EPC), voted to RECOMMEND NOT ADOPTING THE PROPOSED TEXT AMENDMENT of Project 1001620, 13EPC-40153, a request for a Zoning Code Text Amendment, to be forwarded to the City Council, based on the following Findings:

FINDINGS:

1. The request is for a text amendment to §14-16-4-4(A) ROA 1994, Appeal, Jurisdiction, of the City's Comprehensive Zoning Code. The purpose of the proposed text amendment is to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council.
2. The proposed text amendment is to Zoning Code which is an ordinance of general application. The proposed text amendment would apply City-wide, so the request is considered legislative in nature.
3. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning Code are incorporated herein by reference and made part of the record for all purposes.

4. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendment. The City Council is the City's Zoning Authority and will make the final decision. The EPC is a recommending body.
5. The City Council uses the Land Use Hearing Officer (LUHO) to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. Currently, zone changes are the only EPC decision that, upon appeal, does not go to the LUHO for a recommendation before being heard by City Council.
6. The proposed text amendment would abridge the due process rights of parties with standing to have an objective and meaningful hearing by the City Council in its role as the ultimate Land Use authority of the City.
7. All commenting Agencies and City Departments had no objections to the proposed amendment.
8. An announcement of the proposed text amendment was posted on the Planning Department's main web page and announced in the January/February 2014 issue of the Neighborhood News, published by the Office of Neighborhood Coordination (ONC). As of this writing, Staff has not received any inquiries or comments from members of the public.

MOVED BY COMMISSIONER PETERSON
SECONDED BY COMMISSIONER MCCOY

MOTION PASSED 8-0

8. OTHER MATTERS:

- A. Approval of December 12, 2013 Minutes.
MOVED BY COMMISSIONER PECK
SECONDED BY COMMISSINOER

MOTION PASSED 8-0

9. MEETING ADJOURNED AT 11:20 A.M.



ENVIRONMENTAL PLANNING COMMISSION ACTIONSHEET

Thursday, January 9, 2014
Plaza Del Sol Hearing Room
Lower Level
2nd Street NW

MEMBERS PRESENT:

Hugh Floyd, Chair
James Peck, Vice-Chair
Doug Peterson
Peter Nicholls
Moisés González
Patrick Griebel
Bill McCoy
Maia Mullen

RECORDING SECRETARY:

Madeline Carruthers

1. Call to Order: 8:30 AM

- A. Announcement of Changes and/or Additions to the Agenda
- B. Approval of Amended Agenda
- C. Swearing in of City Staff
- D. Election of Officers
 - Peter Nicholls was voted as Chairman
 - Jim Peck was voted as Vice-Chairman

2. Project# 1001386 *

13EPC-40154 Site Development Plan for
Building Permit

Myers, Oliver & Price, PC agent for Youth and Family Centered Services of New Mexico Inc. request the above action for all or a portion of Lots 22-A & 22-B-1, Corona Del Sol Subdivision zoned SU-1 PRD, Student Housing, Psychiatric Treatment Facilities, Senior Citizen Apartment Complex & SU-1, Transitional Living Related Services located on Sequoia Rd between Coors Blvd and Vista Grande Dr, containing approximately 8.11 acres. (G-11)
Staff Planner: Chris Glore
(APPROVED)

3. Project# 1009750 *

13EPC-40155 Site Development Plan for Building Permit

Consensus Planning, agent for The Stroup Company, requests the above action for Lot 9, Block 4, North Albuquerque Acres, Tract 3, Unit 3, zoned RD 5 DU/ac, located on Alameda Blvd., between Barstow St. and Ventura St. NE, containing approximately 1 acre. (C-20)

Staff Planner: Maggie Gould

(APPROVED)

4. Project# 1001620

13EPC-40153 Zoning Code Text Amendment

City of Albuquerque Planning Department, agent for City of Albuquerque, requests an amendment to the Zoning Code §14-16-4-4, Appeals, Jurisdiction, which applies City-wide.

Staff Planner: Carrie Barkhurst

(RECOMMENDATION OF DENIAL)

5. Project# 1003859

13EPC-40137 Site Development Plan for Building Permit Interpretation

COA Planning Department request the above action for all or a portion of lot 6B, Lands of Ray Graham III, Ovenwest Corp., zoned SU-1/O-1, C-2 & PRD, located on Coors between Montano and Learning containing approximately 15 acres. (E-12)

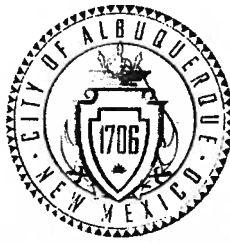
Staff Planner: Russell Brito

(DEFERRED TO FEBRUARY 13, 2014)

6. OTHER MATTERS:

A. Approval of December 12, 2013 Minutes. – APPROVED

7. ADJOURNED AT 11:20 AM



ENVIRONMENTAL PLANNING COMMISSION AGENDA

Thursday, January 9, 2014
8:30 a.m.

Plaza Del Sol Hearing Room, Lower Level
600 2nd Street NW

MEMBERS

Hugh Floyd, Chair
James Peck, Vice-Chair

Doug Peterson
Maia Mullen
Bill McCoy

Moises Gonzalez
Peter Nicholls
Patrick Griebel

NOTE: A LUNCH BREAK AND/OR DINNER BREAK WILL BE ANNOUNCED AS NECESSARY

Agenda items will be heard in the order specified unless changes are approved by the EPC at the beginning of the hearing; deferral and withdrawal requests (by applicants) are also reviewed at the beginning of the hearing. Applications with no known opposition that are supported by the Planning Department are scheduled at the beginning of the agenda; these cases are noted with an asterisk (*). Applications deferred from a previous hearing are normally scheduled at the end of the agenda.

There is no set time for cases to be heard. However, interested parties can monitor the progress of the hearing by calling the Planning Department at 924-3860. All parties wishing to address the Commission must sign-in with the Commission Secretary at the front table prior to the case being heard. Please be prepared to provide brief and concise testimony to the Commission if you intend to speak. **In the interest of time, presentation times are limited as follows, unless otherwise granted by the Commission Chair: Staff – 5 minutes; Applicant – 10 minutes; Public speakers – 2 minutes each.** An authorized representative of a recognized neighborhood association or other organization may be granted additional time if requested. Applicants and members of the public with legal standing have a right to cross-examine other persons speaking per Rule B.12 of the EPC Rules of Conduct.

All written materials – including petitions, legal analysis and other documents – should ordinarily be submitted at least 10 days prior to the public hearing, ensuring presentation at the EPC Study Session. The EPC strongly discourages submission of written material at the public hearing. Except in extraordinary circumstances, the EPC will not consider written materials submitted at the hearing. In the event the EPC believes that newly submitted material may influence its final decision, the application may be deferred to a subsequent hearing.

NOTE: ANY AGENDA ITEMS NOT HEARD BY 8:30 P.M. MAY BE DEFERRED TO ANOTHER HEARING DATE AS DETERMINED BY THE PLANNING COMMISSION.

1. Call to Order:

- A. Announcement of Changes and/or Additions to the Agenda
- B. Approval of Amended Agenda
- C. Swearing in of City Staff
- D. Election of Officers

2. Project# 1001386 *

13EPC-40154 Site Development Plan for Building Permit

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City of Albuquerque Planning Department, agent for City of Albuquerque, requests an amendment to the Zoning Code §14-16-4-4, Appeals, Jurisdiction, which applies City-wide.
Staff Planner: Carrie Barkhurst

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13EPC-40137 Site Development Plan for
Building Permit Interpretation

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Staff Planner: Russell Brito

6. OTHER MATTERS:

A. Approval of December 12, 2013 Minutes.

7. ADJOURNED



**CITY OF ALBUQUERQUE
PLANNING DEPARTMENT**

INTER-OFFICE MEMORANDUM

TO: ENVIRONMENTAL HEALTH/Suzanne Busch
PARKS & RECREATION:
PARK DESIGN/Carol Dumont
OPEN SPACE DIVISION/Susannah Abbey
PLANNING:
LONG RANGE PLANNING/Maggie Gould
METROPOLITAN REDEVELOPMENT/ John G. Rivera
HYDROLOGY/Curtis Cherne
NEIGHBORHOOD COORDINATION/Stephani Winklepleck
TRANSPORTATION DEV. SERVICES/Cynthia Beck/Nilo Salgado-Fernandez
ZONING/Jonathan Turner
ABC WATER UTILITY AGENCY/Allan Porter
POLICE DEPARTMENT/Steve Sink
FIRE DEPARTMENT/Richard C. Suazo
SOLID WASTE MANAGEMENT DEPARTMENT/Lee Whistle
TRANSPORTATION PLANNING/Debbie Bauman
TRANSIT DEPARTMENT/Shabih Rizvi
ALBUQUERQUE PUBLIC SCHOOLS/April Winters
AMAFCA/Lynn Mazur
COUNTY OF BERNALILLO/Nano Chavez
MID-REGION COUNCIL OF GOVERNMENTS/Steven Montiel
MIDDLE RIO GRANDE CONSERVANCY DISTRICT/Ray A. Gomez
NM DEPARTMENT OF TRANSPORTATION/Tony Abbo
NM GAS COMPANY/Brandon Kaufman
PETROGLYPH NATIONAL MONUMENT/Diane Souder
PUBLIC SERVICE COMPANY OF NEW MEXICO/Laurie Moye

FROM: Carmen Marrone, Current Planning Section, Planning Department

SUBJECT: ENVIRONMENTAL PLANNING COMMISSION CASE DISTRIBUTION

Attached are the legal descriptions, applications, and related materials for the cases scheduled for public hearing before the Environmental Planning Commission on **JANUARY 9, 2013**.

Please remember that all agency comments are due **NO LATER THAN DECEMBER 13, 2013**.

COMMENTS TO: Carrie Barkhurst (kcbarkhurst@cabq.gov)
Catalina Lehner (clehner@cabq.gov)
Chris Glore (cgllore@cabq.gov)

Project# 1001386
13 EPC-40154 AMEND SITE
DEVELOPMENT PLAN - BLD PRMT

MYERS, OLIVER & PRICE, PC agent(s) for YOUTH AND FAMILY CENTERED SERVICES OF NEW MEXICO INC request(s) the above action(s) for all or a portion of lot(s) 22-A & 22-B-1, CORONA DEL SOL SUBDIVISION zoned SU-1 PRD STUDENT HOUSING, PSYCH TREATMENT FACILITIES, SR CITIZEN APARTMENT COMPLEX & SU-1 TRANSITIONAL LIVING RELATED SERVICES located on SEQUOIA RD BETWEEN COORS BLVD AND VISTA GRANDE DR containing approximately 8.11 acre(s). (G-11)
STAFF PLANNER: Chris Glore

Project# 1001620
13 EPC-40153 AMNDT TO ZONING CODE
OR SUBDN REGS TEXT

CITY OF ALBUQUERQUE PLANNING DEPT agent(s) for CITY OF ALBUQUERQUE PLANNING DEPT request(s) the above action(s) for all or a portion of CITY WIDE located on CITY WIDE
STAFF PLANNER: Carrie Barkhurst

Project# 1009750
13 EPC-40155 SITE DEVELOPMENT -
BUILDG PRMT

CONSENSUS PLANNING agent(s) for THE STROUP COMPANY request(s) the above action(s) for all or a portion of lot(s) 9, block(s) 4, NORTH ALBUQUERQUE ACRES Unit(s) 3 zoned SU-1 FOR RD 5DU/AC & PLAYGROUND located on ALAMEDA BLVD BETWEEN BARSTOW AND VENTURA containing approximately 1 acre(s). (C-20)
STAFF PLANNER: Catalina Lehner