

**Notice of Decision
City Council
City of Albuquerque
September 30, 2021**

AC-21-9 Project-2020-004657, VA-2020-00379, VA-2021-00147: Nob Hill Neighborhood Association, appeals the Zoning Hearing Examiner's decision to approve a variance of 3 feet to the 3 foot maximum wall height for Lot 1, Block 39, University Heights, located at 202 Richmond DR SE, zoned MX-T [Section 14-16-5-7-D]

Decision

On September 20, 2021, by a vote of 8 FOR 1 AGAINST the City Council voted to deny the appeal and accept the Land Use Hearing Officer Recommendation and Findings.


Against: Davis

IT IS THEREFORE ORDERED THAT THE APPEAL IS DENIED, THE ZONING HEARING EXAMINER IS AFFIRMED, AND THE VARIANCE IS APPROVED

Attachments

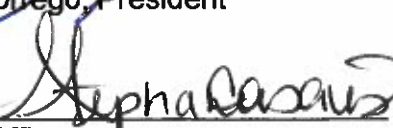
1. Action Summary from the August 16, 2021 City Council Meeting
2. Action Summary from the September 8, 2021 City Council Meeting
3. Action Summary from the September 20, 2021 City Council Meeting
4. Land Use Hearing Officer's Decision

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



Cynthia D. Borrego, President
City Council

Date: 10-7-21

Received by: 

City Clerk's Office

Date: 10/7/21

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2021 OCT -7 PM 3:07



City of Albuquerque

Albuquerque/Bernalillo
County
Government Center
One Civic Plaza
Albuquerque, NM 87102

Action Summary

City Council

Council President, Cynthia D. Borrego, District 5
Vice-President, Diane G. Gibson, District 7

Lan Sena, District 1; Isaac Benton, District 2
Klarissa J. Peña, District 3; Brook Bassan, District 4
Pat Davis, District 6; Trudy E. Jones, District 8
Don Harris, District 9

Monday, August 16, 2021

5:00 PM

Via Zoom Video Conference

1. ROLL CALL

Present 9 - Brook Bassan, Isaac Benton, Cynthia Borrego, Patrick Davis, Diane Gibson, Don Harris, Trudy Jones, Klarissa Peña, and Lan Sena

2. MOMENT OF SILENCE

Councilor Sena led the Pledge of Allegiance in English.

Councilor Bassan led the Pledge of Allegiance in Spanish.

3. PROCLAMATIONS & PRESENTATIONS

4. ECONOMIC DEVELOPMENT DISCUSSION

10. GENERAL PUBLIC COMMENTS

5. ADMINISTRATION QUESTION & ANSWER PERIOD

6. APPROVAL OF JOURNAL

August 2, 2021

7. COMMUNICATIONS AND INTRODUCTIONS

8. REPORTS OF COMMITTEES

Finance and Government Operations Committee - August 9, 2021

Public Safety Committee - August 10, 2021

Land Use, Planning and Zoning Committee - August 11, 2021

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

- a. [EC-21-389](#) Mayor's re-appointment of Mr. Brian White to the Cable Franchise & Hearing Board
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- b. [EC-21-390](#) Mayor's appointment of Mr. Patrick Stewart to the Veterans and Military Affairs Advisory Board
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- c. [EC-21-391](#) Mayor's appointment of Mrs. Jude Quintana to the ABQ Volunteers Advisory Board
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- d. [EC-21-392](#) Mayor's appointment of Ms. Nadine Buerger to the ABQ Volunteers Advisory Board
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- e. [EC-21-393](#) Mayor's re-appointment of Ms. Sandra McCardell to the Albuquerque Energy Council
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- f. [EC-21-394](#) Mayor's re-appointment of Mr. Gabriel S. Pacyniak to the Albuquerque Energy Council
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

- g. [EC-21-395](#) Mayor's appointment of Mr. Larry Hinojos, Jr. to the Human Rights Board
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For:** 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- i. [EC-21-403](#) Volcano Road Right of Way Vacation - Project# PR-2020-004676, SD-2021-00093, Michelle Henrie, agent for Macritchie Storage Ventures, LLC requests Vacation of Public Right-of-Way for 9,347 feet of Volcano Road. (K-9)
- A motion was made by Vice-President Gibson that this matter be Approved.**
The motion carried by the following vote:
- For:** 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- j. [EC-21-406](#) Mayor's re-appointment of Mr. C. Jack Emmons to the Accountability in Government Oversight Committee
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For:** 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- k. [EC-21-408](#) Mayor's appointment of Ms. Mayane Barudin to the Albuquerque Energy Council
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For:** 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- l. [EC-21-409](#) Mayor's re-appointment of Mr. Damon Maddox to the Landmarks and Urban Conservation Commission
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For:** 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- m. [EC-21-410](#) Mayor's appointment of Ms. Frances Armijo to the Housing & Neighborhood Economic Development Committee
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For:** 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- n. [EC-21-411](#) Mayor's appointment of Mr. James Povijua to the Albuquerque Energy Council
- A motion was made by Vice-President Gibson that this matter be Confirmed.**
The motion carried by the following vote:
- For:** 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

- o. [EC-21-412](#) Mayor's re-appointment of Mr. Philip Snyder to the Lodgers' Tax Advisory Board
A motion was made by Vice-President Gibson that this matter be Confirmed.
The motion carried by the following vote:
For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- p. [EC-21-413](#) Mayor's appointment of Mrs. Kristin Abdill to the Metropolitan Parks & Recreation Advisory Board
A motion was made by Vice-President Gibson that this matter be Confirmed.
The motion carried by the following vote:
For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- q. [EC-21-414](#) Mayor's re-appointment of Ms. Elena Gonzales to the Affordable Housing Committee
A motion was made by Vice-President Gibson that this matter be Confirmed.
The motion carried by the following vote:
For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- r. [EC-21-415](#) Mayor's re-appointment of Mr. Felipe Rael to the Affordable Housing Committee
A motion was made by Vice-President Gibson that this matter be Confirmed.
The motion carried by the following vote:
For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- s. [EC-21-416](#) Mayor's appointment of Mrs. Uche Ohiri to the Human Rights Board
A motion was made by Vice-President Gibson that this matter be Confirmed.
The motion carried by the following vote:
For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- t. [EC-21-417](#) Mayor's appointment of Mr. Victoriano Ceballos to the Albuquerque Energy Council
A motion was made by Vice-President Gibson that this matter be Confirmed.
The motion carried by the following vote:
For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena
- u. [OC-21-37](#) Re-Appointment of Charlotte Schoenmann to the Arts Board
A motion was made by Vice-President Gibson that this matter be Confirmed.
The motion carried by the following vote:
For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

Deferrals/Withdrawals

- h. [EC-21-399](#) Freeman Avenue Right of Way Vacation - Project# PR-2020-004812, SD-2020-00220, Tim Nisly requests Vacation of Public Right-of-Way for all or a portion of the alley adjacent to Lot 12, Block 6 Belmont Place Lot 12 & 13 & 14, located south of Freeman Avenue between 5th St and 6th St, containing approximately .03 acre(s). (G-14)

A motion was made by Councilor Benton that this matter be Postponed to September 8, 2021. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

- a. [O-21-49](#) Amending Chapter 2, Article 2, Section 1 Of The Revised Ordinances Of Albuquerque, New Mexico, 1994, The "Capital Improvements" Ordinance, For The Creation Of A Capital Set-Aside For Underserved Areas And Communities (Borrego)

A motion was made by President Borrego that this matter be Postponed to November 15, 2021. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

- b. [O-21-50](#) Amending Chapter 2, Article 11, Of The Revised Ordinances Of Albuquerque, The "City Budget Ordinance" Relating To The Preparation And Adoption Of The Annual Operating Budget Of The City (Davis, Benton)

A motion was made by Councilor Davis that this matter be Postponed to September 8, 2021. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

- i. [M-21-10](#) Reaffirming The City Of Albuquerque's Commitment To Decrease Crime, And Recidivism, And Advocating Criminal Justice Reform In Metro Albuquerque And Bernalillo County (Borrego)

A motion was made by President Borrego that this matter be Postponed to September 8, 2021. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

11. ANNOUNCEMENTS

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

14. FINAL ACTIONS

- k. [R-21-187](#) Concerning A Bond Election To Be Held In The City Of Albuquerque At The Next Regular Local Election On November 2, 2021; Submitting To A Vote Of The Qualified, Registered Electors At Such Regular Local Election A Question Relating To The Issuance Of Gross Receipts Tax Revenue Bonds In The Principal Amount Of Up To \$50,000,000 To Acquire Property For, And To Design, Develop, Erect, Construct And Otherwise Improve A Public Stadium For Multiple Uses, Including, But Not Limited To, Professional Soccer Events; Providing The Form Of The Bond Question And The Designation Clause For Such Question On The Ballot; Prescribing Other Details In Connection With Such Regular Local Election And Bonds; And Ratifying Action Previously Taken In Connection Therewith (Benton and Bassan, by request)

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 2. The motion carried by the following vote:

For: 5 - Borrego, Davis, Harris, Peña, and Sena

Against: 4 - Bassan, Benton, Gibson, and Jones

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

For: 7 - Benton, Borrego, Davis, Gibson, Harris, Peña, and Sena

Against: 2 - Bassan, and Jones

- *p. [R-21-193](#) Directing That The City Expand Site Selection Evaluation For A Proposed Multi-Use Soccer Stadium To Include Evaluation Of One Or More Options West Of The River; Appropriating Funds For The Same (Peña, Sena, Borrego)

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

For: 3 - Borrego, Peña, and Sena

Against: 6 - Bassan, Benton, Davis, Gibson, Harris, and Jones

- c. [O-21-67](#) Amending Sections 7-2-1-2, Of The Transit System Ordinance To Provide For A Zero Fare Pilot Project And Creating A New Section 7-2-1-3 (Davis, Sena, Peña, Benton)

A motion was made by Councilor Sena that this matter be Postponed to September 8, 2021. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

- d. [R-21-173](#) Amending Resolution-21-148, Establishing One-Year Objectives For The City Of Albuquerque In Fiscal Year 2022; To Include A Zero Fare Transit Pilot Objective To Meet Five-Year Goals (Davis, Sena, Peña, Benton)

A motion was made by Councilor Sena that this matter be Postponed to September 8, 2021. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

- e. [R-21-178](#) Amending The City Operating Budget Language To Clarify The Intent Of The City Council To Implement A Comprehensive Zero Fare Pilot (Sena, Peña, Davis)

A motion was made by Councilor Sena that this matter be Postponed to September 8, 2021. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

- f. [R-21-135](#) A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 1717 Edith Blvd SE, Albuquerque NM 87102 Within The City Limits Of Albuquerque, New Mexico Is So Ruined, Damaged And Dilapidated As To Be A Menace To The Public Comfort, Health, Peace Or Safety And That It Is To Be Required To Be Removed (Benton, by request)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

- g. [R-21-155](#) A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 1804 High St SE Within The City Limits Of Albuquerque, New Mexico Is So Ruined, Damaged And Dilapidated As To Be A Menace To The Public Comfort, Health, Peace Or Safety And That It Is To Be Required To Be Removed (Benton, by request)

A motion was made by Councilor Benton that this matter be Postponed to October 4, 2021. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

- h. [R-21-156](#) A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 832 Estancia Dr NW Within The City Limits Of Albuquerque, New Mexico Is So Ruined, Damaged And Dilapidated As To Be A Menace To The Public Comfort, Health, Peace Or Safety And That It Is To Be Required To Be Removed (Sena, by request)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

- i. [R-21-171](#) Concerning The Future Management Of Candelaria Nature Preserve And The Approval Of The 2020 Resource Management Plan (Benton, by request)

A motion was made by Councilor Benton that this matter be Postponed September 8, 2021. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

- j. [R-21-179](#) F/S Declaring The Intent Of The City Council Of The City Of Albuquerque, New Mexico To Consider For Adoption A Resolution Approving The Formation Of South Campus Tax Increment Development District; Approving, Subject To Further Proceedings Of The City Council, A Tax Increment Development Plan For The District, Which Includes A Description Of The Areas To Be Included Therein, The Purposes Of The District, Identification Of Gross Receipts Tax Increment And Property Tax Increment Financing Mechanisms, And Bonds Secured By Gross Receipts Tax Increment Revenue And Property Tax Increment Revenue; Authorizing And Directing The Posting, Mailing And Publication, In A Newspaper Of General Circulation Within The County, Of A Notice Of Public Meeting And Hearing To Be Held On October 4, 2021 To Consider For Adoption The Resolution Approving The Formation Of The District (Davis and Benton, by request)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

A motion was made by Councilor Davis that this matter be Passed as Substituted, as Amended. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

- *m. [R-21-188](#) Encouraging The Albuquerque Ditch And Water Safety Task Force To Conduct A Study To Improve The Safety Of Storm Water Channels, Arroyos And Irrigation Canals; Requesting That The Administration Of The City Of Albuquerque Consider The Study Reports Capital

Recommendations In The City Of Albuquerque 2023 Capital Implementation Plan Program (Borrego)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

***n. [O-21-74](#)**

F/S Amending Ordinance No. F/S O-21-65 Relating To The Authorization, Issuance And Sale Of The City Of Albuquerque, New Mexico Industrial Revenue Bond (El Encanto, Inc. Project) Tax-Exempt Series 2021 (The "Bond") And Providing For The Issuance Of The Bond As A Taxable Bond (Benton, by request)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

A motion was made by Vice-President Gibson that the rules be suspended for the purpose of extending tonight's meeting to 10:45pm. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

***o. [R-21-189](#)**

Accepting And Appropriating Federal Aviation Administration Grant Funding From The American Rescue Plan Act (ARPA) For The City Of Albuquerque Aviation Department (Davis by request)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

12. PUBLIC HEARINGS: {Appeals, SAD Protest Hearings}

a. [AC-21-9](#)

Project-2020-004657, VA-2020-00379, VA-2021-00147: Nob Hill Neighborhood Association, appeals the Zoning Hearing Examiners

decision to approve a variance of 3 feet to the 3 foot maximum wall height for Lot 1, Block 39, University Heights, located at 202 Richmond DR SE, zoned MX-T [Section 14-16-5-7-D]

A motion was made by Councilor Davis To Reject the Land Use Hearing Officer Recommendation. This matter will have a full hearing on September 8, 2021. The motion carried by the following vote:

For: 5 - Benton, Borrego, Davis, Peña, and Sena

Against: 3 - Bassan, Gibson, and Jones

Excused: 1 - Harris



City of Albuquerque

Albuquerque/Bernalillo
County
Government Center
One Civic Plaza
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Action Summary

City Council

Council President, Cynthia D. Borrego, District 5
Vice-President, Diane G. Gibson, District 7

Lan Sena, District 1; Isaac Benton, District 2
Klarissa J. Peña, District 3; Brook Bassan, District 4
Pat Davis, District 6; Trudy E. Jones, District 8
Don Harris, District 9

Wednesday, September 8, 2021

3:00 PM

Via Zoom Video Conference

TWENTY-FOURTH COUNCIL - FORTIETH MEETING

1. ROLL CALL

Present 8 - Brook Bassan, Isaac Benton, Cynthia Borrego, Patrick Davis, Diane Gibson, Trudy Jones, Klarissa Peña, and Lan Sena
Excused 1 - Don Harris

2. MOMENT OF SILENCE

Councilor Jones led the Pledge of Allegiance in English.
Councilor Peña led the Pledge of Allegiance in Spanish.

3. PROCLAMATIONS & PRESENTATIONS

4. ECONOMIC DEVELOPMENT DISCUSSION

10. GENERAL PUBLIC COMMENTS

5. ADMINISTRATION QUESTION & ANSWER PERIOD

6. APPROVAL OF JOURNAL

August 16, 2021

7. COMMUNICATIONS AND INTRODUCTIONS

8. REPORTS OF COMMITTEES

Finance and Government Operations Committee - August 23, 2021

Land Use, Planning and Zoning Committee - August 25, 2021**DEFERRALS/WITHDRAWALS**

- a. [O-21-50](#) Amending Chapter 2, Article 11, Of The Revised Ordinances Of Albuquerque, The "City Budget Ordinance" Relating To The Preparation And Adoption Of The Annual Operating Budget Of The City (Davis, Benton)

A motion was made by Councilor Davis that this matter be Postponed to September 20, 2021. The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- g. [R-21-130](#) Establishing A City Healthy Communities, Public Health, And Sustainability Policy Committee (Borrego)

A motion was made by President Borrego that this matter be Postponed to December 6, 2021. The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

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

- a. [EC-21-375](#) Report on Resolution R-18-59 - Wells Park Neighborhood

A motion was made by Vice-President Gibson that this matter be Withdrawn by Administration. The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- b. [EC-21-396](#) Mayor's Recommendation of Award to db Production Services LLC for "Concert Productions and Backline Services"

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- c. [EC-21-397](#) 3rd Supplemental Agreement with Troy Luna, dba Comprehensive Counseling, LLC

A motion was made by Vice-President Gibson that this matter be Approved.

The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

d. [EC-21-398](#)

Mayor's Recommendation of Award to Copper Law Firm, P.C., and Rita G. Siegel LLC for "Personnel Hearing Officers"

A motion was made by Vice-President Gibson that this matter be Approved.

The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

e. [EC-21-399](#)

Freeman Avenue Right of Way Vacation - Project# PR-2020-004812, SD-2020-00220, Tim Nisly requests Vacation of Public Right-of-Way for all or a portion of the alley adjacent to Lot 12, Block 6 Belmont Place Lot 12 & 13 & 14, located south of Freeman Avenue between 5th St and 6th St, containing approximately .03 acre(s). (G-14)

A motion was made by Vice-President Gibson that this matter be Approved.

The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

f. [EC-21-400](#)

Approval of Springer Square Sky Link Development Agreement with Zydeco 66, LLC

A motion was made by Vice-President Gibson that this matter be Approved.

The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

g. [EC-21-401](#)

Mayor's Recommendation of Award for "Rental Car Concessions at Albuquerque International Sunport"

A motion was made by Vice-President Gibson that this matter be Approved.

The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

h. [EC-21-402](#)

Revenue & Expense Report for Third Quarter Fiscal Year 2021

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- i. [EC-21-404](#) Approval of Nuevo Atrisco Commercial Development & Disposition Agreement with Nuevo Atrisco, LLC
- A motion was made by Vice-President Gibson that this matter be Approved. The motion carried by the following vote:**
- For:** 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena
- Excused:** 2 - Harris, and Peña
- j. [EC-21-405](#) Early Head Start Quarterly Report for April, May and June 2021
- A motion was made by Vice-President Gibson that this matter be Receipt Be Noted. The motion carried by the following vote:**
- For:** 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena
- Excused:** 2 - Harris, and Peña
- k. [EC-21-407](#) Mayor's Recommendation of Award to C & S Companies for "Aviation Sustainability Consultation Services"
- A motion was made by Vice-President Gibson that this matter be Approved. The motion carried by the following vote:**
- For:** 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena
- Excused:** 2 - Harris, and Peña
- *l. [EC-21-424](#) Mayor's Recommendation of Award to SWCA, Incorporated for "Rio Grande Bosque Wildfire Mitigation Services"
- A motion was made by Vice-President Gibson that this matter be Approved. The motion carried by the following vote:**
- For:** 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena
- Excused:** 2 - Harris, and Peña
- *m. [EC-21-425](#) Mayor's Recommendation of Award for "Language Interpretation and Translation Services"
- A motion was made by Vice-President Gibson that this matter be Approved. The motion carried by the following vote:**
- For:** 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena
- Excused:** 2 - Harris, and Peña
- p. [OC-21-39](#) Recommendation of Award for "On-Call Planning Services for City Council"
- A motion was made by Vice-President Gibson that this matter be Approved. The motion carried by the following vote:**
- For:** 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- q. [OC-21-40](#) Re-Appointment of Mary E. Moskal to the Library Advisory Board

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- r. [OC-21-41](#) Re-Appointment of Mr. Robert Joshua Bacon to the Balloon Museum Board of Trustees

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- s. [R-21-183](#) Approving The FY 2022 Audit Plan As Submitted By The Accountability In Government Oversight Committee (Gibson, by request)

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- t. [R-21-185](#) Approving And Authorizing The Acceptance Of Grant Funds From The New Mexico State Highway And Transportation Department And Providing An Appropriation To The Parks And Recreation Department In Fiscal Year 2022 (Benton)

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- u. [R-21-186](#) Approving And Authorizing The Mayor To Execute A One-Time Grant Agreement With The U.S. Department Of Health And Human Services, Early Head Start Program And Providing An Appropriation To The Department Of Family And Community Services Retroactively For Fiscal Year 2021 (Sena, by request)

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

- v. [O-21-72](#) Amending The Metropolitan Redevelopment Agency Ordinance To Create A Metropolitan Redevelopment Commission And Add Clarifying Definitions (Benton, by request)
- A motion was made by Vice-President Gibson that this matter be Withdrawn.
The motion carried by the following vote:
- For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena
- Excused: 2 - Harris, and Peña
- w. [O-21-73](#) Amending The Development Commission Ordinance To Remove Reference To The State Metropolitan Development Code And End The Development Commission's Role Regarding The Metropolitan Redevelopment Agency And Urban Development Agency (Benton, by request)
- A motion was made by Vice-President Gibson that this matter be Withdrawn.
The motion carried by the following vote:
- For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena
- Excused: 2 - Harris, and Peña

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

- o. [OC-21-36](#) 2020 Civilian Police Oversight Agency (CPOA) Semi-Annual Report
- A motion was made by President Borrego that this matter be Receipt Be Noted.
The motion carried by the following vote:
- For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena
- Excused: 2 - Harris, and Peña
- *n. [EC-21-426](#) Mayor's Recommendation of Award to Guidehouse Inc. for "ARPA Fund Management Services"
- A motion was made by Councilor Benton that this matter be Postponed to September 20, 2021. The motion carried by the following vote:
- For: 5 - Bassan, Benton, Davis, Jones, and Sena
- Against: 3 - Borrego, Gibson, and Peña
- Excused: 1 - Harris

11. ANNOUNCEMENTS

12. PUBLIC HEARINGS: {Appeals, SAD Protest Hearings}

- a. [AC-21-9](#) Project-2020-004657, VA-2020-00379, VA-2021-00147: Nob Hill Neighborhood Association, appeals the Zoning Hearing Examiners

decision to approve a variance of 3 feet to the 3 foot maximum wall height for Lot 1, Block 39, University Heights, located at 202 Richmond DR SE, zoned MX-T [Section 14-16-5-7-D]

A motion was made by Councilor Benton that this matter be to Grant the Appeal and Adopt Findings at the next meeting. The motion failed by the following vote:

For: 4 - Benton, Davis, Jones, and Sena

Against: 4 - Bassan, Borrego, Gibson, and Peña

Excused: 1 - Harris

A motion was made by Councilor Bassan that this matter be to Deny the Appeal and Adopt Findings at the next meeting. The motion failed by the following vote:

For: 2 - Bassan, and Gibson

Against: 6 - Benton, Borrego, Davis, Jones, Peña, and Sena

Excused: 1 - Harris

A motion was made by Councilor Benton that this matter be Continued to the September 20, 2021 meeting. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

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

14. FINAL ACTIONS

b. [O-21-67](#)

Amending Sections 7-2-1-2, Of The Transit System Ordinance To Provide For A Zero Fare Pilot Project And Creating A New Section 7-2-1-3 (Davis, Sena, Peña, Benton)

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

For: 7 - Bassan, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 2 - Benton, and Harris

A motion was made by Councilor Benton that this matter be Postponed as Amended to September 20, 2021. The motion carried by the following vote:

For: 6 - Bassan, Benton, Borrego, Davis, Gibson, and Jones

Against: 2 - Peña, and Sena

Excused: 1 - Harris

c. [R-21-173](#)

Amending Resolution-21-148, Establishing One-Year Objectives For The City Of Albuquerque In Fiscal Year 2022; To Include A Zero Fare Transit

Pilot Objective To Meet Five-Year Goals (Davis, Sena, Peña, Benton)

A motion was made by Councilor Davis that this matter be Postponed to September 20, 2021. The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Against: 1 - Peña

Excused: 1 - Harris

d. [R-21-178](#)

Amending The City Operating Budget Language To Clarify The Intent Of The City Council To Implement A Comprehensive Zero Fare Pilot (Sena, Peña, Davis)

A motion was made by Councilor Sena that this matter be Postponed to September 20, 2021. The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Against: 1 - Peña

Excused: 1 - Harris

e. [O-21-68](#)

Amending Section(s) 4-8-8 And 4-8-13 Of The City Of Albuquerque Hospitality Fee Ordinance (Gibson, by request)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

f. [O-21-75](#)

Amending Section(S) 4-4-9 And 4-4-14 Of The City Of Albuquerque Lodgers' Tax Ordinance (Gibson)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

h. [R-21-171](#)

Concerning The Future Management Of Candelaria Nature Preserve And The Approval Of The 2020 Resource Management Plan (Benton, by request)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

A motion was made by Councilor Benton that this matter be Amended. Councilor Benton moved Amendment No. 2. The motion carried by the

following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

A motion was made by Councilor Benton that this matter be Amended. Councilor Benton moved Amendment No. 3. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

i. [R-21-184](#)

F/S Approving The Application And Petition Of Success Land Holdings, LLC And Heritage Trails Development I, LLC, For Formation Of The Aspire Public Improvement District Pursuant To The Public Improvement District Act, NMSA 1978, §§ 5-11-1 To -27 (2001, As Amended Through 2019) And City Ordinance Enactment No. 0-2003-12, Council Bill No. FS 0-03-84; Making Findings In Connection With The Application And Petition And Supporting Documentation Requesting Approval Of The Formation Of The District; Determining The Real Property To Be Included Within The District And The Purposes For Which The District Is Being Formed; Approving The General Plan, Feasibility Study, Rate, Method Of Apportionment And Manner Of Collection Of A Special Levy To Be Imposed Upon Real Property Within The District, And Approving A Development Agreement For The District; Establishing Parameters For The Issuance Of Special Levy Bonds; Authorizing The District To Issue Subordinate Obligations; Providing For Governance Of The District; Providing That Bonds And Other Obligations Of The District Shall Not Be Obligations Of The City; Waiving And Cancelling Certain Requirements To Formation Of A Public Improvement District; Ratifying Certain Actions Heretofore Taken; Repealing All Actions Inconsistent With This Formation Resolution; Directing The Mailing Of A Notice Of Adoption Of This Formation Resolution By The City Clerk; And Taking Related Action (Peña)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

***k.** [O-21-69](#)

Enacting The Albuquerque Automated Speed Enforcement Ordinance To Monitor The Speed Of Travel And Enforce The Speed Limit Through Speed Enforcement Cameras (Peña, Sena, Bassan, Benton)

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

For: 7 - Bassan, Borrego, Davis, Gibson, Jones, Peña, and Sena

Against: 1 - Benton

Excused: 1 - Harris

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 2. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 3. The motion failed by the following vote:

For: 3 - Bassan, Peña, and Sena

Against: 5 - Benton, Borrego, Davis, Gibson, and Jones

Excused: 1 - Harris

A motion was made by Councilor Davis that this matter be Postponed as Amended to September 20, 2021. The motion carried by the following vote:

For: 6 - Bassan, Benton, Borrego, Davis, Gibson, and Jones

Against: 2 - Peña, and Sena

Excused: 1 - Harris

j. [M-21-10](#)

Reaffirming The City Of Albuquerque's Commitment To Decrease Crime, And Recidivism, And Advocating Criminal Justice Reform In Metro Albuquerque And Bernalillo County (Borrego)

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Peña, and Sena

Against: 1 - Jones

Excused: 1 - Harris

***l.** [M-21-11](#)

The City Of Albuquerque Reaffirms Its Strong Commitment To End The Drivers Of Crime, Including Criminal Firearm Use And Recidivism (Borrego)

A motion was made by President Borrego that this matter be Postponed to September 20, 2021. The motion carried by the following vote:

For: 6 - Bassan, Benton, Borrego, Davis, Peña, and Sena

Against: 2 - Gibson, and Jones

Excused: 1 - Harris

J. [M-21-10](#)

Reaffirming The City Of Albuquerque's Commitment To Decrease Crime, And Recidivism, And Advocating Criminal Justice Reform In Metro Albuquerque And Bernalillo County (Borrego)

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

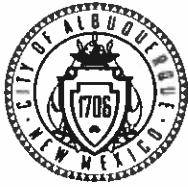
For: 7 - Bassan, Benton, Borrego, Davis, Jones, Peña, and Sena

Excused: 2 - Gibson, and Harris

A motion was made by President Borrego that this matter be Postponed to September 20, 2021. The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Jones, Peña, and Sena

Excused: 2 - Gibson, and Harris



City of Albuquerque

Albuquerque/Bernalillo
County
Government Center
One Civic Plaza
Albuquerque, NM 87102

Action Summary

City Council

Council President, Cynthia D. Borrego, District 5
Vice-President, Diane G. Gibson, District 7

Lan Sena, District 1; Isaac Benton, District 2
Klarissa J. Peña, District 3; Brook Bassan, District 4
Pat Davis, District 6; Trudy E. Jones, District 8
Don Harris, District 9

Monday, September 20, 2021

3:00 PM

Via Zoom Video Conference

TWENTY-FOURTH COUNCIL - FORTY-FIRST MEETING

1. ROLL CALL

Present 9 - Brook Bassan, Isaac Benton, Cynthia Borrego, Patrick Davis, Diane Gibson, Don Harris, Trudy Jones, Klarissa Peña, and Lan Sena

2. MOMENT OF SILENCE

Pledge of Allegiance in English and Spanish and any other language as determined by the Council

3. PROCLAMATIONS & PRESENTATIONS

4. ECONOMIC DEVELOPMENT DISCUSSION

5. ADMINISTRATION QUESTION & ANSWER PERIOD

6. APPROVAL OF JOURNAL

September 8, 2021

7. COMMUNICATIONS AND INTRODUCTIONS

8. REPORTS OF COMMITTEES

Land Use, Planning and Zoning Committee - September 15, 2021

Deferrals/Withdrawals

- a. [O-21-50](#) Amending Chapter 2, Article 11, Of The Revised Ordinances Of

Albuquerque, The "City Budget Ordinance" Relating To The Preparation And Adoption Of The Annual Operating Budget Of The City (Davis, Benton)

A motion was made by Councilor Davis that this matter be Postponed to October 18, 2021. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

e. [O-21-69](#)

Enacting The Albuquerque Automated Speed Enforcement Ordinance To Monitor The Speed Of Travel And Enforce The Speed Limit Through Speed Enforcement Cameras (Peña, Sena, Bassan, Benton)

A motion was made by Councilor Bassan that this matter be Postponed to October 4, 2021. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

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

a. [EC-21-418](#)

Mayor's appointment of Mr. Talal Saint-Lot to the Metropolitan Parks & Recreation Advisory Board

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

b. [EC-21-419](#)

Mayor's appointment of Mrs. Catherine Nicolaou to the Information Services Committee

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

c. [EC-21-420](#)

Mayor's re-appointment of Mr. Donald G. Meaders to the Open Space Advisory Board

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

d. [EC-21-421](#)

Mayor's appointment of Mr. Jeffrey Blair to the Para Transit Advisory Board

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

e. [EC-21-422](#)

Mayor's appointment of Mr. John Garrity to the Urban Enhancement Trust Fund

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

f. [EC-21-423](#)

Mayor's appointment of Dr. Deb Thrall to the Municipal Golf Advisory Board

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

g. [EC-21-427](#)

Mayor's appointment of Ms. Lily Hofstra to the Early Head Start Program Governance Advisory Committee

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

h. [EC-21-429](#)

Eastman Avenue and Hawking Drive Right of Way Vacation - Project# PR-2020-004138 SD-2021-00104 Netflix Studios, LLC requests Vacation of Public Right-of-Way Amended for all or a portion of Eastman Avenue and Hawking Drive located east of University Boulevard and north of Stryker Road containing approximately 10.9 acres

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

i. [EC-21-430](#)

Mayor's Recommendation of On-Call Engineering for the Albuquerque International Sunport and the Double Eagle II Airport

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

10. GENERAL PUBLIC COMMENTS

11. ANNOUNCEMENTS

12. PUBLIC HEARINGS: {Appeals, SAD Protest Hearings}

a. [AC-21-9](#)

Project-2020-004657, VA-2020-00379, VA-2021-00147: Nob Hill Neighborhood Association, appeals the Zoning Hearing Examiners decision to approve a variance of 3 feet to the 3 foot maximum wall height for Lot 1, Block 39, University Heights, located at 202 Richmond DR SE, zoned MX-T [Section 14-16-5-7-D]

A motion was made by Councilor Davis To Accept the Land Use Hearing Officer Recommendation and Findings in part and Reject in part. The motion failed by the following vote:

For: 3 - Benton, Davis, and Sena

Against: 6 - Bassan, Borrego, Gibson, Harris, Jones, and Peña

A motion was made by Councilor Bassan To Deny the appeal and Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:

For: 8 - Bassan, Benton, Borrego, Gibson, Harris, Jones, Peña, and Sena

Against: 1 - Davis

b. [AC-21-11](#)

Project-2021-005392, VA-2021-00112: Dolores Morales, agent for Janet Fuentes, appeals the Zoning Hearing Examiners decision to deny a variance for a 6 foot wall for Lot 1, Block B, Torreon Addn Anderson & Thaxton Replat, located at 700 Gibson BLVD SE, zoned NR-C [Section 14-16-5-7(D)]

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

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

a. [EC-21-426](#)

Mayor's Recommendation of Award to Guidehouse Inc. for "ARPA Fund Management Services"

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

14. FINAL ACTIONS

b. [O-21-67](#)

Amending Sections 7-2-1-2, Of The Transit System Ordinance To Provide For A Zero Fare Pilot Project And Creating A New Section 7-2-1-3 (Davis, Sena, Peña, Benton)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

c. [R-21-173](#)

Amending Resolution-21-148, Establishing One-Year Objectives For The City Of Albuquerque In Fiscal Year 2022; To Include A Zero Fare Transit Pilot Objective To Meet Five-Year Goals (Davis, Sena, Peña, Benton)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

d. [R-21-178](#)

Amending The City Operating Budget Language To Clarify The Intent Of The City Council To Implement A Comprehensive Zero Fare Pilot (Sena, Peña, Davis)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

g. [M-21-10](#)

Reaffirming The City Of Albuquerque's Commitment To Decrease Crime, And Recidivism, And Advocating Criminal Justice Reform In Metro Albuquerque And Bernalillo County (Borrego)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

h. [M-21-11](#)

F/S The City Of Albuquerque Reaffirms Its Strong Commitment To End The Drivers Of Crime, Including Criminal Firearm Use And Recidivism (Borrego)

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

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

A motion was made by President Borrego that this matter be Postponed as Substituted to October 4, 2021. The motion carried by the following vote:

For: 7 - Bassan, Benton, Borrego, Davis, Gibson, Jones, and Sena

Excused: 2 - Harris, and Peña

i. [R-21-195](#)

Directing That The Civilian Police Oversight Agency Provide A Training Compliance Report For Members Of The Civilian Police Oversight Agency Board With Respect To The Training Requirements Under The Court Approved Settlement Agreement With The United States Department Of Justice, And The Civilian Police Oversight Ordinance (Borrego)

A motion was made by President Borrego that this matter be Postponed to October 4, 2021. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

f. [O-21-71](#)

Repealing "The Neighborhood Association Recognition Ordinance" Section 14-18-2 And Replacing It With A Revised Neighborhood Association Recognition Ordinance; And Prescribing Responsibilities And Services Offered By The Office Of Neighborhood Coordination; And Making Revisions To The Integrated Development Ordinance Related To Neighborhood Association Notice (Benton)

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

For: 8 - Bassan, Benton, Borrego, Davis, Gibson, Jones, Peña, and Sena

Excused: 1 - Harris

A motion was made by Councilor Davis that this matter be Amended. Councilor Davis moved Amendment No. 2. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Sena that this matter be Amended. Councilor Sena moved Amendment No. 3. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Sena that this matter be Amended. Councilor Sena moved Amendment No. 4. The motion carried by the following vote:

For: 6 - Bassan, Borrego, Davis, Harris, Peña, and Sena

Against: 3 - Benton, Gibson, and Jones

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 5. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 6. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Peña that this matter be Amended. Councilor Peña moved Amendment No. 7. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Bassan that this matter be Amended. Councilor Bassan moved Amendment No. 8. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Bassan that this matter be Amended. Councilor Bassan moved Amendment No. 9. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Bassan that this matter be Amended. Councilor Bassan moved Amendment No. 10. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Bassan that this matter be Amended. Councilor Bassan moved Amendment No. 11. Councilor Bassan withdrew her motion.

A motion was made by Councilor Bassan that this matter be Amended. Councilor Bassan moved Amendment No. 12. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by President Borrego that this matter be Amended. President Borrego moved Amendment No. 13. The motion carried by the following vote:

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

A motion was made by Councilor Benton that this matter be Postponed as Amended to October 18, 2021. The motion failed by the following vote:

For: 4 - Benton, Davis, Gibson, and Jones

Against: 5 - Bassan, Borrego, Harris, Peña, and Sena

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

For: 5 - Benton, Davis, Gibson, Harris, and Jones

Against: 4 - Bassan, Borrego, Peña, and Sena

A motion was made by Councilor Harris for Reconsideration of O-21-71. The motion carried by the following vote:

For: 5 - Bassan, Borrego, Harris, Peña, and Sena

Against: 4 - Benton, Davis, Gibson, and Jones

f. [O-21-71](#)

Repealing "The Neighborhood Association Recognition Ordinance" Section 14-18-2 And Replacing It With A Revised Neighborhood Association Recognition Ordinance; And Prescribing Responsibilities And Services Offered By The Office Of Neighborhood Coordination; And Making Revisions To The Integrated Development Ordinance Related To Neighborhood Association Notice (Benton)

A motion was made by Councilor Davis that this matter be Postponed to November 15, 2021. The motion failed by the following vote:

For: 4 - Benton, Davis, Gibson, and Jones

Against: 5 - Bassan, Borrego, Harris, Peña, and Sena

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

For: 4 - Benton, Davis, Gibson, and Jones

Against: 5 - Bassan, Borrego, Harris, Peña, and Sena

***j.** [R-21-191](#)

Requiring The City Of Albuquerque To Initiate A Community Benefits Agreement With Representatives And/Or Residents Of The Neighborhood(s) Directly Impacted By Any New Soccer Stadium, And The United Soccer Franchise (Or Relevant Named Tenant) Before A Zone Change Application Is Submitted (Benton)

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

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

For: 9 - Bassan, Benton, Borrego, Davis, Gibson, Harris, Jones, Peña, and Sena

**BEFORE THE CITY OF ALBUQUERQUE
LAND USE HEARING OFFICER**

APPEAL NO. AC-21-9

Project#2020-004657; VA-2020-00379; VA-2021-00147

Nob Hill Neighborhood Association, Appellants,

Gary F. Hoffman, Party Opponent.

1 The Nob Hill Neighborhood Association (NHNA) filed this appeal of a decision from
2 the Zoning Hearing Examiner (ZHE) who granted a variance for the height of a fence. When
3 the ZHE first heard this matter, he denied the application which was subsequently appealed by
4 the applicant, Gary Hoffman. During the first appeal hearing, the applicant supplemented the
5 record with additional significant evidence. Because the ZHE is in a better position to develop
6 and make findings on the facts and evidence in the record, I remanded the matter back to the
7 ZHE (AC-21-1) so that he can reevaluate the application and the new facts. On remand, the
8 ZHE granted Mr. Hoffman's requested variance. This second appeal followed, this time by the
9 NHNA.

10 After reviewing the records of this appeal by the NHNA (AC-21-1 and AC-21-9), and
11 after hearing arguments of the parties, I find that the ZHE's decision is well supported by the
12 records. As described below, I also find that the appeal should be denied.

13
14 **I. RELEVANT PROCEDURAL AND FACTUAL BACKGROUND**

15 Procedurally, as briefly stated above, this matter commenced with the landowner, Gary
16 Hoffman's October 14, 2020, application for a 3-foot variance to a six-foot-tall fence he had

17 built around his front and side yards of his home [R1. 028].¹ On that same day, the application
18 was placed on the ZHE's December 15, 2020, public hearing docket [R1. 028]. Mr. Hoffman's
19 home sits on a corner lot at Silver Ave. and Richmond Dr. SE [R1. 090]. Mr. Hoffman's lot
20 and dwelling, although exclusively used for residential uses, is in a MX-T zone which is
21 defined as a transition zone "*between residential neighborhoods and more intense commercial*
22 *areas*" [IDO, § 2-4(A)(1)]. The abutting lot to the South of Mr. Hoffman's lot is in a
23 residential, R-1C zone district [R1. 017]. Richmond Dr. SE and Silver Ave. SE are both
24 designated as local urban streets on the City Long Range Transportation System (LRTS).

25 There is no dispute that Mr. Hoffman constructed a 6-foot, white vinyl fence around
26 the front and side yard (facing Silver Ave.) of his lot without first obtaining approval from the
27 City. I note however that there is no evidence in the records that he did this with any ill-intent
28 to circumvent the IDO's permitting process. When Mr. Hoffman was cited for the unpermitted
29 fence, he applied for the variance [R1. 069-071]. Under the May 2018 IDO, only a three-foot-
30 tall fence is lawful in the front yard without a variance in a mixed-use zone [IDO, § 5-7(D)(1)].

31 The ZHE held the first hearing on Mr. Hoffman's application on December 15, 2020
32 [R1. 098]. In his December 30, 2020, decision, the ZHE initially denied Mr. Hoffman's
33 application on the basis that he did not demonstrate the "special circumstances" criteria of §
34 14-16-6-6(N)(3)(a) of the IDO. The ZHE further determined that because the first prong for a
35 variance was not shown by Mr. Hoffman, it was "unnecessary to examine the other elements"
36 under that IDO test [R1. 007].

1. Because there are two records in this matter, I refer to the first record (AC-21-1) as R1 and the record of the ZHE's remand hearing as R2 (AC-21-9).

On behalf of Mr. Hoffman, Ms. Mellia Walker filed a timely appeal on January 15, 2021 [R1. 009]. In the first appeal, it was argued that Mr. Hoffman misunderstood the IDO requirements for a variance and Ms. Walker submitted new evidence in the record, presumably to demonstrate what is required in IDO, § 14-16-6-6(N)(3)(a) [R1. 014; 17-24; 47-62]. After an appeal hearing on March 11, 2021, a remand was issued to the ZHE with detailed instructions to reevaluate the application as well as the new supplemented evidence under each of the five prongs of IDO, § 14-16-6-6(N)(3)(a) [See AC-20-1, Remand Instructions].

Then on April 20, 2021, the ZHE held its remand public hearing on the application [R2. 115]. In his Official Notification of Decision, dated May 5, 2021, the ZHE granted the variance [R2. 005]. The NHNA filed their timely appeal on May 18, 2021 [R2. 009]. The Appellants have standing to file this appeal [See IDO § 6-4(U)(2)(b)]. The NHNA appeared at the ZHE's remand hearing and submitted written comments on the application at the ZHE's first hearing [R1. 89; R2. 083, 120]. A hearing on this appeal was held on July 19, 2021.

In this appeal, the NHNA take the position that the ZHE erred by misapplying the variance criteria to the facts and by misinterpreting the facts [R2. 012-014]. In support of their theories, Appellants first contend that there are 12 other lots in the area that are similarly situated corner lots along Silver Ave.—all zoned MX-T. Appellants argue that Mr. Hoffman's lot cannot be uniquely "special" because there are 12 other similarly zoned corner lots in the area [R2. 012-013]. Appellants next contend that because the lattice design component on the fence does not encompass the full length of the fence, the ZHE erred in finding that the fence provides natural surveillance, or "eyes of the street" surveillance [R2. 013]. Next, Appellants generally claim that the fence's materials do not match or "reflect the architectural character

of the surrounding area” [R2. 014]. Finally, Appellants argue that there was insufficient evidence in the record to support the ZHE’s finding that the variance is “minimally necessary” under the fifth prong of § 14-16-6-6(N)(3)(a)(5).

II. STANDARD OF REVIEW

A review of an appeal is a whole record review to determine whether the ZHE acted fraudulently, arbitrarily, or capriciously; or whether the ZHE’s decision is not supported by substantial evidence; or if the ZHE erred in applying the requirements of the IDO, a plan, policy, or regulation [IDO, § 14-16-6-4(U)(1)]. At the appeal level of review, the decision and record must be supported by substantial evidence to be upheld. The LUHO may recommend that the City Council affirm, reverse, or otherwise modify the lower decision to bring it into compliance with the standards and criteria of this IDO. The City Council also delegated authority to the LUHO to independently remand appeals.

III. DISCUSSION

As a preliminary matter, I note that the ZHE utilized the correct test and version of the IDO in his review of this matter—the May 2018 IDO version. The facts demonstrate that on October 14, 2020, the same day Mr. Hoffman submitted his application to the Planning Department Staff, the application was placed on the ZHE’s December 15, 2020, agenda for a public hearing [R1. 28]. IDO, § 1-10(C) states:

Any application... that is submitted after that effective date, shall be processed in compliance with the requirements of this IDO.

Furthermore, under IDO, § 6-4(H)(4):

No development application shall be reviewed for compliance with this IDO or scheduled for a public hearing by any review or advisory body until it is determined to be complete.

As indicated in the remand instructions, unless otherwise shown, there is a rebuttable presumption (in IDO, § 6-4(H)(4)) that on the date an application is placed on a reviewing agency's docket for public hearing, it is deemed complete. In this matter, it is undisputed that Planning Staff placed Appellant's application on the ZHE's public hearing docket on October 14, 2020. No evidence was submitted to rebut the presumption; Appellant's application was deemed complete as of October 14, 2020.

Next, Appellants essentially challenge how the ZHE applied the five prong variance criteria of § 14-16-6-6(N)(3)(a). In May 2018, the variance criteria stated in full:

Except as indicated in Subsections (b) and (c) below, an application for a Variance – ZHE shall be approved if it meets all the following criteria:

1. There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, and physical characteristics, and such special circumstances were created either by natural forces or by government eminent domain actions for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.
2. The Variance will not be materially contrary to the public safety, health, or welfare.
3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
4. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district.

120
121 5. The Variance approved is the minimum necessary to avoid
122 extraordinary hardship or practical difficulties in the vicinity.
123

124 The first prong of § 14-16-6-6(N)(3)(a)(1) seems to be the most difficult prong to
125 satisfy because it has multiple sub-parts, including that the “property” at issue must have
126 “special circumstances” that are fundamentally attributable to something out of the property
127 owner’s control. Moreover, the circumstance(s) can include the “surroundings,” but cannot be
128 “generally” applicable to other properties in the same zone district. The circumstance(s) must
129 also have been created by “natural forces” or by “government eminent domain.” Finally, it
130 must also be shown that the special circumstance(s) produce an “extraordinary hardship” that
131 substantially limits the property owner’s use of his property, or it must produce “practical
132 difficulties” [IDO, § 14-16-6-6(N)(3)(a)(1)].
133

134 **A. There is substantial evidence in the record to support the ZHE’s findings on the**
135 **first prong of IDO, § 14-16-6-6(N)(3)(a)(1).**
136

137 In this appeal, Appellants first contend that the ZHE merely “repeated” the applicant’s
138 presentation of facts supporting their application and that the ZHE did not make any effort to
139 verify the facts [R. 012]. In his Findings number 9.a and 9.b, the ZHE concluded that the
140 conditions on Silver Ave. and specifically, directly “within feet of [Mr. Hoffman’s] yard”
141 qualify as a special circumstance under the first prong. The ZHE explicitly found:

- 142 a. Applicant submitted evidence on appeal to the LUHO that there is
143 heavy pedestrian, bicycle, and automobile traffic on Silver Avenue
144 along the Subject Property, and that 18-wheeled trucks and other
145 large delivery trucks regularly utilize the Silver Avenue curb next
146 to the Subject Property as parking for deliveries. Applicant states
147 that these heavy trucks are often left with engines idling
148 (sometimes for long periods) as the drivers load and unload their
149 trucks, all occurring within feet of his yard. Applicant submitted

evidence that the idling trucks cause unbearable noise and presumably carbon monoxide fumes enter his yard space. Further, Applicant submitted evidence that Silver Avenue is a well-trafficked commercial thoroughfare that causes out-of-proportion negative impacts on residential properties fronting it in this area, in the form of litter, high pedestrian traffic and trespassing by members of the public. These heavy commercial and public uses constitute "special circumstances applicable to the Subject Property that are not self-imposed"

- b. Neighbors argued that these commercial and public uses apply generally to other properties in the general vicinity. While that may be the case, Agent submitted evidence that the impact of these commercial and public uses falls disproportionately on the Subject Property, because it is one of very few MX-T zoned properties in the vicinity that is used for residential purposes. Further the location of the Subject Property as a corner lot adjacent to these commercial and public uses make such uses uniquely harmful to the Subject Property [R2. 006, Fdg. 9.a].

After reviewing the evidence in the record, I first find that there is substantial evidence in the record to support the conclusion that Mr. Hoffman's property surroundings are a special circumstance and specifically that it is due to the trucks parking on Silver Ave. adjacent to, and within feet, of his home. I also find that, despite Appellants' contentions, the ZHE need not confirm or verify the authenticity of evidence. It is, however, the duty of the ZHE to weigh the credibility of evidence, including witnesses who testify. Having the ZHE ascertain the authenticity of evidence would be commensurate to giving the ZHE an open invitation to impermissibly traverse outside of what is in the record to independently corroborate testimony or other evidence. Instead, the ZHE uses his experience and training to judge the credibility of evidence and testimony based on what is in the record. The ZHE's implicit conclusion that the testimony of Ms. Walker and Mr. Hoffman were credible regarding the truck deliveries near his home is supported by the photographic evidence in the record.

183 In an appeal, to challenge the competency of evidence relied on by the ZHE, Appellants
184 must bring forth actual proof to demonstrate that the ZHE erred. If Appellants believe that
185 the evidence does not support the conclusions reached by the ZHE, Appellants must
186 demonstrate with sufficient evidence the basis for their claim. Disagreement on how the ZHE
187 interpreted the evidence, alone, is an inadequate basis to challenge a finding. Moreover, simply
188 showing that there are alternative interpretations of the evidence is also an insufficient basis to
189 overturn the ZHE's decision. Certainly, reasonable minds can differ on how various facts are
190 interpreted. But, unless the decision is shown to be irrational or so out of line with the evidence,
191 the decision should not be disturbed. The issue in an administrative appeal is not whether
192 substantial evidence exists to support the Appellants' contrasting interpretations of the facts
193 and arguments on the findings of the ZHE, but rather the question comes down to whether
194 there is substantial evidence in the record that can support the result reached by the ZHE. This
195 is a fundamental premise of New Mexico law that cannot be overemphasized or ignored. This
196 is so because an appeal is not an opportunity to retry the case a second time. But rather, the
197 purpose of appellate review under the IDO is to determine whether the evidence that the ZHE
198 relied on to support his decision is enough to sustain that decision, or whether the ZHE erred
199 in applying the IDO in some manner in reaching his conclusions [See IDO, § 14-16-6-4(U)(4)].

200 Appellants further allege that there are 12 similarly situated corner lots—all with
201 residential uses that are also in an MX-T zone district along Silver Ave. [R. 012].² They argue
202 that these 12 corner properties on Silver Ave. (between Carlisle and Girard) demonstrate that

2. I note that although Appellants have shown there are 12 corner lots with residential uses in MX-T zones in the area, only 4 of them are exclusively residential uses, the rest have business, home occupations.

the special circumstances alleged by Mr. Hoffman are not unique to his lot. Appellants suggest that the fact there are so many other similarly situated properties makes Mr. Hoffman's lot not special for a variance.

Appellants' arguments miss the point of what the ZHE concluded, what the evidence bares, and what the IDO requires for a special circumstance. The ZHE's decision regarding the special circumstances are not merely grounded on the fact that Mr. Hoffman's lot is a corner lot or that it is in a transition zone from more intense uses to the North and on Silver Ave. These circumstances are important, but it was also shown that the trucking nuisances are routinely encountered directly by Mr. Hoffman as a direct result of the activity alongside of Mr. Hoffman's home. It was this circumstance that tipped the proverbial scale for the ZHE.

Specifically, the ZHE heard testimony that large delivery trucks routinely park directly adjacent to Mr. Hoffman's bedroom window and front porch [R1. 110; R2. 119]. The ZHE heard that truck drivers often leave their engines idling for long periods and engage in loading and unloading activities—all within feet of Mr. Hoffman porch and bedroom window [R1. 110; R2. 119]. There was evidence that the idling trucks spue noxious fumes into Mr. Hoffman's front porch and in his bedroom if the window happened to be open [R1. 110; R2. 119]. There was also evidence that Mr. Hoffman has had to clean up trash off his property left behind and that he has had his home vandalized [R1. 105].

Although Mr. Hoffman's home like many others are corner lots and encompass residential uses, the evidence in the record about the truck deliveries concerned only Mr. Hoffman's property and the nuisance-type activities directly in front of his porch and bedroom window—not up and down the street. The trucking nuisances routinely encountered adjacent

to Mr. Hoffman's lot are arguably created by the "surroundings and physical characteristics" of the area. Although the other 12 lots are corner lots, are zoned MX-T, and are on Silver Ave., no direct evidence was presented by Appellants to demonstrate that the trucking activity (described by Mr. Hoffman and Ms. Walker) applies generally to other similarly situated property owners.

Appellants also challenge the evidence arguing that it was insufficient because there was no evidence of "frequency or duration" regarding the truck deliveries adjacent to Mr. Hoffman's home. I first note that there are no criteria in the IDO regarding the duration and or the frequency of special circumstances alleged. Notwithstanding, the ZHE expressly concluded that the evidence demonstrated that the "*large delivery trucks regularly utilize the Silver Avenue curb next to the Subject Property* [R2. 006, Fdg. 9.a]. This finding conformed to the photographic evidence in the record depicting multiple delivery trucks parked adjacent to Mr. Hoffman's yard at obvious different times [R2. 068-071]. The ZHE's finding that the circumstances occur "regularly" also generally conformed to the testimony regarding the delivery trucks. Moreover, it is not an unreasonable inference that deliveries to nearby businesses occur on a somewhat routine and "regular" basis.

Although, not required in the IDO, I note that there is evidence in the record regarding the "duration" of deliveries. In his appeal (AC-21-1), Mr. Hoffman wrote that sometimes delivery truck drivers park adjacent to his home and leave their trucks idling for "*hours at a time*" [R1. 14]. Again, based on the totality of the evidence in the records, it was not irrational for the ZHE to presume that the occurrences of delivery trucks parking adjacent to Mr. Hoffman's home is sufficient to be a "special circumstance" under the IDO.

B. The evidence in the record supporting the ZHE’s finding on the second prong of IDO, § 14-16-6-6(N)(3)(a)(2) is not erroneous.

The second prong of IDO, § 14-16-6-6(N)(3)(a) requires that the applicant demonstrate that the variance will not “*materially*” impact the “public safety, health, or welfare.” In Finding 10.a of his decision, the ZHE declared that “*based on the photographs and testimony submitted, the ZHE finds that the view fencing provides sufficient ‘eyes on the street’ in this particular case*” (internal quotations omitted) [R2. 019]. The photographic evidence in the record depicting the fence demonstrates that the fence is an approximately 6-foot-tall, white vinyl fence, of which, on the front yard, the top two feet incorporates a lattice design with openings in between the lattices [see photograph, R2. 042]. However, the side-yard segment of the fence along Silver Ave. does not have the lattice component.

In this appeal, the Appellants challenge the evidence arguing that because only the front portion of the fencing incorporates the lattice design component, the ZHE’s finding and therefore his conclusion that the lattice design component “provides sufficient eyes on the street” is erroneous. Appellants also contend that the chain link fence-gate with corrugated metal directly next to the vinyl fence on Mr. Hoffman’s property along Silver Ave. is contrary to the ZHE’s finding 10.a because the corrugated metal has no portions that can be seen through it [See photograph at R2. 016].

Taking the corrugated metal and chain link gate first, it was not part of the ZHE’s analysis nor is it even relevant in this matter. At the appeal hearing, Ms. Walker testified that the gate existed before the IDO became effective. The testimony was not rebutted. Moreover, not only did the chain link gate preexist the construction of the vinyl fence, but it was also not part of the variance application and Appellants cannot now bootstrap it as an appealable issue

in this appeal. To do so would be patently unfair and I find, *without evidence to the contrary*, the chain link gate is a legal non-conforming use because it preexisted the IDO.

Regarding the evidence before the ZHE on the second “public safety” prong of IDO, § 14-16-6-6(N)(3)(a), the ZHE’s finding regarding the lattice component of the fence is not fundamentally erroneous.³ Certainly, I agree on the one hand, having the lattice transparency component on the entire fencing may be more appropriate to achieve a goal of what is euphemistically known as an “eyes on the street” or natural surveillance strategy to reduce crime. But, on the other hand, the ZHE did not err for not requiring it because the IDO does not expressly require natural surveillance features in fencing. Moreover, as the ZHE correctly concluded there are also no threshold requirements in the IDO on the degree of transparency or “opacity” in fencing [See IDO, § 5-7(E)(2), Articulation on Alignment].

Briefly, the underlying premise in the theory of natural surveillance is that criminals do not wish to be observed. Surveillance, or the placing of legitimate “eyes on the street” increases the perceived risk to crime activity. Tall fences that have no degree or a minimum degree of transparency may increase the risk of home invasions if offenders cannot be seen because of tall walls blocking views. Theoretically then, the primary aim of natural surveillance is not necessarily to keep intruders out (although tall fencing may have that effect) but rather, the theory of natural surveillance strategies with transparent fencing is to keep intruders under observation with more “eyes on the street.” Natural surveillance can be achieved by several techniques, such as including transparency elements in tall fencing. Thus, tall fences that have

3. As shown below the finding is not completely accurate, but the error is harmless.

292 little to no transparent elements become obstructions to natural surveillance.⁴

293 Apart from this theory, as stated above, the ZHE correctly found in his finding 10.a,
294 the degree of opacity or transparency in fencing is not required in the May 2018, IDO. Thus,
295 requiring that Mr. Hoffman’s fencing have a certain degree of transparency would be based on
296 arbitrary numbers not supported in the applicable IDO version. Although the ZHE’s finding
297 10.b regarding the lattice element is not entirely accurate (the entire fence does not have it),
298 because transparency is not an explicit requirement, I find that it is harmless error. I note also
299 that the ZHE likely considered that the necessity or purpose for the fence in the first place is
300 to block as much of the emissions of fumes and sound from the idling trucks alongside Silver
301 Ave., and adjacent to Mr. Hoffman’s home.

302

303 **C. In the applicable May 2018 IDO version, there is no requirement that the fence**
304 **“strengthen or reinforce the architectural character of the surrounding area” as**
305 **claimed by Appellants.**

306

307 Appellants next contend that the fence “does not strengthen or reinforce the
308 architectural character of the surrounding area” and therefore the ZHE erred in granting the
309 variance [R2. 014]. Notably though, in the May 2018 IDO, which is the applicable version that
310 the applicant’s variance application was judged by the ZHE, there is no requirement that the
311 applicant demonstrate that the fence strengthen or reinforce the architectural character of the
312 neighborhood. Thus, Appellant’s contention on this point cannot be a basis for sustaining their
313 appeal.

4 . See generally Jane Jacobs, *The Death and Life of Great American Cities* (Modern Library (hardcover) ed.). New York: Random House. February 1993 [1961].

314 Though not necessary to sustain the decision, I note however, that the ZHE expressly
315 found that the fence:

316 is in harmony with the color of the architecture of the subject
317 property and does not have a negative impact on the public safety,
318 health, and welfare of the community by virtue of its architectural
319 style, materials, or construction [See R2. 007, Fdg. 10.b].
320

321 The evidence supports that Mr. Hoffman's house is white in color and so is the fence [See
322 Photos, R2. 041-043]. In his application, Mr. Hoffman also submitted numerous photographs
323 of other walls and fences in the neighborhood that could support the ZHE's finding that the
324 fence is not harmful to the greater community. [R2. 042 044-050, 075-076]. Although,
325 Appellants believe that the fence's materials and height are harmful to the policies of their
326 neighborhood association, it is the IDO that controls the ZHE's decision.

327 Appellants also challenge the finding on the basis that they believe the ZHE
328 mischaracterized and oversimplified the NHNA arguments at the ZHE's hearing. Appellants
329 contend that the ZHE neglected to address the arguments of the NHNA regarding their
330 struggles in maintaining the "historic streetscape" [R2. 014].⁵ In reviewing the record and
331 specifically the minutes of the remand hearing, I cannot find any evidence supporting
332 Appellants' claims. The objective evidence demonstrates that the ZHE gave ample time to
333 Appellants to testify. Objectively, there is no evidence that the ZHE slighted the arguments or
334 the positions of the NHNA. The ZHE did not cut short the testimony of anyone at the hearing.
335 Moreover, there is no support in the IDO for the suggestion that the ZHE must address each
336 contention made in a hearing. There is sufficient evidence in the record to support the ZHE's

5. Mr. Hoffman's home is not in a designated historic district under the IDO, nor is his home a designated historic structure requiring a certificate of appropriateness from the Landmarks and Urban Conservation Commission.

finding number 10.b.

D. The ZHE's finding that the fence is made of "high quality construction" was a superfluous finding and is not necessary to sustain the decision of the ZHE.

Appellants contend that the ZHE erred because there is no evidential basis in the record to support his finding that Mr. Hoffman's fence is made of "high quality construction" as the ZHE wrote in his finding 10.b. I agree; there is no evidence to support that the fence is made of high-quality construction. Nevertheless, the error is harmless because the quality of the construction materials in the fencing has nothing to do with the five prongs of IDO, § 14-16-6-6(N)(3)(a) and is unessential to sustain the decision.

E. Despite Appellants' claims, there is sufficient evidence in the record that a lower fence would not achieve the same goal of safety to Mr. Hoffman.

Appellants next claim that there is no evidence in the record to support the ZHE's finding number 13. In his finding number 13, the ZHE essentially concluded that the 3-foot variance is what is minimally necessary to mitigate the special circumstances [R2. 019]. As indicated above, the fifth prong of IDO, § 14-16-6-6(N)(3)(a) requires that the variance sought is the minimum necessary to avoid the hardship or difficulty caused by the special circumstance.

Under New Mexico law, if a decision is supported with substantial evidence in the record, is not irrational or absurd, it should be accorded deference. I find that the ZHE's decision on the "minimum necessary" requirement of the fifth prong is well-supported with substantial evidence and is not irrational under the facts of this case. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

363 *Embudo Canyon Neighborhood Ass'n v. City of Albuquerque* - 1998-NMCA-17, ¶8. The
364 ZHE's decision was not irrational such that a reasonable mind cannot accept it as adequate to
365 support the result reached. *Id.* at ¶8.


366 The evidence demonstrates that at the remand hearing, the ZHE inquired if the variance
367 requested is minimally necessary [R2. 120]. In her sworn response, Ms. Walker testified that:

368 A lower fence is going to - - I mean, they're just going to go over
369 it. They're just - - it's going to be the same exact issues and as far
370 as the fumes and the smoke and the, you know, the exhaust and
371 stuff from the trucks, a smaller fence isn't going to help. Now, at
372 least we can sit out there and you can have a cup of coffee in the
373 morning even if the trucks are out there. I mean, yes, it's noisy but
374 it kind of serves as a barrier. The fumes are not just overbearing to
375 where, after five minute you're like, okay, I can't do this and you
376 go inside. It's to the point now that it's tolerable. It's, I mean, it's -
377 - the peaceful enjoyment is back. I mean, after 49 years of owning
378 that property I mean, that's a lot of time there and to have to go to
379 this measure now, it's just, it's, it's a sign of the times. It's a corner
380 lot, it's easily accessible. The traffic is there, the people are there
381 and now that things are opening back up from Covid, life is coming
382 back and we're just kind of back where we started. But, like I said,
383 we are okay with that. All we're asking for is a buffer of our own.
384 We don't mind being the buffer you know, for the neighborhood,
385 that's why the property is zoned the way it's zoned. It's been zoned
386 that way for years and years and years but all we're asking for is a
387 personal buffer from all of the excess fumes, the excess traffic, the
388 excess now that's going on [R2. 120].

389 The ZHE apparently concluded that Ms. Walker's testimony satisfied the fifth prong.
390 Appellants may disagree with the conclusion, but it serves as substantial evidence because the
391 evidence supports the decision; and the testimony was not rebutted with evidence that a shorter
392 fence can provide appropriate protection from the idling trucks. Moreover, the ZHE's finding
393 number 13 comports with the above testimony, is not irrational or otherwise arbitrary or
394 capricious. Thus, under law, the ZHE's decision should be accorded deference.
395

396 In conclusion, I respectfully recommend that the City Council deny the appeal. The
397 ZHE addressed each of the five prongs for a variance and concluded that the applicant met the
398 IDO criteria for the variance. As described above, the ZHE's decision is supported with
399 substantial evidence in the record. The decision deserves deference under law, and it should
400 be sustained.

401 Respectfully Submitted:

402 
Steven M. Chavez, Esq.
Land Use Hearing Officer
August 3, 2021

Copies to:

Appellants
Party Opponents
ZHE
City Council and Staff