



## Legislation Text

File #: AC-15-6, Version: 1



### INTER-OFFICE MEMORANDUM

December 17, 2015

**TO:** Dan Lewis, President, City Council

**FROM:** Suzanne Lubar, Planning Director

**Subject:** ..title

(Project# 1010582/15EPC-40051) Peggy Norton appeals the Environmental Planning Commission's (EPC's) Approval of a Zone Map Amendment (Zone Change) from M-1 to SU-1 for M-1, Solid Waste Transfer Station and Convenience Center for a northerly portion of Tract 107B1A1, Tract 107B1A1 excluding portion to right-of-way & excluding a northerly portion, Tract 107B1A2 excluding portion to right-of-way, Tract in the SW corner-Tract 107B1B, Tract 108A3A1A, Tract 108A3A1B, and Tract 108A3B, Tracts 108A1A2B1B & 108A1A2B2, Tract 108A1A2B1A, Tract 107B2A2 excluding portion to the right-of-way, Tract 107B2A1 excluding portion to the right-of-way, MRGCD MAP #33, containing approximately 22 acres

### REQUEST

This appeal seeks to reverse the Environmental Planning Commission's (EPC's) approval of a zone change for an approximately 22 acre City-owned site located at the intersection of Comanche Rd. NE and Edith Blvd. NE (the "Subject Site"). The appeal is submitted by the Peggy Norton (President of the North Valley Coalition). However, no letter of authorization or documentation confirming that the North Valley Coalition voted in favor to submit the appeal is included with the application for appeal.

### BACKGROUND

The EPC approved a zone change from M-1 (Light Manufacturing) to SU-1 for M-1, Solid Waste Transfer Station and Convenience Center by a vote of 6-3. They also approved an associated Site Development Plan for Building Permit by a vote of 6-3 that would allow the applicant to construct a transfer station / convenience center building, an administrative building, vehicle maintenance building, household hazardous waste building and a parking structure on the subject site.

The EPC application was submitted on August 27, 2015, and was initially scheduled to be heard at the October 8, 2015 EPC hearing. However, there were not enough EPC Commissioners present at the October 8, 2015 hearing to constitute a quorum. A special meeting was subsequently scheduled for November 5, 2015. The requested zone change and associated site development plan for building permit were heard and approved by the EPC on November 5, 2015.

### **THE ENVIRONMENTAL PLANNING COMMISSION DECISION**

Subject to seventeen findings and one condition, the EPC approved the zone change at the November 5, 2015 public hearing.

The EPC found that the zone change was adequately justified pursuant to the policies and criteria of R270-1980 and that the request furthered a preponderance of applicable goals and policies in the Comprehensive Plan, North Valley Area Plan and Bikeways & Trails Facility Plan. There was no significant conflict with an adopted element of the aforementioned plans (Section 1C of R-270-1980) and there was no significant conflict with any other subsection of R270-1980. This EPC agenda item was considered and conducted as a quasi-judicial matter.

### **ZONING**

The Subject Site is zoned M-1, light manufacturing (§14-16-2-20). M-1 zoning allows all uses first listed as permissive and as regulated in the C-3 zone and uses permissive and as regulated in the IP zone. Additional permissive M-1 uses include but are not limited to: Automotive sales, service, repair and dismantling, commercial agricultural activity, concrete or cement manufacturing, gravel, sand or dirt removal, stockpiling, processing or distribution.

The requested zone change to SU-1 for M-1, Solid Waste Transfer Station and Convenience Center zoning (§14-16-2-22) provides suitable sites for uses which are special because of infrequent occurrence, effect on surrounding property, safety, hazard, or other reasons, and in which the appropriateness of the use to a specific location is partly or entirely dependent on the character of the site design. The requested use, Solid Waste Transfer Station, in this location qualifies as a special use per the aforementioned definition. The applicant also submitted an associated site development plan for building permit as required by the SU-1 Special Use Zoning designation.

The Code Enforcement Division submitted agency comments on September 16, 2015 stating that “the Use would currently be allowed under the M-1 Zoning that the property is currently zoned. M-1 would refer back to IP Zoning and under 14-16-2-19(A)(19) the use would be allowed in accord with an approved site development plan,.....an adopted facility plan would not be required for this Use as that would only be a requirement for something such as a PNM substation where facility plans are already a requirement”.

### **GROUND(S) & REASON FOR APPEAL**

Pursuant to Zoning Code §14-16-4-4(B)(4), the Appellant must articulate the reason(s) for the appeal and show that the EPC erred:

- 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.

The Appellant, Peggy Norton, raises the following issues, in summary:

- 1) The applicant's stated reason for the zone change is not an included reason in R270-1980;
- 2) Interpretation of the term "community" to mean the City as a whole is incorrect & disagree that traffic increases are not harmful to adjacent property, the neighborhood or the community;
- 3) Development project approvals within the Central Urban Area of the Comprehensive Plan should not solely be based on whether higher density will be achieved;
- 4) Finding 10.N. of the EPC Official Notice of Decision is not furthered;
- 5) The EPC approval is in conflict with Section G. of R270-1980;
- 6) No proof submitted by Traffic Engineering to prove that a traffic study was not warranted;
- 7) EPC did not fully consider public testimony provided in opposition to the requested actions;
- 8) EPC is unable to justify the objectivity of their decision for approval of the zone change request.

Additional issues are raised by the Appellant, each of which is outlined in more detail in the subsequent section below.

## RESPONSE TO APPELLANT'S ARGUMENTS

- 1) *The applicant's stated reason for the zone change is not an included reason in R270-1980*

Appellant refers to adopted Finding 6 of the EPC Amended Official Notice of Decision for the zone change request (N.O.D.) which states that the requested zone map amendment is an exercise in transparency and public notice/involvement because the current M-1 zoning for the subject site already allows for the proposed use (See Zoning Enforcement Agency Comments on Pg. 54 of Staff Report) and, while not required, the requested SU-1 zone is more restrictive than the existing zoning.

Staff analysis has also indicated that the SU-1 zone is more appropriate for the proposed use as it more accurately meets the intent statement of the SU-1 zone in the City of Albuquerque Comprehensive Zoning Code (See Pg. 6 of Staff Report & Section §14-16-2-22 of the Zoning Code).

- 2) *Interpretation of the term "community" to mean the City as a whole is incorrect & disagree that traffic increases are not harmful to adjacent property, the neighborhood or the community*

Appellant cites Section II.C.9. Community Identity and Urban Design, of the Comprehensive Plan, a section that was not cited by the applicant as justification for the requested zone change. Policy II.C.9.a. states that "the City and County differentiate into thirteen sub-areas as shown on the *Community Areas map...*" (emphasis added; See attached Community Areas Map). The proposed use will serve the entire metro area. Per Policy II.C.9.a. of the Comprehensive Plan, and R270-1980 Section G. ("A different use category is more advantageous to the community..."), the word "community" can apply to a larger area, such as the City of Albuquerque, or to smaller sub-areas within the larger community, such as the Central Area, West Side Area, North Valley Area, etc. In this case, given that the proposed use is a city-wide facility, "community" refers to the larger area.

Appellant also states that increases in traffic constitute harm to adjacent property, the neighborhood or the community. City standards did not require the applicant to submit a Traffic Impact Study (T.I.S.). The threshold for a T.I.S. is 100 or more additional/new peak direction,

inbound or outbound vehicle trips to or from the site in the morning or evening peak period of the adjacent roadways. The applicant voluntarily chose to perform a T.I.S. due to feedback received from public meetings and the site's proximity to both NMDOT and Bernalillo County infrastructure.

The Traffic Engineering Division submitted agency comments stating that the applicant has shown that the site will not contribute to a large increase in traffic per City standards. The applicant has shown that based on the new proposed activities there will be additional vehicle trips to and from the site. However, the new trips generated by the site redevelopment occur primarily outside of the AM and PM peak hours.

The applicant's T.I.S. shows that vehicle trip increases are as follows compared to the existing Average Daily Trip (ADT) data supplied by the Mid-Regional Council of Governments (MRCOG) for weekday and weekend ADT traffic volumes on Comanche and Edith, as follows:

- Comanche:

16,500 ADT (MRCOG)	653 total new trips = 3.96% increase in ADT
	428 new truck trips only = 2.6% increase
10,000 weekend-ADT	748 total new trips = 7.48% weekend-ADT increase
	48 new truck trips only = 0.48% increase
- Edith:

14,400 ADT (MRCOG)	428 total new trips = 2.97% increase in ADT
	428 new truck trips only = 2.97% increase
4,500 weekend-ADT	48 total new trips = 1.07% weekend-ADT increase
	48 new truck trips only = 1.07% increase

The applicant's T.I.S. for the subject site development plan and its uses shows that these intersections would continue to have an acceptable level of service (LOS) of D because the new trips generated by the proposed use occur primarily outside of the AM and PM peak hours.

The appellant claims that this modest increase in traffic will harm the nearby business community. American Marine, a local business located at 4404 Edith Blvd. NE referenced in the appellant's write-up, is located within the Unincorporated Area of Bernalillo County. Sheet SP-1 of the proposed site plan indicates that the ingress point off of Edith Blvd. to the subject site is approximately 116 ft. north of American Marine. The business is buffered to the east by the Alameda Lateral. Sheet SP-2 of the site plan shows a series of walls, fencing and screens along the western edge of the subject site which is on the east side of the Alameda Lateral. The approved Site Circulation Plan (Sheet SC-1) indicates that all truck traffic entering the site will head east to the proposed transfer station building and will not pass within 10 ft. of American Marine's property as the appellant claims.

3) *Development project approvals within the Central Urban Area of the Comprehensive Plan should not solely focus on achieving higher density.*

The goal of the Central Urban Area section of the Comprehensive Plan is mainly focused on arts culture and public facilities/activities near the historic center of the City. Finding 10.A. of the EPC N.O.D. reads:

"The Comprehensive Plan characterizes the Central Urban Area as the largest concentration of older (pre 1940) housing and a significant concentration of larger public and private buildings,

cultural amenities, historic districts, and parks (Pg. I-32). The cited Central Urban goal includes a specific focus on arts, cultural, and public facilities/activities while recognizing and enhancing residential neighborhoods and the historic center of the City. The Comprehensive Plan defines public services/facilities as “City services and facilities funded through the Capital Improvement Program” (Glossary of Terms Pg. C-5). No CIP funding will be used for the construction of this proposed project. While the proposed use is technically located within the Central Urban Area of the Comprehensive Plan, the intent of the cited policy is more focused on public/cultural activities than the proposed use. However, a note on page II-33 states that “Development densities in the Central Urban Area should generally be higher than in other portions of [the] Established Urban [Area]”. Therefore, the request furthers the **applicable** portions of Policy II.B.6.a.”

The development density of the proposed use and project (a public facility) efficiently locates and coordinates several related waste management activities on one site with minimal impacts on the adjacent transportation system. This furthers the *applicable* portions of Policy II.B.6.a., which relates to this case because preservation of some existing facilities will be achieved and the proposed use will be located in a primarily industrial portion of the Central Urban Area.

4) *Finding 10.N. of the EPC Official Notice of Decision is not furthered*

Appellant claims that Comprehensive Plan Policy II.C.1.k. (Finding 10.N.): “Citizens shall be protected from toxic air emissions” will not be furthered due to additional toxic air emissions that may be created outside of the proposed transfer station building due to additional vehicle emissions from and around the subject site.

The appellant provides unsubstantiated figures regarding quantities of idling vehicles on the subject site resulting from the proposed use. Appellant has not provided specific citations or a methodology upon which these figures are based.

Staff notes that per Finding 10.N. the EPC found that:

“The proposed transfer station is enclosed and the operations occur within the building. Use of quick-close doors, air curtains and air filtration systems will help keep any potential toxic air emissions from leaving the building. In addition to the proposed site development plan for building permit, the applicant will also be required to secure a Solid Waste Facility Permit through the State of New Mexico prior to the commencement of operations which regulates items such as climatology, meteorology air quality, odor and dust (NM Administrative Code 20.9.3.8). Therefore, the request furthers Policy II.C.1.k.”.

The permitting that is required through the State of New Mexico Environment Department will monitor and regulate the aforementioned items for the entire site, not simply the transfer station building. And furthermore, though the subject site may see a modest increase in vehicular trips during non-peak hours, the number of vehicular trips across the river via I-25 and then I-40 west to the regional landfill will decrease (this route passes through and/or next to numerous, residential neighborhoods, such as Santa Barbara, Martineztown, Near North Valley, Wells Park, Sawmill, Los Duranes, West Old Town, West Bluff, Vista Magnifica, West Mesa, Laurelwood, and Parkway) As mentioned in the response to Appellant’s item number 2, this overall reduction in vehicle trips and related emissions will protect more citizens from vehicular, non-point source emissions.

5) *The EPC approval is in conflict with Section G. of R270-1980*

Section G. of R270-1980 states that “The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a change of zone”. [emphasis added]

Appellant first claims that the approval was in conflict with Section G. of R270-1980 based on testimony at the public hearing regarding economic factors being discussed at the hearing (Per questions posed by the EPC), and then goes on to state: “While economics and land ownership were not the sole factor, the many references to them indicate they were a determining factor for site selection.” The cost of land or other economic considerations pertaining to the applicant were not the determining factor for the change of zone or site selection for the proposed project. Staff analysis indicates that the SU-1 zone was requested based on this zone being more appropriate for the proposed use, as it more accurately meets the intent statement of the SU-1 zone as defined in the City of Albuquerque Comprehensive Zoning Code (*Pg. 6 of Staff Report & Section §14-16-2-22 of the Zoning Code*).

The City Council is the legislative authority of the City with the power to adopt all ordinances, resolutions, or other legislation conducive to the welfare of the people of the city. With regard to site selection, on June 1, 2009 the Albuquerque City Council approved a priority objective for the Solid Waste Management Department to conduct an analysis of potential sites for a transfer station and resource recovery park (Council Bill R-09-225, Enactment # R-2009-077). On September 8, 2010 the Albuquerque City Council accepted the Integrated Waste Management Plan per an executive communication action (EC-10-183) which also recommends the development of a solid waste transfer station. A total of six potential sites for a transfer station were identified per City Council’s directive according to the following criteria:

1. The site should contain between eight (8) and twelve (12) acres (This is criteria for a transfer station only.) with minimum dimensions of 500 to 600 feet in one direction and approximately 700 feet in the other direction.
2. The site should be zoned for light or heavy industry or commercial uses.
3. The site should be located at the center of waste generation (which in this case translated into within a 3-mile proximity to the Big I).
4. The site should have access to major or minor arterials or highways.
5. The site should have topographic features including a natural slope of 6 to 10 feet.
6. The site should have availability of utilities.
7. The site should meet the State's siting criteria for transfer stations in 20.9.4.12 NMAC.

In conclusion, the subject site meets the above selection criteria, which supports the EPC's finding 14.G, and that the cost of land or other economic consideration is merely one of many factors for the change of zone.

- 6) *No proof submitted by Traffic Engineering to prove that a traffic study was not warranted (Appellant cites this as 5.b.1.in their justification statement)*

A Traffic Impact Study (T.I.S.) Form was submitted by the applicant to the Traffic Engineering Division on August 20, 2015 inquiring as to whether a T.I.S. would be required for the requested actions. The form was analyzed by the Traffic Engineering Division and it was determined that the requested actions did not meet the threshold for requiring a T.I.S. (See response to Item #2). The form was analyzed and signed off on by the City Engineer on August 20, 2015. In addition, the Traffic Engineering Division submitted agency comments stating that according to City standards the site development does not warrant a traffic study. The T.I.S. form and Traffic Engineering Division comments were presented to the EPC for consideration in this case. The EPC subsequently adopted a corresponding finding as part of their decision to approve the request (Finding 7.).

- 7) *EPC did not fully consider public testimony provided in opposition to the requested actions*

*(Appellant cites these items as 5.c.1. and 2. in their justification statement)*

The staff report provided to the EPC on October 1, 2015 included a staff analysis of written public comments received by the Planning Department as part of the Neighborhood/Public section of the report beginning on Page 27. All written public comments received after October 29, 2015 was forwarded from the Planning Department to the EPC in accordance with section B.12. of the EPC Rules of Conduct (*See attached*) for consideration by the Commission. Finding 17 of the EPC N.O.D. for the zone change request acknowledges the written public comments received by the Planning Department opposing the request.

During the hearing, the Commissioners each posed several questions to members of the public, the authors of the North Valley Health Impact Assessment (NVHIA), as well as the applicant and representatives of City of Albuquerque departments / agencies. The Commissioners also took the time to facilitate the cross-examination requests submitted by members of the public and had substantial dialogue and debate prior to a formal motion being presented before the EPC as evidenced by the appellant's justification narrative.

8) *EPC is unable to justify the objectivity of their decision for approval of the zone change request. (Appellant cites these items as 5.c.3.in their justification statement)*

Appellant claims that due to the fact that there was a lack of reports regarding traffic studies and level of service, air quality, and water quality, that the EPC is unable to justify the objectivity of their decision. However, the EPC did consider traffic, air quality and water quality. Specifically, a traffic study was not required per existing City standards, but the applicant conducted one anyway to respond to concerns raised at public outreach meetings and the site's proximity to public road infrastructure. The T.I.S. found that the existing level of service "D" at the Edith / Comanche intersection would be maintained with the implementation of the proposed use.

The issue of air and water quality was raised by the NVHIA and the Environmental Health Department submitted extensive agency comments in response to this document and found that the HIA makes the incorrect claim that all of the health disparities cited in the report are tied to the proposed facility, and the report does not account for the extensive design and operational elements that have been included to address any potential negative impacts from the proposed use. The EHD finds that there is no compelling health-related reason to hold back the construction of the transfer station facility. Additionally, staff has analyzed the request against the requirements of R270-1980 and finds that the request is justified and not in significant conflict with any Comprehensive Plan policies.

Appellant also states that "extra scrutiny" should have been given in review of this case. In fact, as previously stated, the applicant was not even required to request a zone change to a more restrictive zoning designation, but chose to do so anyway, in order to allow the community and the EPC opportunity to provide input. The applicant's request for a zone change to SU-1 directly resulted in extra scrutiny that would not have occurred had the project gone forward under the existing M-1 Manufacturing zoning.

Staff analysis also indicates that the SU-1 zone is more appropriate for the proposed use as it more accurately meets the intent statement of the SU-1 zone as defined in the City of Albuquerque Comprehensive Zoning Code (*Pg. 6 of Staff Report & Section §14-16-2-22 of the Zoning Code*). Also, the proposed development does not meet the threshold for a T.I.S., but one



was conducted. The request did receive “extra scrutiny” through the EPC process.

The record shows that the EPC had extensive discussion about, and fully considered, all of the relevant items pertaining to the requested zone change, such as land uses and whether or not the request was justified pursuant to the criteria set forth in R270-1980. The EPC voted 6-3 to approve the zone change and associated site development plan for building permit requests.

The EPC’s decision was within its authority and is supported by the record. The Planning Department supports the EPC’s decision and recommends denial of the appeal.

APPROVED:

Kym Dicome, Manager  
Current Planning Section  
Planning Department