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April 4, 2017

Karen Hudson, Chair
Environmental Planning Commission
Sent via email

RE: Integrated Development Ordinance

Dear Chair Hudson and Members of the EPC:

We urge the Environmental Planning Commission to carefully review the IDO without being rushed. The IDO is a monumental change in law for the City of Albuquerque. For that reason, we ask that these steps be followed:

1. In your first hearing/decision: Review the consolidation of existing documents into the IDO and carrying forward existing policy. Section by section review is needed.
2. In a subsequent hearing: Review new policy in the IDO and analyze its merits and the economic impact of the new policy. (See points made in this letter) Section by section review is needed.
3. In a third hearing process: Review methodology for converting existing zoning to new zoning. (Are State law principles in R270-1980 being followed? (See section C of this letter.)
4. In later hearings: Adopt a new a new zoning map quadrant by quadrant so property owners in those quadrants are well aware of what is happening. Identify parcels that should whose zoning should be reviewed individually—for which a citywide zoning sweep is not appropriate.

There is a great deal of new policy in the IDO. It needs to be carefully considered and not rushed. Each EPC Commissioner should fully understand what is going on and not pass on the new IDO until they do understand and concur with the new policies.

A. The IDO makes sweeping shifts of power from citizen boards (EPC, Board of Appeals) to the Planning Director and staff.

1. **Much of the work of the EPC would be administrative under the IDO.** Many land use decisions—especially those affecting the Bosque, Escarpment, Foothills, culturally important neighborhoods, preservation of community character, making

areas pedestrian friendly—involve many components that are discretionary. Important discretionary land use decisions occur during the site planning process when developers have a concept for development and some of the site characteristics are known. The premise of the IDO is that you can write up front regulations sufficient to remove all discretionary decision making. This premise is faulty when it comes to unique areas of Albuquerque that are unique topographically and culturally.

The EPC has significant experience deliberating on these discretionary areas and applying their discretionary authority. In a recent case regarding the Bosque Plaza Shopping Center¹--which is proximate to the Bosque--the EPC reaffirmed that the EPC should review the site plans for subdivision and also each site plan for building permit. More than one Commissioner commented that this is why we have an EPC....to review projects near environmentally important areas like the Bosque. While this need for EPC is critical, the IDO does not allow for EPC to take this role.

The IDO criteria for Administrative review is alarming. What is the justification for the criteria that is selected for administrative review? (see slide below from staff presentation). The majority of the development projects will fit this criteria—or could be made to fit this criteria through clever project phasing. **It would take most development projects now reviewed by the EPC—developments with far ranging impacts—to be reviewed only administratively.**

5-5.1.F Site Plan -Administrative²

- Single-family & duplex
- Multi-family with 50 or fewer dwelling units
- Non-residential to residential conversions with 100 or fewer dwelling units
- New non-residential < 100,000 gross square feet
- New mixed-use < 75 dwelling units and < 50,000 gross square feet of non-residential
- Expansions of multi-family, mixed use, and non-residential < 25%+ dwelling units or gross floor area

¹ The TRNA letter addressing the importance of the EPC using its discretionary authority to review projects near the Bosque is attached. It was part of the Bosque Plaza Shopping Center case that asked for all Bosque Plaza site plans for building permit to be delegated to the DRB.

² This is a copy of a staff slide made for presentation to the EPC.

2. **The Administrative Deviations give the Planning Department wide latitude to make rule changes.** (see p. 230, 5-4.14) This whole section needs to be clearly justified. Percentage deviations may seem simple to administer. However, you have parcel sizes that vary tremendously, so that ten percent on a small parcel would have very different implications than ten percent on a large parcel. The Administrative Deviations would also allow as much as fifty percent deviations on side and rear setbacks. What intent and purpose is there to a deviation that is no where near the standard? Should this be done administratively? Wouldn't this be a discretionary type of decision to be reviewed publicly?
3. **The Board of Appeals is eliminated in the IDO.** The Board of Appeals is the only other body of citizen decision makers like the EPC. They deliberate on the actions of the Zoning Hearing Officer. Having the Zoning Hearing Officer, who is an attorney, have his/her work reviewed by another attorney (the Land Use Hearing Officer) means that we have double legal review and no review by a body of appointed citizens with ties to the community. If the intent is to streamline the work of the Zoning Hearing Officer, a better approach would be to retain the Board of Appeals and have their decisions go straight to the City Council, without the extra step of going to the Land Use Hearing Officer.
4. **New requirements for EPC service may eliminate worthy candidates.** Many successful Environmental Planning Commissioners have had backgrounds in neighborhood associations and professional background in other fields like engineering, etc. The IDO may disqualify such people from serving.

“...the Mayor shall attempt to appoint members with experience in community planning, architecture, landscape architecture, urban design, real estate development, transportation, and /or real estate finance.” 14-16-5-D-3. P. 305

This qualification list should include those who have actively served in planning related activities in their neighborhood. It should also include civil engineering.

- B. **An Economic Impact Analysis of the proposed zoning districts and the dramatic change in densification to most parts of the City needs to be evaluated.** Giving land in Albuquerque dramatic new development rights (entitlements) in one sweeping process needs serious economic evaluation. ‘Over-entitling’ land with development rights can lead to unintended consequences in the market place.

I worked for the City of Phoenix as a Senior Planner for all of the 1990s. Earlier, in the 1980s the City of Phoenix entitled some land to be higher density village centers. Land owners absorbed these entitlements into their land values and raised the asking price for the land. While the Phoenix intention in entitling the land was good, the Phoenix leaders lacked an understanding of the impact of their decision on land markets. The entitlements were ahead of market forces that sought that amount of densification. So the result was that development went everywhere except in the village centers. The

development market did not desire to be dense and therefore, it went to areas where the land was the lowest price. There were major unintended consequences.

The IDO allows extreme changes in densification throughout the City of Albuquerque. The densification is in height allowances³, changes in parking requirements, and allowance of deviations in setbacks. It is very likely that many land owners will seek to capture these entitlements in the value of their land and will raise their land asking price. If the Albuquerque land development market is not ready to build at these densities, there could be a loss of developments from Albuquerque to neighboring jurisdictions like Bernalillo County, Rio Rancho, and Los Lunas. Will the next big developments choose Albuquerque or Santolina? Land prices will play one of the biggest factors in those decisions.

It would be irresponsible for the EPC to approve these sweeping increases to development entitlements without conducting an independent economic analysis. The independence is needed from staff and consultants who are now immersed in their current ideas in the IDO.

The Albuquerque Journal recently reported on a regional land development expert who reported to commercial developers on Albuquerque's best chances for economic development. He evaluated Albuquerque alongside competing markets in Arizona, Nevada, Texas and Oklahoma. He advised that Albuquerque's best economic growth potential for the near term was in secondary homes and retirees. His advice did not track with the premise of the new Comprehensive Plan and IDO that our economic future is best placed to capture millennials and urban densities. The IDO needs to be subject to this type of real world analysis before the IDO is approved.

- C. **The IDO needs to be analyzed for potential conflicts with State Law.** At least two areas need serious review: proposed changes to "standing" and the methods of doing zoning conversions and compliance with R-270 1980. If the EPC is not carefully attentive to these areas now, it could lead to costly litigation.

³ Currently, many commercial heights are now limited to 26 feet in the C-1 Zone for Shopping Centers. In contrast, the proposed IDO has dramatic changes:

Summarized from IDO p. 170 Table 4-1-2 Heights are unlimited 100 feet from property lines. The terms C-1 to C-3 are used to easily compare heights to the zones currently in use.

New Heights in IDO

Existing Zone Category Equivalent	Regular	UC-MS-PT
C-1	35	55
C-2	45	65
C-3	65	75

1. **The IDO makes substantive changes in standing**—these are not clarifications, they are serious changes.
 - a. **There is inconsistency in “standing” between “Who May Appeal” (p.324) and “Parties and Appearance of Record for a Quasi-judicial Hearing” (p. 317).** In the “Who May Appeal” section registered neighborhood associations are now burdened with a requirement “Showing of Special and Adverse Impact Required.”⁴ Staff presentation slides state that they are clarifying ‘standing.’ This is not a clarification and there appears to be no case law on what this means. Rather case law identifies the relevance of personal interest that could relate to aesthetics or compatibility as well as pecuniary considerations in supporting the appeal rights of those who may be affected by a development.

The IDO language in 5-4.13.C seems to follow state law:

“A person or entity that satisfies the body conducting the hearing the he or she or it has a significant personal, pecuniary, or property right or interest in the subject matter of the hearing.”

2. **The Zoning Conversion map is laden with sweeping changes to entitlements. The methodology is not clear and is not necessarily grounded in solid legal practice.**

R270-1980 states:

“ The applicant must demonstrate that the existing zoning is inappropriate because;

- (1) there was an error when the existing zone map pattern was created; or
- (2) changed neighborhood or community conditions justify the change; or
- (3) a different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other City master plan even though (1) and (2) above do not apply.”

One of the big areas of concern we note in the Taylor Ranch area is with regard to current SU-1 zoning along the westside of the Bosque/Rio Grande. This has been predominately zoned SU-1 because it fits the portion of that zoning definition for land that is unique

⁴ Chapter14-16-5(B) treats who can appeal. Sometime between the October and December drafts the requirement of showing of special and adverse impact was added to all appellants (except owner) wherein previously it only applied to 1.e “any person who can show impact.”

“Individuals and entities listed in subsections 1.b, 1.c, 1.d, or 1.e above must show that its or their property rights or other legal rights have specially and adversely affected by the decision. Such showing must be presented by the appellant as part of the appeal and the LUHO or City Council shall enter a finding or findings as to whether this requirement has been met. If it is found that the appellant cannot satisfy this standard, the appeal shall be denied.”

§ 14-16-2-22 SU-1 SPECIAL USE ZONE.

This zone 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 Zoning Conversion map shows that this land could now be developed as straight zoning and without any public review. While there are some new criteria for developing in this area, we feel that making this land only subject to administrative review is imprudent.⁵

A legal review should be made of whether particularized zoning established in the current SU-1 zones can legally be converted in a citywide process. The approved SU-1 sites in our area are the result of a detailed public process to establish zoning. Our contention is that these SU-1 sites cannot be converted to the new IDO zoning categories without a public review. This is because they are subject to the requirements of R270-1980 which is based in State Law.

The Bosque is one of Albuquerque's most important assets. Staff of the DRB are experts in engineering, but not necessarily in the best development adjacent to the Bosque. They also do not have discretionary authority. Therefore, these sites that are environmentally significant should be reviewed before the multi-disciplinary EPC with the community able to give input. This is the "best practice" for these environmentally significant areas.

3. The procedures for Declaratory Rulings of the Zoning Ordinance have changed in a way that could prove problematic.

It is difficult to find the provisions that cover Declaratory Rulings. Are Declaratory Rulings final if not appealed? A declaratory ruling could occur in one part of the city that sets a precedent that could affect a later development in another parts of the City. For example, TRNA would not get notice if the project is in the NE Heights. But the interpretation would be binding on future projects in Taylor Ranch.

D. Specific Revisions Requested

We request the EPC make these changes to the IDO. Proposed language is underlined:

1. Revision on View Protection Overlay- Coors Boulevard Corridor

(Section 2-7.4, p. 98)

Specific Revisions related to the Coors Corridor View Protection Overlay

⁵ See Section D-1 of this letter for a revision that would allow EPC review of Site Plans in the Bosque area of Taylor Ranch.

New requirements for the Overlay:

1. Review by the EPC of site plans for subdivision and building permit is required.
2. Development shall be sensitive to the Bosque environment. Architectural design should contribute to the enhancement of the overall visual environment and not use colors, materials or lighting that detract from the view of the Sandia mountains and Bosque. Buildings must blend with natural surroundings and uses must not compromise Bosque protection.

2. Specific Revisions related to Major Public Open Space

p. 181

Change Properties Abutting Major Public Open Space (Includes all parcels and portions of parcels within ¼ mile of Major Public Open Space).

Reasoning: The provisions to make development integrate well with Major Public Open Space should apply to all property within ¼ miles of that open space, regardless of parcel size. There are small and large parcels abutting major open space, so the “abutting” provision is not adequate to insure that buildings and their operations and activities do not harm the Public Open Space. TRNA has worked to secure this compatibility with properties in Taylor Ranch that are very near the Bosque, but do not technically ‘abut’ it.

3. Revision to Facilitated Meetings

Add to 5.4.4.A “Facilitated Meetings” The applicant must supply the project information it will be submitting to the City to the RNAs at least 7 days prior to the facilitated meeting. Examples are proposed building square footages, heights, layouts, design guidelines, building architecture, parking, and landscaping.

4. Restore the Provisions of the Large Retail Facilities Ordinance

We cannot find where these substantial provisions have gone in the IDO. It is particularly important that access provisions be maintained as well as building design features such as articulation, etc.

Thank you for your consideration of TRNA requests. It has been very difficult to absorb all the changes that the IDO represents. We would like the opportunity to provide more comments to the EPC in the future.

Sincerely,

Jolene Wolfley, Director
Government Affairs
Taylor Ranch N.A.