

October 16, 2011

Carmen Marrone
City of Albuquerque
Planning Department
600 2nd St. NW
Albuquerque, NM 87102

Re: Project 1003859, shopping center and "large retail facility" at Coors and Montano

Dear Ms. Marrone:

This firm represents the applicant for Project 1003859. Enclosed with this letter is supplemental information regarding the large retail facilities approved for Unser Crossing.

Enclosed is Exhibit A showing selected pages from the Staff Report approving two large retail facilities for this shopping center. I found interesting page 24 stating that the primary access point is on Central Avenue—which is not the road abutting the two large retail facilities. Further, the proposed access on Unser also does not abut the large retail facilities and is not full access (it's right in/ right out/ left in only).

Yours sincerely,

Michelle Henrie



Staff Report

Agenda Number: 4 Project Number: 1007204

Case numbers: 08EPC 40034/40035/40039

May 15, 2008

Agent Darren Sowell Architects, LLC

Applicant Armstrong Development Properties

Requests Sector Development Plan Map Amendment Site Development Plan for Subdivision

Site Development Plan for Building Permit

Tracts 1A, 1B, 2A, 2B, 3A, 3B, 4B, and 6 V.E.

Description

Barrett Subdivision and Tracts 4-A-1, 5-B-1, 5-B-2, Lands of WEFCO Partners

Location SW Corner of Central and Unser SW

between Bridge Street and 86th Street

Size Approximately 50 acres

Existing Tracts 1A, 1B, 2A, 2B, 3A, 3B, and 6 V.E. Barrett Subdivision are zoned SU-1/C-2 (10

acres), O-1, and PRD 20 du/acre (7 acres);

Tracts 4-A-I, 5-B-1, 5-B-2, Lands of WEFCO Partners and Tract 4B, V.E. Barrett Subd. are

zoned C-2

**Proposed** C-2 for Tracts 1A, 1B, 2A, 2B, 3A, 3B, and 6

V.E. Barrett Subdivision, approx. 36 acres

## Staff Recommendation

That a recommendation of APPROVAL of EPC08-40039 be forwarded to the City Council, based on the findings beginning on page 34.

APPROVAL of 08EPC-40034, based on the findings beginning on page 37, and subject to the conditions of approval beginning on page 38.

APPROVAL of EPC08-40035, based on the findings beginning on page 42, and subject to the conditions of approval beginning on page 45.

Staff Contact

Anna DiMambro-AICP, Planner

## Summary of Analysis

Zoning

This is a three part request for a map amendment of the West Route 66 Sector Development Plan, a site development plan for subdivision with design standards, and a site development plan for building permit for approx. 50 acres located at the SW corner of Central Avenue and Unser Boulevard SW.

The applicant is proposing to subdivide the existing 11 tracts into 14 and to develop a large shopping center to include two large retail facilities, a health club, and several smaller retail shops.

The applicant has adequately justified the zone change request per the requirements of R-270-1980 based upon changed conditions and the proposed zoning being more advantageous to the community. All three requests further the preponderance of applicable policies. Staff recommends approval of all three requests with conditions. In the case of the zone map amendment, the EPC is a recommending body to the City Council due to the size of the parcel.



City Departments and other interested agencies reviewed this application from 04/07/08 to 04/18/08.

Agency comments were used in the preparation of this report and begin on page

Description of the second second second



ENVIRONMENTAL: ANNING COMMISSION Project #1007204 Case: 08EPC 40034/40035/40039 May 15, 2008 Page 24

Overall the strip mall layout with several buildings on the periphery of the parking lot is partially pedestrian-friendly. The parking is placed at the front of main structures. As required by the big box ordinance there are walkways on every third double row of the parking lot with a minimum of 10' wide continuous walkway. However, the proposed walkways in several instances do not align with building entrances. The back of the shopping center will face residents across Bridge Boulevard. There are four pedestrian connections between the residential neighborhoods to the south and the shopping center. Two pedestrian connections are along the outer boundaries of the shopping center adjacent to 86<sup>th</sup> Street and Unser, one pedestrian connection is through the loading area between buildings 7C and 7C2, and one pedestrian connection is located between the home improvement store and building 7E. There are no existing crosswalks on Bridge Boulevard. The proposed site layout with the building rears abutting Bridge does not encourage drivers to slow down, which would be more conducive for pedestrians to safely cross the street. Building fronts immediately adjacent to roadways tend to notice drivers of the need to slow down.

The site includes thirteen dumpsters and two trash compactors. There is one recycling bin on the site behind the home improvement store. The Solid Waste Management division has disapproved of this site plan. Changes will need to be made in order to garner the support of this division. Namely, the number of refuse containers and recycling areas needs to be increased. Also, the detail drawings show only a single refuse enclosure. Detail drawings must be provided for the double enclosures as well.

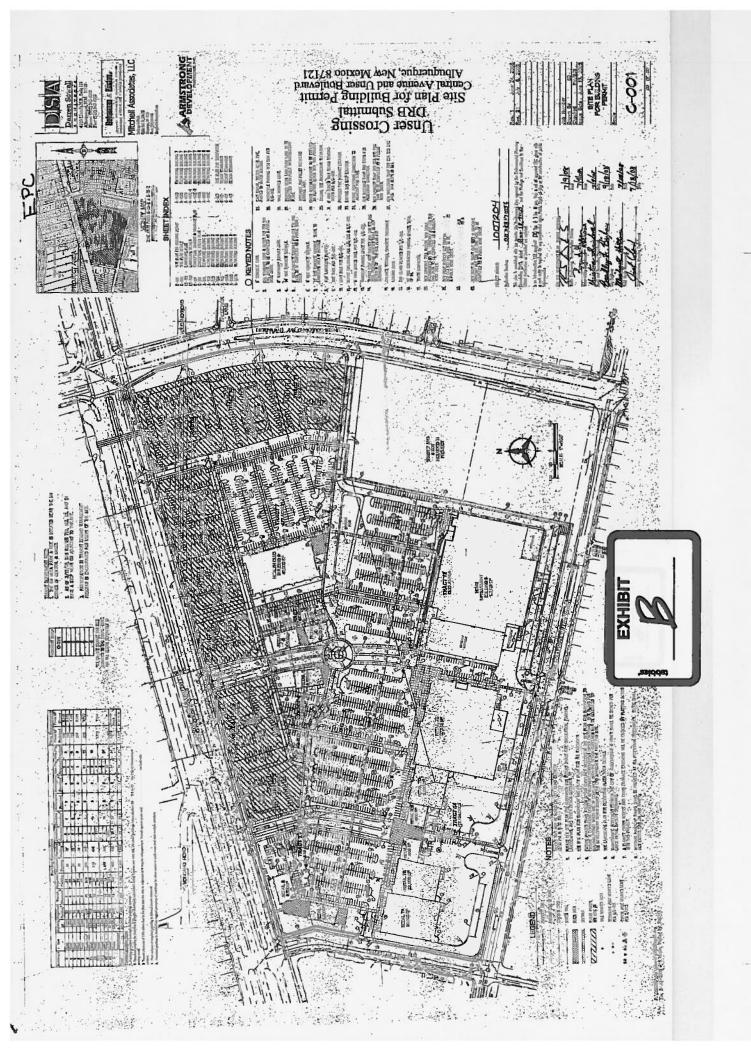
The number of cart corrals is insufficient throughout the site, but especially near the home improvement store and on the west side of the site plan. The lack of cart corrals may to result in parking problems.

#### WALLS/FENCES

A 6' high screen wall has been proposed along the backs of the buildings against Bridge Boulevard. The big box ordinance requires two screen walls, a 6' foot solid masonry wall along the property line and an 8' wall 100' from the face of the dock to screen the dock and truck facilities. Staff finds that in this case the requirement for two walls is excessive. Instead, staff recommends that the proposed 6' high screen wall be made 8' high to protect the neighborhood from adverse effects caused by trucks and loading activities. The applicant has provided no information about the walls including materials and colors. The big box ordinance requires that the screened walls be designed to blend with the architecture of the building. Staff has required that information about the walls be included as a condition of approval.

## VEHICULAR ACCESS, CIRCULATION AND PARKING

There are eight vehicular access points on the site. There are three access points along Central Avenue, one along 86<sup>th</sup> Street, one on Unser, and three along Bridge Boulevard including the loading dock area entrance. The primary access point is on Central Avenue. The circulation system within the site is made up of primary and secondary driveways. The primary driveway (the principal vehicular entrance from a public right of way into or out of a premises) is located in the middle of the site with a roundabout in the center. The secondary driveways, vehicular entrances used to supplement a primary driveway, are located throughout the site. For example, the drive aisle between the commercial strip and the parking lot is considered a secondary driveway. The primary and secondary driveways are used to break up the blocks for walkability and support land use





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Carmen Marrone
City of Albuquerque
Planning Department
600 2nd St. NW
Albuquerque, NM 87102

Re: Project 1003859, shopping center and "large retail facility" at Coors and Montano

Dear Ms. Marrone:

This firm represents the applicant for Project 1003859. By this letter, I need to point out a contradiction that is material to this case.

Attached as Exhibit A is a page from the Transcript of the Hearing on January 19, 2012. As you can see, Catalina Lehner states at page 157 that the large retail facility at Hotel Circle (a Lowe's) is different because it was "a retrofit."

However, Finding No. 2 of the Notice of Decision dated September 18, 2008, indicates that the "proposed building is not a re-use; it is a new structure since the existing buildings will be demolished and a new building will be constructed." Exhibit B. The Big Box Ordinance indicates that it applies wholly to "new construction". Exhibit C. There is no exception for new construction within pre-existing shopping centers.

Per the Big Box Ordinance, the Lowe's at Hotel Circle—over 125,000 sf—was required to have "full access" to two collector roadways. Exhibit D shows the configuration of the area, including the lot containing the Lowe's store (crosshatched). This lot has direct access to Morris/Hotel Circle, which does not have the required four lanes. And there is no traffic signal at any of the lot's driveways. Rather, the traffic signals are on Lomas and Eubank (west of Lomas, running north/south). Despite this, the Staff Report dated as of September 18, 2008 literally punts on the issue at Page 6 ("....") and recommends approval.

This case is precedent for the City. With this precedent, there is no way one can interpret the access requirements as LRF-lot specific as now advocated by Staff in its Supplemental Staff Report for Project 1003859.

Yours sincerely,

Michelle Henrie

EPC Minutes January 19, 2012

CHAIR PETERSON: Yeah, that's something to which we don't have to commit today.

Is there any other input, Commissioners?

Commissioner Gonzalez.

COMMISSIONER GONZALEZ: I just wanted to agree with you, that considering the amount of testimony that we had today, that even if staff believes that there are minor changes, that I think there there's a good possibility that I think there would be public comment that would...

CHAIR PETERSON: Right. I think that's something we have to deal with.

Okay. So before we move on to hear from staff, I noticed your client was trying to get your attention.

MR. BOHANNAN: Yes, what I'd like to do is do one last issue about traffic, and it's more of a logic issue, when you think about it. And everybody has approached traffic a lot of different ways. And if you just use logic, as you're driving home and you see the Walmart store and you go, wow, I really need this, or I need another store, I'm going to go into that store and get it and I'm going to go back, that's what's called a pass-by trip. The IT E manual allows up to 50 percent of all the trips that are coming out of that store to be drive-by trips. All traffic engineers are way too conservative and do allow that. We've actually used 30 percent in our traffic number.

But the logic is that if you're there, it's not generating a lot of new trips. In other words, I -- because we're generating the store, now I'm going to say, "Oh, I've got to go to this Walmart store." The majority of the traffic is already on those streets and are coming to that. And I think Commissioner Garcia said it best, the people that are driving to the West Bluff store and driving to the Cottonwood store now don't have to drive as far to go to either one of those stores. They'll go to their store. And so it's more of a logic standpoint. Yes, it will have more traffic there. But it's that hard part to quantify that's it really more drive by traffic.

CHAIR PETERSON: Okay.

MR. BOHANNAN: Thank you.

CHAIR PETERSON: Are there any questions for the applicant before we move on to hear from staff?

Let's hear from staff, please. Ms. Lehner. I didn't afford you triple time at the beginning, but do you think you need triple time at the end?

MS. LEHNER: Mr. Chair, Commissioners, I will make it relatively brief.

CHAIR PETERSON: Okay. Thank you.

MS. LEHNER: In closing, I would like to respond to some of the points that have been previously raised. First of all, there was a statement made that, quote, the area is planned for this type of project in reference to Coors and the Coors Corridor Sector Development Plan. And I would state that probably in 1984, large box retail was not quite as prevalent and I would not suspect



EPC Minutes
January 19, 2012

that it would have been envisioned at that time.

Also reference has been plead to an LRF approved at Hotel Circle I would like to point out as a case planner on that Hotel Circle case, it's very different from the case that is before you today. The reason being, Hotel Circle was a retrofit. They were proposing to put a large box retail already in a shopping center that already existed. It was a retrofit. It was completely different. There was no vacant land involved, and there certainly was no bosque next to it.

I would also like to point out further that I know that there was a site plan approved for the subject site in 2005. Now, there's been some talk about that plan perhaps not being -- it's kind of being held up as more of an ideal. You see it as necessarily an ideal, but I do believe that the 2005 sector development that was approved is closer in intent to meeting the design standards than the plan that is before you today.

Also, with respect to parking, it's a simple numerical requirement. Parking cannot exceed more than 10 percent of zoning code requirements. Running the numbers, 40075 provided, 385 pursuant to the zoning code. They have an extra 51 spaces; an instance of numerical noncompliance, which is as -- numerical noncompliance is also evident with respect to the view preservations in the Coors Corridor Plan.

Regarding the grading and drainage plan, I found several issues with it. One is that the direction of water flow, which are little arrows on the grading and drainage plan, almost every grading and drainage plan I see has through arrows. This one does not. Therefore it's not possible to evaluate to what extent the proposed curb cuts would be meaningful. There are certain landscape islands that have two curb cuts. Some landscape islands have none. Not knowing the direction of water flow, it's not possible to assess to what degree these would be helpful to even capture water in the first place.

Also, there is no indication of using pervious paving anywhere. Even though there's an opportunity to use it certainly and it would be beneficial, particularly in this drainage type of environment.

Also another thing that comes to my mind is that reasons to community activity centers. While they are labeled as community activity centers, there are fundamental differences. Again, Hotel Circle, an existing shopping center was already there. Wyoming and Menaul, again, existing commercial established urban area. This is a different kind of community activity center because it's also in a developing urban area. And it's also at a portion of Coors that gets closer to the bosque than other portions of Coors.

I'd also like to point out that there are several instances of noncompliance detailed in the staff report with the design standards with the large retail facility regulations that will need to be remedied in order to create compliance. And in creating compliance with what was supposed to have been complied with, that will again improve the extent to which policies are furthered.

With respect to a continuance, I believe that is absolutely necessary at this point in time. The site plan, I believe, needs to be cleaned up so that it can be considered. The overarching issues certainly can be considered, but the site plan itself, if we're going to get into the weeds, certainly needs to be cleaned



City of Albuquerque
Planning Department
Development Review Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Lowe's Home Improvement 4607 Silverheel St. Shawnee, KS 66226 Date: September 19, 2008

#### OFFICIAL NOTIFICATION OF DECISION

FILE: Project# 1007320 08EPC-40071 SITE DEVELOPMENT -BUILDG PRMT

LEGAL DESCRIPTION: for all or a portion of lot 2A-5A1-A1, Horne Development Addition, zoned SU-1 for Planned Commercial Development with uses permissive and conditional in the C-2 zone, located on Hotel Circle NE between Lomas Blvd. and Eubank Blvd., containing approximately 9 acres. (K-21) Catalina Lehner, Staff Planner

On September 18, 2008 the Environmental Planning Commission voted to approve Project 1007320/08EPC 40071, a Site Development Plan for Building Permit for Tract 2A-5A1-A1, Horne Development Addition, zoned SU-1 for Planned Commercial Development with Uses Permissive and Conditional in the C-2 zone, based on the following Findings and subject to the following Conditions:

#### FINDINGS:

- 1. This is a request for a site development plan for building permit for Tract 2A-5A1-A1, Horne Development Addition, an approximately 9 acre site located south of Lomas Boulevard and approximately in the center of the area known as Hotel Circle.
- 2. The applicant proposes to develop an approximately 138,000 square foot home improvement center, which will replace approximately 100,000 square feet of existing retail space. The proposed building is not a re-use; it is a new structure since the existing buildings will be demolished and a new building will be constructed. A reconfigured parking lot area, landscaping and other site improvements are also proposed.
- 3. The subject site is zoned SU-1 for Planned Commercial Development with Uses Permissive and Conditional in the C-2 zone. The proposed retail use is allowed under the subject site's current zoning.

OFFICIAL NOTICE OF DECISION SEPTEMBER 18, 2008 PROJECT #1007320 PAGE 2 OF 6

- 4. The subject site lies within the boundaries of the Established Urban Area of the Comprehensive Plan and is located in the Los Altos/Market Center Community activity center. No sector development plans apply.
- 5. The request is subject to the Large Retail Facilities (LRF) Ordinance, commonly referred to as the "Big Box" Ordinance (O-06-53). The proposed building is greater than the 75,000 square foot threshold for applicability of the Ordinance.
- 6. The request furthers the following applicable Comprehensive Plan policies:
  - A. <u>Policy II.B.5j</u>-general location of commercial uses. The proposed development would be located in a larger area-wide shopping center that is commercially zoned.
  - B. <u>Policy II.B.7f</u>- Activity Centers/buffering. The more intense uses in this shopping center are separated from the single-family homes to the east by a buffer of other uses, including townhomes, a hotel and a school.
- 7. The request partially furthers the following applicable Comprehensive Plan Goal and policies:
  - A. Activity Centers Goal- Locating another commercial use in a designated activity center generally supports the Activity Centers Goal; however, in this case the request will not reduce auto travel needs and will not enhance the identity of Albuquerque and the nearby community.
  - B. <u>Policy II.B.5d</u>-location and intensity/other resources: The location and intensity are appropriate for the proposed use, though many of the LRF Ordinance requirements that would increase its compatibility are not met.
  - C. <u>Policy II.B.51</u>- design quality and innovation/plan area. The proposed new development is franchise architecture and does not demonstrate design innovation, though there is some other franchise architecture in the area.
- 8. The proposed site development plan for building permit mostly complies with O-06-53, the Large Retail Facilities (LRF) Ordinance. The needed improvements that remain, many of which are "clean up" items, can be achieved through the application of conditions of approval.
- 9. A Traffic Impact Study (TIS) was not required, though a Trip Generation Comparison (TGC) was. The TGC indicates that the proposed Large Retail Facility (LRF) will generate approximately 3,000 fewer two-way vehicle trips in a 24 hour period than the existing retail uses.
- 10. Because the subject site is greater than 5 acres, the archaeological ordinance (O-07-72) applies. The applicant has obtained a Certificate of No Effect.
- 11. The required pre-facilitated meeting was held. A few neighbors attended and expressed concern regarding property tax impact and crime at a nearby hotel. A follow-up facilitated meeting was not requested or held. There is no known neighborhood or other opposition as of this writing.

OFFICIAL NOTICE OF DECISION **SEPTEMBER 18, 2008** PROJECT #1007320 PAGE 3 OF 6'

The subject site is located less then 700 feet from the intersection of two collector streets, Lomas Boulevard and Morris Road, and is adjacent to and has full access to these roadways and complies 12. with Section 14.D.2.c.2.

#### **CONDITIONS:**

- The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been 1. satisfied and that other applicable City requirements have been met. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.
- Prior to final DRB sign off, the applicant shall meet with the Development Review Staff planner to ensure that the conditions of approval are met. Evidence of this meeting shall be provided to the 2. DRB at the time of application.
- Maintenance Agreement: The applicant shall sign a maintenance agreement with the City, prior to final DRB sign-off, so 3. that the site will be maintained when vacant to the minimal standards, among others as deemed appropriate by the Planning Director, elaborated in the LRF Ordinance.
- Walls/Fences: 4.
  - A. The screen wall [and the retaining wall if over 4 ft. tall] shall have additional articulation, such as multiple finishes and vertical pilasters, as required pursuant to Zoning Code §14-16-3-19(B)(2) (a and b).
  - B. The retaining wall shall not exceed 3 ft. tall in the west-east segment south of the plaza area.
  - C. The retaining wall's range of height and finish shall be specified on the site development plan.
  - D. The finish for the retaining wall and the screen wall shall be specified as split-face CMU or light beige stucco.
- Loading Dock/Screening: 5.
  - A. The screen wall near the truckwell/loading dock area shall be 8 ft. tall above the finished floor level and extend horizontally 100 ft. from the face of the dock [(D)(5)(g)(1)].
  - B. The finish for both screen walls, for the truck area and the truckwell/loading dock area, shall be specified and blend with the architecture of the building [(D)(5)(g)(1)].
- Pedestrian/Bicycle Connections: 6.
  - A. An ADA accessible sidewalk ramp, that is not a loading zone, shall be provided to allow pedestrian access from the external sidewalk to the required 8 foot wide sidewalk along the primary (western) façade so that pedestrians do not have to walk in the loading area [(D)(5)(i)].

OFFICIAL NOTICE OF DECISION SEPTEMBER 18, 2008 PROJECT #1007320 PAGE 4 OF 6

B. The sidewalk entering the subject site from Hotel Circle, on the western side of the vehicular entrance, shall be shown on the site development plan and the landscaping plan.

7. Landscaping-Buffers:

- A. The landscape buffer along the subject site's southwestern side shall measure 20 ft. wide and the wider portions shall remain [(D)(6)(a)(1)].
- B. Additional shrubs shall be added to the eastern landscape buffer to provide the required 75% coverage with living, vegetative materials (Zoning Code §14-16-3-10).
- 8. Landscaping-Minor "clean up":

A. The note regarding existing trees, and whether or not they will remain, shall be clarified.

- B. The landscaping calculations shall be revised to correct minor discrepancies, such as the size of the plaza area, size of total landscape bed and certain percentages.
- 9. Architecture:
  - A. Every 30,000 gross square feet of structure shall be designed to appear as a minimum of one distinct building mass with distinct expressions [(D)(6)(b)(2)].

B. The patio along the building's main (western) façade shall be recessed a minimum of 20 ft. [(D)(6)(b)(1)].

C. The main (western) façade shall contain Retail Suite Liners, display windows, or a recessed patio at a minimum depth of 20 feet, or a combination of all three, along 50% of the length of the façade [(D)(6)(b)(1)].

10. Signage:

A. There shall be one monument sign, either near the northwest corner or the southern corner of the subject site, along Hotel Circle.

- B. Sign area, for building-mounted signs with borders, shall be measured as the area within the border pursuant to Zoning Code §14-16-1-5 (Definitions), and the signage table on Sheet A-101 shall be corrected.
- 11. Plaza/Outdoor Space:

  The tables in the plaza area shall have umbrellas or other comparable shading structure.
- 12. The parking lot tree wells shall have curb breaks or another design feature to allow for supplemental water harvesting.
- 13. CONDITIONS FROM THE CITY ENGINEER, MUNICIPAL DEVELOPMENT, WATER AUTHORITY and NMDOT:

  Conditions of approval for the proposed Site Development Plan for Building Permit shall include:

OFFICIAL NOTICE OF DECISION SEPTEMBER 18, 2008 PROJECT #1007320 PAGE 5 OF 6

A. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan. Those improvements will include any additional right-of-way requirements, paving, curb and gutter, sidewalk and ADA accessible ramps that have not already been provided for. All public infrastructure constructed within public right-of-way or public easements shall be to City Standards. Those Standards will include but are not limited to sidewalks (std. dwg. 2430), driveways (std. dwg. 2425), private entrances (std. dwg. 2426) and wheel chair ramps (std. dwg. 2441).

B. Where drives are to be constructed on opposite sides of the street, unless they are offset 50' or more, the centerlines need to be within 15' of each other. The only exceptions considered, will be the loading areas at the rear of the store or as approved by the Traffic Engineer.

- C. Provide truck turning template information on site plan.
- D. Site plan shall comply and be designed per DPM Standards.
- 14. The center parking lot sidewalk shall be moved north by one row, and a walkway of textured patterned concrete shall lead to the retail facility to the west. Moving up the southern parking lot sidewalk by one row is optional.
- 15. The Applicant shall investigate whether it is possible to relocate the plaza area adjoining the sidewalk. If this is not possible, the applicant shall demonstrate why.

PROTEST: IT IS NOT POSSIBLE TO APPEAL EPC RECOMMENDATIONS TO CITY COUNCIL; RATHER, A FORMAL PROTEST OF THE EPC's RECOMMENDATION CAN BE FILED WITHIN THE 15 DAY PERIOD FOLLOWING THE EPC's DECISION, WHICH IS BY OCTOBER 3, 2008.

APPEAL: IF YOU WISH TO APPEAL A FINAL DECISION, YOU MUST DO SO BY **OCTOBER 3, 2008** IN THE MANNER DESCRIBED BELOW. A NON-REFUNDABLE FILING FEE WILL BE CALCULATED AT THE LAND DEVELOPMENT COORDINATION COUNTER AND IS REQUIRED AT THE TIME THE APPEAL IS FILED.

Appeal to the City Council: Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If they decide that all City plans, policies and ordinances have not been properly followed, they shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.

OFFICIAL NOTICE OF DECISION SEPTEMBER 18, 2008 PROJECT #1007320 PAGE 6 OF 6

YOU WILL RECEIVE NOTIFICATION IF ANY PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).

Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated 7 years after approval by the EPC

Sincerely

Richard Dineen Planning Director

RD/CL/ac

cc: Lawrence Kline, Denish + Kline Associates, 500 Marquette NW, Ste 350, Albuq. NM 87102

1	Section 14. Section 14-16-3-2 ROA 1994, SHOPPING CENTER
2	REGULATIONS, is amended to add Large Retail Facility Regulations as
3	follows:
4	"(D) Large Retail Facility Regulations.
5	(1) Applicability.
6	(a) Provisions of this section and Section 14-8-2-7,
7	Responsibilities of Applicants and Developers, shall apply to the following,
8	as determined by the Environmental Planning Commission (EPC):
9	1. New construction of a Large Retail Facility;
10	2. Change of use from a non-Large Retail Facility
11	to a Large Retail Facility as defined in Section 14-16-1-5;
12	3. Building expansion of more than 50% of the
13	existing square footage.
14	(b) Building expansion of 10% to 50% of the existing
15	square footage of an existing Large Retail Facility shall be subject to the
16	following requirements:
17	1. Pre-application discussion with the Planning
18	Review Team (PRT).
19	2. Compliance with the Large Retail Facilities
20	design regulations as determined by the EPC. The EPC before issuing final
21	design regulations shall request input from neighborhood associations
22	with boundaries that are within 200 feet of the proposed project.
23	(c) Building expansion up to 10% of the existing square
24	footage and building renovation of an existing Large Retail Facility shall
25	comply with the design regulations in this section to the extent possible as
26	determined by the Planning Director.
27	(2) Location and Access of Large Retail Facility. The following
28	regulations manage the location and design of Large Retail Facilities.
29	These regulations are necessary for the proper functioning and enjoyment
30	of the community. They protect the quality of life within surrounding
31	residential areas, support efficient traffic flows, and provide consistent
32	regulations for such Facilities. Large Retail Facilities shall be located to
	13 EXHIBIT
	13 C

2. Required to be located within 700 feet of the intersection of two roadways, both of which are designated as at least a collector street in the Mid-Region Council of Governments' Metropolitan Transportation Plan and shall have full access to these roadways. One of the adjacent roadways shall have at least four through traffic lanes and the other adjacent roadway shall have at least six through traffic lanes or is designated a limited access principle arterial in the Mid-Region Council of Governments' Metropolitan Transportation Plan and have a minimum of four lanes.

- 3. If an arterial or collector street has yet to be built to its full cross-section and does not have the required number of lanes, the Large Retail Facility may have access onto the roadway if the roadway is identified on the Metropolitan Transportation Plan as having the required number of lanes at full build-out.
- 4. If access control policies prohibit access onto one of the adjacent roadways, a local road may be used as access if it has direct access to at least two roadways that are identified on the Long Metropolitan Transportation Plan, does not pass directly through a residential subdivision and at least one of the intersections is signalized.
- 5. If access to a location fulfills the criteria of this section but control policies outside the city jurisdiction prohibit access onto one of the adjacent arterial or collector streets, the remaining arterial or collector street may serve as the sole access if it has direct access to two intersections with an arterial and the intersections are signalized.
- 6. If warrants are met, the intersection of the primary driveway and the arterial street shall be signalized, unless prohibited by the City Traffic Engineer for safety reasons, at the expense of the applicant. The applicant may place the name of the development on the mast-arm of the signal.
- (3) Site Division. These regulations create block sizes for Large Retail Facility that are walkable and support land use changes over



Agenda Number: 2 Project Number: 1007320 Case #: 08EPC 40071 September 18, 2008

## Supplemental Staff Report

Agent

Denish + Kline Associates

Applicant

Lowe's Home Improvement

Request

Site Development Plan for Building

Permit

Legal Description

Tract 2A-5A1-A1, Horne

**Development Addition** 

Location

On Hotel Circle NE, between Eubank

and Lomas Blvds.

(11,150 Lomas Blvd. NE)

Size

Approximately 9 acres

Existing Zoning

SU-1 for Planned Commercial

Development with Uses Permissive and Conditional in the C-2 zone

Proposed Zoning

Same

## Staff Recommendation

APPROVAL of 08EPC 40071, based on the Findings beginning on Page 16 and subject to the Conditions of Approval beginning on Page 17.

Staff Planner

Catalina Lehner-AICP, Senior Planner

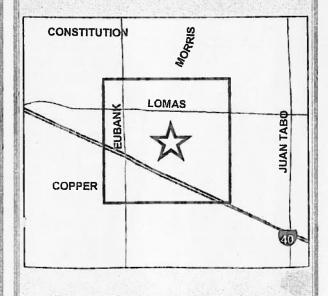
## Summary of Analysis

This request is for a site development plan for building permit for a large retail facility (LRF) on a developed site. The proposed  $\approx 138,000$  sf home improvement center would replace  $\approx 100,000$  sf of existing retail space. The Large Retail Facilities (LRF, or "big box") Ordinance applies (O-06-53).

Prior to the July EPC hearing, this request was deferred for 30 days by the applicant to allow time to address instances of non-compliance with the LRF Ordinance found in 5. Site Design and 6. Main Structure Design. These issues were mostly addressed. At the August hearing, there was insufficient time to hear this request so it was deferred to the September hearing.

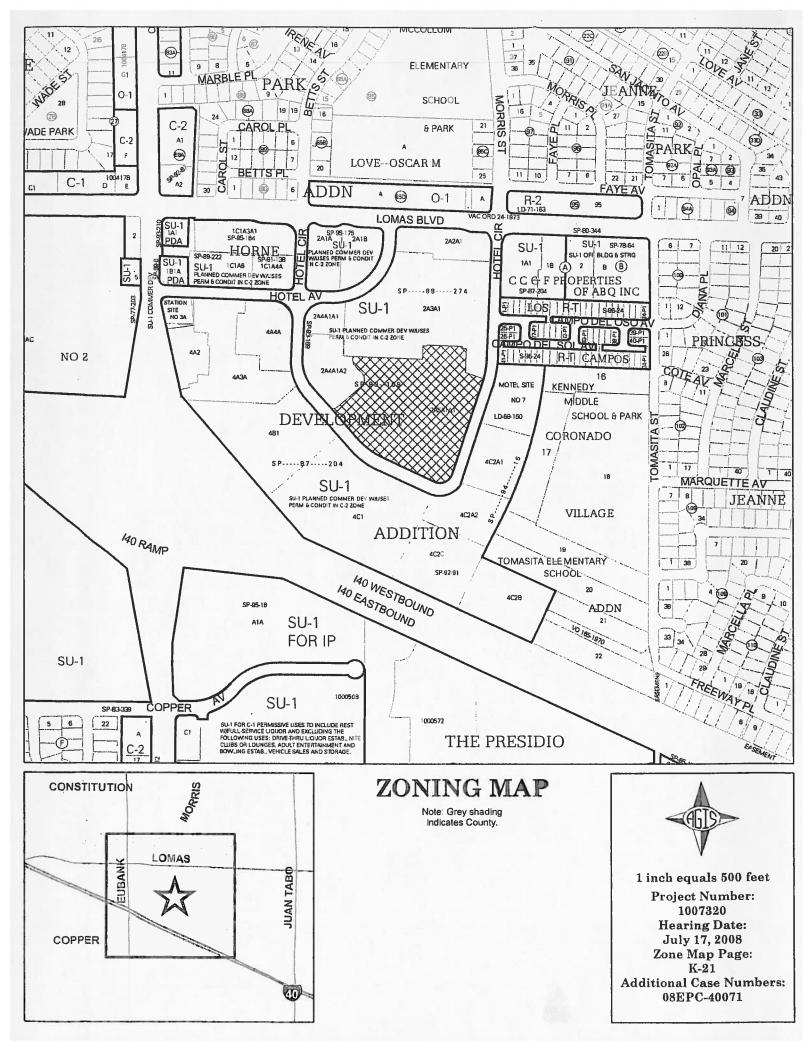
Since then, the applicant has made some revisions to reduce the number of proposed conditions of approval and has investigated the 700 ft. requirement in the LRF ordinance. There is no known opposition. Staff recommends approval subject to conditions.

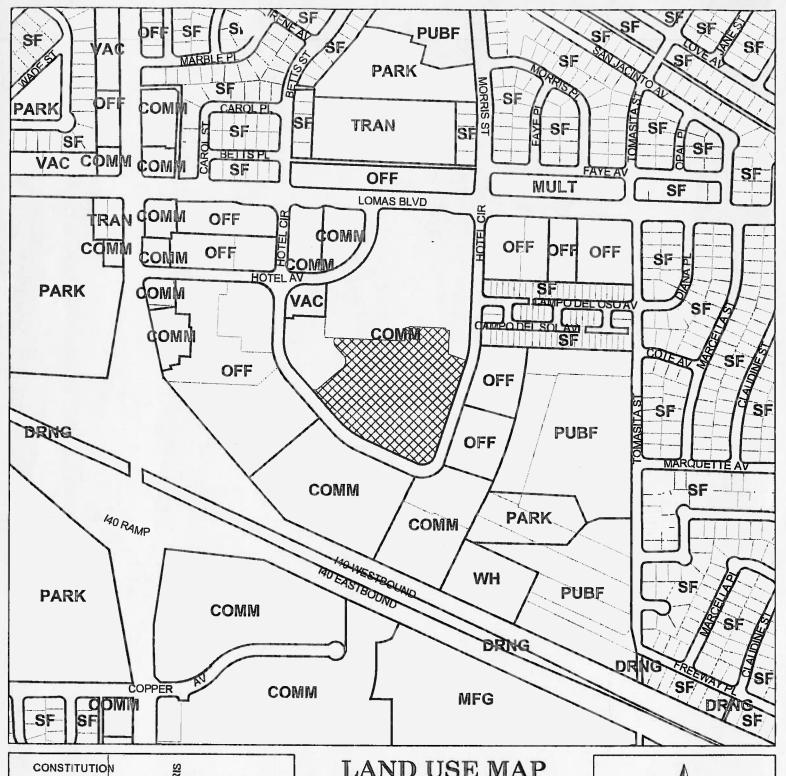
This report should be read in conjunction with the original July Staff report and the supplemental August Staff report.

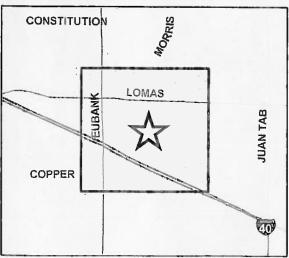


City Departments and other interested agencies reviewed this application from 06/09/'08 to 0 Agency comments were used in the preparation of this report and begin on Page 23 of the origina









## LAND USE MAP

Note: Grey shading indicates County.

KEY to Land Use Abbreviations

AGRI Agricultural COMM Commercial - Retail DRNG Drainage MFG Manufacturing or Mining MULT Multi-Family or Group Home OFF Office PARK Park, Recreation, or Open Space PRKG Parking PUBF Public Facility SF Single Family TRAN Transportation Facility VAC Vacant Land or Abandoned Buildings WH Warehousing & Storage



1 inch equals 500 feet Project Number: 1007320 **Hearing Date:** 

July 17, 2008 Zone Map Page: K-21

Additional Case Numbers 08EPC-40071

Page 5

The signage areas on Sheet A-101 continue to differ from Staff's calculations. The applicant is measuring only the sign area with the letters, whereas Staff is measuring signage using the sign area within the borders. Zoning Code §14-16-1-5 (Definitions) states that sign area, for building-mounted signs with borders, is the area within the border.

For example, Staff calculates approx. 740 sf for the main building-mounted sign (26% of façade area) whereas the applicant lists approx. 348 sf. Building mounted signs are also proposed for the Indoor Lumber Yard and the Garden Center. Staff calculates approx. 72.5 sf for each, though the figures on Sheet A-101 differ. The table needs to be corrected using the measuring practices of this municipality.

#### Outdoor Space (Please also refer to p. 5 of the second supplemental report)

The proposed plaza area is still 2,839 sf (Sheet C-001). The landscaping plan lists a different figure, but that is probably because the landscape beds are included in that total. The significant change is that the plaza area is now proposed to be constructed of permeable material. Please refer to the analysis of the RLF ordinance (below) for more discussion of the proposed plaza area.

#### III. ANALYSIS—LARGE RETAIL FACILITIES (LRF) ORDINANCE REQUIREMENTS

The following analysis examines applicable portions of the LRF Ordinance and the request's compliance with them. Typically, in a supplemental report, only the revisions made during the deferral period are discussed. However, for ease of reading, Staff has included the analysis from the first supplemental Staff report dated August 21, 2008 (pages 3 – 5, see attachment). Revisions made since then, and any new information, are highlighted here in light grey.

#### SECTION 3- RESPONSIBILITIES OF APPLICANTS AND DEVELOPERS.

Applicants are required to notify neighborhood associations and attend a pre-application review team (PRT) meeting prior to filing an application for development of a LRF.

The applicant coordinated with the Office of Neighborhood Coordination (ONC) to notify neighborhood associations (NAs) and arrange a pre-facilitated meeting. There are no affected NAs. The pre-facilitated meeting was held on May 27, 2008. The few neighbors who attended expressed concern regarding property tax impact and crime at a nearby hotel. The applicant attended the required PRT meeting, which was held in February 2008 (see attachment). The applicant complies with Section 3.

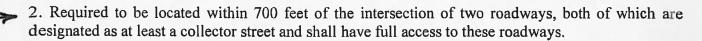
#### SECTION 14- D. LARGE RETAIL FACILITY (LRF) REGULATIONS.

- (2) LOCATION AND ACCESS OF LARGE RETAIL FACILITY.
- (c) Large Retail Facilities containing 125,000 square feet or greater of Net Leasable Area are:
  - 1. Permitted in the C-2, C-3, M-1, M-2, IP, SU-1 and SU-2 for uses consistent with C-2, C-3, M-1, M-2, IP Zones; and The proposed LRF is a permissive use in the SU-1 zone.

#### CITY OF ALBUQUERQUE PLANNING DEPARTMENT DEVELOPMENT REVIEW DIVISION

ENVIRONMENTAL PLANNING COMMISSION
Project #: 1007320 Case #: 08EPC 40071
September 18, 2008

Page 6



Staff has researched the meaning of this subsection and discussed it with Planning Staff involved in the creation of the LRF Ordinance. The northern side of the subject site is located approx. 676 ft. from the intersection of two roadways, Lomas Blvd. and Morris St., which are classified as an urban principal arterial and an urban collector, respectively, on the 2030 Metropolitan Transportation Plan (MTP) map. Full access means that......

The proposed LRF does not comply, since it is approx. 1,200 ft. from the Eubank/Lomas Blvds. intersection Hotel Circle is a local street. The subject site had already developed with LRFs prior to the LRF Ordinance, which would have required that such an LRF be in a different location.

#### (3) SITE DIVISION.

(a) The entire site shall be planned or platted into maximum 360' x 360' blocks except as provided in Items (c) and (d) of this subsection.

Staff points out that the LRF Ordinance allows for blocks of different dimensions (d) provided that the block sizes achieve the intent of this Section and that the EPC approves them.

As mentioned above, the subject site had already developed with LRFs prior to the LRF Ordinance, which would have required that LRF sites be divided differently than in the past.

#### (4) DEVELOPMENT PHASING AND MIXED-USE COMPONENT.

(b) Mixed Use Component. Mixed use development is strongly encouraged.

The request does not propose any phasing and does not include a mixed-use component. The LRF Ordinance "strongly encourages", but does not require, a mixed use component in both Phase One and the Final Phase of LRF development.

#### (5) SITE DESIGN.

These regulations are intended to create pedestrian connections throughout the site by linking structures. The intent is to create an active pedestrian street life and replace large off-street parking fields, conserve energy and water and meet the intent of the Comprehensive Plan and the Planned Growth Strategy (PGS).

(a) Context: The design of structures shall be sensitive to and complement the aesthetically desirable context of the built environment, e.g., massing, height, materials, articulation, colors, and proportional relationships.

The proposed franchise architecture, including some materials and colors, is not sensitive to Albuquerque and could occur anywhere in the Country. The massing and height, though quite



October 16, 2011

Carmen Marrone
City of Albuquerque
Planning Department
600 2nd St. NW
Albuquerque, NM 87102

Re: Project 1003859, shopping center and "large retail facility" at Coors and Montano

Dear Ms. Marrone:

This firm represents the applicant for Project 1003859.

I would like to respond to the legal argument advanced by Mr. Flynn-O'Brien suggesting that the City does not have precedent relating to its interpretation of access allowed under the Big Box Ordinance.

Mr. Flynn-O'Brien basically acknowledges that other large retail facility projects have been approved under the Big Box Ordinance, but suggests that those approvals don't set precedence. As support, he cites a case: PNM v. NM Tax & Rev, 157 p.3d 87 (Ct. App. 2007). In this case, the question is whether PNM should be allowed to not make a tax payment. PNM relies on Department Rulings to inform its interpretation of "ordinary course of business." However, neither Tax & Rev nor the Courts agree. Mr. Flynn-O'Brien latches on to one piece of the analysis and argues it is applicable in Project 1003859. It is not.

The Court indicates that it will treat Department Rulings like judicial rulings. These types of rulings are like the City's Declaratory Rulings. The answer depends on the question that is asked. If the question asked does not deal with a specific issue, Courts will not treat any statements made in the ruling regarding an off-topic issue as precedential. Mr. Flynn-O'Brien suggests that prior decisions of EPC fall into this category.

The problem with this suggestion is twofold. First, in a land use proceeding, Staff essentially has a checklist. Land use proceedings are not restrained by the question asked. The analysis is whether the checklist is met by a preponderance of the evidence.

Second, the Court also mentions that policy favors payment of taxes. Therefore, in situations of ambiguity or grey areas or interpretations, payment of taxes will prevail over non-payment of taxes. Similarly, in land use policy, the policy favors free use of property. Courts will interpret statutes and ordinances liberally in favor of a landowner's free use of her/his property.

For these reasons, the <u>PNM</u> case is not of relevance to EPC and a land use proceeding like this one involving Project 1003859.

Yours sincerely,

Michelle Henrie



October 16, 2011

Carmen Marrone
City of Albuquerque
Planning Department
600 2nd St. NW
Albuquerque, NM 87102

Re: Project 1003859, shopping center and "large retail facility" at Coors and Montano

Dear Ms. Marrone:

This firm represents the applicant for Project 1003859. Enclosed with this letter is a list of the duties delegated to the Environmental Planning Commission by City Council.

Yours sincerely,

Michelle Henrie

### ■§ 14-13-3-2 DUTIES, RESPONSIBILITIES, AND POWERS.

- (A) Delegation by City Council. There is hereby delegated to the EPC the following power and authority:
- (1) Study. The EPC shall study urban and regional planning and means of protecting and improving the environment. The EPC may request assistance of staff of the city by request to the Mayor.
- (2) Advisory Functions. The EPC shall advise the Mayor, City Council, and city staff concerning the development and revision of community goals, plans for urban development and protection of the environment, policies on development and on protection of the environment, ordinances appropriate for effecting such plans and policies, annexation to the city, programming of capital improvements for the city, the designation of land desirable and needed for public purposes, the adoption of air and water quality standards, and other appropriate matters.
- (3) Public Education. The EPC shall promote the understanding of planning and environmental matters among public officials as well as residents of Albuquerque and its environs.
- (4) Environmental and Economic Impact Analyses. The EPC shall review all environmental and economic impact analyses prepared by the city or required of others by the city, or submitted to the EPC by other interested parties on matters under consideration by the EPC.
- (5) Approval of Extraordinary Facilities in City Parks and Open Space. If extraordinary facilities are proposed for city-controlled parks or open space, EPC approval of a site development plan is required before installation or construction. Before considering approval of such facilities, the EPC shall seek the recommendation of the Metropolitan Parks Advisory Board and/or the Open Space Advisory Board, according to their jurisdiction over the area. The decision of the EPC may be appealed to the City Council if appeal is filed with the Planning Director within 15 days of the decision. For the purpose of this division (5):
- (a) EXTRAORDINARY FACILITIES IN PARKS are those which are not primarily for facilitating recreation, relaxation, and enjoyment of the outdoors; they do not include incidental parking and access roads, nor do they include infrastructure not visible on the surface;
- (b) EXTRAORDINARY FACILITIES IN OPEN SPACE are those other than trails, fencing, signs, incidental parking lots, and access roads.
- (6) Other Duties, Responsibilities, and Powers. The EPC has such other duties, responsibilities, and powers as may be delegated to it by the City Council, including but not limited to powers delegated by the Zoning Code and Subdivision Regulations.
- (B) Committees. EPC may form standing committees from EPC members in order to carry out the assigned duties, responsibilities and powers of the EPC. The EPC shall select the EPC members to serve on its committees and may select the Chairperson of EPC committees except as otherwise specified by §§ 14-13-3-1 et seq. Members of EPC committees who are not

members of the EPC are allowed only as authorized in §§ 14-13-3-1 et seq. Where committee members from the general public are authorized, the EPC may recommend to the Mayor people whom it believes to be well qualified for appointment.

- (C) Task Forces. The EPC may form task forces consisting of EPC members and the general public and may select the members and Chairperson of any task force. For the purposes of this division, TASK FORCE means an advisory group established to carry out a specific assignment for a predetermined time, not to exceed 18 months.
- (D) Relationship of the EPC to its Committees and Task Forces. Committees and task forces of the EPC shall report to the EPC on their activities at least semi-annually, and as may be directed by the EPC. The EPC may set guidelines for the communication from its committees and task forces to other governmental entities and the public. The EPC may take an advisory position on a matter which is different from the advisory position of an EPC committee or task force; however, the EPC shall not convey its advice to another governmental entity or the public without also conveying the position of its committee or task force on the same matter.
- (E) Delegation of Planning Commission duties, responsibilities, and powers to a staff hearing officer or Zoning Hearing Examiner may be authorized by rule of the Planning Commission in the following cases:
- (1) Matters determined by the Planning Commission as provided by the Zoning Code, except not the adoption or amendment of sector development plans and not the hearing of appeals; in addition, advice on Zoning Code text amendments shall not be delegated;
- (2) Matters determined by the Planning Commission as provided by the Subdivision Regulations; and
- (3) Advice to the City Council as to proposed annexations.

('74 Code, § 7-15-2) (Ord. 294-1972; Am. Ord. 10-1983; Am. Ord. 90-1983; Am. Ord. 79-1989)



October 16, 2011

Carmen Marrone
City of Albuquerque
Planning Department
600 2nd St. NW
Albuquerque, NM 87102

Re: Project 1003859, shopping center and "large retail facility" at Coors and Montano

Dear Ms. Marrone:

This firm represents the applicant for Project 1003859. Enclosed with this letter are several items intended to make sure that the Record in this matter is accurate. This is important to my client in the event of an appeal. It is also critical in this hearing because the composition of the Environmental Planning Commission has changed during the pendency of this case.

I am basing my understanding of the "Record" on the Supplemental Staff Report dated as of October 18, 2012, including its printed appendices, and the disk containing the following eight files:

- 1. Andalucia HA Petition.pdf
- 2. Form Letter Petition 1 of 3.pdf
- 3. Form Letter Petition 2 of 3.pdf
- 4. Form Letter Petition 3 of 3.pdf
- 5. Materials Applicant Attorney.pdf (mislabeled, this file actually contains materials submitted by the Neighborhood Association's Attorney, Tim Flynn-O'Brien)
- 6. Materials Neighbd Attorney.pdf (mislabeled, this file actually contains materials submitted by me)
- 7. Small Business Petition.pdf
- 8. TRNA Petition.pdf

When I reference a page number, I will be referring to either one of the above items or the Original Staff Report dated as of January 19, 2012, including its printed appendices, starting with the first page and numbering sequentially thereafter.

As you know, the first hearing on this matter took place on January 19, 2012. There were several items submitted in connection with that Hearing, including several items submitted just prior to that hearing and therefore understandably not included in the Original Staff Report for the January hearing. Nevertheless, I know that my letter, including its six exhibits were forwarded to the then-Commissioners because I was cc-ed on those transmittals. And the other

materials should have been included as well, and regardless are now a part of the Record. In connection with the foregoing, enclosed with this letter are the following items.

Exhibit A. My letter dated January 17, 2012, together with 6 exhibits, hand delivered to Planning.

Exhibit B. Proposed Findings and Conclusions emailed by Ron Bohannan on January 17, 2012.

Exhibit C. View plane exhibit emailed by Jon Niski on January 17, 2012.

I note that the Transcript from the Hearing of January 19, 2012, already prepared for one of the City Council appeals, is not included in the Record. I presume that the new Commissioners have read the transcript. Nevertheless, I include herein key pages.

<u>Exhibit D</u>. Pages 146-147 of the Transcript in which Tom Carroll reads a letter of support from the West Side Chamber of Commerce. I include that letter as well.

Exhibit E. Pages 130-131 of the Transcript in which Tim Flynn-O'Brien, then representing Bosque School, reads a statement in which Bosque School withdraws its opposition to the project. A newspaper article emailed on January 19, 2012 by Ron Bohannan regarding the same is also included.

Post-hearing, there were two appeals. The first appeal, AC-12-6, related to EPC's extension of the applicable Site Plan for Subdivision. This appeal was ultimately denied. The Record (i.e., on the CD) does contain my submittals for the first appeal at pages 260-272.

The second appeal, AC-12-10, involved a declaratory ruling. This ruling was separate from this proceeding and my client believes that this matter should be kept wholly separate from the pending application. This argument was *de facto* rejected by City Council by not adopting proposed findings and by the Planning Staff in how it has chosen to proceed. Thus, if these proceedings are to be combined, all of the materials I submitted in connection with AC-12-10 must be included in the Record. Right now, there is the pleading titled "Project Owners Legal Analysis" at pages 257-259, plus its six exhibits 273-361. In addition, there is a pleading titled "Project Owner's Opposition to Re-Characterizing the Appeal Midstream" at 257-259, and letters dated August 23, 2012 and August 28, 2012 (in duplicate) at pages 244-249 and 252-256. In addition, the following should be included:

Exhibit F. "Project Owners Recommendation for How the City Should Handle this Appeal."

Carmen Marrone October 16, 2012 Page 3 of 4

Exhibit G. "Project Owners' Proposed Findings of Fact."

Exhibit H. Exhibits 8, 9, 10 and 11 accepted at hearing.

Unfortunately, the legal analysis related to this matter is buried behind 114 pages of scans of duplicate material (e.g., letters dated October 3, 2012, August 28, 2012, August 23, 2012, etc.). I also note that despite other color pictures in the Record reproducing legibly (e.g., Supplemental Staff Report pages 244-249), unfortunately my submittals translated as 78 pages of black blobs—56 pages of which are duplicates. For purposes of preserving the Record, in which these pictures are important to show compliance with the Big Box Ordinance and to show the Village Center, I include legible black and white copies of the renderings and computer modeling of the proposed large retail facility in legible form.

Exhibit I. Legible copies of the Villa del Bosque renderings.

Exhibit J. Legible copies of the computer modeling.

In addition, I want to point out my disappointment that the overwhelming majority of Walmart supporters were relegated to the disk files or excluded from the Record altogether (in the case of the op-eds and the petition). There are over 270 letters and statements of support contained in the disk files styled "Form Letter Petition" and at pages 347-362 of my submittals. These people took the time to sign a support letter. And most of them also added their personal comments. But for some reason these comments and statements of support were not "good enough" to be included in the Staff Report printed appendices. This unfortunately gives a lopsided misimpression.

In addition, page 65 of the Supplemental Staff Report mentions receiving copies of published oped letters in support of the proposal. The report seems to say that these letters were included but I find them nowhere. I tracked down copies and include them with this letter. In addition, I note that these are not all of the published letters. I am adding a letter that I happened to keep as well as a letter that ran yesterday.

Exhibit K. Op-eds received by Planning on October 18, 2012, per Supplemental Staff Report.

Exhibit L. Additional published letters in support of this project.

Finally, on January 13, 2012, I personally hand-delivered over 6,000 signatures in support of this project to the Planning Department. However, I do not know whether the Commissioners were given copies of these signatures—they appear nowhere in the Original Staff Report. On October 2, 2012, my paralegal, Steve Howard personally hand delivered over 9,000 signatures in support

Carmen Marrone October 16, 2012 Page 4 of 4

of this project to the Planning Department. While I can understand that not all 15,000+ signatures are included in the Record, I do not understand why the Record contains <u>nothing</u>—not even a sample or a placeholder to show how these petitions look. To correct the situation, I am including a handful of pages from the petitions supporting Walmart.

Exhibit M. Sample of petition signed by over 15,000 supporters of this project.

Yours sincerely,

Michelle Henrie

#### Michelle Henrie

From: Michelle Henrie < michelle@mhenrie.com>

Sent: Tuesday, January 17, 2012 2:50 PM

To: 'Marrone, Carmen M.'; Lehner, Catalina L. (CLehner@cabq.gov)

Cc: 'Ron Bohannan'

Subject: North Andalucia at La Luz letter 1-17-12 (Mail 1)

Attachments: Andalucia letter 1-17 scan 1.pdf

#### Carmen, Catalina,

Attached (via three emails) are scans of the letter (with exhibits) that we dropped off at your office ~1:30 today.

# Michelle Henrie | Attorney LEED AP

MHenrie | Land ' Water ' Law
P.O. Box 7035 . Albuquerque, New Mexico . 87194-7035
126 E. DeVargas . Santa Fe, New Mexico . 87501
505-842-1800 | fax 505-842-0033
michelle@mhenrie.com

This email and any attachments are privileged and confidential.

If you have received this email in error, please destroy it immediately.



#### Michelle Henrie

From:

Marrone, Carmen M. < CMarrone@cabq.gov>

Sent:

Wednesday, January 18, 2012 9:09 AM

To:

Lehner, Catalina L.

Cc:

Michelle Henrie: Ron Bohannan

Subject:

FW: North Andalucia at La Luz letter 1-17-12 (Mail 1)

Importance:

High

#### Catalina,

Please forward the "stuff" submitted by the applicant yesterday afternoon as an attachment to this email string.

#### Carmen

From: doug@petersonproperties.net [mailto:doug@petersonproperties.net]

Sent: Tuesday, January 17, 2012 6:33 PM

To: Marrone, Carmen M.

Subject: Re: North Andalucia at La Luz letter 1-17-12 (Mail 1)

Hi Carmen. Assuming that their attorney is correct as to the time that she dropped it off, I agree that it was in before the 48 hour deadline and would like it to be distributed to the Commissioners via email. Thanks. Sent from my Verizon Wireless BlackBerry

From: "Marrone, Carmen M." < CMarrone@cabq.gov>

Date: Tue, 17 Jan 2012 17:38:39 -0700

To: Doug Peterson<a href="mailto:doug@petersonproperties.net">doug@petersonproperties.net</a>

Subject: FW: North Andalucia at La Luz letter 1-17-12 (Mail 1)

#### Doug,

I was in PRT's all afternoon and Catalina was out of the office when the applicant submitted their response to the staff report. Given the volume of stuff you have to read, how do you want to handle this new information? Please read the email exchange from the beginning.

#### Carmen

From: Michelle Henrie [mailto:michelle@mhenrie.com]

Sent: Tuesday, January 17, 2012 5:25 PM To: Marrone, Carmen M.; Lehner, Catalina L.

Cc: 'Ron Bohannan'

Subject: RE: North Andalucia at La Luz letter 1-17-12 (Mail 1)

Carmen, the EPC rules technically say that "All evidence presented to the EPC or Planning staff regarding an application shall be *deposited* with the Planning Department..." (Rule B-10). My letter was timely deposited with the Planning Department. I am sorry that I did not realize that your Staff might neglect to timely alert you, and that I should follow up to make sure you knew. We went to extra effort to get the letter physically there, deposited with the Planning Department, before my 1:30 ZHE hearing today because I did not know when I would be out of the hearing. I think you should at least give the Commission the option to consider it.

From: Marrone, Carmen M. [mailto:CMarrone@cabq.gov]

**Sent:** Tuesday, January 17, 2012 5:08 PM **To:** Michelle Henrie; Lehner, Catalina L.

Cc: Ron Bohannan

Subject: RE: North Andalucia at La Luz letter 1-17-12 (Mail 1)

#### Michelle,

Catalina and I were out of the office when you dropped off your letters today. Since we were not made aware of them until after 3:00, they were not forwarded to the EPC. We were reminded last week of the EPC's desire to maintain strict compliance with the 48-hour rule. We will put your letters into the EPC file and you can address them at the hearing.

#### Carmen

From: Michelle Henrie [mailto:michelle@mhenrie.com]

**Sent:** Tuesday, January 17, 2012 2:50 PM **To:** Marrone, Carmen M.; Lehner, Catalina L.

Cc: 'Ron Bohannan'

Subject: North Andalucia at La Luz letter 1-17-12 (Mail 1)

#### Carmen, Catalina,

Attached (via three emails) are scans of the letter (with exhibits) that we dropped off at your office ~1:30 today.

## Michelle Henrie | Attorney · LEED AP

MHenrie | Land ' Water ' Law P.O. Box 7035 . Albuquerque, New Mexico . 87194-7035 126 E. DeVargàs . Santa Fe, New Mexico . 87501 505-842-1800 | fax 505-842-0033

michelle@mhenrie.com

This email and any attachments are privileged and confidential.

If you have received this email in error, please destroy it immediately.



January 17, 2012

Carmen Marrone, Current Planning Manager Catalina Lehner, Senior Planner Planning Department 600 2nd St. NW Albuquerque, NM 87102

Re: North Andalucia at La Luz, Project #1003859 (Amendment to the North Andalucia at La Luz Site Development Plan for Subdivision and Site Development Plan for Building Permit- Large Retail Facility)

Dear Ms. Marrone and Ms. Lehner:

For the Record in the above-referenced matter, would you please include this letter, which responds to issues raised in the Staff Report for January 19, 2012. This firm represents the Applicant.

First, let me thank both of you for what has clearly been a big job. We appreciate your attention. This response addresses issues where we disagree with the Staff Report (much of which we agree with) or wish to add clarification. I numbered the cover pages of the Staff Report i-vii; when the page numbering in the upper right hand corner concluded at Page 68, I numbered the remainder of the Report sequentially (69-496) in the order of the hard copy report I received on Friday.

## Two Important Legal Principles

- 1. Strictly Construed. As a preliminary matter, I note that there is a longstanding provision in New Mexico (and other) courts that words of a zoning ordinance or other document restricting an owner's common law private property rights, those words will be strictly construed. Thus, I think it is important to check the original language of the Zone Code or planning document or specific design standard. Courts are extremely hesitant to expand the express binding language in these types of documents.
- 2. Precedent Matters. A second important principle is that courts will give persuasive weight to prior agency interpretations (in this case, the EPC). These prior interpretations constitute de facto agency policies.

#### Comments on the Staff Report

A. Clarification Regarding Permissible O-1 (Office) Uses on Tract 3. The Staff Report states that: "The O-1 (Office & Institution) zone, Zoning Code §14-16-2-15, provides 'sites suitable for office, service, institutional, and dwelling uses.' A parking lot is a permissive use in the O-1 zone [Ref: §14-16-2-15(A)(12)] provided it is associated with the 'office, service, institutional, and dwelling uses' listed therein." (page 5).

The limitation contained in the italicized portion of this statement might suggest that a parking lot in an O-1 may not be a free-standing (e.g., pay for) parking lot, may not serve spill-over parking from adjacent uses, and must be an incidental use to another O-1 use. Any such suggestion would be inconsistent with the plain language of the Zone Code (see pages \_\_\_\_ of the Staff Report) as well as the definition of "parking lot": "An area or structure used for temporary parking of automobiles and pickup-size trucks, providing four or more parking spaces, not within the public right-of-way, none of which are required off-street parking."

It would also be inconsistent with the Site Plan for Building Permit that was approved by the EPC for this same site on June 17, 2005 (pages 133-145). The approved 2005 Site Plan shows, within Tract 3 (the area zoned "SU-1 for O-1 Uses") parking, loading docks, and service entrances to the rear of commercial buildings on the O-1 Tract which are <u>not</u> associated with the 'office, service, institutional, and dwelling uses' listed therein. The proposed use is similar and

in compliance with that previously approved Site Plan.

Any contrary position also would be inconsistent with a determination made by the City's Zoning Enforcement Official, Juanita Garcia (the person charged with making such determinations for the City) that parking associated with the commercial use is allowed on Tract 3 provided it is not required off-street parking (page 5).

Applicant's proposed uses of the area zoned "SU-1 for O-1 Uses" (f/k/a Tract 3) are

permissible.

B. Clarification Regarding "Village-Type Character." The Staff Report raises the question of whether a Large Retail Facility (LRF) is fundamentally incompatible with the "village-type character" "goal" of the design standards contained on the existing (approved) Site Plan for Subdivision. A full set of the 2005 design standards are attached.

It is important to note that this site has been zoned to allow C-2 (Commercial) Uses since 1985 (page 3). The site is within a designated "Community Activity Center" per the West Side Strategic Plan (WSSP), which was first adopted in 1995 (see attached pages from the WSSP).

LRFs are clearly allowed both within C-2 zones and within Community Activity Centers because the LRF's previously approved by the EPC are both within C-2 zones and Community Activity Centers (pages 213-214 and 257). The EPC did not require these other LRFs to locate in the more intense "Major Activity Centers." Instead, it approved these LRFs—one comparable in size to the proposed store (98,901 sf proposed/ 97,942 approves) and two larger stores (113,348 sf and 125,601 sf)— within C-2 zones and Community Activity Centers.

Thus the only question is whether the 2005 design standards' reference to a "village-type character" means that a LRF is somehow no longer allowable on a site has been zoned to for C-2 Uses situated within a Community Activity Centers. The answer is "no" for several reasons.

First, the design standards, which restrict an owner's common law private property rights, will be strictly construed by a Court. Courts are extremely hesitant to expand the express binding language. Yes, the design standards contain general reference to "village-type character." But they also contain very specific provisions. For example, the minimum lot sizes for homes is 3,500 sf; maximum height for non-residential buildings is 45'; the minimum amount of landscaping for commercial projects is 15%, the maximum height for some walls is 6' (see attached Exhibit 1). In other words, the design standards could have (but did not) set a maximum square footage for a commercial use. The design standards could have limited the lot size allowable for commercial use. The design standards could have done a variety of things to disallow a 98,901 sf LRF. They didn't. They prohibit "[g]eneric franchise building elevations and canopies." They limit illuminated plastic signs to "business logos." But the design standards do not prohibit the proposed store.

The West Side Strategic Plan is clear about the types of uses allowed in a Community Activity Center. Such uses include: "full service grocery, discount retail and drug store." Examples of commercial uses that are appropriate in a Neighborhood Activity Center are "convenience store/gas station, specialty grocery, video rental, small restaurant or fast food, hair salon/barber, fitness center, etc." (WSSP at page 90, attached as Exhibit 2) If the design standards' reference to "village-type character" intended to limit the nature or type of commercial uses allowed, they needed to do so expressly. They did not, and a court is not likely to read into these design standards what they elected to exclude.

Second, the "village-type character" language first appeared in a 2003 Site Plan for Subdivision (attached, in relevant part, as Exhibit 3). The 2003 Site Plan for Subdivision covers 228 acres—stretching from Montano Road all the way to the Northern boundary of the Alameda Town Grant. The planned area truly was mixed-use: including single-family homes, multifamily homes, open space, Bosque School, and a commercial area. Any suggestion that "village-type character" should be interpreted as "pedestrian oriented" to the exclusion of anything "auto oriented" is unrealistic in the context of 228 acres.

This idea is also unrealistic in the context of the West Side Strategic Plan, which indicates at page 40 that "Community centers shall be easily accessible by automobile..." whereas "Neighborhood Centers should be less auto-oriented..." (Letter page 281). Again, if the design standards intended to preclude auto-oriented types of commercial development from a Community Activity Center, they needed to expressly do so.

Finally, one must also consider the Site Plan for Building Permit that was approved by the EPC for this same site in 2005 (pages 133-145). While the approved 2005 Site Plan does not contain a LRF, it also fails to rise to the standard of strolling villagers. It is an auto-oriented site layout and scattered small boxes.

Because the design standards do not define "village-type character" in a way that precludes the proposed use, the design standards, together with the applicable plans and Zone Code requirements, as informed by the EPC's past precedent, all need to be construed together. This is precisely what Applicant has done in its proposal.

uses are not in the Bosque. The commercial uses are all proposed for the westerly side of Mirandela Road. The Bosque lies to the east. On the east side of Mirandela Road—providing a buffer between it and the Bosque, are approximately 10 acres containing a City-Owned trailhead (Tract 6B), a recently approved Albuquerque Bernalillo County Water Authority's scalping plant (Tract 2-A) (Exhibit 4), and plans for a Bosque School expansion, including several acres of parking area (Tract 2-B). On the other side of this 10-acre buffer area is a second buffer—a 100' wide buffer strip required by the Coors Corridor Plan. ("Policy 8: Buffer Strip. A 100-footwide buffer strip shall be established west of the Corrales Riverside Drain throughout Segment 3. The buffer strip shall remain in a natural condition and shall not be used for development.") The Corrales Riverside Drain lies on the easterly side of the 100' wide buffer strip and separates any threat of development from encroaching into the Bosque / State Park area.

The proposed commercial uses are not situated in the Bosque. These commercial uses are not even adjacent to the Bosque, nor the buffer strip that the City put in place to protect the Bosque.

D. "Significantly Larger" Comparison Requires Apples-to-Apples. The Staff Report takes the position at page 11 that the proposed LRF does not comply with Policy II.B.7c. This policy states that "Structures whose height, mass or volume would be significantly larger than any others in their surroundings shall be located only in Major Activity Centers..." Staff's position is based on several interpretations, none of which Applicant believes to be supported by precedent or any other independent rationale.

The first interpretation is that "structures" means a "single-tenant" facility. Staff compares the proposed LRF building, 98,901 sf, with 70,000 sf grocery store north of Montano and concludes that the LRF would be "significantly larger." A more appropriate comparison, given that the reasoning behind the Policy is "visual variety and functional diversity in the metropolitan area while preserving pleasing vistas and solar access," is consideration of the structure or structures that impede visual variety and interfere with vistas and solar access. In the case of a strip-style shopping center such as Montano Plaza, where the referenced grocery store sits, this would be the entire shopping center which is clustered together into one mass—not just one store plucked free from its abutting buildings. At Montano Plaza, the strip center has a façade length (mass) of 1,075 feet, and the total square footage (volume) is 105,200 sf. The proposed LRF is 409 feet long (which includes the Garden Center area) and 98,901 sf. It is hard to say that the closest comparable commercial buildings are not similar.

The second interpretation hinges on the argument that something 29% larger than the second largest comparable (assuming that the comparables are in fact comparable) is "significantly larger." Applicant disagrees that 29% is, in fact, "significant".

E. Parking Lots Abutting Coors. Staff has raised concerns in several places because parking—not buildings—about Coors. This design concept is articulated in both the WSSP and the Coors Corridor Plan. However, a glance at the pattern of development along Coors indicates that no one has seriously enforced this planning vision. Along the entire Coors

corridor, the main body of the development faces Coors Boulevard and parking separates the building from the street.

It is interesting to note that the approved design standards for the 2005 Site Plan for Subdivision (Exhibit 1) do not even pretend that anyone follows this planning policy. Design standards include: "In cases where parking is adjacent to roadways, landscaping for screening purposes shall be required." Similarly, the parking area setbacks are "15 feet, except along Coors Boulevard where the setback shall be 35 feet." The EPC approved these design guidelines.

Moreover, at this particular site, the grade difference along Coors effectively screens the proposed parking for the site, even though it technically abuts Coors from a bird's-eye view. By contrast, abutting buildings against Coors would violate the Coors Corridor Plan's view plane requirements.

F. Transit Feasibility and Access Plan: Already Approved. Policy 1.2 of the West Side Strategic Plan states that a transit feasibility and access plan (also known as a "TDM" or "Transportation Demand Management" plan) shall be provided with each development plan located in a Community Center. The existing 2005 Site Plan for Subdivision includes a TDM at Sheet 3. This approved TDM plan is the following:

"Future employers that locate within the Andalucia Community Activity Center will be part of the TDM effort designed to help mitigate traffic impacts:

- Businesses with more than 50 employees shall provide designated carpool parking spaces to encourage carpooling by employees.
- Businesses should work with employees to encourage carpooling, bus ridership,
   and alternative modes of transportation.
- Businesses should post the City trail map and bus route information in employee
   break rooms or other locations easily accessible to employees.
- Businesses shall provide conveniently located bicycle racks and facilities to encourage bicycle commuting.
- The Owner/Developer will also be the contact person with City Transit and Environmental Health Departments for update, technical assistance, etc."

"As a part of the TDM Program, City Transit should:

- Work with the residential and non-residential projects to provide efficient routes and schedules to the Andalucia Community Activity Center that address their specific needs; and
- Work with the Owner/Developer to provide bus routes off of Coors Boulevard and Montano Road and into the Interior of the project when feasible."

In accordance with the approved TDM, in connection with the proposed Site Plan for Building Permit for a LRF, Applicant proposes the following as conditions of approval. The proposed retailer has agreed to the following requirements:

- 1. Provide designated carpool parking spaces for employees (which are shown on the north side of the building).
- 2. Work with employees to encourage carpooling, bus ridership, and alternative modes of transportation.
- 3. Post the City trail map and bus route information in employee break rooms or other locations easily accessible to employees.
- 4. Provide conveniently located bicycle racks and facilities.
- G. Clarification Regarding Blocks. The Staff Report discusses the requirement in the LRF that the site be planned or platted into "blocks." The Report states that the proposal, which contains an irregular block, does not meet the exception allowed in subsection (c).

However, the Report overlooks subsection (d). Subsection (d) allows the EPC discretion to approve irregular blocks that meet certain conditions, as did the irregular block at the LRF approved at Unser Crossing. Applicant's proposed irregular block also meets the requirements allowing it to be approved.

We appreciate this opportunity to provide additional information.

Yours sincerely,

MICHELLE HENRIE, LLC

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