INTER-OFFICE MEMORANDUM

April 18, 2006

AC-06-9 - 06EPC-00143; Project #1004677 Jennifer de Garmo, agent for the Downtown Neighborhoods Association, appeals the decision of the Environmental Planning Commission's decision to approve a Site Development Plan for Subdivision, for all or a portion of Tract A-1-A, Laguna Subdivision; Portion of Tract B, Block 3 and Parcels 1, 2, and 3, Huning Castle Addition; Tract A & B, Lands of H.B. Horn and Calvin Horn, MRGCD Map 38, zoned SU-2/CLD, and located on Central Avenue SW, between Laguna Boulevard SW and San Pasquale Avenue SW, containing approximately 4.5 acres. (J-13) Carmen Marrone, Staff Planner

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This is an appeal of the Environmental Planning Commission's (EPC) March 16, 2006 decision to approve a Site Development Plan for Subdivision to redevelop approximately 4.5 acres along Central Avenue SW between Laguna Boulevard and San Pasquale. The request involves demolition of several buildings in order to construct a combination of residential, office, and commercial buildings. Demolition of a State and National Historic Registered building is included in the request and is the primary basis of the appeal. The Planning Department recommended approval of the request and the EPC voted 6 to 2 to approve the request.

STANDING:

The Downtown Neighborhood Association (DNA) boundaries fall within 600' of the subject site and therefore have standing to bring the appeal forward.

GROUNDS FOR APPEAL:

The appellant claims that (a) the EPC erred in applying adopted city plans, policies and ordinances in arriving at their decision, and (b) the EPC acted arbitrarily, capriciously and manifestly abusive of discretion. Below is a list of the appellant's arguments **(in bold text)** followed by responses from the City of Albuquerque Planning Department.

(a) The EPC erred in applying adopted city plans, policies and ordinances in arriving at their decision.

The appellant lists several *Comprehensive Plan* policies that emphasize preservation and retention of historic sites; however, the appellant does not specify how each of these policies was misapplied by the EPC. Instead, the appellant summarizes the course of the EPC hearing and makes general claims regarding the EPC decision.

1. **The EPC's decision is based on the developer's urgency to secure financing and the presumption that destruction is the only viable option for the location.**

   The EPC stated that the developer's urgency and financial situation was <u>not</u> a deciding factor (p.65 of the 3/16/06 minutes). The minutes show that the EPC discussed various options for preserving the entire historic building and did not presume that destruction was the only viable option.

2. **The significance of Findings 9, 10, and 12 of the Official Notice of Decision, was not examined or explained by the EPC.**

   Findings 9, 10 and 12 refer to the historic significance of the Horn Oil Company buildings. The significance of these findings was explored by the EPC throughout the course of the hearing as indicated in the minutes of the hearing.

3. **The developer provided no documentation as to the alternatives considered to preserve and protect the motel units.**

   The subject request does not require the developer to provide alternative schemes for the motel units to the EPC. The record shows that the developers testified that they considered several alternatives as part of the land assembly process. However when it became obvious that they were not going to be able to acquire all of the land they had envisioned, removal of the motel units became more evident. As a redevelopment project, the request involves demolition, relocation of an auto salvage yard, costly utility deficiencies, soils and grading issues, and industrial contamination. The significant infill costs coupled with costs for preserving the motel units placed a huge financial burden on the developer. The developers also testified that retaining the motel units would compromise the integrity of the proposed residential development and would result in a disjointed development that would not promote quality of life.

4. **The EPC relied on an incomplete picture about how preservation and economic development are adverse options.**

The appellant does not elaborate on the "incompleteness" of information. Over the course of 2 ½ hours, the EPC relied on public testimony from area residents, professional preservation planners, the applicant, and city staff, as well as police records and applicable City goals and policies in rendering a decision.

5. **The EPC did not apply Objective A.1 of the *Huning Castle and Raynolds Addition Sector Development Plan* that requires comments from the Advisory Council on Historic Preservation when federal assistance is involved.**

The subject request does not involve federal assistance; therefore comments from the Advisory Council are not required.

6. **The EPC did not apply Section 2.5 of the *Central Avenue Streetscape Plan* that encourages conservation and preservation of vintage and historic buildings and other features that convey the history of Route 66.**

The EPC considered Section 2.5 of the Central Avenue Streetscape Plan and felt that preserving the front portion of the Horn Oil Company buildings, as proposed, still tells the story of Route 66 (p. 59 of 3/16/06 minutes). Section 2.5 of the Streetscape Plan also calls for the promotion of economic vitality in the region, multi-modal transportation options, and public social interaction. The EPC considered these goals as well as the historic preservation goals when they made their decision.

7. **The EPC relied solely on some policies while ignoring others.**

The appellant does not list the particular policies that were ignored, however, it is assumed that they are referring to the historic preservation policies. As stated by staff throughout this memo, the EPC considered *all* applicable policies.

8. **The appellant refers to a memo from architectural historian David Kammer which states, "Of all of the remaining Route 66-related properties in Albuquerque, I consider [the Horn Oil Company and Lodge] and the El Vado Motel to be the best remaining, largely unaltered examples of roadside businesses constructed during the heyday of Route 66." Mr. Kammer goes on to say that the Horn Oil Company buildings merit consideration as a City Landmark.**

The memo that the appellant refers to is dated March 28, almost two weeks after the EPC hearing and decision of March 16. Under the Rules of Appeal, new evidence, which could have been put in the record during the EPC hearing, is not favored for introduction at a Hearing Officer hearing. The appellant not only introduces Mr. Kammer's memo, but also introduces memos from Mr. John Murphey, Official Scenic Historic Markers Coordinator, Ms. Diane Schaller, President of Historic Albuquerque, Inc., and Ms. Ann Carson, President of the Albuquerque Conservation Association. These letters were not part of the EPC record and are dated well after the EPC hearing date of March 16.

(b) The EPC acted arbitrarily, capriciously and manifestly abusive of discretion.

1. **The EPC was influenced by the urgency of the applicant.**

   Refer to staff's response under (a) 1.

2. **The EPC was influenced by area crime.**

   The EPC heard testimony regarding area crime and was referred to police records from 2/21/05 to 2/21/06. Finding #11 refers to the area crime, however, it is one of many statements of fact. The EPC considered the area crime, along with many other factors, but it was not the sole reason for their decision.

3. **The EPC should mandate a complete listing of options that were considered to preserve the motel units.**

   Refer to staff's response under (a) 3.

4. **Demolition of this landmark sets a bad precedent.**

   The Horn Oil Company buildings are not a City landmark and are therefore not protected from demolition. This case has the potential for setting a precedent; however each new redevelopment project presents a new set of circumstances that must be considered independently of the outcome of this case.

5. **Relevant information was not presented to the EPC. Section 18-8-1 and 18-8-8 of the New Mexico State Statues requires a developer to request a "Section 106 Consultation" if any federal permitting, or state and federal funding will be required for the project. It is assumed that the project will require remediation of the hazardous materials associated with the former gas station on the Horn Oil Company site.**

   The developer has provided an Executive Summary of a Phase I Environmental Site Assessment that was conducted from October 21 through November 4, 2004 at the Horn Oil Company site (see attached). The assessment revealed that the underground storage tanks associated with the former gas station were removed in 1986 and that the affected soils were removed and replaced with clean-fill and ground-water monitoring wells to document the effects of the completed remedial actions. The assessment revealed that there is no evidence of any Recognized Environmental Conditions associated with the subject site. The developer will not be seeking any state or federal funds to help with remediation; therefore a Section 106 Consultation is not required.

CONCLUSION:

The EPC considered all relevant information for this case. They acted within their power and authority as granted them. This was a difficult decision for the EPC, however the EPC found that the request furthered a preponderance of the City's goals and policies regarding land use, transportation, safety, and economic development. They considered the neighborhood values and the overwhelming support of

those neighbors that will be most directly affected by the project. The EPC did not err in applying adopted city plans, policies and ordinances and did not act arbitrarily, capriciously or manifestly abusive of their discretion. The Planning Department supports the EPC's decision and recommends denial of the subject appeal.

APPROVED:

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Russell Brito, Manager
Development Review Division
Planning Department

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