

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

**WILDFLOWER NEIGHBORHOOD
ASSOCIATION, MARIA DIERS
NEIGHBORHOOD ASSOCIATION,
NORTH EDITH CORRIDOR
ASSOCIATION, LARRY T. CAUDILL,
HARRY "PAT" HOUSER, and
TINA M. VILLEGAS,**

Plaintiffs-Appellants,

v.

No. A-1-CA-42875

**CITY OF ALBUQUERQUE,
a New Mexico municipal corporation,**

Defendant-Appellee,

and

**CONSENSUS PLANNING,
Agent for City of Albuquerque/
New Mexico United,**

Interested Parties.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Erin B. O'Connell, District Court Judge

Yntema Law Firm, P.A.
Hessel E. Yntema III
Albuquerque, NM

for Appellants

1 City of Albuquerque
2 Lauren Keefe, City Attorney
3 Camilla S. Allison, Assistant City Attorney
4 Sarah Simon, Assistant City Attorney
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6 Albuquerque, NM

7 for Appellee

8 **MEMORANDUM OPINION**

9 **HANISEE, Judge.**

10 {1} This appeal concerns an application by Interested Party Consensus Planning,
11 as agent for Defendant City of Albuquerque’s parks and recreation department, and
12 New Mexico United (the state’s professional soccer team), to build an outdoor sports
13 stadium on Balloon Fiesta Park (BFP) land. The City’s Environmental Planning
14 Commission (EPC) accepted the application, and Wildflower Neighborhood
15 Association, Maria Diers Neighborhood Association, North Edith Corridor
16 Association, Larry Caudill, Harry Hauser, and Tina Villegas (collectively, Plaintiffs)
17 appealed to the City Council twice. The City Council denied both appeals and issued
18 its decision approving the application. Plaintiffs timely appealed to the district court.
19 Acting in its appellate capacity, the district court affirmed the City Council’s
20 decision on July 7, 2025, and further rejected Plaintiffs’ motion for discovery and to
21 supplement the record and the briefings. The district court’s rulings were explained

1 in a comprehensive written order, all aspects of which Plaintiffs now appeal.¹ We
2 affirm for substantially the same reasons listed by the district court in its written
3 order, which we adopt and incorporate as stated, referenced, and explained herein.

¹Appellants raise issues arising from the district court’s exercise of appellate jurisdiction. Issues arising from the district court’s appellate jurisdiction typically require a petition for a writ of certiorari, which is absent in this case. *See* Rule 12-505(B) NMRA (“A party aggrieved by the final order of the district court in [an administrative appeal under Rule 1-074 NMRA] may seek review of the order by filing a petition for writ of certiorari with the Court of Appeals, which may exercise its discretion whether to grant the review.”). However, this Court may exercise its discretion to construe a docketing statement as a nonconforming petition for a writ of certiorari if it is filed within the time for filing a petition for a writ of certiorari. *See Wakeland v. N.M. Dep’t of Workforce Sols.*, 2012-NMCA-021, ¶¶ 18-20, 274 P.3d 766 (explaining that this Court can construe a docketing statement as a nonconforming petition for a writ of certiorari when it is filed within the thirty-day window for filing petitions for writs of certiorari of Rule 12-505); *see also* Rule 12-505(C) (“The petition for writ of certiorari shall be filed with the clerk of the Court of Appeals within thirty (30) days after entry of the final action by the district court.”). Such is the case here. The final action at the district court was filed on July 30, 2025, *see* Rule 12-505(C) (“Final action by the district court shall be the filing of a final order or judgment in the district court unless timely motion for rehearing is filed, in which event, final action shall be the disposition of the last motion for rehearing that was timely filed.”), and the docketing statement on August 27, 2025—within the thirty-day window. We therefore exercise our discretion to construe the docketing statement as a nonconforming petition for a writ of certiorari, grant the writ, and address all issues raised arising from the district court’s exercise of its appellate authority, and not merely those challenging the district court’s resolution of motions first raised with it, under our own appellate jurisdiction. To the extent that Appellants argue the discovery and supplemental briefing issues to have arisen under the district court’s original jurisdiction and not its appellate jurisdiction, we need not resolve this argument and instead affirm such issues for the reasons discussed in the final two sections of this opinion.

1 BACKGROUND

2 {2} The beloved Albuquerque International Balloon Fiesta began calling BFP
3 home just prior to the turn of the century. Defendant City of Albuquerque had
4 acquired land for this purpose in 1985, and the City Council approved the BFP
5 Master Development Plan (BFP master plan or master plan) thirteen years later.
6 Since then, the master plan has been amended several times, and BFP has been
7 rezoned once, in 2018. The 2018 rezoning resulted in a comprehensive zoning code,
8 known as the Integrated Development Ordinance (the IDO) *See* Albuquerque, N.M.,
9 Code of Ordinances, IDO ch. 14., art. 16 § 14-16-1 to -7 (2022, amended 2026).²

10 {3} The original BFP master plan contained a prohibition as to any outdoor sports
11 stadium, and this prohibition remained through the most recent amendments in 2012.
12 However, the IDO designated BFP as a nonresidential parks and open space district,
13 NR-PO-A. *See* IDO § 14-16-2-2, tbl. 2-2-1. Such a designation has as permissive
14 uses “parks and open space,” “sports field,” “amphitheater,” “stadium or racetrack,”
15 and “other outdoor entertainment.” *See* IDO § 14-16-4-2, tbl. 4-2-1.

16 {4} When New Mexico’s professional soccer team, New Mexico United,
17 developed plans to build a stadium in 2023 at BFP, it began working with

²We reference the same IDO version used by Plaintiffs below, which became effective in July 2023 and is available to the public on the City of Albuquerque’s website. IDO-2023 Annual Update, https://abq-zone.com/sites/abq-zone.com/files/u53/IDO_2023_AnnualUpdate_Effective-Clerical-optimized.pdf.

1 Defendant's parks and recreation department and Consensus Planning to prepare and
2 submit an application for approval of the project. Specifically, Defendant, on behalf
3 of New Mexico United, sought to amend the BFP master plan to (1) eliminate
4 existing language prohibiting an outdoor stadium; (2) modify the master plan and
5 associated site plan for subdivision to include the proposed multiuse, outdoor
6 stadium in the eastern area of BFP, where a multistory parking structure was initially
7 permitted under the approved master plan; (3) modify the lighting standards in the
8 master plan to allow for stadium lighting; (4) replace a portion of BFP's existing
9 outdoor recreation area with surface parking; and (5) expand BFP's size from 358
10 acres to 367.5 acres by adding 9.5 acres of abutting City-owned land to allow for an
11 additional 750 new parking spaces.

12 {5} Given the necessity of amendment to the master plan if New Mexico United's
13 new stadium were to be built at BFP, Defendant held a meeting with planning staff
14 at the City's planning department in order to ascertain how to amend the master plan.
15 Because amendment procedures were not detailed in either the BFP master plan or
16 the IDO, the City's planning staff recommended Defendant follow the criteria listed
17 in the IDO for amending a Site Plan-EPC. *See* IDO § 14-16-6-6(I). Defendant
18 submitted the application to the EPC on September 14, 2023. After hearing public
19 comments on the application, the EPC accepted and approved the application.

1 {6} Several administrative appeals and hearings later, one of which entailed
2 remand for a second public hearing after it was determined by a land use hearing
3 officer that the notice requirements as listed in the IDO were not followed, *see* IDO
4 § 14-16-6-4(K), the City Council ultimately affirmed the EPC's decision to accept
5 and approve the application. As stated, Defendant exercised its right of appeal to the
6 district court, which upheld approval of the application. Plaintiffs timely appealed
7 the district court's decision, seeking further appellate review of the propriety of the
8 approved application. Plaintiffs also appeal the district court's denial of their
9 motions for discovery and to supplement the record and briefing.

10 **DISCUSSION**

11 {7} Plaintiffs raise six issues resolved by the district court in its appellate role, and
12 we exercise our discretion to address these issues as part of our own appellate
13 jurisdiction. Plaintiffs also raise two issues alleging error originating in district court,
14 which we lastly consider.

15 **I. The EPC Had Authority to Establish a Procedure to Amend the BFP** 16 **Master Plan**

17 {8} We first address the issues presented on appeal that were resolved by the
18 district court in its appellate capacity. In administrative appeals, this Court applies
19 the same standard of review applied by the district court. *Rio Grande Ch. of Sierra*
20 *Club v. N.M. Mining Comm'n*, 2003-NMSC-005, ¶ 17, 133 N.M. 97, 61 P.3d 806.
21 "A ruling by an administrative agency is arbitrary and capricious if it is unreasonable

1 or without a rational basis, when viewed in light of the whole record.” *Id.* “When
2 applying this administrative standard of review, [the Court] will not substitute [its]
3 judgment for that of the fact-finder, but [will] review questions of law de novo.”
4 *Benavidez v. Bernalillo Cnty. Bd. of Cnty. Comm’rs*, 2021-NMCA-029, ¶ 16, 493
5 P.3d 1024. We apply this standard of review to sections I through IV of this opinion.

6 {9} The district court concluded that the EPC had authority to amend master plans,
7 disagreeing with Plaintiffs’ assertions otherwise. We agree with the district court’s
8 stated reasoning, which we briefly explain and minimally supplement.

9 {10} In both their appeal to the district court and now this Court, Plaintiffs argue
10 that the EPC has no authority to amend master plans and that nowhere in the IDO is
11 the EPC granted such. *See* IDO § 14-16-6, tbl. 6-1-1; § 14-16-6-2(E); § 14-16-6-4;
12 § 14-16-6-6; and § 14-16-6-7. Rather, they claim that unless procedures to amend
13 are specified in the master plan, the IDO gives amending authority only to relevant
14 “implementing departments.” *See* IDO § 14-16-6-4(Z)(3)(a). Only then may the EPC
15 get involved—when implementing departments “request review by the EPC and/or
16 City Council where more input is desired.” *Id.* Furthermore, the IDO states that the
17 EPC has the responsibility to make recommendations or decisions shown as EPC
18 responsibilities in IDO § 14-16-6, tbl. 6-1-1, which does not list “Amendment to
19 Master Plan” or anything similar as an EPC responsibility. *See* IDO § 14-16-6-
20 2(E)(3)(2). To Plaintiffs, the omission of authority to engage in master plan

1 amendment from the stated list of EPC responsibilities equates to a prohibition of
2 master plan amendment by the EPC.

3 {11} The district court found that since the BFP master plan is a Rank 3 plan under
4 the IDO, the “review and decision processes set forth in the IDO are not relevant to
5 the EPC’s authority to decide the proposed amendment.” *See* IDO § 14-16-6-3(C).
6 Defendant explains further. The IDO defines Rank 3 plans as including “[m]aster
7 [p]lans” such as the BFP master plan. *Id.* Then, the IDO dictates that “Rank 3 Plans
8 are not subject to the review and decision processes in the IDO.” IDO § 14-16-6-
9 3(C). Instead, “relevant implementing City departments may choose to have Rank 3
10 [p]lans reviewed by the EPC and/or accepted by the City Council when additional
11 input is desired.” *Id.*

12 {12} Defendant further argues that just because the IDO does not list master plan
13 amendments under the EPC’s authority does not mean the EPC cannot derive
14 authority elsewhere. We agree, noting both Defendant’s and the district court’s
15 citation of IDO § 14-16-6-4(Z)(3)(a), which contains language very similar to IDO
16 § 14-16-6-3(C) and acts as an additional source of the EPC’s authority to amend a
17 master plan: “Master [p]lans . . . for City facilities may be amended per the
18 procedures specified in the relevant plan or by the relevant implementing City
19 department. The implementing departments may request review by the EPC and/or
20 City Council where more input is desired.” The district court also cited the BFP

1 master plan, which states, “Major [p]ark elements described in the [m]aster
2 [d]evelopment [p]lan, including all buildings over 10,000 square feet (e.g., [l]arge
3 [o]utdoor [p]erformance [a]rea, [b]alloon [m]useum, and [m]ulti[p]urpose [c]enter);
4 [m]ain [s]treet [p]romenade require review and approval by the [EPC].” The district
5 court apparently viewed a stadium as a “major park element” that required review
6 and approval from the EPC according to the master plan—thereby identifying yet
7 another source of authority for the EPC to amend the BFP master plan.

8 {13} In light of the above sources of authority, we agree with both the district court
9 and Defendant and hold that the EPC had the authority to decide the proposed
10 amendment to the master plan.

11 **II. Plaintiffs Had No Established Right to the BFP Master Plan’s Prohibition** 12 **of an Outdoor Stadium**

13 {14} Before the district court, Plaintiffs argued that because the BFP’s master plan
14 prohibited an outdoor stadium at BFP, Plaintiffs therefore had an unalterable right
15 to there being no stadium at BFP. For support, Plaintiffs cited a part of the IDO
16 dictating that the IDO is superseded by “pre-IDO approval[s]” such as the BFP
17 master plan: “Any use standards or development standards associated with any pre-
18 IDO approval or zoning designation establish rights and limitations and are
19 exclusive of and prevail over any other provision of this IDO.” IDO § 14-16-1-
20 10(A)(2).

1 {15} The district court agreed that the BFP master plan constitutes a “pre-IDO
2 approval” because the EPC approved both the original December 1998 version and
3 the November 2012 update before the IDO became effective in 2018. However, the
4 district court did not agree that the BFP master plan’s classification as a “pre-IDO
5 approval” meant that it superseded or otherwise negated applicability of the IDO.
6 Instead, it found that per the IDO, pre-IDO approvals are still subject to amendment:
7 “Any approvals granted prior to the effective date of this IDO shall remain valid,
8 subject to . . . amendment pursuant to [IDO §] 14-16-6-4(Z).” IDO § 14-16-1-
9 10(A)(1). Section 14-16-6-4(Z)(3)(a) of the IDO states that “[m]aster [p]lans . . .
10 may be amended per the procedures specified in the relevant plan or by the relevant
11 implementing City department. The implementing departments may request review
12 by the EPC and/or City Council where more input is desired.” The district court also
13 noted that Plaintiffs acknowledged that pre-IDO approvals are subject to amendment
14 in one of their replies, undercutting their argument that they had an unalterable right
15 to the “no stadium” limitation. We adopt the district court’s reasoning and affirm on
16 this point.

17 **III. The City Council Did Not Grant Unbridled Discretionary Authority to**
18 **the Implementing Departments**

19 {16} Plaintiffs assert that the City Council delegated discretionary authority to the
20 implementing departments to establish procedures to amend master plans. Defendant
21 generally agrees, although Defendant views it not as a delegation of the City

1 Council’s authority but rather a recognition of the authority of the implementing
2 departments themselves to prepare guidance documents for specific areas under the
3 implementing departments’ authority. Where the parties do not agree is whether this
4 delegation vested the implementing departments with unbridled or arbitrary power.
5 The district court found that it did not. We again adopt the district court’s reasoning,
6 as follows.

7 {17} In the district court’s view, the City Council’s delegation of discretionary
8 authority complied with our Supreme Court’s guidance in *City of Santa Fe v.*
9 *Gamble-Skogmo, Inc.*: “It is settled that a legislative body may not vest unbridled or
10 arbitrary power in an administrative agency but must furnish a reasonably adequate
11 standard to guide it.” 1964-NMSC-016, ¶ 19, 73 N.M. 410, 389 P.2d 13. However,
12 “[s]tandards required to support a delegation of power by the local legislative body
13 need not be specific.” *Id.* In fact, “[m]ost decisions hold that broad general standards
14 are permissible so long as they are capable of a reasonable application and are
15 sufficient to limit and define the [deciding body’s] discretionary powers.” *Id.*
16 (internal quotation marks and citation omitted).

17 {18} Assuming without deciding that *Gamble-Skogmo, Inc.* applies to this case, we
18 agree with the district court that the IDO provides sufficient standards to guide the
19 implementing departments, and with Defendant that the specificity Plaintiffs desire
20 is not required by *Gamble-Skogmo, Inc.* The BFP master plan required “review and

1 approval by the [EPC]” but otherwise provided no specific decision criteria for
2 amendments. In affirming the decision of the EPC, the district court stated its
3 reliance on the “General Criteria for Review and Decision” provision found at IDO
4 § 14-16-6-4(N)(3), which supports the application’s approval when “the application
5 complies with all applicable standards in this IDO, other adopted City regulations or
6 policies that may be applicable, and any conditions specifically applied to
7 development of the property in a prior permit or approval affecting the property.”
8 *Id.* The district court found such a standard adequate to guide its exercise of
9 discretion, as do we.³ We affirm the district court on this point.

10 **IV. Formulation of the Process Determination Did Not Violate the OMA**

11 {19} Plaintiffs next contend that Defendant’s planning and parks and recreation
12 departments violated the Open Meetings Act (OMA), NMSA 1978, §§ 10-15-1 to -4
13 (1974, as amended through 2013), by formulating the process determination,

³We note that the provision cited by the district court in its conclusion that the City Council’s delegation of discretionary authority for amending master plans did not vest its implementing departments with unbridled or arbitrary power, IDO § 14-16-6-4(N)(3) is mirrored in one of seven criteria listed in IDO § 14-16-6-6(I) of the IDO, which governs review and decision criteria for Site Plan-EPC applications. *See* IDO § 14-16-6-6(I)(3). Notably, the latter provision and its seven criteria were employed by the decision-making body below and such is unchallenged by Appellants. Moreover, the district court was not determining the Site-Plan EPC application’s adequacy in this portion of the order, but rather the City Council’s delegation of authority. It therefore reasonably relied on IDO § 14-16-6-4(N), the “General Criteria for Review and Decision” for decision-making bodies, in doing so.

1 specifically by “deciding the procedures including the decision criteria to process
2 the amendment in meetings or by action outside properly noticed meetings.” The
3 district court’s findings on this issue rest almost entirely on this Court’s holdings in
4 *Benavidez*, 2021-NMCA-029. We agree with and again adopt its findings,
5 elaborating only briefly.

6 {20} Citing *Benavidez*, the district court explained that while the purpose of the
7 OMA is “to open the conduct of the business of government to the scrutiny of the
8 public and to ban decision-making in secret,” *id.* ¶ 49 (internal quotation marks and
9 citation omitted), not every entity or proceeding is subject to the requirements of the
10 OMA (e.g., to have meetings open to the public). *See id.* ¶ 51. To determine whether
11 an entity is subject to the OMA, courts look at whether the entity constitutes a
12 “policy-making body . . . [that] makes decisions on behalf of, formulates
13 recommendations that are *binding* in any legal or practical way on, or otherwise
14 establishes policy for the public body.” *Id.* (emphasis added) (internal quotation
15 marks and citation omitted). Courts also consider the “nature of the act
16 performed, . . . not its makeup or proximity to the final decision.” *Id.*

17 {21} The district court noted that the City’s planning staff included certain
18 recommendations concerning the application, such as that the EPC apply the review
19 and decision criteria for the Site Plan-EPC. *See* IDO § 14-16-6-6(I). These
20 recommendations were discussed at the EPC hearing on April 11, 2024. Once the

1 EPC received and discussed the planning staff’s recommendations, it heard public
2 comments on the application before then accepting the recommendations and
3 applying them as part of its application approval process. The district court found
4 that the EPC heard public comments on the application before exercising its
5 authority to decide the application.

6 {22} The district court found that none of the actions taken by the planning staff
7 bound the EPC to adopt the planning staff’s recommendations. Rather, the planning
8 staff’s actions mirrored those not subject to the OMA in *Benavidez*. There, a working
9 group negotiated and prepared a development agreement and “handed it off” to the
10 deciding body. *Benavidez*, 2021-NMCA-029, ¶ 53. The deciding body then heard
11 public comments and took action; but at no point did the working group have any
12 “authority to act in a way that could bind the [deciding body].” *Id.* Similarly, here,
13 the City prepared a report that contained recommendations and handed that report to
14 the deciding body (the EPC)—which then took public comment on the application
15 before exercising its authority to decide the application. We agree with the district
16 court that, as with the working group in *Benavidez*, the planning staff’s “creation,
17 development, and negotiation process conducted by the working group was not
18 subject to the OMA and, therefore, no violation of the OMA occurred.” *Id.*

V. Defendant Did Not Act Unreasonably, Arbitrarily, or Capriciously in Establishing and Applying the Process Determination

{23} Plaintiffs argue that the process determination to amend the BFP master plan was arbitrary and capricious. Particularly, Defendant assumed the BFP master plan and a Site Plan-EPC were governed by the same criteria when undergoing the amendment process; but, Plaintiffs assert, since the IDO distinguishes the two, they cannot be governed by the same criteria. *See* IDO § 14-16-7-1. Thus, the process determination—namely, the decision to amend the master plan according to amendment criteria used for Site Plan-EPC—was arbitrary and capricious. The district court disagreed, as do we. *See* IDO § 14-16-6-6(I).

{24} “A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record.” *Rio Grande Ch. of the Sierra Club*, 2003-NMSC-005, ¶ 17. According to the district court, the record did not support that the application of the review and decision criteria for a Site Plan-EPC, *see* IDO § 14-16-6-6(I), was the result of unconsidered, willful, and irrational choice of conduct. Rather, the decision to use Site Plan-EPC criteria resulted from an absence of criteria for amendment in both the IDO, *see* IDO § 14-16-6-4(Z)(3)(a) (“Master Plans . . . may be amended per the procedures specified in the relevant plan or by the relevant implementing City department.”), and the BFP master plan, which required “review and approval by the [EPC]” but otherwise provided no specific decision criteria for amendments.

1 {25} As previously stated, the IDO instructs that when it “does not list additional
2 or more specific criteria for the review and decision on applications,” IDO § 14-16-
3 6-4(N)(3), as is the case here, the application should be recommended for approval
4 or approved—with conditions as necessary—if it is determined “that the application
5 complies with all applicable standards in [the] IDO, other adopted City regulations
6 or policies that may be applicable, and any conditions specifically applied to
7 development of the property in a prior permit or approval affecting the property.”
8 *Id.* The reviewing and decision-making bodies here merely applied what they
9 believed to be the applicable standard from the IDO based on standard practice: the
10 review and decision criteria for a Site Plan-EPC. *See* IDO § 14-16-6-6(I). This
11 decision reflects due consideration of which decision criteria to apply to the
12 application, and Plaintiffs did not show otherwise. *See Process Equip. & Serv. Co.*
13 *v. N.M. Tax’n Revenue Dep’t*, 2023-NMCA-060, ¶ 23, 534 P.3d 1043 (“Even if
14 another conclusion may be reached or there is room for two opinions, the action is
15 not arbitrary or capricious if made after due consideration”). We therefore affirm the
16 district court’s finding that the decision to apply Site Plan-EPC criteria when
17 amending the BFP master plan was not arbitrary or capricious.

18 {26} We acknowledge that, as the dissent points out, Plaintiffs may not have known
19 Defendant intended to apply Site Plan-EPC criteria before the EPC issued its first
20 decision. *See dissent* ¶ 55. However, once the initial decision was issued, Plaintiffs

1 had ample time to orient themselves to that issue, if it was indeed one of legitimate
2 gravity in Plaintiffs’ view, and marshal their full efforts toward challenging the
3 selected standard, including by proposing an alternative.

4 {27} We disagree with the dissent that such was done. *See dissent* ¶ 55. While the
5 dissent correctly notes that Plaintiffs below mention IDO § 14-16-6-7(E)—a section
6 relating to text amendments for small areas, and the dissent’s preferred alternative
7 standard—they do so in a letter *supplementing* the arguments that would be
8 presented at the Land Use Hearing Officer (LUHO) hearing during the course of
9 Plaintiffs’ second administrative appeal. *Dissent* ¶ 53. There, Plaintiffs said that IDO
10 § 14-16-6-7(E) “would appear to be the most closely equivalent decision criteria
11 under the IDO for the [master development plan] text amendment.” However, they
12 fail to argue that IDO § 14-16-6-7(E) works as a potential alternative, let alone that
13 it is the correct alternative, in both their second appeal to the LUHO and City Council
14 and their appeal to this Court; in fact, there is no mention of this standard at all in
15 the appellate briefing. Thus, while we take no issue with the dissent’s suggestion
16 that different determinative criteria may have been superior in this circumstance to
17 the chosen standard, imposing a standard upon Defendant that was neither presented
18 nor argued by Plaintiffs is beyond the purview of this Court’s current review. *See*
19 *dissent* ¶¶ 46, 53-55. Applying the same standard of review as the district court, this
20 Court reviews an administrative order to determine whether the order is “arbitrary,

1 capricious, or an abuse of discretion; not supported by substantial evidence in the
2 record; or, otherwise not in accordance with law.” *Rio Grande Ch. of the Sierra*
3 *Club*, 2003-NMSC-005, ¶ 17.

4 {28} The dissent also agrees with Plaintiffs that Defendant selected to use Site Plan-
5 EPC review and decision criteria to guide the amendment process arbitrarily and
6 capriciously. *Dissent* ¶¶ 55-56. We acknowledge Plaintiffs’ argument to this effect
7 in the brief in chief. Although the dissent takes issue more so with the chosen criteria
8 and Defendant’s arguable inability to comply with seven factors within that
9 criteria—an argument that does not appear in the appellate briefing—Plaintiffs lean
10 into Defendant’s arguable failure to involve interested parties in the discussion of
11 which standard to choose. Plaintiffs contend that in selecting the review and decision
12 criteria to follow during the text amendment process, Defendant should have
13 “described” the applicable decision criteria and “encouraged” witnesses to “testify
14 about facts and opinions relevant to the decision criteria.” Instead, Plaintiffs contend,
15 the review and decision criteria were chosen “secretly.” But neither Plaintiffs nor
16 the dissent cite case law requiring that applicable standards themselves be publicly
17 vetted or prohibiting public officials from selecting a reasonable standard to follow
18 in a case such as this.⁴

⁴The dissent cites *Albuquerque Commons Partnership v. City Council of Albuquerque*, 2008-NMSC-025, ¶ 36, 144 N.M. 99, 184 P.3d 411, in arguing that the EPC did not explain why it believed Site Plan-EPC was the appropriate standard

1 {29} Here, Defendant reasonably crafted a standard by which to amend the BFP
2 master plan, using the IDO—a 652-page document containing extensive standards
3 that does not, despite its length, directly instruct how to amend the BFP master plan.
4 And while Plaintiffs and the dissent maintain that Defendant’s selection of review
5 and decision criteria was arbitrary and capricious, such a conclusion on our part
6 would run afoul of our standard of review and intrude upon the decisional autonomy
7 that our courts have recognized public officials have. *See Bass Enters. Prod. Co. v.*
8 *Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, ¶ 45, 238 P.3d 885 (“An arbitrary
9 and capricious action by an administrative agency is the result of an unconsidered,
10 willful, and irrational choice of conduct and not the result of the winnowing and
11 sifting process.” (internal quotation marks and citation omitted)); *see also id.* ¶ 28
12 (“Under whole record review, evidence is viewed in a light most favorable to
13 upholding the agency’s determination.”); *Rodriguez v. Permian Drilling Corp.*,
14 2011-NMSC-032, ¶ 7, 150 N.M. 164, 258 P.3d 443 (“[W]e will not substitute our
15 judgment for that of the agency; although the evidence may support inconsistent
16 findings, we will not disturb the agency’s finding if supported by substantial

for evaluating the proposed amendment. *Dissent* ¶ 55. Plaintiffs cite the same case to support their contention that the City’s decision criteria do not comply with New Mexico case law. *Albuquerque Commons Partnership*, 2008-NMSC-025, ¶ 30. But we read neither citation as supporting what the dissent or Appellants contend; instead, *Albuquerque Commons Partnership* relates to zoning decisions, which are inapplicable here, since, as the dissent notes, “a zoning change was not necessary for the City to move forward with the proposed stadium.” *Dissent* ¶ 46.

1 evidence on the record as a whole.” (omission, internal quotation marks, and citation
2 omitted)). The dissent’s and Plaintiffs’ argument in this regard would effectively
3 provide a right to the public to approve steps along the decision-making processes
4 of local government that does not exist under our case law.⁵

5 {30} Finally, the dissent implicitly points to the reply brief to support its conclusion
6 that Defendant adequately presented an argument on appeal that the chosen
7 standard’s review and decision criteria are “facially inapplicable to a text
8 amendment to the BFP master development plan.” *Dissent* ¶ 50. Even if the reply
9 brief adequately presented such an argument, however, we nonetheless elect to
10 comply with our case law and court rules, which direct us not to consider arguments
11 that were not raised in the brief in chief, unless such are directed to new arguments
12 or authorities in the answer brief or the reply brief. *See Wilcox v. N.M. Bd. of*
13 *Acupuncture & Oriental Med.*, 2012-NMCA-106, ¶ 15, 288 P.3d 902; Rule 12-
14 318(C) NMRA.

⁵Similarly, from the dissent’s perspective, even the chosen criteria would require the EPC to “conduct a public hearing” and “merely make a recommendation to the City Council and not the final decision.” But this is exactly what occurred: the EPC held a public hearing and made recommendations, not the final decision. Furthermore, as noted by the Planning Department, “It is not possible to appeal an EPC Recommendation to the City Council since this is not a final decision.” The City Council then adopted those recommendations, as the final decision-making body.

1 **VI. Defendant Did Not Deny Plaintiffs Due Process**

2 {31} Plaintiffs’ final argument is that they were denied due process by the “internal
3 cooperation, complicity and prejudgment about the location of the soccer stadium at
4 BFP.” Plaintiffs’ argument is rooted in the belief that the proceedings conducted
5 were quasi-legislative when they should have been quasi-judicial and thus the
6 proceedings failed to adequately protect Plaintiffs’ due process rights. We review
7 the constitutionality of administrative actions de novo. *See Shook v. Governing Body*
8 *of the City of Santa Fe*, 2023-NMCA-086, ¶ 21, 538 P.3d 466.

9 {32} Defendant responds that a quasi-judicial hearing is only required when an
10 administrative agency makes “a determination of the rights, duties, or obligations of
11 specific individuals.” *See Benavidez*, 2021-NMCA-029, ¶ 28 (internal quotation
12 marks and citation omitted).

13 {33} As for the “internal cooperation, complicity, and prejudgment of the soccer
14 stadium” that Plaintiffs argue represent bias violative of due process, we agree with
15 the district court’s finding that Plaintiffs have not met their burden to overcome the
16 presumption of impartiality to those serving as administrative adjudicators. *See*
17 *Jones v. N.M. State Racing Comm’n*, 1983-NMSC-089, ¶ 13, 100 N.M. 434, 671
18 P.2d 1145 (explaining that there is a “presumption of honesty and integrity in those
19 serving as administrative adjudicators” (alteration, internal quotation marks, and
20 citation omitted)); *Am. Fed’n of State v. Bd. of Cnty. Comm’rs of Bernalillo Cnty.*,

1 2015-NMCA-070, ¶ 10, 352 P.3d 682 (“The burden of overcoming the presumption
2 of impartiality rests on the party making the assertion of bias.” (alteration, internal
3 quotation marks, and citation omitted)), *vacated on other grounds by* 2016-NMSC-
4 017, 373 P.3d 989. Plaintiffs fail to cite any portion of the record that supports their
5 allegations of internal cooperation or prejudgment. The example Plaintiffs use to
6 illustrate such bias—the City Council’s approval of a lease for the proposed stadium
7 location before approval of the application—is inapposite, as the district court points
8 out, because the lease was explicitly contingent upon approval of the amendment
9 sought by the application. This means that even though Plaintiffs are correct that the
10 approval of the lease preceded the approval of the amendment, there was no evidence
11 of bias here because in the case that the amendment was not approved, the lease
12 would no longer be valid. Like the district court, we see no bias based on this
13 evidence or in the record as a whole. We again affirm the district court’s
14 determination that Plaintiffs were not denied due process.

15 **VII. The District Court Did Not Err in its Discovery Decision**

16 {34} We now turn to the district court’s decision to deny Plaintiffs’ motions for
17 discovery and to supplement the record and briefing. In their appeal to the district
18 court (and, significantly, not before then), Plaintiffs moved for discovery to more
19 thoroughly determine how Defendant determined the process to amend the BFP
20 master plan. In particular, Plaintiffs contested that the process determination—the

1 procedure the applicants needed to follow to amend the BFP master plan and apply
2 to build an outdoor stadium—was reached by Defendant in secret, through, for
3 example, internal memos, emails, and meetings among City employees rather than
4 in open meetings. It was this information—internal memos, emails, meeting
5 recordings—Plaintiffs sought. The district court denied their motion.⁶

6 {35} The standard of review for discovery orders is abuse of discretion. *See*
7 *Albuquerque J. v. Bd. of Educ. of Albuquerque Pub. Schs.*, 2019-NMCA-012, ¶ 15,
8 436 P.3d 1. “An abuse of discretion occurs when a ruling is clearly contrary to the
9 logical conclusions demanded by the facts and circumstances of the case.” *Benz v.*
10 *Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 11, 314 P.3d 688 (internal quotation
11 marks and citation omitted). The parties agree that this appeal is guided by Rule 1-
12 074 NMRA, which sets out the standards of review for administrative appeals. In
13 particular, a record on appeal from an administrative agency consists of “all papers,
14 pleadings, and exhibits filed in the proceedings of the agency” and a “transcript of

⁶The Court is aware there is a second appeal currently before the Court on this issue, *Hauser v. City of Albuquerque*, A-1-CA-43076 (N.M. Ct. App.). The underlying case, Order Denying Appellants’ Motion to Allow Limited Discovery to Supplement the Record and Supplemental Briefing *Hauser v. City of Albuquerque*, D-202-CV-2024-07811 (2d Jud. Dist. Ct. Apr. 14, 2025), arises from the same underlying events and is brought by many of the same parties, albeit following a district court order in which Plaintiffs were the prevailing party. However, after careful review of the record on appeal, including material that was the subject of the latter two issues resolved in this appeal that are in fact nonetheless within the record proper in this case, we view the issues in this case to be suitable for present resolution.

1 the proceedings.” Rule 1-074(H)(2), (4); *see Martinez v. N.M. State Eng’r Off.*,
2 2000-NMCA-074, ¶ 48, 129 N.M. 413, 9 P.3d 657 (stating that only material that
3 was in fact presented below, but was mistakenly or inadvertently omitted from the
4 record, may be included in a supplemental record). Additionally, when acting under
5 Rule 1-074, “the district court is a reviewing court, not a fact-finder, and therefore
6 may consider only evidence presented to the [administrative agency] in the first
7 instance.” *Martinez*, 2000-NMCA-074, ¶ 48; *see Cerrillos Gravel Prods., Inc. v. Bd.*
8 *of Cnty. Comm’rs of Santa Fe Cnty.*, 2004-NMCA-096, ¶ 24, 96 P.3d 1167 (stating
9 the district court is considered an appellate court when acting under Rule 1-074).

10 {36} To appeal the district court’s denial of their discovery motion, Plaintiffs cite
11 *Lewis v. City of Santa Fe* for the proposition that a court addressing an administrative
12 appeal is at liberty to remand for the purpose of creating a record that is adequate for
13 review. *See* 2005-NMCA-032, ¶ 20, 137 N.M. 152, 108 P.3d 558 (“[T]he district
14 court is at liberty to remand for the purpose of creating a record that is adequate for
15 review.”). However, *Lewis* concerned evidence presented to the administrative
16 agency in the first instance. *See id.* Similarly, Plaintiffs’ citation of *High Ridge*
17 *Hinkle Joint Venture v. City of Albuquerque*, 1994-NMCA-139, ¶ 46, 119 N.M. 29,
18 888 P.2d 475, simply demonstrates that this Court permits supplemental discovery
19 only for items that *had* been presented to the administrative body. Both *Lewis* and

1 *Hinkle*, then, concerned supplements to the record that fall safely within the confines
2 of Rule 1-074.

3 {37} For *Lewis* and *Hinkle* to apply here, the discovery Plaintiffs seek must fall
4 within Rule 1-074 and have been presented to the EPC and then to the City Council
5 (the administrative agency) for review. But Defendant argues that the records sought
6 by Plaintiffs—evidence such as internal memos, emails, and meeting recordings that
7 enabled Defendant to create the process determination—were never presented to any
8 administrative agency and are thus outside the bounds of Rule 1-074. We agree.
9 Plaintiffs moved the district court for supplemental discovery, having not previously
10 sought the items requested, on March 3, 2025, *after* the EPC hearings, which
11 occurred on November 16, 2023, and April 11, 2024. Therefore, it follows that
12 unlike the Plaintiffs in *Lewis* and *Hinkle*, Plaintiffs seek supplemental discovery for
13 evidence they did not present to the administrative agency, contrary to Rule 1-074.

14 {38} Defendant further contends that discovery is generally not necessary or
15 permitted in appellate proceedings and that a district court has the discretion to deny
16 discovery when, as here, a party fails to show that the requests are reasonably
17 calculated to lead to the discovery of admissible evidence. *See* Rule 1-026(B)(1)
18 NMRA (“The information sought need not be admissible at the trial if the
19 information sought appears reasonably calculated to lead to the discovery of
20 admissible evidence.”). Defendant argues that the records sought by Plaintiffs would

1 be inadmissible since, as mentioned above, they were neither requested through
2 discovery nor presented to the administrative agency and are thus outside the bounds
3 of Rule 1-074. Defendant also explains that the planning department's
4 preapplication meeting was merely fulfilling a requirement of the IDO. *See* IDO
5 § 14-16-6-4(C). Finally, Defendant points out that any error in the district court's
6 denial of Plaintiffs' discovery requests was harmless because Plaintiffs were
7 permitted to seek the discovery and then obtained the discovery in a separate
8 proceeding, and the Plaintiffs eventually presented those materials to the district
9 court in this case in their second motion to supplement the record.

10 {39} We agree with Defendant and the district court. The dispute here relates to the
11 discovery obtained in a second pending appeal, *see Hauser v. City of Albuquerque*,
12 A-1-CA-43076 (N.M. Ct. App.), discovery that was not successfully sought in the
13 case underlying this appeal. The district court did not abuse its discretion by
14 fulfilling its charge as a "reviewing court, not a fact-finder" and "consider[ing] only
15 evidence presented to the [administrative agency] in the first instance." *See*
16 *Martinez*, 2000-NMCA-074, ¶ 48. We hold that the district court acted within its
17 discretion in refusing to allow Plaintiffs to conduct discovery as part of their Rule 1-
18 074 appeal and that it reasonably concluded that the existing record was sufficient
19 to resolve all issues.

VIII. The District Court Did Not Err in its Denial of Plaintiffs' Discovery Motion to Supplement the Record and Allow Supplemental Briefing

{40} Relatedly, Plaintiffs argue that the district court erred in denying their discovery motion to supplement the evidentiary record and permit additional briefing related to the evidence Plaintiffs hoped to admit. A district court's decisions regarding discovery are reviewed for abuse of discretion. *See Albuquerque J.*, 2019-NMCA-012, ¶ 15.

{41} As with the discovery motion, Plaintiffs sought to supplement the record and the briefing with evidence and argument that was not before the administrative agency. Specifically, Plaintiffs wished the district court to consider emails between the mayor's office and the planning department and zoning enforcement officer that evidenced "pressure" and "closed meetings." Such evidence was important and relevant to a few of Plaintiffs' arguments, namely, the City Council's asserted delegation of unbridled discretion to the EPC, its failures under the OMA, and the failure to afford due process.

{42} But Plaintiffs' theory fails for substantially the rationale applicable to their discovery challenge discussed above: evidence not before the administrative agency may not be considered on appeal, as the district court here concluded. *See* Rule 1-074(H)(2) (requiring that the record on appeal consists of "a copy of all papers, pleadings, and exhibits filed in the proceedings of the agency, entered into or made a part of the proceedings of the agency, or actually presented to the agency in

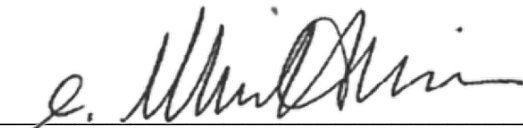
1 conjunction with the hearing”). We therefore hold that the district court did not abuse
2 its discretion by denying Plaintiffs’ discovery motion to supplement the record and
3 the briefing with evidence that was not presented in prior proceedings.

4 {43} We briefly address Plaintiffs’ contention that the additional discovery was
5 necessary to Plaintiffs’ due process argument regarding an alleged OMA violation.
6 Given the presence in the record proper of the very documents on which the district
7 court ruled, we note that all communications are between Plaintiffs and nondecision
8 makers. Having held there to be no OMA violation, partly on this basis as explained
9 above, our decision herein does not turn on the absence of such discovery.

10 **CONCLUSION**

11 {44} We affirm.

12 {45} **IT IS SO ORDERED.**

13 
14 **J. MILES HANISEE, Judge**

15 **I CONCUR:**

16 
17 **JACQUELINE R. MEDINA, Chief Judge**

18 **MEGAN P. DUFFY, Judge, concurring in part and dissenting in part**

DUFFY, Judge (concurring in part and dissenting in part).

{46} The City approved a “major amendment” to the planning documents governing Balloon Fiesta Park that removed language expressly prohibiting an outdoor sports stadium on the property, thereby allowing the City to move forward with plans to build a new outdoor stadium for the New Mexico United at Balloon Fiesta Park. Several neighborhood associations surrounding Balloon Fiesta Park unsuccessfully opposed the change in use, citing concerns about noise, light, and traffic. On appeal, the neighborhood associations (Plaintiffs) challenge several parts of the City’s process for reviewing and approving the requested change, including the choice of “decision criteria” used to evaluate whether the amendment should be approved. I write separately out of concern that the review and decision criteria suggested by the City and employed by the City’s environmental planning commission (EPC) were plainly arbitrary and capricious, as Plaintiffs argue, or not otherwise in accordance with the law. This matter should be reversed and remanded for another hearing using the review and decision criteria for text amendments. *See* IDO § 14-16-6-7(E).

{47} The City’s IDO is a 652-page comprehensive rulebook covering zoning, land use, and subdivision regulations in the City. Part 6 of the IDO sets out the processes for review and approval of development projects. The IDO identifies over thirty different development project related matters that come under the umbrella of IDO

1 approval, such as permits, certificates, subdivision of land, zoning changes, and the
2 like, each requiring an application to the City to move forward. Matters are grouped
3 in the IDO by what process is required to approve an application—that is, whether
4 the application requires merely an administrative decision (including certain permits,
5 historic certificates, and site plans), requires a public hearing (including conditional
6 uses, expansions of nonconforming structures, master plan developments,
7 subdivision of land, and site plans), or is a policy decision (including zoning
8 changes, changes to the comprehensive plan, and text amendments). For each type
9 of matter, the IDO provides an individual subsection that identifies the procedure to
10 be employed for reviewing an application and “review and decision criteria” that
11 serve as the lens through which the decision-maker will decide whether the
12 application should be approved. Importantly, the procedural subsection for each
13 matter also identifies the decision-makers who will *review* the application, who will
14 make a *recommendation* on the application, and who will ultimately *make a decision*
15 on the application; these can include, for example, the City’s Planning Department,
16 a zoning hearing examiner, the EPC, a land use hearing officer, or the City Council,
17 among others. Consequently, Plaintiffs are correct that whether the EPC has
18 authority to merely provide a recommendation on an application to the City Council,
19 or to actually make a decision on the application, depends entirely on the type of

1 application (i.e., what the application is seeking) and the procedure set out in the
2 IDO.

3 {48} The threshold question, therefore, is what type of application was the City
4 dealing with here? Consensus Planning, on behalf of the City of Albuquerque Parks
5 and Recreation Department and New Mexico United, submitted an application
6 seeking a “Major Amendment to the Balloon Fiesta Park Master Development Plan
7 and Site Plan.” The BFP master development plan—originally adopted in 1998 by
8 the City Council and amended in 2012 by the EPC—is a 156-page document
9 consisting of ten sections. Section 4 is titled, “Site Plan for Subdivision” and
10 “includes a general description of existing and future park elements, buildings, and
11 circulation systems, and corresponds to the Site Plan for Subdivision drawings.”
12 This section of the BFP master development plan recognizes “permissive land uses
13 approved by the City Council” and contains a bulleted list of approved buildings. At
14 the end of the list is an asterisk noting that “[a]n outdoor sports stadium is not
15 allowed in Balloon Fiesta Park.”⁷ Accordingly, to move forward with the stadium,

⁷When the City adopted the IDO in 2018, Balloon Fiesta Park received a zoning designation that permits a stadium. *See maj. op.* ¶ 3. Accordingly, a zoning change was not necessary for the City to move forward with the proposed stadium. But the City’s adoption of the IDO in 2018 did not alter the BFP master development plan’s stadium prohibition. The IDO specifically recognized that “[a]ny use standards or development standards associated with any pre-IDO approval or zoning designation establish rights and limitations and are exclusive of and prevail over any other provision of this IDO”—meaning that the BFP master development plan’s

1 the applicant(s) needed to (1) make “text amendments” to the BFP master
2 development plan to eliminate language prohibiting an outdoor stadium and add
3 language about lighting, and (2) revise the site plan exhibits to reflect the stadium in
4 place of a parking garage. At issue in this appeal is the EPC’s decision on the first
5 of those requirements.

6 {49} The IDO does not contain any explicit procedure for amending the BFP master
7 development plan, and thus no express delegation to a particular decision-maker to
8 decide the matter or settled review and decision criteria to evaluate the application.
9 As discussed in the majority opinion, Plaintiffs challenge whether the EPC had the
10 authority to make a decision on the application, as well as the discretionary authority
11 to determine what “review and decision criteria” should be used to evaluate the
12 application. Under IDO § 14-16-6-4(Z)(3), the standard relied on by the district court
13 and the majority opinion, the answer depends on whether the EPC is the “relevant
14 implementing City department” for the BFP master development plan—a matter the
15 City has not addressed. *See id.* (stating that master plans approved before the IDO
16 took effect “may be amended per the procedures specified in the relevant plan or by
17 the relevant implementing City department. The implementing departments may

prohibition of outdoor stadiums is controlling unless and until the plan is amended.
IDO § 14-16-1-10(A)(2)

1 request review by the EPC and/or City Council where more input is desired.”).⁸ The
2 City Council approved the original BFP master development plan in 1998, along
3 with the permissive land uses at issue. The EPC’s recommendation on the
4 application at issue contains conflicting information as to whether the EPC acted as
5 a decision-maker with respect to either the initial approval of the BFP master
6 development plan or the 2012 amendment. The EPC recommendation states that the
7 EPC approved the BFP master development plan in 1998 as well as the 2012

⁸It is not clear whether the BFP master development plan qualifies as either a “master development plan” or a “master plan” as those terms are defined in the IDO. The IDO defines “Master *Development* Plan” as “[a] plan created by an applicant and approved by the City *to achieve a coordinated private development*, such as a business or industrial park, on larger sites that comprise more than one lot and building.” IDO § 14-16-7-1. Based on this definition, it would seem that master *development* plans are for private developments, and the definition does not expressly apply to the City-owned Balloon Fiesta Park.

Immediately following the definition of “master development plan,” the IDO defines a “Master Plan” as “[a] Rank 3 Plan developed and approved by an implementing City department to guide the development, maintenance, and operation of individual public resources or facilities”—which seems directly applicable to Balloon Fiesta Park, except that the definition expressly states that “[i]n the case of the City and Bernalillo County, *this Master Plan is the ABC Comp Plan.*” *Id.* This definition suggests that the ABC Comp Plan is the exclusive Rank 3 plan for the City. Consequently, it is not clear that the BFP master development plan is a “master development plan” or a “master plan” under the plain language of the City’s definitions for these types of plans. At best, these terms are ambiguous. I note as well that the IDO appears to use the terms “master development plan” and “master plan” interchangeably at times. *See* IDO § 14-16-6-4(Z)(3)(a)-(b) (suggesting that master plans may apply to both City property and private property); IDO § 14-16-2-5(B)(3)(f) (discussing master development plan amendments for nonresidential—commercial zone districts under the standard for amending master plans set out in Subsection (Z) of IDO § 14-6-6-4).

1 amendment to that plan, but also that the “Balloon Fiesta Park Master Development
2 Plan received its initial approval from City Council in 1998 and underwent revisions
3 in 2012.” The City has not addressed the evidence in the record or attempted to
4 answer why the EPC (as opposed to the City Council) should be considered the
5 “relevant implementing City department” for purposes of IDO § 14-16-6-4(Z)(3)(a).

6 {50} But I am not convinced that IDO § 14-16-6-4(Z)(3)(a) is controlling here. The
7 EPC prepared a staff report and recommendation in advance of the EPC hearing on
8 the application and noted that the textual amendment to the BFP master development
9 “is handled as if it were an amendment to a site development plan for subdivision.”

10 Notably, IDO § 14-16-6-4(Z)(1) expressly addresses amendments to site
11 development plans approved before the effective date of the IDO. For major
12 amendments (which all parties agree this was), the IDO states that IDO standards
13 apply,⁹ and that “major amendments shall be reviewed and decided by the decision-
14 making body that issued the . . . approval being amended, *following the procedure*
15 *for the most closely equivalent decision in Part 14-16-6.*” IDO § 14-16-6-4(Z)(1). I
16 am persuaded that EPC staff were correct in concluding that this is the controlling

⁹The City argued, and the district court found, that IDO standards do not apply to amendments to master plans. IDO § 14-16-6-3(C) states that “Rank 3 Plans provide policy guidance for a particular geographic area to relevant implementing departments” and include “Master Plans.” Subsection (C) goes on to say that “Rank 3 Plans are not subject to the review and decision process in the IDO.” Here, too, the City appears to use the term “master plan” interchangeably with “master development plan.”

1 IDO standard in this case, as the BFP master development plan most closely meets
2 the definition of “Site Development Plan” set forth in the IDO.¹⁰ Under this standard,
3 either the City Council or the EPC—whichever can be said to have issued the
4 approval being amended—would select the most closely equivalent procedures and
5 decision criteria.

6 {51} Putting aside for a moment the issue of who is the correct decision-maker, I
7 am persuaded that the review and decision criteria selected and employed in this
8 case were arbitrary and capricious and not in accordance with the IDO. The City

¹⁰The IDO states that “Site Development Plan” is

[a] term used prior to the effective date of the IDO for a scaled plan for development on one or more lots that specifies at minimum the site, proposed use(s), pedestrian and vehicular access, any internal circulation, maximum building height, building setbacks, maximum total dwelling units, and/or nonresidential floor area. A more detailed site development plan would also specify the exact locations of structures, their elevations and dimensions, the parking and loading areas, landscaping, and schedule of development. The equivalent approval in the IDO will be determined based on the level of detail provided in the prior approval.

1 Planning Department recommended,¹¹ and the EPC apparently accepted,¹² “Site
2 Plan-EPC” as the applicable review and decision criteria for the amendment to the
3 BFP master development plan.¹³ The Site Plan-EPC review and decision criteria
4 state that “[a]ny application for a Site Plan-EPC shall be approved if it meets *all of*
5 *the following criteria.*” IDO § 14-16-6-6(I)(3) (emphasis added). Those seven
6 criteria are set forth in IDO § 14-16-6-6(I)(3)(a)-(g) as follows:

- 7 (a) The Site Plan is consistent with the ABC Comp Plan, as
8 amended.
- 9 (b) The Site Plan is consistent with any applicable terms and
10 conditions in any previously approved NR-SU or PD zoning
11 covering the subject property and any related development
12 agreements and/or regulations.

¹¹ In September 2023, James Aranda, the deputy director and zoning enforcement officer for the City’s Planning Department, notified Consensus Planning that the City Parks and Recreation Department would be submitting an application to allow the EPC to consider the amendment to the BFP master development plan and the existing site plan. In this letter, Mr. Aranda indicated that the application was a “Site Plan EPC” application and that the requests would proceed in three parts, with the BFP master development plan text amendment first, followed by the Site Plan amendment, presumably because the Site Plan could not be amended unless and until the BFP master development plan was amended to allow a stadium.

¹² The staff report prepared by the EPC in advance of the hearing indicated that the EPC “may impose conditions necessary to ensure compliance with the development standards of this IDO via the Site Plan-EPC review and Decision Criteria of IDO [§]14-16-6-6(I).” The report also noted that separate approval was needed for the BFP master development plan amendment and the Site Plan amendment, and that both are “interdependent for approval.”

¹³ It is unclear, however, whether this decision was communicated to the public at any point before the EPC hearing.

1 (c) The Site Plan *complies with all applicable provisions* of this
2 IDO, the DPM, other adopted City regulations, *and any terms*
3 *and conditions specifically applied to development of the*
4 *property in a prior permit or approval affecting the property.*

5 (d) The City's existing infrastructure and public improvements,
6 including but not limited to its street, trail, drainage, and
7 sidewalk systems, have adequate capacity to serve the proposed
8 development, and any burdens on those systems have been
9 mitigated to the maximum extent practicable.

10 (e) The application mitigates any significant adverse impacts on the
11 project site and the surrounding area to the maximum extent
12 practicable.

13 (f) *If the subject property is within an approved Master*
14 *Development Plan, the Site Plan meets any relevant standards in*
15 *the Master Development Plan* in addition to any standard
16 applicable in the zone district the subject property is in.

17 (g) If a cumulative impact analysis is required in the Railroad and
18 Spur Small Area pursuant to Subsections 14-16-5-2(E)
19 (Cumulative Impacts) and 14-16-6-4(H) (Cumulative Impacts
20 Analysis Requirements), the Site Plan incorporates mitigation
21 for all identified cumulative impacts. The proposed development
22 will not create material adverse impacts on water quality or other
23 land in the surrounding area through increases in traffic
24 congestion, parking congestion, noise, vibration, light spillover,
25 or other nuisances without sufficient mitigation or civic
26 environmental benefits that outweigh the expected impacts.

27 (Emphases added.)

28 {52} Plaintiffs argue, and I agree, that Site Plan-EPC review and decision criteria
29 are facially inapplicable to a text amendment to the BFP master development plan.
30 It is clear that the proposed amendment to the BFP master development plan could
31 never satisfy criteria (c) or (f) because the proposed amendment, by its very nature,

1 does not and cannot comply with existing limitations and standards contained in the
2 BFP master development plan. Accordingly, because the IDO’s Site Plan-EPC
3 review and decision criteria are clearly inapplicable to the application to amend the
4 BFP master development plan, it was either arbitrary and capricious to apply them
5 here, or plainly not in accordance with law. *See Rio Grande Ch. of Sierra Club*,
6 2003-NMSC-005, ¶ 17 (“A ruling by an administrative agency is arbitrary and
7 capricious if it is unreasonable or without a rational basis, when viewed in light of
8 the whole record.”).

9 {53} As for what are “the procedures for the most closely equivalent decision in
10 Part 14-16-6” of the IDO, Plaintiffs argued below that IDO § 14-16-6-7(E)—the
11 section relating to text amendments for small areas—“would appear to be the most
12 closely equivalent decision criteria under the IDO for the [master development plan]
13 text amendment.” The application to amend the BFP master development plan was
14 a request for text amendments to that plan, as the City recognized when processing
15 the application. But beyond the mere semantics of what the amendment entailed, the
16 text amendment review and decision criteria are directly applicable to the
17 substantive change the amendment sought to accomplish—a change in use. Under
18 Section 14-16-6-7(E)(3)(d), “[i]f the proposed amendment changes allowable uses,
19 the proposed amendment does not allow permissive uses that would be harmful to
20 adjacent property, the neighborhood, or the community, unless the Use-specific

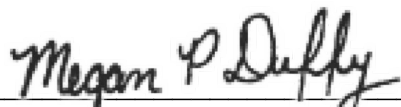
Standards in Section 14-16-4-3 associated with that use will adequately mitigate those harmful impacts.” *See* IDO § 14-16-6-7(E)(3)(d).

{54} If this section of the IDO applies, and I believe that it does, it also answers Plaintiffs’ initial challenge to who must ultimately decide the matter. EPC would be required to conduct a public hearing, but would merely make a recommendation to the City Council rather than the final decision. The City Council would be required to conduct a public hearing and then make a decision on the application. *See* IDO § 14-16-6-7(E)(2)(c)-(d).

{55} While the majority opinion faults Plaintiffs for not advancing a more developed argument in either the administrative proceedings or the district court, it does not appear that Plaintiffs would have known that the EPC intended to apply Site Plan-EPC criteria at any point before the EPC issued its first decision, which was ultimately reversed due to insufficient notice. At no point did the EPC provide any explanation as to why it believed Site Plan-EPC was the appropriate standard for evaluating the proposed amendment. *See Albuquerque Commons P’ship v. v. City Council of Albuquerque*, 2008-NMSC-025, ¶ 36, 144 N.M. 99, 184 P.3d 411. In my view, Plaintiffs adequately raised the matter of whether the City’s selection of Site Plan-EPC was arbitrary and capricious in the course of its second administrative appeal, in the district court, and in this Court, and it is plain enough from the face of the City’s chosen standard that it was an incorrect choice under the circumstances.

1 The City, for its part, has not justified its decision. Its argument on appeal contains
2 only a summary of some of the factors relevant to the Site Plan-EPC decision criteria
3 and wholly omits any mention of the two factors that would conclusively require
4 that the amendment be denied under that standard.

5 {56} For the reasons set forth above, I believe the City did not afford Plaintiffs
6 appropriate procedural protections or comply with the process and standards set
7 forth in the IDO. These matters are at the very heart of the City's administrative
8 approval process. Plaintiffs were actively involved from the start, but were placed at
9 a disadvantage by the lack of transparency as to the City and the EPC's decision-
10 making process as to what review and decision criteria should be applied under the
11 circumstances. And, in my view, the criteria selected and applied by City to approve
12 its application did not squarely or appropriately address the impact of the proposed
13 change in use. For all of these reasons, I would reverse the decision to approve the
14 BFP master development plan text amendment and remand for further proceedings
15 consistent with IDO § 14-16-6-7(E).

16 
17 MEGAN P. DUFFY, Judge