

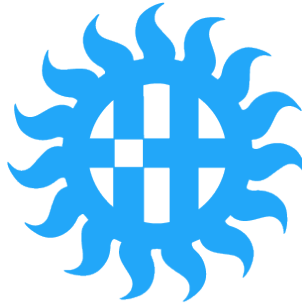
# CITY COUNCIL AGENDA

Mayor  
Eric Enriquez

**Tuesday, January 2, 2024 at 1:00 PM**  
**Council Chambers**

**CITY HALL**  
**P.O. BOX 20000**  
**LAS CRUCES, NM 88004**

**700 N. Main St.**  
**PHONE (575) 541-2067**



**CITY OF LAS CRUCES**

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If you need an accommodation for a disability to enable you to fully participate in this event please contact us 72 hours before this event at [541-2115/V](tel:541-2115).

## **CONSENT AGENDA**

Minutes and Items on the Consent Agenda Are Considered Routine Items and Will Be Voted on with One Motion Unless a Councilor Requests That a Specific Item Be Removed. There Will Be No Discussion.

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### **1. OPENING CEREMONIES**

- 1.1. Pledge of Allegiance - Mayor Enriquez.
- 1.2. Presentation of Certificates of Appreciation/Proclamations - Mayor Enriquez.
- 1.3. Jobs of the Week.
- 1.4. Pets of the Week.

### **2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)**

### **3. ORGANIZATIONAL CEREMONY**

- 3.1. Selection of Mayor Pro Tem.

### **4. PUBLIC PARTICIPATION**

### **5. ACCEPTANCE OF AGENDA**

### **6. CITY COUNCIL MINUTES**

- 6.1. Special Work Session of December 4, 2023.

[Special Work Session - Dec 04 2023 - Minutes - Pdf](#)

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|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 6.2.      | Regular City Council Meeting of December 4, 2023.<br><a href="#">City Council - Dec 04 2023 - Minutes - Pdf</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 14 - 31   |
| 6.3.      | Work Session of December 11, 2023.<br><a href="#">Work Session - Dec 11 2023 - Minutes - Pdf</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 32 - 37   |
| <b>7.</b> | <b><u>RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |           |
| 7.1.      | <u>RESOLUTION NO. 24-071: A RESOLUTION APPROVING THE PURCHASE OF 211 SQUARE FEET PORTION OF LAND OWNED BY ROGER CISNEROS AT 1108 W. PICACHO AVENUE IN THE AMOUNT OF THREE THOUSAND NINE HUNDRED DOLLARS (\$3,900.00). AS PART OF 4TH STREET/US 70 (PICACHO AVENUE) PEDESTRIAN CROSSING H.A.W.K SIGNAL CONTROL NO. HW2L100518 PROJECT.</u><br><a href="#">Resolution No. 24-071 - Pdf</a>                                                                                                                                                                                               | 38 - 48   |
| <b>8.</b> | <b><u>RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |           |
| 8.1.      | <u>RESOLUTION NO. 24-072: A RESOLUTION COMMITTING THE LAS CRUCES UTILITIES DEPARTMENT TO THE DEVELOPMENT AND IMPLEMENTATION OF AN ASSET MANAGEMENT PLAN FOR WATER AND WASTEWATER INFRASTRUCTURE.</u><br><a href="#">Resolution No. 24-072 - Pdf</a>                                                                                                                                                                                                                                                                                                                                    | 49 - 52   |
| 8.2.      | <u>COUNCIL BILL NO. 24-013; ORDINANCE NO. 3055: AN ORDINANCE APPROVING A ZONE CHANGE FROM EE (EQUESTRIAN ESTATE AND AGRICULTURE) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR PROPERTY LOCATED AT 780 STERN DRIVE. SUBMITTED BY TED SCANLON, BORDERLAND ENGINEERS AND SURVEYORS.</u><br><a href="#">Ordinance No. 3055 - Pdf</a>                                                                                                                                                                                                                                                             | 53 - 108  |
| 8.3.      | <u>COUNCIL BILL NO. 24-014; ORDINANCE NO. 3056: AN ORDINANCE APPROVING A ZONE CHANGE FROM R-2/C-2 (MULTI-DWELLING LOW DENSITY/COMMERCIAL MEDIUM INTENSITY) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR PROPERTY LOCATED AT 806 EAST BOWMAN AVENUE. SUBMITTED BY NICOLE E. AND PHILIP EHRGOTT, PROPERTY OWNER.</u><br><a href="#">Ordinance No. 3056 - Pdf</a>                                                                                                                                                                                                                             | 109 - 166 |
| 8.4.      | <u>COUNCIL BILL NO. 24-015; ORDINANCE NO. 3057: AN ORDINANCE APPROVING A ZONE CHANGE FROM C-1 (COMMERCIAL LOW INTENSITY) AND R-3 (MULTI-DWELLING MEDIUM DENSITY) TO C-3 (COMMERCIAL HIGH INTENSITY) ON A PROPERTY ENCOMPASSING 1.436 ± ACRES. THE ZONE CHANGE REQUEST SEEKS TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 2001 LAS CRUCES MUNICIPAL CODE, AS AMENDED, ALLOWING FOR THE CURRENT BUSINESS EXPANSION AS WELL AS ENCOURAGING FUTURE DEVELOPMENT ON THE PROPERTY. THE SUBJECT PROPERTY IS LOCATED AT 2460 MISSOURI AVENUE.</u><br><a href="#">Ordinance No. 3057 - Pdf</a> | 167 - 236 |

**9. BOARD APPOINTMENTS**

**10. NOTICE OF PROPOSED ORDINANCE(S)**

1) There will be no public discussion.

2) A Councilor may ask staff for clarification on the proposed ordinance(s).

10.1. COUNCIL BILL NO. 24-016; ORDINANCE NO. 3058: AN ORDINANCE 237 - 258  
APPROVING A ZONE CHANGE FROM M-1/M-2 (INDUSTRIAL  
STANDARD) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR A  
PROPERTY ENCOMPASSING 8.25 + ACRES AND LOCATED AT  
4201 DEL REY BOULEVARD. SUBMITTED BY NEW REPUBLIC  
DESIGN CO., REPRESENTATIVE. (23ZO0500140).

[Ordinance No. 3058 - Pdf](#)

**11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT**

**12. CITY MANAGER REPORT**

**13. ADJOURNMENT**



**City of Las Cruces**  
**MINUTES**  
**Special Work Session**  
**Monday, December 4, 2023 @ 10:00 AM**  
City Council Chambers, City Hall

**PRESENT:** Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran

**ABSENT:** Councilor Johana Bencomo

**1. AGENDA ITEM**

**1.1 STATE LEGISLATIVE PRIORITIES.**

Barbara Bencomo, Chief Administrative Officer gave an overhead presentation.

Larry Horan, Lobbyist continued overhead presentation.

Srijana Basnyat, City Innovation & Strategy Manager continued overhead presentation.

Lisa LaRocque, Sustainability Officer continued overhead presentation.

Barbara Bencomo continued overhead presentation.

Mayor Miyagishima said I wanted to voice my support for all the projects that were listed. I think they are all good and looking forward to that coming about.

Councilor Graham asked have we nailed down where the next Lift Up area is going to be?

Issac Holguin, Housing Development Specialist said currently we did a scoring matrix to identify which location would be the best neighborhood for the Lift Up #2 and it is located between Amador and Idaho, and then it also encompasses El Paseo/Campo, I believe all the way up to Solano. That's where the next Lift Up Las Cruces will be located.

Mayor Miyagishima said so just a thought for Larry. One obviously there is a fentanyl crisis going on in the State and have you heard what possibly could be done to help local law enforcement combat that? Then two, these are unprecedented times to see



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this type of money that's available and you would think this would be the time to possibly look at a mental health facility here in Southern New Mexico. Literally they could do that, and I recognize all the legislators do get certain types of monies they put aside. What are your thoughts on those two things?

Larry Horan said as far as the first I have not heard anything specifically dealing with fentanyl and treatment as a topic by itself. But when you're looking at criminal justice and you're looking at potential programming as it relates to criminal justice, not necessarily just reform but combating the issue, and behavioral health your two questions actually tie in well together. I would not be surprised, and I think that would come up in the discussion of how we're going to deal with the reduction in crime itself. Treatment would be for both behavioral health funding and also for treatment, I suspect if it's not just a stand-alone legislation included an increase in the budget. As far as it relates to the mental health, behavioral health facility, I don't know that the concept is ready for actual funding for a hospital in the southern part of the State. It's something when we met with the Governor last year we brought up and had discussion with identify on the capital outlay you have services that relates to behavioral health. I think there is a potential for us to try and get funding to help bolster behavioral health services. I just don't know what it's going to look like. We've had these discussions and Mayor Pro Tem has been pushing this for a very long time as a priority for the City. I think it's a good time for us to continue the conversation and identify what's the best way to bring those services and what does it look like. Is it a hospital? Is it other treatment facilities? Is it inpatient, is it inpatient/outpatient what's the mix? I think this is a good time because behavioral health is a big topic as it relates to not just stand alone but also to the unhoused and also to crime it's all tied together.

Mayor Miyagishima asked Chief, if you had your druthers is there something that you'd think it would help you and your department help combat the fentanyl crisis? If so is there something there you'd like for us to entertain to possibly ask the legislature to help fund?

Chief Jeremy Story, Interim Police Chief said if I had my wish list there's lots of things I do agree with Larry, hit the nail on the head. These are complex problems and they're all related to each other. I see in my short time even as Interim Chief, I've seen there's a lot of good people that are very intelligent and motivated to impact substance use issues, homelessness issues, and mental health doing good work. I think having one central facility in Southern New Mexico would be very beneficial. We don't see a lot of commitments go up to Las Vegas even on the more severe or extreme cases. I think having a facility here would help us, having more resources for long-term inpatient treatment I think would be beneficial. When it comes to fentanyl it's such a difficult problem. We have seen in a short period of time 3-4 years a transformation of the reality for officers and everyone else that works in that field. As bad as heroin is, fentanyl is at a whole other level. I'm not sure what the answer is other than it's going to take all of us working together, not necessarily a law enforcement problem by itself. It's not even a treatment problem by itself. It's difficult trying to beat the addiction in one person it's hard enough, we look at how fast it spread throughout the community. I think it's going to take a very holistic multi-faceted approach, to deal with it here.

Mayor Miyagishima said this morning I was listening to the news and there was some young kid who I guess he bought something on social media. He was buying Percocet, and it turns out it had fentanyl and he died. Then over the weekend I was listening to NPR, and they were talking about schizophrenia and how that's on the rise as well, it's just unless the legislature can help fund some of these issues to help our health providers and such, it's just going to continue to grow. I think it's incumbent on as you mentioned the community, both City and County elected officials to work with our law makers to help come to some type of solution or something to at least help keep it from continuing to take off.

Councilor Gandara said I agree, I don't see this as part of an almost every year that we've come in front of the legislature we offer at least our feedback related to a mental health facility. I think it's something you need to continue to put on your list and it's just going to get worse. What I'll say is there is a local behavioral health collaborative that's having their end of the year meeting next week, I believe. Lieutenant Howie Morales will be here along with other specialists. Chief is right there is a number of people working collaboratively, Barbara you're a part of that, through the Opioid Settlement Funding. All I would say is you need to coordinate those efforts, there is a large group of people that are working on this and more specifically identify a mental health specialist, Ifo something I've been talking a lot about, someone around that has that kind of expertise because we don't have it within the City. It just falls off, it's not even a part of priorities as staff comes in front of us and I'm not criticizing. I'm just saying it's typically not a municipality function and it's just going to get worse. Wherever it lands if it's in Fire, Police Department it needs to be I think on the forefront of everything that you do. All the things that you're doing LiftUp, and a number of these programs LIGHT. It's just going to keep affecting it and getting worse. If anything we need to identify that person. Mayor and I worked on a behavioral health district that didn't really come to fruition but it's something that you'll need to have and someone that is sort of advocating for that, at every single turn. I would just say Resilience Leaders we've spoke of last Friday more specifically which if people aren't familiar, it's a collective impact group that has, 10 sector leaders working on survival and thriving services one of those is behavioral health. We're talking a lot about legislative priorities more specifically the local behavioral health collaborative is looking at the Amigos Project, the Soteria House. To your point Mayor about schizophrenia, much of that is drug induced and fentanyl that's what you're seeing. I'm asking that this be a part of the priority, it's a must a mental health facility and Chief you hit the nail on the head. Being able to have those kind of conversations with Chief and police officers and your judges that are making those kind of determinations to send, they're not even sending folks to Vegas anymore. I'm not sure if that problem is the barrier but if we had something like that here that would be more helpful to our area. Larry we've talked about other counties be a part of that conversation.

Larry Horan said there are not necessarily directly related to behavioral health hospital there are some other things going on that we will see this session. The Governor and the Legislature last year created a healthcare authority and part of that is to breakdown the silos between you have Human Services Department, you have Department of Health, you have other departments at the State that are dealing with

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healthcare related issues. Even the IBAC the state employee health plan they're all housed in different places. The report is supposed to be out I think already, but the plan for creation of the Behavioral Health Authority and whether or not they need implementing of legislation is scheduled to come during this 30-day session. As we're dealing with behavioral health a lot of the healthcare is provided through Medicaid, which is run by Human Services Department, in addition to the creation of the Healthcare Authority you also have the new Medicaid contract that they're negotiating are going into effect on July 1. You have different things happening related to behavioral health there and the other thing the place we normally wouldn't think about especially in a Municipal Government a lot of what we're talking about not just behavioral health, also healthcare in general is how can we grow the healthcare workforce and keep that workforce in the State. There are things being discussed like loan forgiveness, higher Ed programs to increase the amount of social workers, nurses, health care related fields. Even things such as discussions on paid internships for college students, to try and make the connection between them and their communities to keep them here in New Mexico. Although it's not specifically related to the hospital itself, if we're supportive of behavioral health initiatives there's lots of places we're going to see suggest changes and improvements in the system in this session.

Councilor Flores said I believe you stated that there are coordinated efforts throughout the State to address the behavioral health, mental health issue?

Larry Horan said there's a discussion, I'm not sure how coordinated it is. I know there are different efforts that we're hearing, and different legislative committees have had discussions on it, so we will see the behavioral health related issues.

Councilor Flores said there should be a coordinated effort. What does it take, you say the Governor has a lot of money and there's also the General Fund that is just billions of dollars and if we plucked out a billion it would still feel like taking a hair off a cat's back, there's so much money there. I know Senators Soules there was a great feature article or piece by Mike Cook where he quoted Senator Soules and then I asked Senator Soules if that was all true, not that I don't trust Mike he's a wonderful journalist. He said, "yeah it's all there, we've got lots of money New Mexico isn't poor". I said, "you could have fooled me". How do we get that money? I am going up this coming session in January and I want to make sure that the things that we have laid out and aligned are addressed. Larry you as a lobbyist probably have access and probably represent other municipalities, does this issue come up with other members, your clients for lack of a better word? Is there any effort to bring us together and get the Governor to be responsive with all due respect to the Governor there's been very little empathy in terms of her actions? The net effect is that we're not getting the money we need and then there's also this wind fall from gas and oil. Then to say there's all this money and for those of us who believe that we have to be careful in terms of the environmental impact all of that has, yeah there's a lot of money. Where is it going? Look at all the issues we have, I'll bet my bottom dollar that we haven't brought up anything you don't already know and know a lot better in terms of other municipalities and jurisdictions throughout the State. How can we as individual Councilors going to Santa Fe be effective? That's why, why waste the City's money on my going to an expensive hotel and then my time and boarding my dog, making

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sure my plants get watered etc. What would be the most effective way to for us to conduct business while we're there, except looking for you?

Larry Horan said I will take your last question first and then back into your initial, if that's ok? Just the fact that you are willing to travel to Santa Fe and meet with our Legislators has a significant impact. It may not seem to you at least initially, but there's a dynamic that when other elected officials are talking to our elected officials it's very different if it's staff or if it's a professional lobbyist. When you go up and advocate as a Councilor for the City of Las Cruces you take the time to make the four hour drive, to stay in Santa Fe, to board your dog and to go have a discussion on these issues, it has an impact. It doesn't just have an impact on our legislators, it has an impact on all of them. I'll give you an example because of timing, good planning, and luck because it is chaotic but there is some planning that can go into things. When the Tax Reform Bill was scheduled in the House Tax Committee last year it included an elimination of pyramiding of Gross Receipts Tax which has a significant impact on cities in particular it just happened to be Municipal Day. You had a whole bunch of not just City Managers, but elected officials who were in Santa Fe and were able to talk to the legislators and testify to the Committee about the damage that pyramiding could have on local government and the services we provide. That provision did not remain in the bill because those voices were heard, and they were there. Just by being there and having a discussion on these issues and asking those hard questions of legislators has a significant impact. It's always worth a trip to Santa Fe, something good always comes of it. As far as coordinated efforts there's discussion going on across the board as it relates to behavioral health, fentanyl, and crime, DA's are having it, the AG is leading efforts, you have discussions in the healthcare field. The Municipal League talks about a package as it relates to crime every year, we've been working on law enforcement legislation every year. Yes there's lots of money, but part of problem comes in when how are we going to spend it to help solve the problem. One of the biggest issue we have as it relates to this is availability of workforce. I talked a little bit about when I talked about Capital Outlay. If you have 5 billion dollars it can go to Capital Projects, but you only have the capacity to spend a billion because you don't have enough contractors. It's the same thing as we're seeing in healthcare. Part of the Governors public health order has requirements for managed care organizations to provide behavioral health services within a certain period of time. If you don't have the counselors, if don't have the doctors, if you don't have the social workers in the workforce, even though you may have the money to spend, how do we provide the services to those that are in need. That's a big part of what the Legislature and also local governments we're all struggling with this, where do we put the funding and how do we increase that access. That's part of the challenge that they have. If there is a good plan put in place to deal with an issue like fentanyl, addiction, crime, or homelessness the Legislature is able and willing to spend the funding. A second thing is starting to happen, and I know we talked about as a priority last year I didn't mention it and I should have. There is a discussion about modernization of the Legislature they did put out an RFP to look at what does that look like. What is staff look like, how do we bolster the resources of the Legislature so it's easier for them to deal with these complex issues. That hasn't happened yet, what we're seeing I can point to some concrete examples. For the first time the Senate Finance Committee has a fulltime year round Chief of Staff. For the first time the House Appropriation Committee hired a fulltime year round Chief of

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Staff. That gives a different perspective to the Legislators because they're not just relying on Legislative Finance Committee, they now have someone else who also is looking at the issues. Even in the short time that been in place Finance hired theirs right before the session last year. The Appropriations Committee hired theirs in I want to say July or August, you can feel a significant difference as you're talking about these complex issues. Part of what's going to happen is we don't know what the modernization will look like, but it will transform how the Legislators engage. When the fentanyl issue and the Chief talked about it, fentanyl is a behavioral health issue, it's a healthcare issue, it's a public safety issue, it's a mental health issue, it's a housing issue. It's so complex and that's just one thing. In Medicaid, the Medicaid budget takes up billions of revenue in the state, half of our population is on Medicaid. The Medicaid contract is complicated. What the Legislature has to deal with is becoming more and more complex as our society is more and more complex. They need to put things in place to help them address these issues rather than just coming in every 30 or 60 days.

Councilor Flores said the one point you brought up is, well even if we did this we don't have the personnel, we don't have the bodies the people to fulfill all those positions. It seems to me if you build it they will come. I don't want to believe that Legislators whatever level whether its municipalities, county or the State Representatives wouldn't want those programs and advocate and make it a top priority. As you very well stated, and we all know very well is that it's definitely really the poverty. It's really a fundamental basic thing and then of course the racism and even though the State of New Mexico is primarily "Spanish" we're still treated like second class citizens. Also our Native American communities have been ignored and of course we all know through the centuries have been horribly abused and slaughtered. I think that it's very important for the State of New Mexico to say we have of all this money we're going to invest it in our people. I think that if the State was to show that it really cares about its people. I think there is going to be a turnaround in terms of how people live their lives. Think about it most children who are abandoned, abused, or not fed correctly, not educated correctly are the ones that are not going to have a good outcome in their adulthood. If we take care of our children now and then we take care of those that just weren't as fortunate I think we will be a better state to live in. Do you see how all this money is going to make a big difference are we going to be still hearing, straggling a year from now, ten years from now, fifty years from now the same old same old. What do you think?

Larry Horan said although it may surprise you a little bit considering the profession I am in and maybe the profession I came from, I still am a little bit idealistic. I do think that the State will improve and will take those necessary steps and part of that is I see the make-up of the Legislature and particularly Legislative Leadership and how they're looking at issues now versus how maybe they have in the past. Specifically I'll point to the House with Javier Martinez as Speaker of the House, Ryan Lane is Minority Leader from Aztec. It's a different generation, they're younger, they view things differently. The speaker was an advocate. You bring up the challenges with education and feeding of our children. He was an advocate of the Early Childhood Trust Fund and creating the Early Childhood Department and Pre-K and those type of programs. I think we're seeing a shift, in fact I think generally it feels like, this is just a feeling so I can't point to a piece of paper and say it's happening. There is a

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significant like a generational shift happening in the Legislature, it's not only with membership but it's how they view things, how they address and how they tackle issues. I think this new group of Legislators are starting to see this change. I think we will see significant changes that will help improve and take advantage of this opportunity of increase funding and although it's a finite increased funding because it's dependent on oil primarily, there's a disagreement on how long it's going to be. The short end is probably 5-7 years, industry thinks this is more like a 30 year trend. Somewhere in there we have that opportunity to change the State. Part of what we have to do, because I've been here before, you talking about the fact we're trying to avoid cuts and we didn't get any Capital Outlay because didn't have Capital Outlay build because the budget was down so far those big significant swings we see because of an oil dependent economy. We have to diversify our economy, we have to figure out what we bring in. How do we keep the next generation of educated New Mexicans to stay in the State because once you have a connection here, you have a vested interest in helping improve the State. All of these things we're talking about I think if they're successful as we make those connections with the community it will help make those improvements, so I'm not back here in 10 years or 15 years still talking about septic which we probably will because that's a huge problem, but that we made steps to improve these other areas that you're talking about.

Councilor Flores said Yazzie/Martinez some money is being allocated for that and Yazzie/Martinez was decided quite a long time ago, I mean several years ago. There's been very little movement. There was all that fiasco over Native Americans during Covid not getting computers, the children. What money is being allocated to Yazzie/Martinez? Why is PED dragging its feet? What kind of money do they need to make sure Yazzie/Martinez gets that holding and the decision gets implemented?

Larry Horan said it's actually a good example to what your original question was which is we have all of this money, how do we fix the problem? Yazzie/Martinez they've increased teachers' salary, they've significantly increased funding for education. They've poured money into trying to solve the problem and depending who you ask it hasn't moved the needle at all. It's exactly what we're talking about is having the funding in and of itself may not be enough to solve the problem. The Legislature says look we've poured a lot more money into education and the plaintiffs in that case say it has not been enough. Now where it goes and especially, I will for disclaimer do not have any K-12 nor do I lobby for any K-12 education that's a whole different area. It depends who you ask. If you ask Representative Derrick Lente from Sandia Pueblo also a member of Isleta they haven't done nearly enough because he introduces legislation every year to increase funding specifically related to Native American education and some of it gets implemented some of it doesn't. There's also struggles at the local school board district level, there's a PED. It's a good example of we have the resources but where do you put them to make it effectively change the system.

Mayor Miyagishima said every so often the City will do a Strategic Plan so we can kind of get input from Council to see how we want to move the City forward and listen to what they're hearing from their constituents, what they need. Then we all come together to tie it all up, point it out and figure out how we're going to pay for it. Does the State do that? They don't do they, everyone just comes together the Legislature

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they do what they want to do. They're just doing little parts here and there. There's no big plan for the State, I don't believe like a Strategic Plan. I know that's silly, but we don't do that, correct?

Larry Horan said there's not one that I'm aware of but what I'd like to point out they talked about doing a 50 year water plan for the State of New Mexico, water has been an issue we've been dealing with since inception. I'm not even sure that has been adopted yet. No there is not a Comprehensive Plan for the State.

Mayor Miyagishima said you know basically getting the Legislatures together and kind of talking about what's going on in their various cities and seeing exactly how can we combat the things that they're seeing.

Barbara Bencomo said just wanted to make sure that I understood your guidance and input for the resolution that will be coming forward on the 18th. I heard that support for the Capital Projects, just wanted to find out if you would like to add support for a regional behavioral health facility in Southern New Mexico to the list of items that we would adopt by resolution.

Councilor Flores said if you're asking a question, and you want an answer, I think I can say yes.

Mayor Miyagishima said I think that would be the goal. I am supportive of it but when Mayor Pro Tem said something a light bulb just went off. I was thinking about workforce solutions. How we have the State is broken up in the four parts and how there is six counties, and how we used to have meetings every so often. We would reach out to various businesses, and they would help with unemployment. I don't think they have one in the Department of Health, how they have a special board to combat whether it's fentanyl or whether it's behavioral health and how they could reach out to various mental health facilities and help fund them. Now it's a lot quicker, but it's going to take forever to build, don't get me wrong I am supportive of building a facility. I think it's going to be a long term issue. You care to answer that? I don't think there is a board, ideas are just flowing right now listening here. There is not a board to my knowledge, much like a workforce solutions board. There is one for the State under Department of Health or Health and Human Services.

Larry Horan said currently there is no such structure in place. I think the collaboratives might be the closest that you have to that. I think what you're talking about is something a step beyond the collaborative, more of an appointed board with a mix of folks like they're dealing with well the workforce with that model if that where to come that would now come through that new Healthcare Authority that they're forming.

Mayor Miyagishima said I looked that up, but it didn't quite jive. It's supposed to start July 1st, 2024, but it seemed like it was just another State Agency.

Larry Horan said kind of a Mega State Agency with the idea that they're going to deal with all things healthcare related including employee benefits, Medicaid, etc. Don't know who the Secretary is going to be, the plan really hasn't been vetted yet.

Councilor Corran said I was just going to ask more to the nuance of what you are proposing. I feel like in the priorities that exist there is highlighting of permanent supportive housing as well as project LIGHT. Which are two sort of things that we are investments in community organizations that already exist. I feel like we need to add up our investments in and efforts we've already invested in. I wouldn't want to displace those efforts which are addressing a lot of issues that were alluded to. I want to make sure those don't fall in their prioritization. I think they're concrete and they're folks we know are already working on this and doing things that are working. I know how that all goes like or sort of but in terms of priorities of things that are very close to the top our list. I would ask that those stay there.

Barbara Bencomo said I'll just address that briefly and then Larry you can feel free to correct me if I miss speak. This list of Capital Projects things that the City would undertake to construct, with respect to the regional behavioral health facility it would be support for that initiative that would not necessarily be our Capital Project it might be from the State as well.

Larry Horan said I don't think I would ever correct Barbara. I think what she said is actually kind of the way I'm thinking, and I would take it a step further. We have had this discussion and Mayor Pro Tem and I have had this discussion. I think if you make a statement of policy of support for increase behavioral health services to include a potential behavioral health hospital or something like that. I think what I hear when I'm in front of you and I hear you talk about it is, we have a void of services in this part of the state that we need to fill. A hospital may be a piece of it but it's probably broader than that. Maybe more of a broad policy statement of support for an increase behavioral health services in Dona Ana County or the Southern part of the State maybe including a statement as it relates to a behavioral health workforce. It's a much broader issue so if that's your idea of let's support it that's a piece of it but I think there's a lot more there because when we're talking about behavioral health and what the fire department has been doing with Project LIGHT that is all helping towards the solution as well. For me to understanding direction from the Council that broader statement is beneficial, if that makes sense.

Councilor Corran said I am definitely here for it, that's sort of what I was hoping was the nuance. Thank you I appreciate that clarity.

Barbara Bencomo said we will be coming back with that resolution on the 18th so we can proceed with the Capital Outlay process. I very much appreciate the guidance and input.

Councilor Flores asked so you will be adding the mental health that you brought up the guidelines that Larry pointed out?

Barbara Bencomo said yes we will add a policy statement for support of additional behavioral health services for our region, that may include language regarding the workforce development as well.



2. ADJOURNMENT

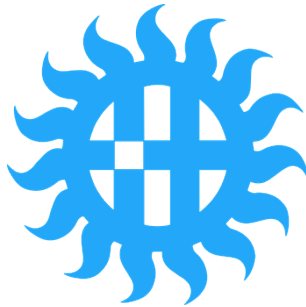
2.1

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to Adjourn at 11:07 a.m.

|           |                                                                                                                                                        |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| RESULT:   | Carried                                                                                                                                                |
| MOVER:    | Councilor Yvonne Flores                                                                                                                                |
| SECONDER: | Councilor Tessa Abeyta                                                                                                                                 |
| AYES:     | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran |
| ABSENT:   | Councilor Johana Bencomo                                                                                                                               |

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



## **MINUTES**

### **City Council**

**Monday, December 4, 2023 @ 1:00 PM**

City Council Chambers, City Hall

**PRESENT:** Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Becky Corran, and Councilor Yvonne Flores

**ABSENT:** Councilor Johana Bencomo

#### **1. OPENING CEREMONIES**

##### **1.1 PLEDGE OF ALLEGIANCE - COUNCILOR CORRAN.**

##### **1.2 PETS OF THE WEEK.**

Amy Defelix, Animal Services Center of the Mesilla Valley presented Pets of the Week.

##### **1.3 JOBS OF THE WEEK.**

Sarah Raney, New Mexico Workforce Connection presented Jobs of the Week.

##### **1.4 PRESENTATION OF CERTIFICATES OF APPRECIATION/PROCLAMATIONS - COUNCILOR CORRAN.**

Mayor Miyagishima presented Senator Jeff Steinborn with the Mayor's Distinguished Service Award.

Councilor Corran presented the Chabad Community of Las Cruces with a proclamation Denouncing Anti Semitism Day.

Fire Engine Donation presentation by Fire Chief Jason Smith.

#### **2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)**

##### **2.1**

Councilor Corran said I do have a potential conflict on 8.2 and so I will recuse myself for that vote.

Mayor Miyagishima asked do you sit on one of the boards?

Councilor Corran said one of them is for DACC and that is where I work so I just want to make sure.

### **3. PUBLIC PARTICIPATION**

#### **3.1**

Paul Rovado, Member of the Public said my wife and I live in Del Rey Estates for the last 10 years which is in District 5. I would like you all to place yourself in the following scenario. It is 8 p.m. in the evening, you are relaxing in your living room talking to your significant other, maybe watching TV, reading a book, or playing with your children. When all of a sudden a window in your living room is shattered, glass is flying in all directions as a 9 mm bullet enters your living room. Take a moment to think about that. This is not a hypothetical scenario for my wife and myself. On November 15th at approximately 7:30 p.m. exactly this happened to us. My wife and I were extremely lucky. The bullet hit the living room window and lost energy and fell onto the window seal. I spent almost 30 years in the military during the Vietnam War era, the Cold War era, I spent several weeks at Ground Zero in New York City on 9/11 but never in a million years would I have thought my wife and I would be exposed to a bullet entering our living room on a quiet Wednesday evening. The open area behind us is in city limits. Homes are bordering this area from Park Hill Estates, Del Rey Estates, and single-family homes on Tucson Ave. This is not the place to be discharging firearms. As our elected officials get together with the Chief of Police and come up with a concrete plan to curtail this type of activity within city limits before it leads to tragic consequences.

Mayor Miyagishima said that is incredible story that you shared with us. Years ago, I would go to the Mayor's meetings every year and I have been going for the last 16 years. About 10 years ago Shot Spotter and I used to think wow they could actually within 50 feet figure out where that shot came from and I used to think I am glad that we don't really need that here in Las Cruces but I think it is time that the future city council maybe looks at something like that because what you are recanting is extremely scary situation and I appreciate you sharing your story with us.

Reymundo Montes, Member of the Public said I thank you sir for acknowledging the military and the first responders. My grandson is at the induction center as we speak getting ready to go into the Navy and answer the call to his country. My father was also a volunteer fireman for Las Cruces in the 30's and the 40's so I would like to say I am a lifelong resident of Las Cruces, born and raised here. Mayor, I know your tour of duty is coming short, here pretty soon. Your collaboration with Eric Enriquez can be positive for Las Cruces. Three months ago I called the police. Three times on a 911 emergency call and they responded quickly. I want to compliment the professionalism, the integrity and the caring of our Las Cruces finest. Second to none I am totally impressed. I have had collaboration with the police when I was a teacher. I participated in the DARE Program. I would like to see a reinstatement of a form of relation building between police and citizens. When I was overseas, I longed to hear from my family and friends but did not. I would like for our men and women on duty

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who care for us on their watch say you will be safe on my watch. So, a reinvention of a great and efficient police citizen team building effort would be great.

Mayor Miyagishima said thank you Mr. Montes. We appreciate you taking the time to come to the city council to share with us that letter and your kind words and words of encouragement and also congratulations to your son and thank him from us for his service to our country.

Diane Starbuck, Member of the Public said I am with Animal Advocates for Change. Last week I listened to the Animal Service Center of Mesilla Valley board meeting and in this meeting Clint Thacker states statistics that they gather from the previous month which this time was October and the kill rate for the shelter was 41%, which is bad. Nobody wants to hear numbers like that. They are hard to hear but unfortunately this is the kind of range that they have been in for the past few years. Also, during this meeting Michelle Correra, she runs the SNAP Program for the County, and she was saying that if she didn't have more money that she would not be able to do with much for next year as she did last year. Our rescues and the shelter are begging for volunteers. They are asking for money. They are over worked. They are overwhelmed. What we really need is a fully funded phased in required spay and neuter program and I would like to thank the Mayor for bringing forward the Work Session back in November to work on a new animal ordinance that would be better for all companion animals and I hope as per your wishes that all parties concerned are working collaboratively on this new ordinance and I hope the Mayor and council can see to support this ordinance in word and in deed.

Patricia Alford, Member of the Public said with me is Debra Brown. We live in the Metro Verde section. First, I want to thank the police officers Jonathon Pagan and Detective McDaniels and number 888 and their night shift Captain for their quick and effective response when my friend's car parked in my driveway was broken into on the early morning of Saturday, November 25, 2023, which began at 1:44 a.m. They were amazing and with the help and aid of the video from my house they were able to make an arrest. Unfortunately, it was a juvenile and I don't think it went very far but I only placed the camera three weeks prior because of incidents involving my next door neighbor and the neighbor across the street whose daughter-in-law's car was broken into stolen and retrieved at an elementary school still running but extensive damage to the car. These incidents involve material things however the cost and loss of time is unfair to the owner. We the neighbors now forced into extra expense for the cost of cameras, monitoring rates and system updates. There have been many, many carjackings attempts and carjacking and attempted home invasions in the last one and half months in our area. I am here today representing a group of neighbors concerned about protecting their property with the hopes that it will not lead into home invasions or the loss of someone's life. There will be a new town watch group. Our volunteerism will only focus on observations. We only want to be the eyes of the area and contacting the police with as much information to give them to apprehend the perpetrators. We are having another meeting this Saturday, December 16, at the Red Hawk Golf Club which is supporting the group because they are concerned about their area too. The management is graciously letting us use an area to meet and come up with safe strategies within our communities, Metro Verde and the Red Hawk homes. We would like the following if it is possible, we would like somebody from the

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Police Department to attend that meeting and give us the legal perspective. We would like to have a representative from council to attend that meeting. We have a question, is there anyone who trains town watch groups on how to be safe and not intrusive to the community?

Mayor Miyagishima said your time is up, however if you want to leave our contact information here, I am sure I believe under Chief Story there is a Neighborhood Watch Coordinator that can help you work on what you are trying to do which I have to commend you on what you are trying to do. I applaud you for that. Two things that city council is looking to do in the future is the mobile vans that have cameras in them, primarily for speeding but also can be used for various other things and then also the Police Department just purchased about 6 more of what they call eyes in the sky where they can actually kind of do a 360 rotation of a particular area. I have to tell you I have of course been involved with local government for 30 plus years and what we are experiencing in the last couple of years is unprecedented and I would always keep up with our neighbors in El Paso. El Paso is always the largest safest city in the United States. Very rarely did you hear about homicides or stabbings or shootings over there. That was almost like my correlation if crime was up there it just seems like unfortunately it was up not only in Las Cruces, but it is up nationwide. Although I just left my last conference and Mayor's meetings a few months ago that discussion is nationwide. I don't know what is going on. I don't know if it is lack of financial resources that they feel that they have to steal, to break in to do what ever it is they need to do, I don't know but I want to commend you for what you are doing because I think you are setting the example for what other neighborhoods need to do but I am confident that the Police Department has a Neighborhood Watch Coordinator that could help you.

Councilor Corran asked what time is the meeting on Saturday?

Patricia Alford said 2 p.m. I'm from Philadelphia originally and there is a model where they have citizens sort of like look out for things, but they have a police officer that helps them. They said their crimes are down 70%. That is something to think about. We have to work together.

Jacob Pruitt, Member of the Public said I live just off of Spruce close to Sierra School and there is a tremendous disconnect between the Public Works and road closures and Roadrunner Transit. The bus drivers tell me the only way they know a road or a stop is closed is when the driver drives past on the first run of the day and calls it in and says by the way and says Route 22 at stop 12 is which doesn't exist is closed. I don't know where the break down is but between the drivers and citizens and the Roadrunner Management and the City Public Works road closures and whoever is in charge of that doesn't get that information out to the people it matters to and if you are trying to get to a doctor's appointment and I don't know maybe most of you are lucky enough to be able to drive, I am not and also with Roadrunner Transit there are stops that are closed and there is no work being done. They put out the orange barrels at 6 or 7 o'clock in the morning and they leave them up and I don't know if they take them down at night or not because I rarely go out after 5 or 6 but that is an issue that is dear to my heart because there is a lot of disabled people that use that bus and if their

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stop is closed and they have a doctor's appointment they're just out of luck.

Mayor Miyagishima said thank you Mr. Pruitt for sharing that with us. I am sure Ifo and his team will take note of that. I will tell you that I and I can't speak for the rest of the council that I get them on my emails that certain roads will have such and such closed. I will say a lot of times I have been asked why can't you guys work at night or do something, that was viable six to seven years ago but after Covid the prices that you see that the city contracts with these contractors they are up 20% to 30% as it is and then to try to work at night or weekends you are talking almost double the price. One thing Mr. Pruitt are you aware of being able to use Dial-A-Ride?

Jacob Pruitt said that is a good point. I am glad you asked that question because Dial-A-Ride generally request that you call a week in advance, and I mean let's face it how many of you plan your life a week in advance and if you happen to be making something. If I have to go to the grocery store, it's a four-hour trip for me.

Nicholas Nevarez, Member of the Public said I am with the ACE Program. I just wanted to come up here and tell you guys about how good of a program it is. So, before this program I wouldn't be able to look anyone in the eye. I couldn't give out a handshake. I couldn't speak to anyone in front of anyone like this. So, I just wanted to point out how good they do for us youth and they really push us and strive us to do better in our lives. I am with an aviation program right now with Bellator Aviation at the Las Cruces Airport and I have been flying for the past two years and they have paid full expenses, and I am actually working and striving up to get my private pilot's license here pretty soon. This pathway has really opened up a big career with me so I am now I am going to the Army and I am going to be an Apache Helicopter Pilot and I just want to point out how much they really help you. They put you in front of random people that you have never met before to do job interviews, mock interviews, everything all of the above. They help you write your own resume. They just prepare you for everything life will throw at you. I know that they have really been trying to work on transportation for us because there are a lot of students that cannot join the program or keep with the program because they do not have transportation. They don't have cars. Maybe their car breaks down, anything of the above. They also do provide suits, ties, dress pants, dress shoes, everything for us just so that we can go and do these interviews. They also have us go to NMSU job fairs, career fairs, all of the above. So, I just want to point out how good they are and they really do help us out, as far as money wise too because not a lot of us can pay for that.

Mayor Miyagishima asked who is in charge of this program?

Nicholas Nevarez said so we have our three mentors.

Mayor Miyagishima said what you are talking about sounds like a great thing. Thank you for wanting to serve our country but you are going to be one of the youngest Generals. I can see you in your enthusiasm and your ability to convey what you wish to say to us so thank you very much for that. Good luck to you.

## 4. READ CLOSED MEETING STATEMENT

**4.1 READ NOVEMBER 20, 2023 CLOSED MEETING STATEMENT INTO THE RECORD.**

The Las Cruces City Council met in Closed Session and only discussed those limited items as stated in the posted notice to discuss pending litigation regarding to discuss pending litigation regarding Tom Reynolds v. City of Las Cruces, Case No. D- 307-cv-2022-01521, which is closed pursuant to NMSA 1978, section 10-15-1H(7).

**5. ACCEPTANCE OF AGENDA**

**Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to accept the agenda as presented.**

|                  |                                                                                                                                                        |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>Carried</b>                                                                                                                                         |
| <b>MOVER:</b>    | Councilor Tessa Abeyta                                                                                                                                 |
| <b>SECONDER:</b> | Councilor Becki Graham                                                                                                                                 |
| <b>AYES:</b>     | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Becky Corran, and Councilor Yvonne Flores |
| <b>ABSENT:</b>   | Councilor Johana Bencomo                                                                                                                               |

**6. CITY COUNCIL MINUTES**

**6.1 SPECIAL WORK SESSION OF OCTOBER 23, 2023.**

**6.2 WORK SESSION OF OCTOBER 23, 2023.**

**6.3 REGULAR CITY COUNCIL MEETING OF NOVEMBER 6, 2023.**

**7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA**

**7.1 RESOLUTION NO. 24-056: A RESOLUTION PROVIDING FOR THE DETERMINATION OF REASONABLE NOTICE OF MEETINGS OF THE CITY COUNCIL AND ITS BOARDS, COMMITTEES, AND COMMISSIONS FOR CALENDAR YEAR 2024.**

**7.2 RESOLUTION NO. 24-057: A RESOLUTION APPROVING A PRECOMMITMENT OF CITY FUNDING FOR A FEDERAL LOW-INCOME HOUSING TAX CREDIT PROJECT FOR AN AFFORDABLE MULTI-FAMILY HOUSING DEVELOPMENT, SUBJECT TO AWARD OF SAID TAX CREDITS BY THE NEW MEXICO MORTGAGE FINANCE AUTHORITY AS PART OF THEIR 2023/2024 4% LOW-INCOME HOUSING TAX CREDIT PROCESS.**

**7.3 RESOLUTION NO. 24-058: A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF \$150,000 FOR BOOKS AND PERIODICALS WITH BAKER TAYLOR BOOKS, INC. OF ATLANTA, GEORGIA, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.**

**7.4 RESOLUTION NO. 24-059: A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 18-19-008 WITH CENTER FOR TRANSPORTATION & THE ENVIRONMENT OF ATLANTA, GEORGIA, TO INCREASE THE CONTRACT AMOUNT BY \$70,500.00 TO \$458,247.02 PLUS APPLICABLE GROSS RECEIPTS TAX FOR ADDITIONAL SERVICES.**

**8. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION**

**8.1 RESOLUTION NO. 24-060: A RESOLUTION APPEALING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 26, 2023, FOR A 24-FOOT VARIANCE TO THE FRONT YARD SETBACK IN ORDER TO RETAIN A CONSTRUCTED CARPORT ADDITION ON A PROPERTY LOCATED AT 4093 WINTERS STREET. THE SUBJECT PROPERTY ENCOMPASSES 0.12 + ACRES AND IS ZONED R-1BC (SINGLE-FAMILY HIGH DENSITY- CONDITIONAL). SUBMITTED BY CATHERINE SILVA, PROPERTY OWNER (23VO0500101).**

Christine Rivera, City Clerk said Sara, do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Sara Gonzales, Senior Urban Planner said I do.

Christine Rivera said thank you Sara.

Sara Gonzales said this is a variance appeal for 4093 Winters Street. Property is approximately 649 feet north of its intersection with Holly Drive and Winters Street. It is approximately .12 acres in size. Property is zoned R-1Bc which is our singly family high density conditional and has a single-family residence. Here is a zoning map of the property and the surrounding area. There is multiple family or single family uses as well as a mobile home park located to the west and to the south. Everything else was either annexed into the city located to the north that is why it is R-1Am, which is mobile so a lot of them are mobile homes. Here is an aerial map of the subject property highlighted. As you can see the property in question does have a carport located within the front that is why we are here for the appeal today. The code does require per Chapter 38 of the 2001 Zoning Code that any single-family residential zone which is R-1b requires a 25-foot setback from the property line for any carport or garage structures. On September 26th the Planning and Zoning Commission denied the request 2 to 4 with one commissioner absent for the following findings, it did not meet the code requirement of the 25 feet setback from the front property line, the deviation is a 24 foot variance and does not meet the criteria for a variance to be approved, meaning there is no topography constraints on the property, the carport does not spur economic development for the area and a monetary hardship was not met being it was not self-imposed. Lastly, the structure was built without a building permit. Here is a site plan of the subject property highlighted in basically red. The carport is 24x20 in size, so it does cover primarily the entire driveway up to the property line but one foot. There is still that 12-foot utility easement as previously discussed in our previous case and with that we did see here is the carport structure. As you can see the carport overhang is closer to the rock wall. We measure from the overhang not from the actual post because that is where the extended structure goes. They did leave utility markers out there. We do have telephone and cable that are located within our utility easement on the property. The applicant is requesting the appeal in order to retain the carport at a one-foot setback because one she was not aware of the codes and regulations at the time, there are medical reasons in which for her and her daughter's safety. It does protect the driveway from becoming slippery and vehicles from weather damage. We did not receive any complaints from the public during the public hearing that took place on September 26th and the structure



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does not impede onto the utilities. With that staff does have a requirement to resend out notification for any appeal process. There was one member who spoke on her behalf during the public hearing process. Staff did receive one phone call requesting that you know if they get approved are they able to go ahead and apply and get one as well from a local neighbor and then on Friday I did receive an email and a phone call, same person that was not in support because it would devalue his property. He is located at 4096 Winter Street directly across the street. It will also open up the idea that everyone else in the neighborhood would be able to acquire one. With that if the council does recommend approval or changes or overturns P&Z's decision staff would still recommend that both sides of the carport remain open and not enclosed so that way you do have vehicle safety being met when you actually exit the property. The structure does need to be attached to the home being that it is not permitted to have accessory structures in your front yard, obtain an encroachment agreement for use of that utility easement since it is encroaching into that utility easement and then obtain any building permits and all required inspections. With that here are council's options, if you vote yes to approve that will overturn the P&Z decision that was made on September 26th. If you vote to deny that will uphold the decision made by P&Z, vote yes with conditions, or vote to table. I stand for any questions and the applicant is here as well.

Mayor Miyagishima said thank you Sara, Councilor Flores.

Councilor Flores said thank you Mr. Mayor and thank you Ms. Gonzales. It sounds very similar to the one we just heard a week or so ago but there is no permit, utilities are affected, they don't meet the, they don't meet the distance. They are at 24 feet as opposed to the 25 required or?

Sara Gonzales said Mayor, Councilor Flores that is correct. Yes, the property is encroaching into essentially 24 feet. That is the deviation requested. The garage is currently at 25 feet which is the minimum require. Any structure that will be built along there that would be for carport or garage would need to be at 25 feet. So, this variation is going to be 24 feet into the actual 25-foot setback. So, there is a one-foot separation of what is required from the property line right now.

Councilor Flores asked does that one foot have a, is there a consequence of an unsafe, safety issue? Does it raise a safety issue the one-foot deviance?

Sara Gonzales said Mayor, Councilor Flores because the structure is open it does not pose as many conflicts. Generally, when we look at structures that is why we have a clear sight triangle for driveways. It is a 20x10 area in which we would like it to remain open so that way there isn't any obstructions from whenever you pull out. Based on this it would be a single pole that would not be the obstruction if it were enclosed.

Councilor Flores asked so that one foot wouldn't obstruct any, the vision or doesn't it really create a safety issue?

Sara Gonzales said Mayor, Councilor Flores it does not create a safety issue because it is open.

Councilor Flores said thank you Ms. Gonzales.

Mayor Miyagishima said thank you Councilor. So, Sara let me just give you my take on this. I think we have no choice probably but to allow it to go through because we let the other one but I would and I will get with and if the council is consensus but get with the City Manager and City Attorney that I think there needs to be a moratorium on all carports and then so that council can draw up a resolution or ordinance because if not it is just going to continue going. The moratorium would stop any carports that have not been filed with Community Development and then as was discussed they have to come up with something whether it is five times the cost of the permit and also bill the contractor, the person who is building it as well so they both share in the penalties. That is ten times of what the actual cost would be or whatever the council decides to do. I mean we are could probably get it done this month but I will just leave it up to future council here, but I think that is about the only way we can do this is put a moratorium on all carports until that way there when the council passes that moratorium from that point on if any one builds another carport it has to be disclosed. I don't see any other way, really they are just going to keep adding them until the council does something of that nature. That is my take. We had to do that years ago. I mean 25 years ago on an issue. We had to put a moratorium and at that time the county could do something and get it done. So that is the only thing. That is why I am speaking from that experience. Any comments on this issue with the? Yes, Councilor.

Councilor Flores said well I'm just, I am not sure I understand what you propose Mr. Mayor and even if we had an ordinance people apparently just don't know that they need to get permits and I don't know should we just paper the city with, "you need to get a permit to do this, this, that and the other". And I agree with the Mayor in as to you know it is very similar to other one. This doesn't really present a safety hazard, the utility lines are not impeded or affected in anyway, vision isn't impeded. So, I, even if we had an ordinance, I am not aware of every city ordinance. You know I am just not.

Mayor Miyagishima said Councilor, excuse me what was discussed at that ordinance would be they would still be allowed to do it, it's just that the fine would be like ten times of what the actual cost would be. Five times for the applicant and five times for the person who built it.

Councilor Flores said oh, I see a fines. Yeah, yeah but, but I think though that even a fine would be overly, the punishment would be ten times the, I don't know how much it cost to get a permit for a variation, but it just seems kind of punitive. Well, it would be punitive if that is the intent, but they still wouldn't know. We would probably collect a lot of money. Or think we might be collecting money from properties owners that do that but how are you going to keep them from doing it in the first place. What do we do to let the homeowners know about all the ordinances we have. Is there a place we go to?

Mayor Miyagishima said Councilor you could put it in the water, the utility bill. A little

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flyer saying you need a permit to add onto your house. Something like that. They can be a campaign done by the Communications Office.

Councilor Flores said it would have to, yes there would have to be a campaign, but I am just posing these rhetorically to you Ms. Gonzales because I think there is an element of unfairness and I know that ignorance is no defense to anything that is unlawful but it just doesn't seem fair, that's all. And what steps has the department taken since our last hearing? Has the city been papered with, "follow your ordinances"?

Sara Gonzales said Mayor, Councilor Flores no it has not. Being that we are now currently going through the code rewrite we have gone through some of those ideas to see if there are things that we can implement and change because these processes are taking place. As far as getting the information out there it is always, we do have public that comes in and talks to us. Sometimes it is you accept it or sometimes it still happens without permits. Sometimes it is known, sometimes people do know and wish to not follow those regulations and sometimes we do have constituents that do follow regulations. All of our codes are online. All of the city website publishes everything. It would be very difficult to get the information out individually except for in we try to do our postings you know through Facebook, through anything we can do on public websites, our Community Development website it has all of our building codes, our ordinances. That is the easiest way for us to get the information out there and then working as we continue to get these calls or these complaints or working with other companies to let them know what those regulations are especially when they do come in and ask to make sure that they understand what they are presenting to the person who may be purchasing it and getting them educated as well through their business license process.

Councilor Flores asked so does that include Ms. Gonzales say the installers of these carports and all of these businesses that perform those services and provide the materials or do they know that the owner needs a permit and I really believe in PSA's, Public Service Announcements and you can't get enough of those and they are free and it seems to me that you can have spots on all the local radio stations, you know AM/FM stations whatever, just so that everybody just hears this from time to time when people get together. I am going to put a carport in. Oh, did you know you need a permit? I mean you know kind of like the word gets out. So, okay I think that is all I have to say, thank you, thank you Ms. Gonzales. Thank you, Mr. Mayor.

Mayor Miyagishima said Councilor Corran.

Councilor Corran said I, I thank you for eluding to the Realize and I see the Realize thing. I do hope that Realize can be tool for us sort of streamlining a lot of this and thinking about how we may, I think the trend is to have a different approach in some ways to some things like this and I would ask that we take a different approach then perhaps we did in 2001 and just generally sort of to the Mayor's point like shifting that we don't have to be doing this all the time. That would be my ideal specific to this. I am curious if we say yes to conditions there are probably amendments that we have to give or like last time, specific amendments?

Sara Gonzales said Mayor, Councilor Corran that is correct. Based on the conditions that were listed the last hearing we did say to approve or amend with conditions voted on that and then voted to approve the case as well.

Councilor Corran said okay so, which these conditions, these conditions are similar to the prior one I think in some ways, open, encroachment agreement, attached to the home which I think I am not sure it might already be attached to the home it kind of looks like it might be I am just not sure and a building permit. So, I would, I would move to add these conditions to the or we can just say yes to conditions. Okay, I would like to move to amend the proposal to add these conditions, please.

**Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to amend Resolution 24-060 to add the conditions of both sides of the structure must remain open, the structure needs to be attached to the home, obtain encroachment agreement for use of utility easement, and must obtain building permit and all required inspections.**

|                  |                                                                                                                                                        |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>Carried</b>                                                                                                                                         |
| <b>MOVER:</b>    | Councilor Becki Graham                                                                                                                                 |
| <b>SECONDER:</b> | Councilor Tessa Abeyta                                                                                                                                 |
| <b>AYES:</b>     | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Becky Corran, and Councilor Yvonne Flores |
| <b>ABSENT:</b>   | Councilor Johana Bencomo                                                                                                                               |

**Councilor Becky Corran moved, seconded by Councilor Becki Graham, to Approve Resolution No. 24-060 as amended.**

|                  |                                                                                                                                                        |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>Carried</b>                                                                                                                                         |
| <b>MOVER:</b>    | Councilor Becky Corran                                                                                                                                 |
| <b>SECONDER:</b> | Councilor Becki Graham                                                                                                                                 |
| <b>AYES:</b>     | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Becky Corran, and Councilor Yvonne Flores |
| <b>ABSENT:</b>   | Councilor Johana Bencomo                                                                                                                               |

**8.2    RESOLUTION NO. 24-061: A RESOLUTION AMENDING RESOLUTION 23-027 FUNDING PRIORITIES AND ALLOCATIONS TO VARIOUS LAS CRUCES NON-PROFIT ORGANIZATIONS FOR THE CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ESTABLISHED BY THE AMERICAN RESCUE PLAN ACT (ARPA) AND REPURPOSING PREVIOUSLY AWARDED FUNDS TO CITY LED PROJECTS.**

Irene Parra, Business Development Administrator gave the overhead presentation.

Councilor Flores asked can you go back to slide 12? This adds up to \$940,000 and then \$60,000 is reserved, so that is \$100,000?

Irene Parra said correct.

Councilor Flores asked is that the amount that had been allocated for Bitwise?

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Irene Parra said \$1 million was allocated, yes.

Councilor Flores asked so with the addition \$60,000 it would be \$1,000,000.

Irene Parra said correct.

Councilor Flores said first of all I want to thank you for this. This is absolutely wonderful for all around. It is really keeping up with the times. It is keeping up with technology. I think it is really giving our youth a real menu of where they can go and they can even go further from there. Thank you for that and especially for the childcare. That I think sometimes really impedes men and women with children who cannot participate even though this is geared for well the apprenticeship program and all that the training. Well, the apprenticeship and the pre-apprenticeship is geared for high school students because I saw that LCPS would be participating?

Irene Parra said the pre-apprenticeship is focusing on supporting training for Las Cruces Public School students. The apprenticeship program is for those older.

Councilor Flores asked the only one that is working in conjunction with LCPS is the pre-apprenticeship program and the others are working with DACC?

Irene Parra said the transitional job training program we will be working with DACC, the childcare provider program we are partnering with Ngage. The apprenticeship program we are partnering with IEC, the pre-apprenticeship with New Mexico Workforce Solutions and then MVEDA with manufacturing.

Councilor Abeyta said I am very excited to see all of these projects come to be. It kind of starts at that childcare making sure that individuals have stable places to send their children while they are doing the workforce training and then having our young adults having career pathways. With that in mind I do have a little bit of a question on our last one, project 5, the manufacturing training. Within our packets we do have you know a lot of things about program length, number of clients to be served, even some more of the details like cost of just supplies and things. This one is a little bit lighter on details and just for my clarification we have with this the number of clients to be served with this project are about 5-10 and is that manufacturing companies that they are going to partner with is 5-10 or is that the anticipated clients?

Irene Parra said I just got some updated information from Davin Lopez with MVEDA and in terms of an average cost for this type of training it is about a \$1,000 so they are hoping to actually train up to 100 employees working with a minimum of 1 and 5 employees in the area.

Councilor Abeyta said thank you for that clarification and with that in mind I am very excited to see what happens with everything, but I think it is a great use of these ARPA dollars so thank you.

Mayor Miyagishima said I have to agree I think you and your team did a fantastic job being able to redistribute the money that was going to Bitwise and I wondered how

you all were going to come up with that and did a great job. You are touching on so many different things and our young people that are out here today they are represented by at least one of them. Thanks for that.

**Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Resolution No. 24-061.**

|                   |                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>    | <b>Carried</b>                                                                                                                 |
| <b>MOVER:</b>     | Councilor Tessa Abeyta                                                                                                         |
| <b>SECONDER:</b>  | Councilor Becki Graham                                                                                                         |
| <b>AYES:</b>      | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, and Councilor Yvonne Flores |
| <b>ABSTAINED:</b> | Councilor Becky Corran                                                                                                         |
| <b>ABSENT:</b>    | Councilor Johana Bencomo                                                                                                       |

**8.3     RESOLUTION NO. 24-062: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY’S ADOPTED FY2024 BUDGET.**

Charlie Fierro, Budget Analyst gave the overhead presentation.

**Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Resolution No. 27-062.**

|                  |                                                                                                                                                        |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>Carried</b>                                                                                                                                         |
| <b>MOVER:</b>    | Councilor Tessa Abeyta                                                                                                                                 |
| <b>SECONDER:</b> | Councilor Becki Graham                                                                                                                                 |
| <b>AYES:</b>     | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Becky Corran, and Councilor Yvonne Flores |
| <b>ABSENT:</b>   | Councilor Johana Bencomo                                                                                                                               |

**8.4     COUNCIL BILL NO. 24-010; ORDINANCE NO. 3052: AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, (LCMC) CHAPTER 11, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE PREVENTION CODE, BY REPEALING THE ADOPTED 2015 EDITION OF THE INTERNATIONAL FIRE CODE AND ENACTING THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE AS AMENDED WITH CERTAIN RELATED APPENDICES.**

Jason Smith, Fire Chief gave the overhead presentation.

Councilor Graham asked restaurants and bars with more than 100 occupants require a sprinkler but then earlier there was a modification to something with 300 occupants, alcohol serving establishments, that would refer to establishments that don’t have a restaurant component? I am just a little confused on the discrepancy between the 300 and the 100.

Mark Dubbin, Fire Protection Engineer said the requirement for establishments that serve alcohol over 300 is for existing buildings, it is already adopted by the state. It does differentiate between restaurants or bars.

Councilor Abeyta asked on slide 8 when it talked about institutions where occupants are incapable of self-preservation, how does that then apply to since we were just

## Agenda Item #6.2.

talking about childcare facilities thinking of those who are going to have overnight type care?

Chief Jason Smith said the overnight care for daycare centers are required to have fire sprinklers.

Councilor Abeyta asked as programs that we were looking at too even if it was a home occupancy, but they had that certification then they would fall under this because they would have a commercial license?

Chief Jason Smith said I believe so.

Councilor Abeyta said I am just thinking that might be some good education that we make sure that we are training as individuals are getting licenses and certified for all of this and those types of issues and they need to make sure their home is set for.

Councilor Corran asked I am hoping you can provide a big picture orientation to how this fits in with the heated sprinkler conversation a few weeks ago and the building codes and just sort of give a picture of where this fits into that scheme of changes that are going to cause a big ruckus versus changes that are not going to cause a big ruckus, more or less?

Chief Jason Smith said no big ruckus. The discussion we had a couple of weeks ago in the Work Session was based off of the International Residential Code where the ICC has the requirement for one- or two-family homes and town houses to have sprinklers. The fire code gives us more of how we can change some of our other requirements when the entire subdivision has fire sprinklers installed in the home. So, things like having fewer access roads or smaller streets or longer spacing in between fire hydrants. The IFC tells us how we can apply that. The residential code says here is the requirement for fire sprinklers so this code update shouldn't cause a ruckus with that discussion.

Councilor Corran asked thank you, so they are not nearly related, kind of related but that is still simmering?

Chief Jason Smith said it's like cousins.

Councilor Gandara said I wanted you to go back I think it was the food trucks with the hood. Tell me, have we put that out? Do people know what is the general feeling about hoods because they can be costly? Are we going to give people some time to do that? What are the specifics on the food truck hoods?

Chief Jason Smith said I will speak first on my observation of our Prevention Bureau, I don't perform the food truck inspections but I do see the customers come in and see our personnel talking with them. I know they have been mentioning it to them, some of the food trucks that have been coming in with certain designs for hood systems already so we are putting that information out there. I believe we do an annual inspection on food trucks that serve within the city. We are working with them. I

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believe we are looking at the phase in in March.

Michael Mandavaso, Fire Marshall said we get a lot of people coming in that want to start food trucks and they ask us what do I need to do? And we are advising them of this change that is coming and that they are going to need to have a suppression system and the ones that do come in for inspection we tell them as well. Correct me if I am wrong but this is going to go into effect on March 30th. So were looking at a six-month grace period from that point. This is adopted by the state so it is not something that we can take out if we do adopt the 2021.

Councilor Gandara asked will you be sending letters out to registered businesses?

Michael Mandavaso said that is a good idea. That is something we can do.

Councilor Gandara said I would like to see that happen because even though people are coming in maybe asking and putting out the information still there is people who don't really read the water bill, you know all the other things that we hear more regularly when we are trying to give notices so maybe a letter to the registered businesses that have food trucks would be another addition.

Michael Mandavaso said sure, I think that would be a great idea.

**Councilor Tessa Abeyta moved, seconded by Councilor Becky Corran, to Approve Ordinance No. 3052.**

|                  |                                                                                                                                                        |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>Carried</b>                                                                                                                                         |
| <b>MOVER:</b>    | Councilor Tessa Abeyta                                                                                                                                 |
| <b>SECONDER:</b> | Councilor Becky Corran                                                                                                                                 |
| <b>AYES:</b>     | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Becky Corran, and Councilor Yvonne Flores |
| <b>ABSENT:</b>   | Councilor Johana Bencomo                                                                                                                               |

## 9. BOARD APPOINTMENTS

### 9.1 SUSAN POLKA

**Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to Appoint Susan Polka to the City Art Board.**

|                  |                                                                                                                                                        |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>Carried</b>                                                                                                                                         |
| <b>MOVER:</b>    | Councilor Becki Graham                                                                                                                                 |
| <b>SECONDER:</b> | Councilor Yvonne Flores                                                                                                                                |
| <b>AYES:</b>     | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Becky Corran, and Councilor Yvonne Flores |
| <b>ABSENT:</b>   | Councilor Johana Bencomo                                                                                                                               |

## 10. NOTICE OF PROPOSED ORDINANCE(S)

- 1) There will be no public discussion.
- 2) A Councilor may ask staff for clarification on the proposed ordinance(s).

### 10.1 COUNCIL BILL NO. 24-011; ORDINANCE NO. 3053: AN ORDINANCE



**APPROVING A ZONE CHANGE FROM R-4 (MULTI-DWELLING HIGH DENSITY – LIMITED RETAIL AND OFFICE) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR A PROPERTY ENCOMPASSING 0.812 + ACRES AND LOCATED AT 6281 REYNOLDS DRIVE. SUBMITTED BY GABRIEL ORTIZ, REPRESENTATIVE. (23ZO0500124).**

Council agreed to bring it forward.

**10.2 COUNCIL BILL NO. 24-012; ORDINANCE NO. 3054: AN ORDINANCE AMENDING ORDINANCE NO. 3028, UPDATING THE PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., TO ADD AN ADDITIONAL \$2,800,000 TO GO TOWARDS RENOVATIONS OF MULTIPLE FACILITIES.**

Council agreed to bring it forward.

## **11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT**

### **11.1 MAYOR MIYAGISHIMA**

I go every year of course to the Christmas Tree Lighting and this year it was really packed. It was a great job. I understand that every department I contributed from Economic Development to Community Development and of course Parks and Rec. They all did a great job helping out and I also got a little plaque with a little light switch, which was pretty cool. I was not expecting that. I just want to tell you thanks.

### **11.2 COUNCILOR GANDARA**

Wishing everybody Happy Holidays. I appreciate being on this council and all the Mayor and Council. I will be missing next week's meeting. I have some family duties to attend to with my mom and I know those who have been following understand that I have to be pulled away, but I think you will understand.

### **11.3 COUNCILOR FLORES**

None.

### **11.4 COUNCILOR CORRAN**

I also want to echo the Christmas Tree Lighting. I had never been so for me it was very exciting and cool to see everyone there. There were huge lines of people drinking cocoa and playing in the fake snow and it was really fun and really incredibly fun and well put together so thank you for everyone who contributed and made it happen and made it so successful.

I do have note that the TSI PRC meeting is tomorrow at 8:30 and we are going to hear about something that was sort of mentioned earlier bus shelters and model for approaching potentially adding bus shelters.

I will miss the December 18th meeting because of a health-related issue that I could not get any other time scheduled for so I just wanted to say that I will be missing it, and I will be sad to miss it.

### **11.5 COUNCILOR GRAHAM**

I love a good public service announcement, so I am thinking about this whole permit thing. I think it is good when they rhyme. "Before you build it, permit". In actual news

please join me and members of our brilliant Parks and Recreation Department and whoever else will be there supporting Catrina this Thursday, December 7th we will be having some community listening and info gathering for our replacement and improvement of Valley View Park. We are going to start out at the park at 4:30 p.m., 750 South Espina. If you're someone that doesn't have trouble visualizing you can join us at Munson Senior Center, 975 South Mesquite around 5 o'clock and that is where we will have our conversation and see what we can do with this space.

**11.6 COUNCILOR ABEYTA**

I actually have a request, I don't ask for much and I only have one more meeting to ask for anything, but I did want to bring up the fact that today we did look and approve items for that capital outlay, and I was one of the councilors that went up last year and really advocated very strongly for different things. One of the areas I did for was for Tony Gomez Park and for that first phase of the fix and revitalization and so my request was that I hope this council will be generous and thinking about that area and the allocation for that first phase. I know that it is really important to the people in that community to see the revitalization. It is going to work a lot on that parking area which if you have ever been in that it's really hard to even get in. The parking does need a lot of adjustments. So, I hope that can be continued.

**12. CITY MANAGER REPORT**

**12.1 IFO PILI**

The only other update I got from Parks and Rec via Ikani, Keep Las Cruces Beautiful Program recently hosted a Neighborhood Dumpster Day on Saturday, November 18th at three convenient locations throughout the city. Residents dropped off over two tons of trash and continue beautifying their neighborhoods by utilizing these commercial roll offs on these designated days. Our next Dumpster Day is Saturday, December 9th from 8 a.m. to 12 p.m. and containers will be available at Henry Benavidez Center and Paz Park Baseball Field parking lot.

**13. ADJOURNMENT**

**13.1**

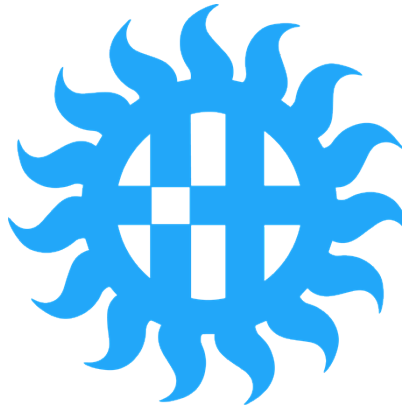
**Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to adjourn at 3:14 p.m.**

|                  |                                                                                                                                                        |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>Carried</b>                                                                                                                                         |
| <b>MOVER:</b>    | Councilor Tessa Abeyta                                                                                                                                 |
| <b>SECONDER:</b> | Councilor Becki Graham                                                                                                                                 |
| <b>AYES:</b>     | Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Becky Corran, and Councilor Yvonne Flores |
| <b>ABSENT:</b>   | Councilor Johana Bencomo                                                                                                                               |

\_\_\_\_\_  
Mayor

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City Clerk



**MINUTES**  
**Work Session**  
**Monday, December 11, 2023 @ 1:00 PM**  
City Council Chambers, City Hall

**PRESENT:** Mayor Ken Miyagishima, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran

**ABSENT:** Councilor Kasandra Gandara and Councilor Tessa Abeyta

**1. PETS OF THE WEEK**

**1.1.**

Amy Defelix presented Pets of the Week.

**2. JOBS OF THE WEEK**

**2.1.**

Sarah Raney presented Jobs of the Week.

**3. AGENDA ITEM**

**3.1. VISIT LAS CRUCES UPDATE.**

Rochelle Miller-Hernandez, Executive Director gave an overhead presentation.

Albert Herrera, Director of Sales continued overhead presentation.

Rochelle Miller-Hernandez continued overhead presentation.

Lorena Lozano, Director of Marketing continued overhead presentation.

Rochelle Miller-Hernandez continued overhead presentation.

### Agenda Item #6.3.

Councilor Flores said I was looking quickly through this because it does say “the lay of the land” and The Treaty of Guadalupe Hildago was mentioned. What isn’t mentioned is how this part of New Mexico was the last hold-out before it became part of the United States. New Mexico didn’t become a state until 1912 along with Arizona. Thank you so much for having the Real New Mexico. I hope you sent a t-shirt of ours to our Governor and to the New Mexico True.

Rochelle Miller-Hernandez said they are very aware of our branding Councilor, thank you.

Councilor Flores said well wonderful, I’m so happy to hear that.

Rochelle Miller-Hernandez said I called them before we launched and actually we’ve been told it’s pretty great.

Councilor Flores said well happy to hear that. Also Jeff Steinborn was hear at our last meeting and did bring us up to speed on how wonderful that outdoor thing has been. Thank you so very much all of you, it’s been wonderful working with you.

Councilor Bencomo said I just wanted to say congratulations to you and your team. I think too often we’re having conversations up here about the challenges Las Cruces is facing and not enough about celebrating all the incredible, beautiful, powerful things happening in the City and a lot of that is because of your team. I just wanted to say thank you and congratulations.

Mayor Miyagishima said I just want to also echo that. I know you won’t be here next week but nonetheless I want to thank you all for all the great work that you’ve done. You’ve really stepped up and really made it a lot more visible than how it was before the old Convention and Visitor’s Bureau so good job and continued great success.

Councilor Flores said I think I’ve mentioned this to you before. There are airports throughout the country that show different places in the United States to travel to and there’s just a short little video that just shows. Is that something maybe we can do one day?

Rochelle Miller-Hernandez said for Mira Las Cruces and The Film Fest we did have advertising in the Tucson Airport, and we currently have, when you go down the escalator we have an ad in El Paso, we also have a static ad when you pick-up your luggage because not everyone going through El Paso lives in El Paso, they’re visiting El Paso. I believe the message is “Less than an hour away is the Real New Mexico” or something similar to that. Advertising for airports are very expensive. New Mexico True does highlight our area in some of their ads and I’ve seen those in Dallas and Denver and they’re now moving into the San Francisco Bay area. Thank you Mayor, we’ll greatly miss you, good luck on your future endeavors. I know we’ll be seeing you around.

### **3.2. GO BOND PROJECTS - OVERALL UPDATE**

Tony Trevino, Deputy Director of Public Works gave an overhead presentation.

Natalie Green, Housing & Neighborhood Services Manager continued overhead presentation.

Councilor Bencomo asked on the East Mesa Recreational Facility do you foresee a Phase 3 to be needed or do you think this will wrap up the completion of that park?

Tony Trevino said no this is just a portion of it. Sreedevi has put together a kind of cost estimate to do the full build out and I think that is still about \$20 million without incurring costs.

Councilor Flores asked when do you project the East Mesa Recreational Complex to be finished?

Tony Trevino said finished is a hard question but once this current phase is done we can open it to the public with our existing facilities. The two baseball/softball fields, the soccer and pickleball. As soon as they get this construction away right now, we can safely have public go in and enjoy the facilities.

Councilor Flores asked and then the entire is just? That design, that whole dream we will still be pursuing that?

Tony Trevino said we are still pursue that heavily until we get that entire complex complete.

Councilor Flores said it will probably be another 5 years.

Tony Trevino said I hope not.

### **3.3. AN UPDATE FROM 828 PRODUCTIONS.**

Chris Faivre, Deputy Director Economic Development introduced topic.

Todd Lundbohm, CEO of 828 Productions gave an overhead presentation.

Robert Dean, Head of Operations continued overhead presentation.

Todd Lundbohm continued overhead presentation.

Jon Sepp, Manager of Operations & Public Affairs continued overhead presentation.

Todd Lundbohm continued overhead presentation.

Robert Dean continued overhead presentation.

Mayor Miyagishima asked let me just ask you something as far as the renovations that you all are doing, have you all had a chance to work with our Community Development Office? I'm going to guess that your area falls within the infill area which

### Agenda Item #6.3.

gives you a lot more benefits, they waive certain fees, certain building permits, and stuff like that. Have you had a chance to work with them yet on it?

John Sepp said yes we have been working very closely with Larry and his office, more so recently with the property at 106 S. Miranda and going through the infill development process to get the land uses for our needs and that area going. They've been wonderful to work with and that process it went really well, I'm really excited to be embraced by the neighborhood in addition to that. Having Larry's guidance and his teams guidance helping us walk through that process as well as giving us those tidbits of advice of make sure to work with the community you're in, keep them educated. I'm finding that I get texts constantly from people helping us secure the area. Letting us know when we have break-ins. We have really good security around there with our security cameras, but the neighborhood is an additional layer to that. We're excited to work with Larry and the City staff going further with rest of the properties we have in Las Cruces.

Councilor Bencomo said I also just wanted to thank you for your attention around working with like home grown folks, Sandra helped me buy my first house and now she's helping you buy these incredible properties. I do want to thank you the work you've done with the Alameda neighborhood and really integrating yourself into their meetings and just being a really good neighbor. I think that means a lot to them for a neighborhood they really care about. I just really wanted to thank you all for the intention behind those relationships that you're building locally.

Councilor Flores said I just want to say thank you Jon, you started out with this several years ago and there were some bumps in the road. I'm just really happy you stayed. Thank you so much and thank you gentleman, I'm so happy that you're here. You're in an area where I've looked at that we could have housing there. This is even better, we still need housing but insofar as generating all this work and all this aspiration. I think that's what New Mexico needs, we need.

Mayor Miyagishima asked how many studios are there in New Mexico just approximately?

Jon Sepp said there are about 7 different facilities with varying amounts of actual soundstages in New Mexico; Albuquerque Studios, I25, Fulcrum, NBC/Universal, Albuquerque Journal has a stage in Albuquerque, Santa Fe Studios, and there's a couple more.

Mayor Miyagishima said I too appreciate you all, your investment in purchasing the studios or working to build. Do you know of those 7 that you mentioned are some just renting it or are they actually buying it as you all have done?

Jon Sepp said the majority of those studios I just mentioned are primarily purchased. One thing to note Netflix Studios are for Netflix only productions and same thing with NBC/Universal. One of the things that you're seeing with Albuquerque Studios being taken offline by Netflix, is an increasing need for soundstage space. That's also one of the reasons why we are focusing our immediate attention on the 30 thousand square

## Agenda Item #6.3.

foot retrofit because we're seeing the interest on it daily for soundstage space. There's no soundstage space available in New Mexico at the moment, same thing with backlot space.

Mayor Miyagishima said the reason why I bring this up is and you may be aware of this, recently the Chair of the Senate Finance Committee looks like it has gotten some traction here, it wants to look at some of the incentives going to the Film Industry. They want to know if the ROI is good. All I was going to suggest is to make sure they know when you all are doing what you're doing the City also benefits from the tax rolls you put on there. As well as I think

Councilor Bencomo mentioned about someone who helped you do the financing that money you're paying to the financial institution, I don't know if it's New Mexico hopefully it stays here and that also helps build jobs as well. That's all I'm going to say, I'll be reaching out to the Chairman and let him know I'm supportive of this. I think if there is going to be able to help those that are investing, I know you all stuck your neck out and you did a lot I think it's important that the State still has your back basically. That is one of the things I'll convey to the Chairman. I was just curious if you all knew that there looking at doing an audit. I think right now it's a \$100 million that the State gives and it's looking like to go up double in the next few years. They want to make sure their return on investment is good and I just thought to be sure to put about the taxes and all the other stuff. That even though you're bringing in money you're also buying business as well and that's a huge return for us.

Jon Sepp said on that note I would like to mention something that my co-worker Chris Shepard and I have recently started working on, we've been following with those committee meetings over the last six months pretty intensely and we are actually taking the notes that those committee members are asking on the type of ROI they would like to see and the way they would like that laid out. Internally we're actually preparing our Economic Impact Data to reflect what the committees are looking for and what EDD will look to put together the next year so our internal reporting will be directly in line with what the State is looking to see.

Mayor Miyagishima said very good. One last thing, I am glad to see what you all are doing trust me. Are you all familiar with Sawmill District in Albuquerque? If you look at one of my State of the City addresses I mention 3 things. I mention the land across from MountainView, I also mention the El Paseo corridor and I kind of danced around that area where you're at because I wanted to do that something similar to Sawmill, how you have that cotton gin so that was going to be the Cotton Gin District. When the Governor announced you all were bringing this studio here, I thought oh well there goes that, but hey good for you, this is going to be great. This is really a great investment in the City. You should be proud of all that you've done to make it move, this is going to be really cool.

## 4. ADJOURNMENT

### 4.1.

**Councilor Johana Bencomo moved, seconded by Councilor Yvonne Flores, to Adjourn at 2:52 p.m.**



Agenda Item #6.3.

|                  |                                                                                                                              |
|------------------|------------------------------------------------------------------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>Carried</b>                                                                                                               |
| <b>MOVER:</b>    | Councilor Johana Bencomo                                                                                                     |
| <b>SECONDER:</b> | Councilor Yvonne Flores                                                                                                      |
| <b>AYES:</b>     | Mayor Ken Miyagishima, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran |
| <b>ABSENT:</b>   | Councilor Kasandra Gandara and Councilor Tessa Abeyta                                                                        |

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



24-071

# City Council Action and Executive Summary

Type of Action:  
☒ Resolution  
☐ Ordinance  
☐ TIDD Resolution

|              |                                                                                                                                                                                                                                                                                                             |                   |                      |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|----------------------|
| District:    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> N/A                                                                                                   |                   |                      |
| 1st Reading: | Adopted: January 2, 2024                                                                                                                                                                                                                                                                                    |                   |                      |
| Drafter:     | David Vielma                                                                                                                                                                                                                                                                                                | Department:       | Economic Development |
| Program:     | Land Management                                                                                                                                                                                                                                                                                             | Line of Business: | Land Management      |
| Title:       | A RESOLUTION APPROVING THE PURCHASE OF 211 SQUARE FEET PORTION OF LAND OWNED BY ROGER CISNEROS AT 1108 W. PICACHO AVENUE IN THE AMOUNT OF THREE THOUSAND NINE HUNDRED DOLLARS (\$3,900.00). AS PART OF 4TH STREET/US 70 (PICACHO AVENUE) PEDESTRIAN CROSSING H.A.W.K SIGNAL CONTROL NO. HW2L100518 PROJECT. |                   |                      |

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

**PURPOSE(S) OF ACTION:**  
To approve the purchase of real property by the the City of Las Cruces.

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**  
On November 18, 2019, City Council approved Resolution 20-060, which amended the City's Capital Improvement Program (CIP) for Fiscal Year 2020 through Year 2025. This includes the Pedestrian Crossing H.A.W.K Signal Control Systems, as a project listed on the CIP, with land acquisition for right-of-way on 4th Street and US 70 - Picacho Avenue.

The City needs to acquire approximately 211 square feet of land from Roger Cisneros, as shown on Exhibit "A", of the Real Estate Purchase Agreement at 1108 W. Picacho Avenue. The fair market value of the land to be acquired was determined to be \$3,900.00. This price was based on an examination of commercial lot sales of similar size, as well as a formal appraisal of a commercial lot that occurred near the project area. In accordance with Municipal Code 2-1313(1), the City is authorized to purchase real property under \$10,000.00 without a formal appraisal. A written opinion of the estimated land value from Real Estate Services staff is shown as Attachment "A". The negotiated purchase price is \$3,900.00.

In addition to the land acquisition of the parcel of land and included as part of the negotiated agreement with the property owner, the City of Las Cruces agrees to replace any site improvements that will be displaced or damaged by the project.

Acquiring the right-of-way will allow for improved safety for pedestrian crossing of Picacho Avenue, and will include pedestrian signal lights, signage, ADA sidewalk, accessibility ramps, new curbs, and gutters.

**SUPPORT INFORMATION:**  
[Exhibit "A" Real Estate Purchase Agreement](#)  
[Attachment "A" Waiver of Formal Appraisal Statement of Value](#)

**PLAN(S):**

Elevate Las Cruces

**COMMITTEE/BOARD REVIEW:**

None

**DOES THIS AMEND THE BUDGET?:**

☐ Yes

☒ No

**BUDGET / FISCAL IMPACT:**

**BUDGETED AMOUNT:**

\$59,805.00

**AVAILABLE AMOUNT:**

\$49,055.49

**EXPENDITURE AMOUNT:**

\$3,900.00

**Funding Source(s):**

4202-40255008-802000-12081

**Does this action amend the Capital Improvement Plan (CIP)?**

☐ Yes

☒ No

**Does this action align with Elevate Las Cruces?**

☒ Yes

☐ No

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this approve the resolution and authorize the purchase of real estate between the City and Roger Cisneros.
2. Vote "No"; this will not approve the Resolution and rejects the land purchase. This action could also cause project delays.
3. Vote to "Amend"; this action could modify the terms of the Resolution and requires instruction staff to seek alternative direction.
4. Vote to "Table"; this action could postpone the Resolution per the Council's discretion to staff.

**REFERENCE INFORMATION:**

Resolution 20-060

**RESOLUTION 24-071**

**A RESOLUTION APPROVING THE PURCHASE OF 211 SQUARE FEET PORTION OF LAND OWNED BY ROGER CISNEROS AT 1108 W. PICACHO AVENUE IN THE AMOUNT OF THREE THOUSAND NINE HUNDRED DOLLARS (\$3,900.00). AS PART OF 4TH STREET/US 70 (PICACHO AVENUE) PEDESTRIAN CROSSING H.A.W.K SIGNAL CONTROL NO. HW2L100518 PROJECT.**

The City Council is informed that:

**WHEREAS**, on November 18, 2019, City Council approved Resolution 20-060, which amended the City's Capital Improvements Program (CIP) for Fiscal Year 2020 through Year 2025; and

**WHEREAS**, Picacho Avenue H.A.W.K. signal control system project, which includes land acquisition for the right of way from 1108 W. Picacho Avenue, and is a project on the CIP; and

**WHEREAS**, the City needs to acquire approximately 211 square feet from parcel of land for the project; and

**WHEREAS**, in accordance with Municipal Code 2-1313(1), the City is authorized to purchase real property under \$10,000.00 without a formal appraisal; and

**WHEREAS**, the negotiated fair market value of the land being acquired was determined to be \$3,900.00 based on an examination of commercial lot sale of similar size, as well as a formal appraisal of a commercial lot that have occurred in the project area; and

**WHEREAS**, a written opinion of estimated land value from Real Estate Services staff is shown as Attachment "A" and incorporated herein; and

**WHEREAS**, negotiated purchase price is \$3,900.00; and

**WHEREAS**, in addition to the land acquisition which includes as part of the negotiated agreement with the property owner, the City of Las Cruces agrees to replace any site improvements that will be displaced or damaged by the project; and

**WHEREAS**, acquiring the right of way allows for improved safety for pedestrian crossing of Picacho Avenue, and will include pedestrian signal lights, signage, ADA sidewalk and accessibility ramps, new curbs and gutters.

**NOW, THEREFORE**, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

**THAT** the Real Estate Purchase Agreement as stated in Exhibit "A" between the City of Las Cruces and Roger Cisneros, is hereby approved.

(II)

**THAT** the City Manager is hereby authorized to execute the agreement and any other documents necessary to finalize the exchange on behalf of the City.

Agenda Item #7.1.

(III)

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this    day of

APPROVED

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

**Moved by:**

**Seconded by:**

**AYES**

**NAYS**

## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT is entered into on this 28<sup>th</sup> day of June, 2023, between the **City of Las Cruces**, a New Mexico municipal corporation ("City") and **Roger Cisneros** ("**Cisneros**"), whose address is the real property described and depicted on Exhibit "A" attached hereto.

Cisneros, in consideration of the mutual covenants herein contained, agrees to sell and convey, and the City agrees to purchase 211 square feet of land ("Property") together with all improvements thereon, if any, and all rights, hereditaments, easements and appurtenances thereunto belonging, located in the County of Dona Ana, State of New Mexico described on Plat of Survey being Lots 23 and 24, Block 9 of Palmers Subdivision filed February 7, 1912 more particularly described on Exhibits "A", which is attached for reference purposes for this Agreement and not to be used for conveyance of property. Upon City Council approval, Roger Cisneros agrees to grant 211 square feet of land to the City (hereinafter called the Property) to the City.

### TERMS AND CONDITIONS

1. **Purchase Price.**

a) The purchase price for the Property shall be Three Thousand Nine Hundred and No Cents (\$3,900.00) , payable in cash or equivalent upon conveyance of the property, for a total purchase price of \$3,900.00 .

2. **Property Conveyance.**

a) Cisneros shall execute and deliver a Warranty Deed conveying the Property to the City after City Council approval, of the resolution authorizing the purchase pursuant to Municipal Code Section 2-1312 et. seq.

b) The City agrees to repair and/or replace any improvements damaged during the installation and improvement of Pedestrian Crossing H.A.W.K. Signal Control No: HW2L100518 by the City or its contractor(s) upon the project site. City or its contractor (s) shall acquire 211 square feet for installation of the H.A.W.K signal devices including lighting, signing, striping, advance warning signs, signal interconnect and A.D.A. ramp modification for a Pedestrian Crossing H.A.W.K. Signal Control No: HW2L100518.

c) The proposed project will install a High-Intensity Activated Crosswalk (H.A.W.K) signal device on US 70 (W. Picacho Avenue) at 4<sup>th</sup> Street at an existing mid-block crossing. The proposed H.A.W.K signal device will compliment a proposed trail system crossing on US Highway 70 (Picacho Ave.). City is looking to install signal post, post foundation signage of ADA ramp for pedestrian crossing withing the proposed right-of-way.

3. **Risk of Loss.**

All risk of loss or damage to the Property will pass from the Roger Cisneros to the City at the time of filing of the Warranty Deed.

4. **Costs and Fees.**

The City shall be responsible for the cost of recording the Warranty Deed in the records of Doña Ana County.

5. **Possession of Property.**

Possession of the Property will be released to the City upon filing of the Warranty Deed.

6. **Governing Laws.**

This Agreement shall be subject to the laws of the State of New Mexico.

7. **Counterparts.**

This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement, which shall be binding on all the parties.

8. **Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by certified mail, to the City of Las Cruces, ATTN: Catherine Duarte, Real Estate Services Specialist, Sr. P.O. Box 20000, Las Cruces, NM 88004; and to Roger Cisneros whose address is 1108 W. Picacho, Las Cruces, NM 88005 the real property described and depicted on Exhibit "A" attached hereto, or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.



**Done and approved on the date first written above.**

CITY OF LAS CRUCES

\_\_\_\_\_  
Ifo Pili, City Manager

OWNER

\_\_\_\_\_  
Roger Cisneros

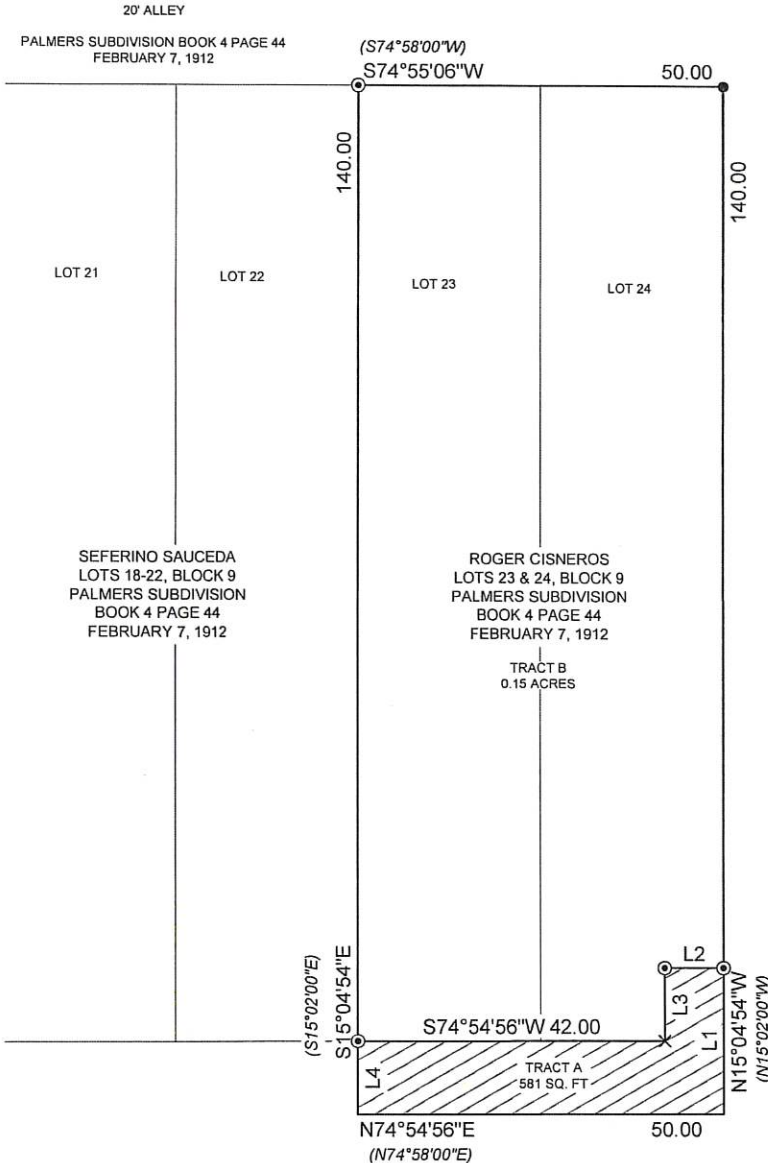
6/28/2023

APPROVED AS TO FORM:

\_\_\_\_\_  
Jocelyn Garrison, Acting City Attorney

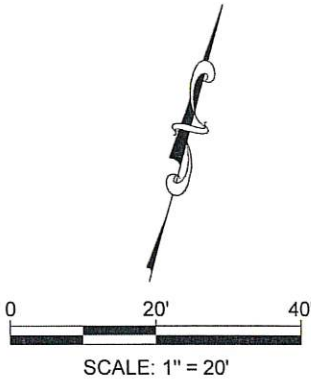
# PLAT OF SURVEY

BEING LOTS 23 AND 24, BLOCK 9  
PALMERS SUBDIVISION AS FILED FEBRUARY 7, 1912  
IN PLAT BOOK 4 PAGE 44 OF THE DOÑA ANA COUNTY RECORDS  
LOCATED WITHIN SECTION 13, T.23S., R.1E.E, N.M.P.M OF THE U.S.R.S. SURVEYS  
CITY OF LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO  
JULY 2022



**FOURTH STREET**  
RIGHT OF WAY 60'  
PALMERS SUBDIVISION (BOOK 4 PAGE 44)

| LINE TABLE |                |          |
|------------|----------------|----------|
| LINE       | BEARING        | DISTANCE |
| L1         | N15° 04' 54\"W | 20.00    |
| L2         | S74° 55' 06\"W | 8.00     |
| L3         | S15° 05' 04\"E | 10.00    |
| L4         | S15° 05' 04\"E | 10.00    |



## US HIGHWAY 70

RIGHT OF WAY (VARIES)-NH-070-2(22)145

- LEGEND**
- ⊙ SET 1/2" REBAR WITH 2" ALUMINUM CAP STAMPED "CITY OF LAS CRUCES NMPS 26832"
  - ✕ SET A CHISELED "X" IN CONCRETE
  - FOUND 1/2" REBAR WITH PLASTIC CAP NMPS 8172 (DONAHUE) TAGGED WITH WASHES STAMPED NMPS26832

**SURVEYOR'S STATEMENT**  
I, JESUS J. FAVELA JR., NEW MEXICO PROFESSIONAL SURVEYOR NO. 26832, DO HEREBY CERTIFY THAT THIS SURVEY AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS IS A SURVEY OF AN EXISTING TRACT OF LAND AND IS NOT A SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT.

*[Signature]* 1-20-23  
JESUS J. FAVELA JR., PS 26832 DATE  
700 N. MAIN STREET, CITY HALL, SUITE 2100  
LAS CRUCES, NEW MEXICO



- SURVEY NOTES:**
1. RECORD BEARINGS & DISTANCES SHOWN IN (PARENTHESIS)
  2. TRACT A WAS PURCHASED BY CITY OF LAS CRUCES FOR EXPANSION OF ROW ON US-70, DESCRIBED IN EXHIBIT A. REMAINDER PARCEL DESCRIBED IN EXHIBIT B
  3. UNIT OF MEASUREMENT IS INTERNATIONAL FEET
  4. **BASIS OF BEARING** - CLC, 5NOV19 GRID NORTH, A CITY OF LAS CRUCES LOW DISTORTION PROJECTION AND CO-ORDINATE SYSTEM.
  5. PROPERTY IS DESIGNATED AS FLOOD ZONE "X", AS SHOWN ON FLOOD INSURANCE RATE MAP 35013C1083G EFFECTIVE JULY 6, 2016
- REFERENCE DOCUMENTS**
- INSTRUMENTS OF OWNERSHIP AS NOTED ON THIS PLAT
- PALMERS SUBDIVISION AS NOTED ON THIS PLAT
- NMSHD MAP NH-070-2(22)145

|                                                                                                                                                                                                                                            |         |           |                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-----------|-----------------------|
|  <b>PUBLIC WORKS DEPARTMENT</b><br>CITY OF LAS CRUCES, NEW MEXICO  |         |           |                       |
| PROJECT TITLE HIGHWAY 70 (PICACHO AVE)-HAWK SYSTEM                                                                                                                                                                                         |         |           |                       |
| PROJECT NO. 22S003-PICACHO-4TH STREET                                                                                                                                                                                                      |         |           |                       |
| SCALE: 1" = 30'                                                                                                                                                                                                                            | DATE    | REVISIONS | SHEET<br>1<br>OF<br>1 |
| SURVEYOR: JESUS J. FAVELA JR., PS                                                                                                                                                                                                          |         |           |                       |
| DRAWN BY: JF                                                                                                                                                                                                                               | 1/20/23 |           |                       |
| CHECKED BY: MG                                                                                                                                                                                                                             | 1/20/23 |           |                       |

## Agenda Item #7.1.

### Exhibit A

Being a part of Lot 23 and Lot 24 of Block 9, Palmers Subdivision located in the City of Las Cruces, Doña Ana County, New Mexico as shown on the aforementioned plat filed at the office of the County Clerk of said county on February 7, 1912, and recorded in Book 4 Page 44, plat record and more particularly as follows:

BEGINNING at a point being the southwest corner of Lot 23, Block 9 of the aforementioned subdivision;

THENCE from the point of beginning along the North Right-of-Way line of US 70-80 NMSHD Map NH-070-2(22)145 (Picacho Avenue), N 74°54'56" E a distance of 50.00 feet to a point being the southeast corner of Lot 24, Block 9;

THENCE along the east line of Lot 24, Block 9, N 15°04'54" W a distance of 20.00 feet;

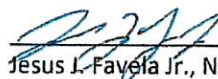
THENCE S74°55'06" W a distance of 8.00 feet to a set rebar with cap;

THENCE S15°04'54" E a distance of 10.00 feet to a chiseled X in concrete;

THENCE S74°55'06" W a distance of 42.00 feet to a set rebar with cap being on west line of Lot 23, Block 9;

THENCE along the west line of Lot 23, Block 9, S15°04'54" E a distance of 10.00 feet to the point of beginning. Being 581 square feet more or less, subject to any easements of record. All monuments set are ½" Rebar with 2" Aluminum Cap Stamped "City of Las Cruces NMPS 26832".

Description Prepared by Jesus J. Favela Jr., PS NMPS #26832

  
Jesus J. Favela Jr., NMPS 26832

1-20-23  
Date



Survey Project 22S003



## MEMORANDUM

**From:** Bill R. Hamm, Real Estate Administrator  
**Date:** April 19, 2023  
**Subject:** Waiver of Formal Appraisal & Statement of Value-4<sup>th</sup> Steet and Picacho Avenue – Roger Cisneros.

In accordance with Municipal Code 2-1313, the City may purchase real property under \$10,000 without a formal appraisal. A written explanation of the difference must be incorporated as part of the resolution. This memo represents that requirement written explanation.

The City needs to acquire an approximately 211 square foot parcel of land from Roger Cisneros as part of the 4<sup>th</sup> Street/US 70 (Picacho) Pedestrian Crossing H.A.W.K. Signal Control No: HW2L100518. Rather than absorbing the expense of a formal appraisal, staff negotiated a fair market value of the land based on an examination of recent sales transactions of comparable commercial lots. This data indicates land values ranging from approximately \$12.00 per square foot to \$23.40 per square foot. Based upon the location and physical characteristics of the Cisneros property, \$18.50 per square foot is concluded to represent fair market value of the land being acquired from the Cisneros property for the project.

The negotiated fair market value of the land being acquired and as agreed upon by staff and property owner was \$18.50 per square foot, or \$3,900.00, rounded.

Thank you.

A handwritten signature in blue ink, appearing to be "BH" or "Bill Hamm".

Bill R. Hamm, Real Estate Administrator



24-072

# City Council Action and Executive Summary

Type of Action:  
☒ Resolution  
☐ Ordinance  
☐ TIDD Resolution

|              |                                                                                                                                                                        |                                       |                                       |                                       |                                       |                                       |                              |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|------------------------------|
| District:    | <input checked="" type="checkbox"/> 1                                                                                                                                  | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 3 | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 6 | <input type="checkbox"/> N/A |
| 1st Reading: |                                                                                                                                                                        |                                       |                                       | Adopted:                              | January 2, 2024                       |                                       |                              |
| Drafter:     | Abner Gomez                                                                                                                                                            |                                       |                                       | Department:                           | Utilities                             |                                       |                              |
| Program:     | Rate & Economic Analysis                                                                                                                                               |                                       |                                       | Line of Business:                     | Business Services                     |                                       |                              |
| Title:       | A RESOLUTION COMMITTING THE LAS CRUCES UTILITIES DEPARTMENT TO THE DEVELOPMENT AND IMPLEMENTATION OF AN ASSET MANAGEMENT PLAN FOR WATER AND WASTEWATER INFRASTRUCTURE. |                                       |                                       |                                       |                                       |                                       |                              |

TYPE OF ACTION:    ☒ Administrative    ☐ Legislative    ☐ Quasi-Judicial

**PURPOSE(S) OF ACTION:**

The Water Trust Board requires City Council's approval to proceed with the development of an asset management plan, when the applicant does not have an existing plan.

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The Las Cruces Utilities ("Utilities") Board of Commissioners encourages the Utilities Department to continue to seek out funding sources for capital improvement projects in the form of grants and/or low-interest loans. An application was submitted to the Water Trust Board seeking funding for the rehabilitation of a water storage tank.

To ensure that the Water Trust Board's investments are protected and maintained for optimum longevity, applicants are required to submit, as part of the *Readiness Application*, asset management plans for the utility facilities for which funding is sought. The asset management plans must include core components such as the current state of the assets, the desired level of service, which assets are critical for sustained performance, the best life cycle cost, and a long-term funding strategy.

The Water Trust Board requires that if an applicant does not have an existing asset management plan, then City Council must pass a formal resolution expressing their commitment to develop an asset management plan relevant to the utility infrastructure for which funding is sought. The Utilities Department has master and specific infrastructure rehabilitation plans, but the asset management plan should be provided in a specific format. The Utilities Department commits to working with staff and any needed consultant(s) to develop an asset management plan to meet all requirements required by funding entities, including, but not limited to the Water Trust Board.

**PLAN(S):**

Department Strategic Business Plan

**COMMITTEE/BOARD REVIEW:**

None

Agenda Item #8.1.

**DOES THIS AMEND THE BUDGET?:**

☐ Yes

☒ No

**Does this action amend the Capital Improvement Plan (CIP)?**

☐ Yes

☒ No

**Does this action align with Elevate Las Cruces?**

☒ Yes

☐ No

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Resolution and commit the Las Cruces Utilities Department to the development and implementation of the water and wastewater asset management plan.
2. Vote "No"; this will not approve the Resolution and not commit the Las Cruces Utilities Department to the development and implementation of the water and wastewater asset management plan.
3. Vote to "Amend"; this will amend the Resolution to develop and implement an asset management plan and requires instruction from City Council as deemed appropriate.  
for water and wastewater infrastructure.
4. Vote to "Table"; this will table the Resolution and City Council may direct staff accordingly.



**RESOLUTION 24-072**

**A RESOLUTION COMMITTING THE LAS CRUCES UTILITIES DEPARTMENT TO THE DEVELOPMENT AND IMPLEMENTATION OF AN ASSET MANAGEMENT PLAN FOR WATER AND WASTEWATER INFRASTRUCTURE.**

The City Council is informed that:

**WHEREAS**, the Las Cruces Utilities ("Utilities") Board of Commissioners encourages the Utilities Department to continue to seek out funding sources for capital improvement projects in the form of grants and/or low-interest loans; and

**WHEREAS**, an application was submitted to the Water Trust Board seeking funding for the rehabilitation of a water storage tank; and

**WHEREAS**, to ensure that the Water Trust Board's investments are protected and maintained for optimum longevity, applicants are required to submit, as part of the Readiness Application, asset management plans for the utility infrastructure for which funding is sought; and

**WHEREAS**, the asset management plans must include core components, such as, current state of the assets, desired level of service, which assets are critical for sustained performance, the best life cycle cost, and a long-term funding strategy; and

**WHEREAS**, the Water Trust Board requires that if an applicant does not have an existing asset management plan, the governing body must pass a formal resolution expressing their commitment to develop an asset management plan relevant to the utility infrastructure for which funding is sought; and

**WHEREAS**, the Utilities Department has master and specific infrastructure rehabilitation plans, but the asset management plan should be provided in a specific format; and

**WHEREAS**, the Utilities Department commits to working with staff and any needed consultant(s) to develop an asset management plan to meet all requirements required by funding entities, including, but not limited to the Water Trust Board.

**NOW, THEREFORE**, Be it Resolved by the Governing Body of the City of Las Cruces:

**(I)**

**THAT** the City of Las Cruces commits to developing an asset management plan for the water utility, to be managed by the Utilities Department.

**(II)**

**THAT** City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this day of

Agenda Item #8.1.

APPROVED

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

**Moved by:**

**Seconded by:**

**AYES**

**NAYS**





# City Council Action and Executive Summary

3055; Council  
Bill 24-013

Type of Action:  
☐ Resolution  
☒ Ordinance  
☐ TIDD Resolution

|              |                                                                                                                                                                                                                            |                   |                       |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------|
| District:    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> N/A                  |                   |                       |
| 1st Reading: | December 18, 2023                                                                                                                                                                                                          | Adopted:          | January 2, 2024       |
| Drafter:     | Vince Banegas                                                                                                                                                                                                              | Department:       | Community Development |
| Program:     | Community Planning                                                                                                                                                                                                         | Line of Business: | Community Planning    |
| Title:       | AN ORDINANCE APPROVING A ZONE CHANGE FROM EE (EQUESTRIAN ESTATE AND AGRICULTURE) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR PROPERTY LOCATED AT 780 STERN DRIVE. SUBMITTED BY TED SCANLON, BORDERLAND ENGINEERS AND SURVEYORS. |                   |                       |

TYPE OF ACTION:    ☐ Administrative    ☐ Legislative    ☒ Quasi-Judicial

**PURPOSE(S) OF ACTION:**

Zone change.

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The City Council is required to review and take final action on zone changes per Section 38-10.B.2.b. and 38-13.A. of the 2001 Las Cruces Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulation uniformly governs the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from EE (Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for property approximately 1.78 acres in size and located at 780 Stern Drive. The existing EE zone represents a district designation that allows the development of residential lots that maintain a semi-rural atmosphere (1-acre minimum lot size) and allow the keeping of large and small animals. In this instance, no more than one lot could be created and as such, staff believes that the EE zone was applied when rezoned (October 6, 2003) to supplement the land use buffer between the commercial land use/zoning (northwest) and single-family residential uses/zoning south and west of the subject property.

The subject property is currently vacant and the property owner wishes to convert the zoning to a commercial designation much like properties directly northwest of the subject location. In that there are no imminent plans for development, the property owner wishes to market the location with the proposed zoning in place so that any future development remains consistent with developed nonresidential properties in the vicinity.

If rezoning is approved, buffering will still be achieved via the A-2 (Agriculture District) property located at the northwest corner of Stern Drive and Boutz Road and the buffering that will be required when development pursuant to the 2001 Las Cruces Zoning Code, as amended takes place. Because of these circumstances, approving the zone change as proposed makes sense and maintains the protections the EE zone sought to provide.

The proposed zone change is consistent with the Elevate Las Cruces Comprehensive Plan and several goals, policies, and actions contained therein. Policy supporting the request speaks to balanced growth, promoting

## Agenda Item #8.2.

investment in older areas of the city through development, encouraging infill, economic equity, and entrepreneurship to name a few. Furthermore, the property is within the Suburban Neighborhood place type which encourages intermixed areas of residential and commercial uses.

On September 26, 2023, the case was heard by the Planning and Zoning Commission at their regular meeting. The zone change request had no opposition from area residents. Ultimately, the Planning and Zoning Commission voted 6-0-0 (one Commissioner absent) to approve the request with no conditions.

### **SUPPORT INFORMATION:**

[EXHIBIT "A" - Vicinity Map](#)

[EXHIBIT "B" - Findings](#)

[ATTACHMENT "A" - Approved 9.26.23 P Z Minutes](#)

[ATTACHMENT "B" - Staff Report](#)

### **PLAN(S):**

Elevate Las Cruces

### **COMMITTEE/BOARD REVIEW:**

P&Z

### **DOES THIS AMEND THE BUDGET?:**

☐ Yes

☒ No

### **Does this action amend the Capital Improvement Plan (CIP)?**

☐ Yes

☒ No

### **Does this action align with Elevate Las Cruces?**

☒ Yes

☐ No

### **OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 780 Stern Drive will be rezoned from EE (Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity).
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current zoning designation of EE will remain, requiring the property owner to seek an alternative zoning designation to aid in furtherance of the property owner's plans.
3. Vote to "Amend"; this would allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.
4. Vote to "Table"; this would allow the City Council to table/postpone the Ordinance and direct staff accordingly.

**ORDINANCE 3055; COUNCIL BILL 24-013**

**AN ORDINANCE APPROVING A ZONE CHANGE FROM EE (EQUESTRIAN ESTATE AND AGRICULTURE) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR PROPERTY LOCATED AT 780 STERN DRIVE. SUBMITTED BY TED SCANLON, BORDERLAND ENGINEERS AND SURVEYORS.**

The City Council is informed that:

**WHEREAS**, Mr. Ted Scanlon, Borderland Engineers and Surveyors, has submitted a request for a zone change from EE (Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity); and

**WHEREAS**, the subject property is approximately 1.78 acres in size, vacant, and has no imminent plans for development; and

**WHEREAS**, the proposed C-3 (Commercial High Intensity) zone is consistent with the Suburban Neighborhood place type per the Elevate Las Cruces Comprehensive Plan and is supported by various goals and policies contained therein; and

**WHEREAS**, the proposed zone change meets the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

**WHEREAS**, the Planning and Zoning Commission, after conducting a public hearing on September 26, 2023, recommended that the zone change request be approved by a vote of 6-0-0 (one Commissioner absent).

**NOW, THEREFORE**, Be it Ordained by the Governing Body of the City of Las Cruces:

**(I)**

**THAT** the land as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-3 (Commercial High Intensity).

**(II)**

**THAT** the zoning is based on the findings contained in Exhibit "B", attached hereto and made part of this Ordinance.

**(III)**

**THAT** the zoning of said property be shown accordingly on the City Zoning Atlas.

**(IV)**

**THAT** City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

**DONE AND APPROVED this** day of

APPROVED

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

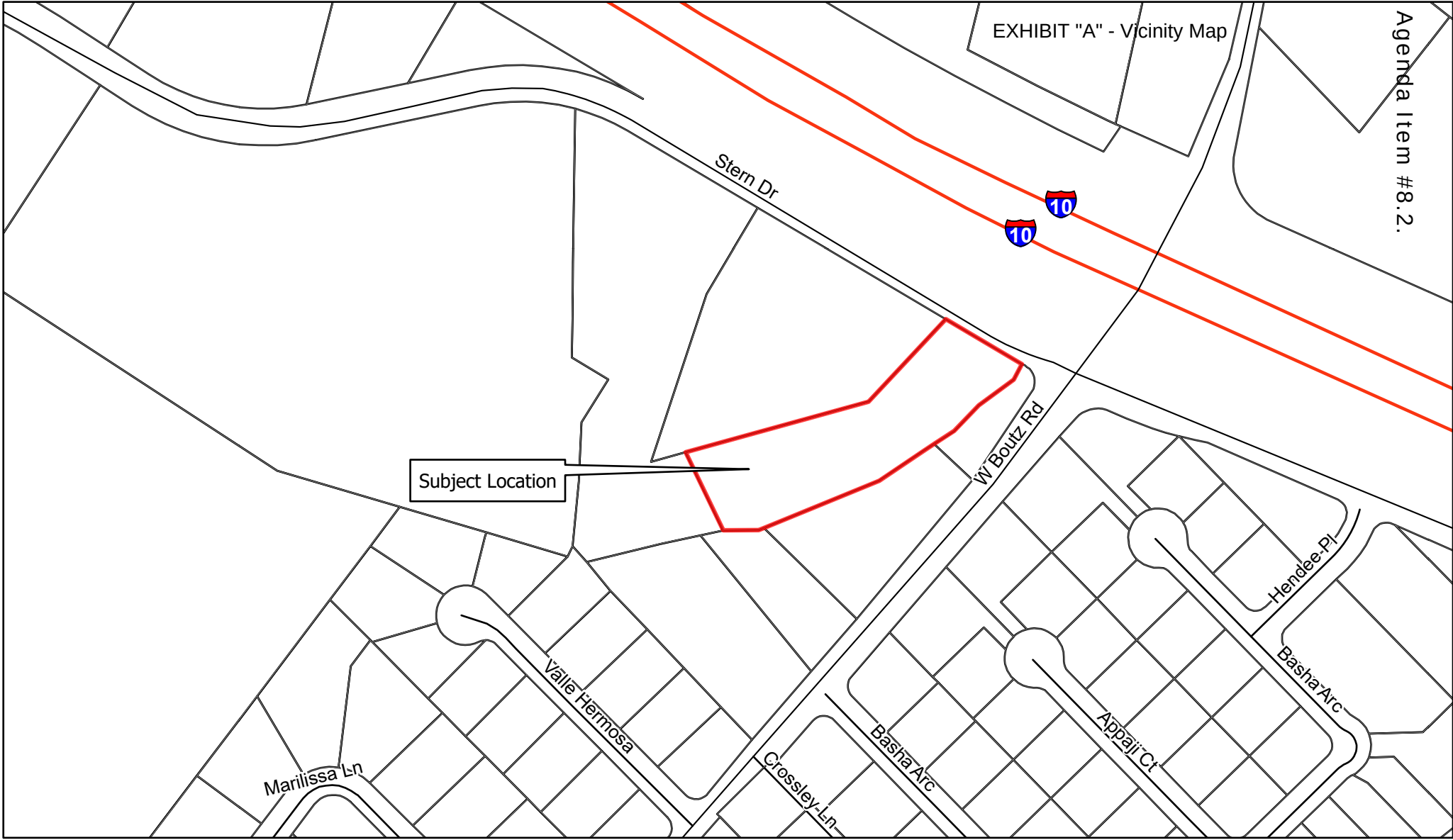
**Moved by:**

**Seconded by:**

**AYES**

**NAYS**

EXHIBIT "A" - Vicinity Map



Subject Location

Note: Subject property is outlined in red.

Legend

- parcel
- RoadCenterline
- Road Class
  - Freeway
  - Minor Arterial
  - Collector
  - Local Streets
- DAC\_Parcel
- Heather Hills Zoning



**FINDINGS**

1. The subject property is vacant and there are no imminent plans for development.
2. The subject property falls within the Suburban Neighborhood place type. This classification provides for low-to-moderate density residential land uses intermixed with areas of commercial development.
3. The request is consistent with what the Suburban Neighborhood place type provides.
4. Currently, land uses along Stern Drive from Avenida de Mesilla south to Boutz Road consist of residential (RV Park), office (Agricultural Dept. and a "spec" building), regional commercial/service (RV sales and service) and vacant land. No neighborhood commercial retail exists currently along that segment.
5. The northwest boundary for the Suburban Neighborhood place type is shared with the adjacent Regional Commercial place type.
6. The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).



**PLANNING AND ZONING COMMISSION  
FOR THE  
CITY OF LAS CRUCES  
City Council Chambers  
September 26, 2023 at 6:00 p.m.**

**BOARD MEMBERS PRESENT:**

- Scott Kaiser, Chair
- Enrico Smith, Vice-Chair
- James Bennett, Secretary
- Vanessa Vega, Member
- Joaquin Acosta, Member
- Connor Murray, Member

**BOARD MEMBERS ABSENT:**

- Vanessa Porter, Member

**STAFF PRESENT:**

- Tim Pitts, Deputy Director Building Development
- Adam Ochoa, Senior Planner/Building Inspection Supervisor
- Vincent Banegas, Interim Planner
- Brad Douglas, Deputy City Attorney
- Becky Baum, Recording Secretary, RC Creations, LLC

**1. CALL TO ORDER (6:00)**

Kaiser: All right. Good evening. It is 6:00 p.m. on September 26th and we will go ahead and call this meeting to order. It is the City of Las Cruces Planning and Zoning Commission meeting. Before we get started, we've got a couple of housekeeping items tonight. The first is I've been informed that I believe that big screen up there is out of order but we do have this smaller screen on either side of me so if you do want to move up or feel like you need to move up to be able to see the presentations tonight, I encourage you to do so.

The second item is I want to extend my thanks and gratitude to Commissioner Smith for covering last month while I was out. First month as Vice Chair and threw you into the deep end, and so I appreciate you covering for me and really did a great job. So thank you.

And then finally, if the rumors are true this is Commissioner Vega's final meeting with us here on the Commission. I speak for myself but certainly colleagues of up here, it's been a pleasure working with you the last year-

1 plus for myself, and certainly longer for others. And we wish you all the best  
2 and hope to see you around town.

3  
4 Vega: You will, on my bike.

5  
6 Kaiser: Sounds great. All right.

7  
8 **2. CONFLICT OF INTEREST**

9  
10 Kaiser: So with that we will go ahead. Are there any conflicts of interest from the  
11 Commission tonight? All right. Seeing none.

12  
13 **3. APPROVAL OF MINUTES – July 25, 2023**

14  
15 Kaiser: We'll go to the approval of minutes. Before we do that were there any  
16 corrections or edits that folks would like to make? I just have a couple just  
17 to clarify on the attendance. It should be Commissioner Bennett listed as  
18 the Secretary and Commissioner Smith listed as the Vice-Chair. So we can  
19 make those corrections and then looking for a motion to approve.

20  
21 Bennett: I make a motion to approve the minutes.

22  
23 Smith: I second.

24  
25 Baum: Board Member Acosta.

26  
27 Acosta: Yes.

28  
29 Baum: Board Member Smith.

30  
31 Smith: Yes.

32  
33 Baum: Board Member Vega.

34  
35 Vega: I abstain. I was not here.

36  
37 Baum: Board Member Bennett.

38  
39 Bennett: Yes.

40  
41 Baum: Board Member Murray.

42  
43 Murray: Yes.

44  
45 Baum: Chair Kaiser.



1 Kaiser: I abstain as I was absent.

2

3 Baum: Thank you. Passes.

4

5 **4. POSTPONEMENTS**

6

7 Kaiser: All right. Moving onto the acceptance of the agenda, or I actually should  
8 clarify there are no postponements tonight; is that correct?

9

10 Ochoa: Nothing tonight, sir. No.

11

12 **5. ACCEPTANCE OF THE AGENDA**

13

14 Kaiser: So go ahead and looking for a motion approve tonight's agenda?

15

16 Ochoa: I make a motion to approve tonight's agenda.

17

18 Murray: I second.

19

20 Baum: Board Member Acosta.

21

22 Acosta: Yes.

23

24 Baum: Board Member Smith.

25

26 Smith: Yes.

27

28 Baum: Board Member Vega.

29

30 Vega: Yes.

31

32 Baum: Board Member Bennett.

33

34 Bennett: Yes.

35

36 Baum: Board Member Murray.

37

38 Murray: Yes.

39

40 Baum: Chair Kaiser.

41

42 Kaiser: Yes.

43

44 Baum: Passes.

45

46 **6. PUBLIC PARTICIPATION**

1  
2 Kaiser: All right. Moving onto public participation. Is there anybody in the audience  
3 who wishes to speak on an item that is not on tonight's agenda? Please  
4 raise your hand. Okay. Seeing none.  
5

6 **7. CONSENT AGENDA**  
7

8 Kaiser: We will move onto the consent agenda in which we have three, yes, three  
9 items on the consent agenda. Can I get a motion to approve tonight's  
10 consent agenda?  
11

12 Vega: I make a motion to approve the consent agenda.  
13

14 Smith: I second.  
15

16 Baum: Board Member Acosta.  
17

18 Acosta: Yes.  
19

20 Baum: Board Member Smith.  
21

22 Smith: Yes.  
23

24 Baum: Board Member Vega.  
25

26 Vega: Yes.  
27

28 Baum: Board Member Bennett.  
29

30 Bennett: Yes.  
31

32 Baum: Board Member Murray.  
33

34 Murray: Yes.  
35

36 Baum: Chair Kaiser.  
37

38 Kaiser: Yes.  
39

40 Baum: Passes.  
41

42 **8. OLD BUSINESS**  
43

44 Kaiser: Okay. Moving on. We do not have any old business tonight.  
45

46 **9. NEW BUSINESS**

1  
2       **9.1   Case No. 22ZO0500085:** A zone change request from R-4 (Multi-Dwelling  
3       High Density and Limited Retail and Office) to C-3 (Commercial High  
4       Intensity) for a property located at 3250 Northrise Drive and encompassing  
5       2.5 acres in size. Submitted by Mark Heck, property owner. Council District  
6       6.

7  
8   Kaiser:       So we'll move onto new business and begin with item 9.1, A zone change  
9               request from R-4 to C-3 located at 3250 Northrise Drive. Staff, please take  
10              it away.

11  
12   Banegas:     Good evening, Commissioners. Vincent Banegas, Interim Planner for the  
13               record, presenting tonight's case involving 3250 Northrise Drive. It is a zone  
14               change request seeking zone change from R-4 to C-3. It is Case  
15               22ZO0500085.

16  
17               Current conditions on the case at hand, the zoning is R-4 which is our multi  
18               dwelling, high density and limited retail and office zone. Limited retail and  
19               office in the sense that there are perhaps more office uses than retail and  
20               retail home occupation that type of thing is allowed. But otherwise, it's well  
21               suited for the multi dwelling component of our land use spectrum. It is  
22               roughly 2.5 acres in size and it was rezoned from A-2 to R-4 back in 2014.

23  
24               The property is currently vacant and from a grading or elevation perspective  
25               it does sit lower than some of the properties around it. In fact to that end,  
26               there's some fill dirt being requested to help elevate the site so that it is  
27               more developable, easier to develop in that regard.

28  
29               It is one of several of 2.5 acre lots that were annexed back in the day with  
30               the East Mesa U.S. 70 annexation that took place in 1986. The A-2 zone  
31               was used quite extensively during that time. And for many of these parcels  
32               as a placeholder, if you will, in that future consideration, future development  
33               was going to be thought through and then a rezoning would be brought forth  
34               at that time. So there's still several that are A-2 in nature and that's what  
35               prompted the rezoning back in 2014 for this particular parcel.

36  
37               Many of the properties in question around the subject property and including  
38               the subject property were platted with access easements serving as a legal  
39               method to gain access to the property. But from a broader perspective  
40               doesn't provide any great surety in completing or providing for a suitable  
41               road network further south of Northrise.

42  
43               The property in question has approximately 35 feet of Northrise Drive  
44               frontage, barely enough to comply with the ingress/egress requirements of  
45               the code or design standards. The transportation issue going back to that  
46               because there is a general lack of roadway system south of Northrise, a

1 blueprint to address those type of issues is currently underway. In fact, the  
2 City has hired a consultant to aid in that effort and they are holding a  
3 meeting I believe tomorrow if I'm not mistaken. And the expected  
4 completion date is approximately four months from now, so end of year.

5  
6 The property currently sits in the suburban neighborhood place type and as  
7 we now know that supports low to moderate residential densities and allows  
8 pockets of commercial development. The property is directly south and  
9 west of the regional commercial neighborhood place type. In fact, the  
10 majority of that place type sits north of Northrise Drive and then does wrap  
11 around on the southwest corner of Rinconada Boulevard and Northrise.

12  
13 The current R-4 zoning helps address some of the housing related issues  
14 that we are well aware of through the planning efforts of late. Specifically,  
15 the missing middle housing that we are trying to fill the gap for, and also  
16 housing affordability. So those are a couple of the housing related issues  
17 that play a role in this current request.

18  
19 The surrounding neighborhood is multifamily residential both west and  
20 southwest, office and commercial, north, northeast and east and southeast,  
21 and vacant to the south of the subject property. The supporting zoning for  
22 those uses is an alphabet soup, as you can see there's PUD, R-4, EE, A-2,  
23 and so on. There's no immediate plans to develop the property. Certainly,  
24 none that were mentioned to staff.

25  
26 So here's a zoning map that shows the location of the subject parcel here.  
27 Northrise Drive sits here. And the property as shown is currently R-4. You  
28 do have EE which is our equestrian estates and agriculture zoning district  
29 allowing up to one dwelling unit on a minimum of a one-acre lot size. The  
30 other A-2 zone parcels kind of speak to that zoning effort back in the '80s  
31 and based on what I know from the efforts back then those are the  
32 placeholders.

33  
34 You do have some plethora of other uses up in here. Some vacant, some  
35 are developing right now but you have some office and commercial uses  
36 further west of the property along Roadrunner. And of course, you do have  
37 significant commercial uses beginning further east of the property along  
38 Northrise out towards Rinconada with Walmart, etc., taking place in that  
39 region.

40  
41 The aerial view of the subject property. You do have this area here which  
42 is not currently serviced, that's the area that is being referenced when I  
43 speak of lack of road network. Connectivity for any roadway from Northrise  
44 down to Calle Jitas intersection with Sonoma Ranch for instance once you  
45 get past that it's kind of no man's land. There is the school further south of  
46 subject property, an arroyo that separates some of the land in question.

1  
2 A lot of these parcels, these 2.5-acre parcels are individually owned and  
3 some have a grouping in terms of ownership. We refer to one as the tetras  
4 parcel which has a shape of a tetra's game piece and has multiple 2.5-acre  
5 lots assembled under a single ownership.  
6

7 So the proposal given is R-4 to C-3 speculative in nature. Speculative in  
8 the sense that that's a necessary step to get to market the property and  
9 ultimately develop the property. Staff is aware of that but the applicant has  
10 indicated that there's a need to change the zoning to commercial to help  
11 offset some of the costs that are associated with grading and making the  
12 parcel marketable and developable.  
13

14 This is a plat showing the parcel in question. It's a little hard to read but you  
15 see that small amount of frontage right along Northrise Drive which runs at  
16 this location here. And you do see some of the easements, road easement,  
17 in this case it looks to be a 33-foot road and utility easement here. A lot of  
18 those parcels have very similar easements identified.  
19

20 Some of the photos taken out on site. Here's the sign that's seeking clean  
21 fill to help elevate the parcel. There is a fairly significant drop depending  
22 where you stand from the top of surface here adjacent to Northrise Drive on  
23 down to the subject parcel. Another shot. And then looking at either  
24 direction both west and east along Northrise Drive and that's what these  
25 photos represent. A lot of vacant land or underdeveloped land.  
26

27 So in terms of analysis, there's no health, safety, or welfare issues that are  
28 identified by staff through the review process. However, we do consider the  
29 fact that the proposed zoning maybe compatible to some of the properties  
30 east of the subject location. What I'm referring to are some of the  
31 commercial properties there but again the regional commercial place type  
32 that starts looping down along Rinconada lends credence to that  
33 compatibility.  
34

35 Staff feels that allowing further intrusion, if you will, of the regional  
36 commercial or commercial uses I should say in an area that's already  
37 identified as a suburban place type kind of minimizes the importance of that  
38 suburban placed type and may provide added pressure for additional  
39 property owners to seek rezoning to a commercial designation. So staff  
40 feels that the areas north of Northrise Drive and east, south at the southwest  
41 corner of Rinconada and Northrise Drive already allow commercial and so  
42 limiting commercial to those areas is prudent.  
43

44 So the property is within that suburban place type. We do encourage a  
45 variety of residential development at low to moderate densities with areas  
46 of commercial as we have identified in previous cases. I've also stipulated

1 that the deficient road network is a concern and the planning effort  
2 underway at the present time will hopefully shed some light on how we can  
3 handle that for future development.

4  
5 The proposed zoning that is being requested in terms of the C-3 does allow  
6 residential densities. I don't want to lead you to believe that it will not. It  
7 does allow a minimum of 10 dwelling units per acre and up to 40 dwellings  
8 units per acre as well. So that can be done. The question is will it be done  
9 or will we see additional commercial development? Again, based on the  
10 grading issues and the information provide, staff would suspect that  
11 commercial would probably be a likely development scenario for that lot.

12  
13 In terms of public notice and input, notice was sent in accordance with the  
14 2001 Zoning Code as amended. And we really did not receive any feedback  
15 from property ownership within the 500 feet of the subject property.

16  
17 Staff recommendation and findings. This is going to be a little different than  
18 most cases that you hear. Staff is recommending denial based on the  
19 following findings. Property south of the subject property do not have  
20 adequate road network to service those properties. Many of the properties  
21 are platted with access easements which provide legal access but no surety  
22 of developing right-of-way and efficient connectivity.

23  
24 The CLC consultant is currently studying developing the blueprint in an area  
25 concentrating on transportation issues and needs. And that hasn't come to  
26 fruition yet so we feel rezoning is a little premature at this point given that.  
27 The property is in the suburban neighborhood place type. Again, low to  
28 moderate residential densities with supporting commercial.

29  
30 The regional commercial place type primarily takes place north of Northrise  
31 Drive, directly north of the subject property wrapping around to Rinconada  
32 and Northrise. And so commercial areas and opportunities for development  
33 already exist. The further introduction of commercial in this suburban  
34 neighborhood place type kind of minimizes its purpose, that's kind of how  
35 we feel. There's an ongoing need for apartments which the R-4 can satisfy  
36 addressing the missing middle and housing affordability.

37  
38 And so, we feel that the proposal is not substantially supported by Elevate  
39 Las Cruces Comprehensive Plan in that it doesn't meet the purpose and  
40 intent of the 2001 Las Cruces Zoning Code. The subject property is  
41 surrounded largely by commercial, office, multifamily, and vacant property,  
42 and zoned a variety of zoning designations. So a little different here in terms  
43 of options. Staff would recommend you vote in affirmative like you would  
44 any other case. But in this case if you vote yes, you're voting to approve  
45 the zone change to C-3 in which case the findings that I've already identified  
46 in the presentation you need to know do not support the request so you'd

1 have to identify findings of fact that are different from those I've just  
2 presented. If you vote no, then you deny the request and you can also vote  
3 yes amend with conditions, or you vote to table. And that concludes that  
4 presentations. And I stand for question. And I know the property owner's  
5 in attendance might want to say a few words regarding his request.  
6

7 Kaiser: All right. Well, before we come to the Commission, would the applicant,  
8 property owner wish to make a presentation or provide statements? Before  
9 you start can you state your name for the record so I can swear you in?

10  
11 Heck: Full name is John Mark Heck.

12  
13 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
14 truth and nothing but the truth under penalty of law?

15  
16 Heck: Yes.

17  
18 Kaiser: Okay. Please go ahead, sir.

19  
20 Heck: Good afternoon. Good evening. He failed to mention that that is a massive  
21 sewer line across the, what I would call the southwest portion of the  
22 property. It's already in existence. It's probably an 18-inch sewer line. It  
23 serves Walmart and all the commercial area on upstream.

24  
25 There's also an easement on what I would call the northeast side which is  
26 a utility easement with an existing powerline. It's the only property in that  
27 entire area that fronts Northrise. And it's also one of the deepest points  
28 along Northrise elevation and topographical, so it needs to be filled in, and  
29 you're talking approximately 35 to 40 feet of fill on 2.5 acres, that is a  
30 considerable amount of fill. That's going to be incredibly expensive in most  
31 cases.

32  
33 Also, he did not mention that there is an existing arroyo that often flows that  
34 goes around what I would call the west point of the property. That's going  
35 to have to be addressed. I do not think that residential property can be built  
36 on that area that would overcome those expenses that's why we need to go  
37 commercial in that property. And I do have a prospective restaurant that  
38 has looked at it and were thinking about it, but we don't know what the  
39 zoning is going to be and we don't know whether they would qualify or not.

40  
41 It seems like that's all I can think of that needs to be addressed. Other than  
42 there's nothing but commercial property on both sides of it except for the  
43 south portion and across the road it's all commercial in that area. I don't  
44 understand why it has to be residential when you have so much other  
45 property there and when they address the access needs that that could not  
46 be developed more efficiently and at a lower cost. Thank you.

1  
2 Kaiser: Thank you. All right. Coming to the Commission, are there any questions  
3 or comments?  
4

5 Acosta: I've got one. So looking at the, a statement you said Vincent about it being  
6 perhaps too premature. In terms of the steps that would need to be making  
7 it appropriate for rezoning could you clarify that for me?  
8

9 Banegas: Certainly. Mr. Chairman, Commissioner Acosta. The statement of being  
10 premature is referring to the planning effort for the blueprint in terms of  
11 identifying how to provide for transportation networks, road networks in that  
12 southern area. It could be that as Mr. Heck indicated that the property in  
13 question that has perhaps the only access at least for some of those A-2  
14 zoned and EE zoned parcels that's the only one that has the frontage could  
15 be impacted in some form or fashion in terms of the provision for access.  
16

17 So we don't know what's going to come from the planning effort. We truly  
18 don't. We would like to wait and see and see what they come up with policy  
19 wise, idea wise in terms of road network.  
20

21 Acosta: And so just to clarify that, it comes from the City of Las Cruces before a  
22 property owner could do what he needs to do as far as developing that? Or  
23 can property owner, or if he sells it somebody come in there and do the  
24 blueprints or propositions?  
25

26 Banegas: The City of Las Cruces in working with the consultant have made contact to  
27 the various property owners in the vicinity trying to assemble them, trying to  
28 setup a meeting. In fact, that meeting as I recall talking with Sara about,  
29 will take place tomorrow. And so the purpose is to convey what is being  
30 proposed and start assembling some of the ideas and the thoughts of those  
31 property owners in terms of making this a reality, making the road network  
32 a reality for this region.  
33

34 Acosta: Okay. Thank you.  
35

36 Kaiser: Yes. Go ahead, Commissioner Smith.  
37

38 Smith: I have a question or concern. I did a site on this area and it is highly  
39 commercial and now looking at the zoning map, seeing that this one parcel  
40 that's zoned residential. What is the likelihood that that area would be  
41 developed for residential? I know of course the property owner would have  
42 to sell it and then someone would have to purchase it and decide to build  
43 residences there but what is that likelihood because of the highly  
44 commercial and the fact that it's zoned EE and also A-2 that that would  
45 happen sooner than say zoning it for commercial and having another  
46 business there?



1  
2 Banegas: Mr. Chairman, Commissioner Smith. That's a difficult question and the only  
3 thing I can point to is some areas that have previously undergone master  
4 planning that have identified multifamily as a use on property as part of the  
5 master plan. Staff has received in the past immense pressure to convert  
6 those parcels that were identified as multifamily over to a commercial  
7 designation from a use perspective and then change the zoning to support  
8 that. Staff has resisted that in the past and it took a while but we finally got  
9 apartments exactly where the master plan intended them to be. And this  
10 was an area along Sonoma Ranch.

11  
12 In this case, it's likely. I can't indicate that some of these areas that are  
13 south of the subject property will not ever be multifamily in nature. Keep in  
14 mind that the suburban neighborhood place type encourages residential  
15 with pockets of commercial. So commercial isn't outright banned. It's  
16 allowed but we want to see, from our perspective residential is often,  
17 especially multifamily is often the stepchild of master plans. Those tend to  
18 come last.

19  
20 Smith: All right. Thank you.

21  
22 Kaiser: I just want to go back to Commissioner Acosta's question. So as it stands  
23 right now R-4 is the current zoning. So if they wanted to move ahead with  
24 a residential project is it staff's position that at this time due to the circulation  
25 constraint concerns that it would also be premature to develop that type of  
26 project now as well?

27  
28 Banegas: Mr. Chairman. Based on the fact that the existing zoning is in place, staff  
29 would encourage them to hold on but we wouldn't restrict them from  
30 proceeding with development plans.

31  
32 Kaiser: Okay. Thank you. And if you could go back to the slide that showed the  
33 easement.

34  
35 Banegas: If I could find it. Let's see. There.

36  
37 Kaiser: That one, yes. So if I'm reading this correctly, the easements I guess would  
38 be the eastern edge of the parcel, correct?

39  
40 Banegas: That's correct.

41  
42 Kaiser: So I'm just trying to think because that would be if they were to develop say  
43 a residential project right now. Would that presumably be the access point?  
44 I mean because they would have access, I'm assuming through that  
45 easement back to Northrise.  
46

1 Banegas: Mr. Chairman, Commissioners. You might also reference this little detail.  
2 Based on that detail, I'd have to assume that their intent for primary access  
3 to this property will be right at that frontage. The detail kind of illustrates a  
4 driveway detail that is being at least proposed per this plat. I don't know if  
5 that's going to change in terms of their development proposal, they would  
6 ultimately submit but.

7  
8 Kaiser: Okay. Thank you. Yes. This seems like a headache to be honest given  
9 the lack of circulation there. I do want to kind of touch on the point that  
10 Commissioner Smith kind of alluded to. And part of my concern is that, and  
11 staff I think you've made this point in your presentation that we only ever  
12 see these zone changes from residential to commercial on our multifamily  
13 parcels. And I'm really concerned about that because we don't have a lot  
14 of that to begin with. And every single time we do these, one instance. It's  
15 always one instance. Well soon we're at 1,000 instances and we've lost a  
16 tremendous amount of opportunity to develop multifamily and the missing  
17 middle types of housing that the comprehensive plan is wanting to see.

18  
19 We never see the opposite. We never see commercial being proposed to  
20 be rezoned for multifamily residential, and we sure as heck do not see  
21 single-family being rezoned either to commercial or multifamily. So I am  
22 very concerned that by us giving this away it's another two acres. I mean  
23 back in July I think we had another zone change off of multifamily residential  
24 to commercial in urban core. It's just another example of this maybe one,  
25 2.5-acre parcel but you do that 25 times, 30 times, 40 times suddenly we're  
26 left with nothing else.

27  
28 And so, I'm just very concerned. I'm also concerned that I mean I think  
29 you've got to do some sort of master plan here. It sounds like the blueprint  
30 may address some of it but I just think there's got to be some bigger vision  
31 aside from just one, 2.5-acre parcels. So that's just my perspective there.  
32 Any other questions or comments from, yes, Commissioner Smith?

33  
34 Smith: Would you once again just clarify how we're to vote on this proposal?

35  
36 Banegas: Yes.

37  
38 Smith: Thank you.

39  
40 Banegas: If I could before I leave this slide, Mr. Chairman, Commissioner Smith. I just  
41 wanted to point out that this EE is the tetras piece that I mentioned. They're  
42 knocking. Okay, they've already come and they're aware of the planning  
43 effort but they're holding off until that goes through. Okay..

44  
45 So going back to Commissioner Smith's question. The report that you've  
46 read and my presentation are recommending denial. Staff would like for

1 you to vote. Make a motion in the affirmative and if you do so the findings  
2 that I presented are based on a denial position. So you'd have to come up  
3 with findings of fact that would support approval. Now, I do have some  
4 standard ones that are in our com plan that could support that if you feel it's  
5 warranted. But otherwise, if you vote no, you're siding with the packet,  
6 you're siding with this presentation and you're denying the request. Okay.  
7 Is that clear, because it is a little convoluted.

8  
9 So if you want to approve it, these are some of the elements in our  
10 comprehensive plan that speak to commercial development growth,  
11 development of not necessarily older areas but vacant areas infill  
12 development generating employment opportunities. Those are some of the  
13 ones that we've used in the past. So I offer them up but staff recommends  
14 denial.

15  
16 Kaiser: Okay. I'm going to go to the public now. Are there anyone in the audience  
17 who wishes to speak on this item? Please raise your hand. All right. Seeing  
18 none. We'll come back to the Commission. Any final questions or  
19 comments? All right. Looking for a motion to approve.

20  
21 Bennett: I make a motion to approve 9.1.

22  
23 Vega: I second.

24  
25 Baum: Board Member Acosta.

26  
27 Acosta: I vote yes to approve based on some of the findings that he had given us  
28 there, balanced growth I would say, and I think infill development as well  
29 would support my vote.

30  
31 Baum: Board Member Smith.

32  
33 Smith: I vote no based on staff recommendation. I feel that this needs to be more  
34 of a master plan for this entire zoning area.

35  
36 Baum: Board Member Vega.

37  
38 Vega: I vote no based on staff recommendation.

39  
40 Baum: Board Member Bennett.

41  
42 Bennett: I vote no based on staff recommendation.

43  
44 Baum: Board Member Murray.

45  
46 Murray: No based on staff recommendation.

Baum: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion fails.

**9.2 Case No. 23ZO0500006:** A zone change request from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for one parcel located at 780 Stern Drive and encompassing 1.78 acres in size. Submitted by Ted Scanlon, Borderland Engineers and Surveyors on behalf of Michael Clute, Hacienda RV LLC. Council District 4.

Kaiser: Okay, moving onto item 9.2. This is a zone change request from EE to C-3 located at 780 Stern Drive and I'll turn it over to staff.

Banegas: Once again, Mr. Chairman, Commissioners. Vincent Banegas for the record, Interim Planner presenting tonight's case involving 780 Stern Drive. The property is currently zoned EE and they are seeking the designation to C-3. And you may draw some I guess the proper term would be corollaries from what we just heard to this case. And if you have any questions, I think I can answer them as to why one is denial and this one is approval.

But this case has the following current conditions. It's located along Stern Road between Boutz Road to the south and the Avenida de Mesilla to the north. It's 1.78-acre parcel and it's our equestrian estate and agricultural district. Again, allowing one dwelling unit for a minimum of one acre lot size. It's within the suburban neighborhood place type per the Elevate Las Cruces Comprehensive Plan and immediately adjacent on the north side of this property is our commercial place type, literally just due north.

The applicant's request in this case at least early discussions with them are speculative in nature. But like the last case, we do recognize it's a necessary step in the marketing, sale, and development of property. The existing EE as indicated can be developed residentially, in fact that's what it calls for. But given the minimum lot sizes, you're going to see one lot based on the current acreage of this property developed unless they were to seek a variance to allow additional homes on the property.

The area has limited commercial office uses that exist between Avenida de Mesilla and Boutz. The commercial uses are largely coming from the RV sales right off of Avenida de Mesilla. Office uses, you have the Department of Agriculture not too far from this subject property. And you do have other I think it's a spec building on the east side of Stern. I didn't see any signs and couldn't come up with a specific use but it looks to be a spec building at this point in time, perhaps also for an office.

1  
2 Stern Drive and Avenida de Mesilla are both minor arterials. Boutz Road is  
3 a major collector. So you have adequate road infrastructure in this case to  
4 support the commercial zoning that is immediately northwest of the subject  
5 property. In fact, the zoning here is C-3C and you have additional C-3 not  
6 too far off of Stern.

7  
8 Now, in here you have what some of you may recall Banmore Estates, a  
9 residential subdivision that was approved by you all, single-family detached  
10 homes. You have an existing neighborhood in here. All this is R-1aC in  
11 terms of zoning. Some of the existing older properties in the area, you have  
12 fairly large R-1a tract here. I think some of that was used for agricultural  
13 purposes as well. You have an A-2 sliver right up against Boutz Road and  
14 right along the south boundary of the EE existing parcel in question. So you  
15 do have much of that is underutilized property at the present time. So again,  
16 even though you have C-3 zoning a lot of that is office and/or service  
17 related.

18  
19 Here is an aerial view of the subject property. You can see Banmore  
20 Estates is well on its way. The Department of Ag building, RV park which  
21 is residential in nature but nonetheless an RV park, RV sales further down  
22 the road there. This is that spec building that I couldn't identify as to what it  
23 is.

24  
25 Staff is of the understanding that U-Haul seeks to develop here on this  
26 portion, this lot. To my knowledge, we haven't seen any plans submitted  
27 yet but that's what we hear is coming. So the proposal is to rezone to C-3.  
28 Again, staff has not been informed of any specific development proposal for  
29 this lot in question. The staff feels that this proposed zoning is in  
30 accordance with Elevate Las Cruces. The early notification efforts that staff  
31 requested of the applicant's representative were undertaken and to the best  
32 of my knowledge staff did not receive any input from the neighborhood as  
33 a result of that effort. And as I recall the representative indicated they had  
34 received none as well.

35  
36 A couple of photos. This was right off of Stern looking west. A vacant  
37 property right now. This is part of that A-2 strip on the south side of the  
38 property line. You can kind of tell what's going on there. Looking down  
39 Stern Drive due north, the Department of Ag building. And looking south  
40 there's Banmore Estates going in right here, right at the corner of Boutz and  
41 Stern.

42  
43 So staff did not identify any health, safety, or welfare issues related to this  
44 proposal. We do find that the zoning district that is being proposed provides  
45 some compatibility with existing uses in the surrounding neighborhood. It  
46 is within the suburban place type and would offer the commercial

1 component that is allowed as per the suburban place type, and as such it is  
2 found to be consistent with Elevate.

3  
4 As we know it's low to moderate density residential development with  
5 intermixed commercial uses. There are some buffers that will have to be  
6 maintained if this property goes to a C-3 designation and those are  
7 anywhere adjacent to lower density or less intense parcels. For instance,  
8 those residential parcels on the southside. So regardless of the zone  
9 change if it goes through that is an element of protection that can be  
10 maintained pursuant to code for those residential single-family or lesser  
11 zoned properties.

12  
13 Public input notice was carried out as indicated. Early notification efforts  
14 were conducted. Staff's efforts, we sent out letters pursuant to code. We  
15 did not receive any inquiry as of this meeting date. So staff's  
16 recommendation and finding is approval based on the following findings.  
17 The property is 1.78 acres in size and has limited development potential for  
18 providing a significant buffer, if you will, between the regional commercial  
19 place type and the suburban place type. So since it's immediately adjacent,  
20 we felt that impacts would be rather limited.

21  
22 The applicant has no imminent plans for development. And if approved the  
23 supporting road network, Stern Drive, etc., Boutz Road and Avenida de  
24 Mesilla could easily provide for access to the property. And we all know  
25 suburban supports that. Several goals, policies, and actions from Elevate  
26 are identified for support of the proposed request as well as the 2001 Las  
27 Cruces Zoning Code in terms of its purpose and intent.

28  
29 And your options this evening with this one is to vote "yes" and approve,  
30 vote "no" and deny, in which case you'd have to come up with your own  
31 findings of fact, you could vote "yes" with conditions, or vote to table. And  
32 that concludes staff's that presentation. And I believe the owner and/or  
33 representative are in attendance if they'd like to speak to their case.

34  
35 Kaiser: All right. Thank you very much. Would the owner/applicant wish to speak  
36 before we turn this over for Q&A? If you could just state your name for the  
37 record.

38  
39 Scanlon: My name is Ted Scanlon. Address 2990 North Main Street.

40  
41 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
42 truth and nothing but the truth under penalty of law?

43  
44 Scanlon: I do.

45  
46 Kaiser: Go ahead.

1  
2 Scanlon: Okay. I don't have a whole lot to add to Vince's very concise and thorough  
3 presentation here but it was -- one thing I wanted to bring up is the fact that  
4 we subdivided this property and created that lot to go back a certain  
5 distance from Stern Drive and leave a big buffer for ponding area and  
6 landscaping adjacent to the existing houses along there. And we're only  
7 asking for rezoning on that lot that was created and not on the area that's  
8 adjacent to the existing residential development. That will stay undeveloped  
9 with no buildings or anything on it for certain.

10  
11 I believe the property was originally zoned equestrian estates because  
12 there's a gentleman that owns a property right on Boutz Road. His name is  
13 Ken Mills and he kept horses back there. And he would graze those horses  
14 on our property. And for the record, I'm one of the owners of this property  
15 besides being the applicant and the representative. But we allowed him to  
16 graze horses back there forever.

17  
18 But now, we've sold the RV park. We've sold the parcel to U-Haul. We sold  
19 the parcel to USDA and this is the last piece of property on that area that  
20 we still own that we need to dispose of, to sell and have developed as a  
21 commercial site. I don't know if I have anything more to add to that or not,  
22 but I would appreciate an affirmative vote. Thank you.

23  
24 Kaiser: Thank you very much. All right. Any questions or comments from the  
25 Commission? All right. Seeing none. We'll turn to the public now. Is there  
26 anybody in the audience who wishes to speak on this item? Please raise  
27 your hand. All right. Seeing none. We'll come back to the Commission and  
28 looking for a motion.

29  
30 Vega: I'll make a motion to approve item 9.2.

31  
32 Murray: I'll second.

33  
34 Baum: Board Member Acosta.

35  
36 Acosta: I vote yes based on staff recommendation.

37  
38 Baum: Board Member Smith.

39  
40 Smith: I'll vote yes based on site visit and staff recommendation.

41  
42 Baum: Board Member Vega.

43  
44 Vega: I vote yes based on staff recommendation and Elevate Las Cruces.

45  
46 Baum: Board Member Bennett.

1  
2 Bennett: I vote to approve based on staff recommendation. This meets the  
3 neighborhood character and compatibility Elevate Las Cruces and purpose  
4 and intent of the code.

5  
6 Baum: Board Member Murray.

7  
8 Murray: I vote yes based on staff recommendation.

9  
10 Baum: Chair Kaiser.

11  
12 Kaiser: Yes. Based on staff recommendation and consistency with Elevate Las  
13 Cruces.

14  
15 Baum: Motion passes.

16  
17 **9.3 Case No. 23VO0500101:** A variance request to deviate twenty-four (24)  
18 feet from the required twenty-five (25) foot front yard setback for a carport  
19 addition to a home located at 4093 Winters Street. The property is  
20 approximately 0.12 + acres in size and zoned R-1bC (Single-Family High  
21 Density- Conditional). Submitted by Catherine Silva, property owner.  
22 Council District 1.

23  
24 Kaiser: Okay, moving onto item 9.3. This is a variance request to deviate from the  
25 front yard setback at 4093 Winters Street. Staff, all yours.

26  
27 Gonzales: Good evening, Commission. Sara Gonzales, Senior Planner, City of Las  
28 Cruces. This is for a variance request for 4093 Winters Street. Currently,  
29 the property is about 649 feet north of its intersection with Holly Drive and  
30 Winters Street. It is approximately 0.12 acres in size. The property was  
31 rezoned to R-1bC back in 2006, which is single-family high density  
32 conditional. At that time, there was six acres left and the developer wanted  
33 to reduce the lot sizes in order to fit in 35 more single-family homes.

34  
35 As stated, this does have a single-family residence on the property. Here's  
36 an aerial map of the subject property. These are the properties that went  
37 into essentially a higher density as opposed to the surrounding neighbors.  
38 They are probably about a third to half an acre in size and then we move  
39 into a mobile home park that's located on the west side.

40  
41 Here's a zoning map of the surrounding area. As you can see, it is primarily  
42 single-family residential. We do have a few nodes of multifamily on the  
43 south side. However, those are also developed with single-family  
44 residences.



1 Per chapter 38 of the 2001 Zoning Code, setbacks for an R-1b zoning  
2 designation for a garage or carport is to be at 25 feet. The applicant is  
3 seeking to retain the carport addition to the existing dwelling that was placed  
4 in the front yard of the property. The variance would allow the applicant to  
5 maintain a one-foot setback from the property line. Here's a site plan of the  
6 property. As you can see within this area, this designation here shows that  
7 this is 25 feet back already originally for the original garage. So with that,  
8 with the 25 foot setback, you essentially take up that entire space covered  
9 with a carport structure leaving one foot. One of the concerns, and I'm only  
10 bringing it up now and I'll reiterate it later is that there is a 12-foot utility  
11 easement that runs along the front of the property. Structures, buildings are  
12 not permitted to be within those utility easements as you have line  
13 connections, El Paso Electric. Anything that has to be done there would  
14 have to be modified. So as part of our recommendation, I will provide those  
15 findings and to elaborate later.

16  
17 Here are the site photos of the property. As you can see it is extended out.  
18 This would be where we measure from whenever we actually measure  
19 carports. It's never to the edge of it, it is to the actual overhang because  
20 that is the part that is actually extending up to the furthest point of the  
21 property line. The posts are pushed back. However, we do only have about  
22 one foot to that property line.

23  
24 The applicant did provide a letter that was provided within your staff packets  
25 that she was unaware that the codes and regulations were going to require  
26 the building permit or the status of that application or to them to be permitted  
27 to be put into place. There are medical reasons in which she has requested  
28 that carport to be maintained and it also protects vehicles from weather  
29 damage.

30  
31 As identified, staff did not see any health, safety, or welfare issues. Our  
32 only identification was that the utility easement is in place and that  
33 structures are not to be within a utility easement. However, we also  
34 analyzed that the 24-foot variance to the minimum required 25-foot setback  
35 does not meet the criteria for a variance. Whenever you look at variances,  
36 we are looking at topographic constraints on a property. We are looking at  
37 does it spur economic development? Is there a monetary hardship on a  
38 property in which you would be forced to do something that's going to cost  
39 you more than what you would need as far as putting it in a different  
40 location?

41  
42 So with that staff is recommending denial as it does not meet the criteria  
43 outlined in the 2001 Zoning Code to meet 25-foot setback. We are also  
44 saying that it does not follow the standards for criteria to approve the  
45 variance based on the three criteria listed: topographic constraints, spur

1 economic development, and then monetary hardship. And the carport was  
2 constructed unfortunately without a building permit.

3  
4 Notice was sent to the surrounding properties. The only phone call that I  
5 ever received as far as the carports being in placed is if this one were to be  
6 approved does everybody in the neighborhood now get one? The response  
7 I did provide to the person who contacted me via phone was that every  
8 variance case is a case-by-case basis. We are looking at every request  
9 that comes in here as a single case. The adjacent property owners do not  
10 set precedence. We are not looking for those to move forward. Variances  
11 stay with the land and it's based on the justification provided by the  
12 applicant.

13  
14 If the P&Z Commission decides to approve the case, staff is recommending  
15 that these conditions be placed upon it. Both of the sides of the structure  
16 remain open just for visibility whenever you back up into the oncoming  
17 traffic. The structure does need to be attached to the residence as you are  
18 not permitted to have accessory structures located within your front yard.  
19 Making it attached makes it now an addition to your structure. They must  
20 obtain a building permit and require all inspections, and we are requesting  
21 that it be built or cut down to meet the 12-foot setback out of that utility  
22 easement.

23  
24 With that your options are to vote "yes" and approve, if you choose to vote  
25 and approve, please provide new findings of fact as everything presented  
26 to you this evening has been in denial. You can vote "no" and deny, you  
27 can vote "yes" with conditions, or you can vote to table. The applicant is  
28 here as well. And then I do believe there is public to speak on behalf. And  
29 if you have any questions, I stand for those as well.

30  
31 Kaiser: Thank you very much. Any questions or comments from the Commission?

32  
33 Bennett: How much of that needs to be cut off for the utility easement? Just a  
34 ballpark.

35  
36 Gonzales: Mr. Chair, Commissioner Bennett. That would be 11 feet just because we  
37 only have ...

38  
39 Bennett: Thank you.

40  
41 Gonzales: That one foot. So to get out of that 12 feet, we have that 11 foot deviation.

42  
43 Murray: And then are these underground utilities or above ground?  
44

1 Gonzales: Mr. Chair, Commissioner Murray. These are going to be underground  
2 utilities. A lot of times in the 12-foot utilities what we find are El Paso  
3 Electric, Comcast, Quest, Lumen, your phone, your electrics.  
4  
5 Kaiser: All right. Thank you. Any other questions or comments? Commissioner  
6 Smith.  
7  
8 Smith: Could you go back to the photo of the vehicles underneath the carport?  
9 Thank you.  
10  
11 Kaiser: All right. If the applicant wishes to speak, you're welcome to come forward  
12 before we get a public comment. You're not obligated to. And before you  
13 begin can you please state your name?  
14  
15 Silva: Catherine G. Silva.  
16  
17 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
18 truth and nothing but the truth under penalty of law?  
19  
20 Silva: I do.  
21  
22 Kaiser: Please go ahead.  
23  
24 Silva: Well, the reason I did it it's because for my daughter's protection. She's on  
25 medication. She can't be under the sun because of her medication. It's  
26 medical reasons. And when it's raining, we can't be running into our vehicle  
27 and slip and fall besides myself too. I'm injured too. So that's why I got it  
28 done and it's expensive. And to remove it, it's another expense for myself  
29 and I'm a single parent. So hopefully, I get it approved and it's for her  
30 protection.  
31  
32 And I don't have no shade for her and I can't keep her inside the house all  
33 the time. And that's the only place I take her outside. She loves to color so  
34 I take her outside on a chair and she colors out there. And that's all I have  
35 to say.  
36  
37 Kaiser: Okay. Thank you very much.  
38  
39 Silva: Okay.  
40  
41 Kaiser: All right. Is there anybody in the audience who wishes to speak? Please  
42 raise your hand. Okay. Yes, ma'am. Please come forward. I'll give you  
43 three minutes. We have a timer here. It will count down but I've been told  
44 the beeper sound doesn't work so if you hear this gentleman here beep  
45 that's your time. Before you begin can you please state your name for the  
46 record?

1  
2 Chavez: My name is Bertha Chavez.  
3  
4 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
5 truth and nothing but the truth under penalty of law?  
6  
7 Chavez: I do.  
8  
9 Kaiser: Go ahead.  
10  
11 Chavez: What I wanted to add as they need just a caregiver for Ms. Silva's daughter.  
12 And I do take her outside. She loves to color. She loves to be outside for  
13 a while but due to her medical condition I can only keep her out for a while.  
14 So this was serving a purpose and a need for her daughter and also Ms.  
15 Silva. That's all I have to say. Thank you.  
16  
17 Kaiser: Thank you very much. All right. Anybody else in the audience who wishes  
18 to speak on this item? Okay. Seeing none. We'll come back to the  
19 Commission. Any final comments? Commissioner Smith.  
20  
21 Smith: I just have a question for the applicant. Did you hire a commercial contractor  
22 to build this? Was this something that was done by a family member who  
23 is capable of building it?  
24  
25 Silva: It was done from a family member's friend. That was it. It wasn't a  
26 contractor or nobody.  
27  
28 Smith: So this person is not a contractor themselves?  
29  
30 Silva: No.  
31  
32 Smith: Okay. Thank you.  
33  
34 Silva: But he did a good job. It's welded.  
35  
36 Smith: The reason I ask that question is that I mean any type of structure that's  
37 being built like this requires a permit and is something that any contractor  
38 would definitely know and should inform you of. And even if it's a family  
39 member if they're capable of building something like this, they should know  
40 that a permit is ...  
41  
42 Silva: Well, we didn't know. I didn't know I had to get ...  
43  
44 Smith: Required. All right. Thank you, ma'am.  
45  
46 Silva: I didn't know I had to get a permit.

1  
2 Kaiser: All right. Any other comments or questions from the Commission? We're  
3 looking for a motion to approve.  
4  
5 Bennett: I make a motion to approve 9.3.  
6  
7 Vega: I second.  
8  
9 Baum: Board Member Acosta.  
10  
11 Acosta: I vote no to deny based on staff recommendation.  
12  
13 Baum: Board Member Smith.  
14  
15 Smith: Sorry. I vote no to deny based on staff recommendation.  
16  
17 Baum: Board Member Vega.  
18  
19 Vega: I vote no based on staff recommendation.  
20  
21 Baum: Board Member Bennett.  
22  
23 Bennett: I vote to approve based on monetary hardship and medical reasons.  
24  
25 Baum: Board Member Murray.  
26  
27 Murray: I vote is to approve based on medical reasons and monetary hardship.  
28  
29 Baum: Board Member Kaiser.  
30  
31 Kaiser: No, based on staff recommendation.  
32  
33 Baum: Motion denied.  
34  
35 **9.4 Case No. 23VO0500106:** A variance request to deviate twenty (20) feet  
36 from the required twenty-five (25) foot front yard setback for a carport  
37 addition to a home located at 4053 Winters Street. The property is  
38 approximately 0.108 + acres in size and zoned R-1bC (Single-Family High  
39 Density- Conditional). Submitted by Tracie Stevenson, property owner.  
40 Council District 1.  
41  
42 Kaiser: Okay. Moving onto item 9.4. This is another variance request from the front  
43 yard setback. This time 4053 Winters Street. Back to you staff.  
44  
45 Gonzales: Sara Gonzales, Senior Planner once again for the record. This is a variance  
46 request for 4053 Winters Street. The property is approximately 200 feet

1 north of its intersection of Holly Drive and Winters Street. The property is  
2 0.108 acres in size. Once again, is zone R-1bC which is single-family, high  
3 density conditional and there is currently a single-family residence on the  
4 property.

5  
6 Here's an aerial map of the subject property. As you can see the carport is  
7 highlighted essentially in white as to its location. Surrounding neighborhood  
8 is residential in nature as all the adjacent properties are either single-family,  
9 mobile home, or multifamily to the south.

10  
11 Per code, Chapter 38, 2001 Zoning Code, the property is required to meet  
12 the 25-foot yard setback for a garage or carport. And the applicant is  
13 seeking to retain the carport addition that was put up into the front of the  
14 property for the existing dwelling. The variance would allow the applicant  
15 to maintain a five-foot setback from the property line. Here is a site plan of  
16 the subject property. You can see we do have the 12-foot utility easement  
17 that also runs along the front of Winters continuously through the  
18 subdivision. The building or the structure is a 20 x 20 so that's why you  
19 have a five-foot deviation as far as it coming from that 25-foot setback. So  
20 all garages in this area were built at a 25-foot setback leaving no additional  
21 room for any of these carports to be placed onto the property.

22  
23 Here is an image of the property, as far as you can see here is the structure.  
24 It is pushed back a little bit further. As you can tell there is a five-foot  
25 setback from this property boundary. The applicant has provided the  
26 justification in the letter that was provided within your staff report. It was an  
27 anniversary gift to the applicant as part of the, for their anniversary to protect  
28 their vehicles from weather damage. Once the structure did go up, it did  
29 provide some type of safety as far as the applicant was concerned once it  
30 was in place.

31  
32 Staff did not identify any health, safety, or welfare issues. Once again, there  
33 is that condition of where we see the 12-foot utility easement in which  
34 structures are not to be constructed upon. We did see that the 20-foot  
35 variance does not meet the criteria that is outlined within a variance. There  
36 are no topographic constraints. We do not see any spur of economic  
37 development, and the monetary hardship would be essentially from not  
38 receiving a building permit prior to where they would be notified that the  
39 monetary value would be essential.

40  
41 Monetary hardship is definitely determined by if you had to do something  
42 outside or make it impossible to reconstruct or build something on a  
43 property then that is considered a monetary hardship. We had a previous  
44 case to where it is, in order to construct a home, you had to move the well,  
45 that is a monetary hardship constraint.

1 So with this staff is recommending denial based on the carport does not  
2 meet the requirement of the 25-foot setback with any residential zoning  
3 district. We also are saying that it does not meet the essential guidelines to  
4 permit a variance request for the three identified as topographic, monetary,  
5 or for a spur of economic development, and it was constructed without a  
6 building permit.

7  
8 Public notice was sent out. The same phone call was in direction to both  
9 as these neighborhoods are very close to one another. Notification was  
10 sent to everybody essentially twice. And so, it gave two opportunities for  
11 everyone to be notified within the neighborhood.

12  
13 Once again if Commission decides to approve this case, please be aware  
14 to add the conditions as to the structure must remain open. The structure  
15 needs to be attached to the home as it is not considered accessory  
16 structure. It needs to be added. Must obtain a building permit and all  
17 required inspections and be removed up until the 12-foot utility easement.

18  
19 Your options are to vote "yes" and approve. If you choose to vote to  
20 approve you do need to find new facts of finding not found within your staff  
21 report. Vote "no" and deny, vote "yes" with conditions, or vote to table. The  
22 applicant is here as well and I stand for any additional questions.

23  
24 Kaiser: All right. Thank you. Coming to the Commission. Any questions?

25  
26 Smith: Once again would you please go back to the photo of the, thank you. I have  
27 a question for the applicant. Was this carport constructed by the same  
28 people, person, because they look almost identical?

29  
30 T. Stevenson: No, they are. They do ...

31  
32 Kaiser: Before you answer that question, ma'am. Can you please state your name  
33 for the record?

34  
35 T. Stevenson: My name is Tracie Stevenson.

36  
37 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
38 truth and nothing but the truth under penalty of law?

39  
40 T. Stevenson: Yes, I do.

41  
42 Kaiser: Go ahead.

43  
44 T. Stevenson: This isn't, we don't have the same person who built, mine went up first in  
45 our neighborhood. And actually, the way this all came about was back in  
46 January my husband wanted to give, we were going to plan something for

1 our 43rd wedding anniversary. And I told him I'm putting this on you  
2 because I plan them all and he said he'll do it.

3  
4 And then didn't hear anything. February comes rolling around. I don't see  
5 anything happening. Like he hasn't made any plans. And we had an  
6 automotive business here in town and he was a very, very busy man. March  
7 comes rolling around and March 3rd is a Friday and we were having  
8 breakfast and he was getting ready for work, and he comes back in and he  
9 has a massive heart attack right in front of me. And all my attempts to try  
10 to save him were gone.

11  
12 And you go through all the motions of a funeral and all and then I did. April  
13 comes running around. My anniversary was April 12th. April comes  
14 around, the first week of April and I get somebody rang my doorbell. I go to  
15 the door and it was a grandfather, a father, and a son, and they said that  
16 they were here to put up an awning for me. Well you can imagine how  
17 excited I was because this was something we always wanted, both of us.  
18 And I know Roger. Roger always liked to do things correct. He never, if he  
19 knew he was supposed to have a permit, I know he would have looked into  
20 that because he was very adamant about that kind of a thing.

21  
22 And so, you can imagine how excited I was. I said yes, please put it up. I  
23 was thrilled. A permit never even crossed my mind. It was just, I literally  
24 got weak at the knees. Well next morning comes, I was there. They came  
25 and put it up and I watched them. They did the first two poles there; I saw  
26 them dig the holes. It's three feet down into the ground with, they put a lot  
27 of cement. It's bolted towards the end of the garage very securely. I mean  
28 it's not going anywhere. It's structurally sound.

29  
30 And so, I was thrilled and then of course I was, codes comes probably about  
31 three days later. I guess he said he was going through the neighborhood  
32 and saw it. And he put a notice on my door. And so, then I right away called  
33 here and said what do I need to do to get a permit for this? And he sent me  
34 through all the motions and I did them all because I want to keep it. It's the  
35 last gift I'll ever receive from my late husband and he was like my best friend.  
36 And I just really feel, I just really don't want to see it dismantled and taken  
37 away. It's that special.

38  
39 Now, she said it didn't provide any safety features. Now, this does provide  
40 safety features. Last winter, I actually slipped outside while we were  
41 clearing off our windshields. And it does provide elements from the  
42 weather. I mean it's a 20 x 20 and it's structurally, has beautiful curb appeal.  
43 And I also presented some letters from my surrounding neighbors that it did  
44 not even propose a threat to them. They were absolutely thrilled about it  
45 and didn't give me any heartache about it whatsoever. I was just, I didn't  
46 know.



1  
2 So I just thought I would come here today and just kind of give you a little  
3 bit of insight how special it really is to me. And I hope I'm able to keep it  
4 and I hope you all can find it in your hearts to allow me to have it and maybe  
5 purchase a permit and be able to keep it. We all don't know how long we're  
6 going to be here. I mean everything we have can be gone just like that.  
7 And I just want to present my case and see if that's obtainable.

8  
9 Now it's not attached but I did get a contractor to come over and look at it.  
10 And he said that is attachable. He said it's just so close and he said that he  
11 would do that for me. So I'm willing to do what I have to do to keep it and  
12 enjoy it for as long as I can. I don't plan on selling my home. I plan on living  
13 in it. And now that I'm alone, it does provide some safety for me. I stand  
14 up here literally broken going through all this. And I just have to let you  
15 know that if you would allow me to obtain a permit, I would be forever  
16 grateful respectfully. Thank you.

17  
18 Kaiser: Thank you. Any other questions? Commissioners Smith.

19  
20 Smith: Ma'am I just wanted to offer my deepest condolences to you and your family  
21 for the loss of your husband. And I know that this carport means a lot to  
22 you. It's difficult for us as a Commission here. We get many cases where  
23 carports are built in the City without permission and it's a challenging job for  
24 codes because they're doing their job. And although this has special  
25 meaning to you, the carport is no different than the previous applicant as far  
26 as the amount of the variance that you're requesting.

27  
28 And so, our hearts are with you and your family. We have a decision that  
29 we'll have to make and so it will be a difficult one but we'll make the best  
30 decision that this Commission can make based on the information we've  
31 been provided.

32  
33 Vega: I also want to say that regardless of what decision we come to you can  
34 always appeal to the City Council; is that correct? So that's just something  
35 else to share with you as well.

36  
37 Kaiser: I also extend my condolences as somebody who unexpectedly lost a family  
38 member within the last year. I certainly understand what you've been going  
39 through. I think the difficulty here is there's rules in place and it's the  
40 responsibility of all of us to be aware. I know this seems like something you  
41 probably would never think of but the reality is these types of home projects  
42 they are regulated.

43  
44 And honestly hearing you explain what they did to put the posts in the  
45 ground, I'm just very thankful nobody hit something they would regret hitting

1 especially if they were not aware. So call before you dig. But I think this is  
2 just kind of unfortunate but there are rules in place. So that's all I'll say.

3  
4 Is there anybody in the audience who wishes to speak on this item? Yes,  
5 ma'am. Please come forward and please state your name for the record.

6  
7 Vulco: Sarah Vulco.

8  
9 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth  
10 and nothing but the truth under penalty of law?

11  
12 Vulco: Yes, sir.

13  
14 Kaiser: I'll give you three minutes.

15  
16 Vulco: Okay. So when Tracie called me and asked me to look at the scenario that  
17 had been presented to her from the City, I was of course wanted to help in  
18 any way that I could. My background is that I am a general contractor and  
19 I'm also a civil engineer. I work for the City at one point in the Public Works  
20 Department. And then at this point, I'm a Regional Project Manager for the  
21 State of New Mexico.

22  
23 Based on my background what I wanted to present respectfully is that in the  
24 case of building \$30 to \$50 million structures for the State of New Mexico,  
25 there are situations where User Department buys a plat of land and there is  
26 a utility easement right down the middle of the property. And so, at that  
27 point we're coming together and collaborating with the design professional  
28 saying, my gosh, how do we build anything on this plat of land?

29  
30 And so, we try to take a more ethical approach. And what we do is often  
31 times we'll build a building maybe with an outdoor courtyard that's over that  
32 easement. And what we tell the User Department at that time is that we will  
33 build the structure but they will have to resume the cost of remove and  
34 replacement in the case that the utility easement, a project comes through  
35 that requires them to access the utility easement.

36  
37 And so, a lot of times we construct these buildings like I said with the  
38 courtyard in the middle and that's the portion that's over the easement so  
39 that it's predominantly flat work which is sidewalks things like that. So the  
40 User Department would then tear that up and remove and replace it. And  
41 so, there's an addendum to the contract when we do something like that.

42  
43 My request is that if Tracie would be willing to sign some sort of an  
44 addendum or some sort of paperwork that would say in the case of these  
45 utilities needing to be accessed that she would remove and resume the cost  
46 of removing the carport at that time. This isn't saying that she keeps the

carport for 20 years. It's not saying that she keeps the carport forever. It's saying during this time when emotions are raw and there's newly broken hearts that they would be able to keep the carport. And that's my request. Thank you for your time and consideration.

Kaiser: Thank you. Anybody else in the audience that wishes to speak? Yes, ma'am. Please come forward. Please state your name for the record.

Morgan: My name is Vicki Morgan.

Kaiser: And do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Morgan: Yes.

Kaiser: You have three minutes. Please go ahead.

Morgan: I am writing this letter on behalf of Tracie, my dear friend since grade school, to attest to her impeccable character and extraordinary circumstances surrounding the awning in question.

Throughout our years of friendship, Tracie has consistently shown herself to be an individual of outstanding character. She possesses a rare combination of qualities that can only be described as extraordinary. She is caring, always placing the needs and concerns of others above her own. She exudes positivity even when faced with challenges that would overwhelm many. Her resilience, her generosity and her kindness are qualities I have witnessed firsthand for many years.

The awning which stands at the heart of dispute represents more than just a mere structure to her. It was one of the last gifts given to her by her late husband before his untimely passing. Every time she looks at it, she is reminded of the love they shared and the memories they created together. It's a testament to their bond and an emblem of the life they built. While some may view it as just an awning, for Tracie it holds profound sentimental value.

Furthermore, beyond the emotional significance, the financial burden of removing the awning would be undue and harsh especially given the heartache she has already endured. I kindly request that you consider the exceptional circumstances of this case. Removing the awning would not only be financially expensive for Tracie but would also mean erasing a tangible reminder of her husband. I sincerely hope that a compassionate resolution can be reached in this matter taking into account both the character of my dear friend and the significant emotional implications of

1 removing such a treasured memento. Thank you for your time and  
2 consideration.

3  
4 Kaiser: Thank you very much. Anybody else that wishes to speak? Yes, ma'am.  
5 Please come forward. State your name for the record.

6  
7 Gennings: Hi. My name is Lindsey Ray Gennings.

8  
9 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
10 truth and nothing but the truth under penalty of law?

11  
12 Gennings: Yes, I do.

13  
14 Kaiser: Please go ahead.

15  
16 Gennings: All right. So everybody has kind of hit upon the emotional aspect of Tracie  
17 losing her husband which was very sad. But I would like to provide a  
18 different perspective on the structure.

19  
20 So I work for Wet Dog Mobile Grooming Services. And I am out there  
21 probably at least once a month for the last seven years to groom her dogs,  
22 make sure they're nice and clean. And I've never seen a weed in her yard.  
23 Her house is always kept up really nice. That structure is really nicely built.  
24 I complimented her on it the first time I came out and saw it. I was like this  
25 is really nice.

26  
27 It doesn't really block anybody's view. And it's so hot in Las Cruces that  
28 Tracie likes to put out water for the stray cats in the neighborhood. And it's  
29 very nice for me to see someone taking initiative to prevent unneeded  
30 cruelty to the cats, where Las Cruces takes them and spays them, neuters  
31 them and then places them back where they found them. We don't need to  
32 be cruel to the cats so it's nice to see.

33  
34 I've been out there several times. I get to see the cats getting a nice cool  
35 drink of water. It provides shade for her car so the paint doesn't get eaten.  
36 And it seems to me that if the utilities are underground already, they're going  
37 to have to go under the concrete slab so I don't think that it's a problem  
38 having the carport there. And I'm sure that if it is for the utilities in the future  
39 that she would be willing to remove it or replace it or whatnot.

40  
41 And I'm sure that she didn't know about a permit because of her husband  
42 being the last gift that she was given from him. So I would like to see Tracie  
43 be able to keep the carport. That's it.

44  
45 Kaiser: Thank you. Anybody else? Please state your name for the record.  
46

1 Allen: My name is James Allen.

2  
3 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
4 truth and nothing but the truth under penalty of law?  
5

6 Allen: I do.

7  
8 Kaiser: Go ahead.  
9

10 Allen: So I do not know Ms. Tracie by any means or length measure. I did listen  
11 to her testimony and narrative. There were some things that were brought  
12 up to me knowing now she was in her emotional state after having recently  
13 lost her husband. She was presented by three gentlemen. I know that in  
14 Las Cruces having had family members who are small business  
15 contractors, she was presented as that this was something that was  
16 arranged for her.  
17

18 She has stated that she is willing to retain a permit and take care of any  
19 fees that were unnecessarily missed with this. But I do question, she was  
20 presented with three individuals who were stated that they were contracted  
21 to do this job. So with her emotional state at the time and with her  
22 knowledge, I mean most people in town do not know building code but it  
23 seems that she may have been led to believe that this was a permitted job  
24 at the time. And she later found out that she did not have proper contractors  
25 so I believe that is something to be taken into consideration in this case.  
26

27 Kaiser: Thank you. Okay. Is there anybody else who wishes to speak? Yes, sir.  
28 And before you come up can I just see hands so we just have an idea of,  
29 okay. So this gentleman is going to be the last one. Please come forward.  
30 Please state your name for the record.  
31

32 B. Stevenson: Hi. My name is Brent Stevenson.  
33

34 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
35 truth and nothing but the truth under penalty of law?  
36

37 B. Stevenson: Yes.  
38

39 Kaiser: Go ahead.  
40

41 B. Stevenson: Yes. Well, I'm up here just to kind of talk. This is my mother and I do know  
42 that my father after hearing or seeing that she did fall in the driveway. I  
43 mean I know you took it upon himself to make sure that it will never happen  
44 again. And I'm sure that's the reason why he did purchase this awning.  
45

1 As her son and the rest of her family, we're concerned about her, about her  
2 safety of course. And now that she does live alone, we are concerned that  
3 we just want her to be safe. And I think that if you're able to grant this  
4 variance I mean I know that she'll be more than grateful. We'll all be grateful  
5 and we'll do whatever it takes to conform with your policies and everything  
6 if that were possible. It does protect the driveway from its elements, from  
7 snow, from rain, from the heat. I just see more positives with this and I just  
8 wanted to talk about that. Thank you.  
9

10 Kaiser: Thank you. Okay. Coming back to the Commission. Commissioner Smith.  
11

12 Smith: I just have one more question for staff. Did you state that there was also a  
13 12-foot easement with this property also, or it was just the previous  
14 proposal?  
15

16 Gonzales: Mr. Chair, Commissioner Smith. There is a 12-foot utility easement that  
17 runs along every property within this subdivision in the front of those  
18 property boundaries. A lot of times what we see in newer subdivisions is  
19 that is essentially where all the utilities are being placed. There used to be  
20 in the old part of town where we would get utility easements in the back, on  
21 the side of the properties. Now everything is generally ran through the front  
22 of the properties and it's 12 feet wide as generally the distance we see.  
23

24 Smith: Okay. Thank you.  
25

26 Kaiser: All right. Any other questions, comments? All right. Looking for a motion  
27 to approve.  
28

29 Vega: I make a motion to approve item 9.4.  
30

31 Smith: I second.  
32

33 Baum: Board Member Acosta.  
34

35 Acosta: I vote yes to approve with the conditions that the City staff had outlined.  
36

37 Kaiser: You need to provide a ...  
38

39 Acosta: Sorry, can I go back to that page if that's the case? So I guess it would just  
40 be all four lines of that. Should I read that out?  
41

42 Kaiser: No. I was just looking for there, based on what was your rationale for voting  
43 to approve with the conditions.  
44

45 Acosta: I'm sorry about that. Okay. So just based on the emotional impact and the  
46 willingness to work with City staff to keep the structure alive in whatever

compliant capacity and willingness to pay for that. So I think if they'd be willing to work under that condition then they need to perhaps preserve a structure that had that much more sentimental value.

Baum: Board Member Smith.

Smith: I vote yes to approve. I know that this case is very similar to the previous applicant. There are some extraordinary circumstances I think in this particular case based on the fact that the homeowner was not aware that she was even going to be receiving the carport. And that the people who presented it, who arrived to construct it may not have told her that whether they were actually contractors or not. And there is room for compassion, there is room for just the circumstances under which this particular carport was constructed as opposed to the previous one. And so, that is why I'm voting yes to approve.

Baum: Board Member Vega.

Vega: I echo Commissioner Smith's comments. I also vote yes to approve based not only on the financial hardship. Also, the suggestion for easement. I have an easement in my backyard, it's totally different but always something to consider. Thanks.

Vega: Board Member Bennett.

Bennett: I vote to deny based on staff recommendation.

Vega: Board Member Murray.

Murray: I vote to deny based on staff recommendation.

Vega: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion denies due to a tie.

**9.5 Case No. 23VO0500107:** A variance request to deviate one (1) freestanding sign to the maximum permitted two (2) freestanding signs and a to deviate seven (7) feet to the minimum required fifteen (15) foot freestanding sign front yard setback for a property located at 1300 El Paseo. The property is 5.50 + acres in size and zoned C-3 (Commercial High Intensity). Submitted by Burke Sign Company, LLC., representative. Council District 3.

1 Kaiser: All right. Our final item this evening is item 9.5. A variance to request to  
2 deviate from the maximum permitted signs. This is at 1300 El Paseo. And  
3 do we have staff to make a presentation?  
4

5 Ochoa: Sorry for the delay. Adam Ochoa, Senior Planner, Community  
6 Development Department for the record. The last case we have tonight for  
7 you folks is case number 23VO0500107. It is a request for a variance for a  
8 property located at 1300 El Paseo Road.  
9

10 A little case specifics of the subject property. It is located on the southwest  
11 corner of El Paseo Road and Idaho Avenue. Currently zoned C-3  
12 commercial, high intensity encompasses roughly 5.5 acres in size. There  
13 is an existing business/shopping center on the property. And just a  
14 reference are two existing previously permitted freestanding signs on the  
15 property.  
16

17 Here's showing the property on the zoning map here. A large parcel here  
18 is zoned C-3 and in what is just a sea of commercial zoning, so definitely  
19 one of our major commercial hubs in the City of Las Cruces with a lot of  
20 traffic going off El Paseo and Idaho Avenue.  
21

22 Showing here on the aerial map the shopping center, if you will, kind of L-  
23 shapes along the back with parking along the front. The two existing  
24 freestanding signs that were permitted previously, a number of years ago  
25 of course, is one located right on the corner of Idaho and El Paseo and  
26 another one essentially right around here in the entry along El Paseo.  
27

28 The third sign which we'll be discussing here today is located off of Idaho.  
29 Here are the pictures of the two distant signs as they currently exist. And I  
30 just wanted to bring up the fact as well that what is the Planet Fitness sign  
31 itself does conform with current requirements for a freestanding sign. The  
32 larger sign to the left of all the different tabs in it, that's a nonconforming  
33 sign, so just a little bit of reference for you all.  
34

35 So what we're looking at today is in Chapter 36, the Las Cruces sign code.  
36 We're looking at two different sections because this is essentially two  
37 different variances under this case. One is Article 2, Section 36-46 (b) (6).  
38 This is essentially dictating the number of freestanding signs allowed for  
39 what are C-2, C-3 in our industrial zoning designations where essentially it  
40 states in the City of Las Cruces each commercial property is allowed to have  
41 one freestanding sign with the exception with lots that exceed a frontage of  
42 600 linear feet which this property does. In those cases, those properties  
43 are allowed up to two freestanding signs. That is the absolute max that is  
44 permitted by code.  
45



1 The other that we're looking at here is under Appendix 1, Table 2, also of  
2 the Las Cruces sign code. There is a minimum of 15-foot front yard setback  
3 required for all freestanding signs located along what are collector roadways  
4 and arterial roadways which are El Paseo and Idaho Avenue.  
5

6 Here's a picture of that sign that has been constructed that third  
7 freestanding sign. So again, so the variance would be a variance of one  
8 freestanding sign to allow for three freestanding signs on the subject  
9 property and a variance of eight feet to allow the sign to stay where it is  
10 existing at its current location which is roughly about seven feet from the  
11 front property line there on Idaho Avenue.  
12

13 A little bit of analysis, a little bit of what happened essentially here is  
14 essentially the sign was permitted and issued by error by staff, some  
15 misinterpretations, some misinformation unfortunately was provided and  
16 the sign permit application was essentially approved by staff and it was  
17 issued. The sign permit application was missing some information. It did  
18 not show the existing two freestanding signs on the site plan nor did it show  
19 setbacks on there. Something staff should have taken the consideration  
20 but like I said it was issued by error.  
21

22 The applicant was unaware of these requirements, essentially of the  
23 requirements as stated. And after he was made aware of the issuing of the  
24 permit, he was made aware of the error of the sign being the third sign and  
25 its setback, was made aware after we issued the permit and he already  
26 installed the sign.  
27

28 So additional analysis. So the way you approve a variance under the 2001  
29 Zoning Code on Article 2, Section 38-K. Staff kind of went back and forth  
30 on this one. Where we could see both ways how this variance could  
31 potentially be denied or approved. First, of course, I want to touch base on  
32 your physical hardship which is relative to the property. The first thing that  
33 staff looked at and we saw there's no real topographical constraints, any  
34 right-of-way takes or anything that would impinge on them having to meet  
35 code. But we also saw the potential of a, if we go back here, how the layout  
36 of this existing shopping center exists. How this back row kind of lies along  
37 the back instead of closer to the street. We could potentially see that the  
38 business is located in that further back portion from the street of El Paseo  
39 could potentially benefit. And so that's kind of a physical hardship being  
40 located further back away from the street. So we saw that as a potential  
41 physical hardship so just keep that in mind.  
42

43 Second, the spurring of additional economic development. This may not  
44 considering the shopping center is existing. It's fully built out, that's what  
45 staff saw essentially. But the potential for now those businesses in the back  
46 which as a person who reviews all business permits that come in from a

1 building standpoint, we get a number of them, a lot of turnaround in the back  
2 portion of this shopping center so it potentially for business opportunities or  
3 economic opportunities for those in those suites located in the back portion  
4 of the property.

5  
6 And third, of course, for monetary hardship. There is the cost of the already  
7 built and erected sign that was located on the property due to error  
8 unfortunately.

9  
10 With that note, staff does still recommend kind of a soft denial for this case.  
11 That being said, staff does not see any significant safety, health, or welfare  
12 issues associated or identified for the proposed variance. Findings stated  
13 here in you find in your staff report, essentially the two code requirements,  
14 maximum two freestanding signs, required setback. And of course staff in  
15 the end after much deliberation came with a soft denial because we feel it  
16 does not meet the Section 38-10J of the 2001 Zoning Code.

17  
18 I did want to mention, staff did also send out a public notification to the  
19 surrounding property owners. We received nothing until yesterday morning.  
20 We did get a phone call from; they didn't want to state who they were or  
21 what business they were but they're a business in that shopping center.  
22 They have their name on that sign and they find to get a little more flow into  
23 their business now. So they appreciate the sign as they stated. Again, no  
24 name, no business unfortunately.

25  
26 But with that the Commission's options tonight, one to vote "yes" and  
27 approve the proposed variance. Again, new findings will be required if you  
28 do vote to approve. Two, to vote "no" and deny as recommended by staff.  
29 Three, to vote "yes" with conditions. And four, table or postpone and direct  
30 staff and the applicant accordingly. The applicant and I believe her  
31 representative who erected the sign are here if you have any questions for  
32 them. I stand for questions as well.

33  
34 Kaiser: All right. Thank you. Any questions, comments from the Commission?

35  
36 Smith: I just have a comment. I'm very familiar with this shopping area. I live very  
37 close to El Paseo and Idaho. And the other businesses are setback from  
38 El Paseo. Of course, the Planet Fitness has their own sign. It is also a sign  
39 that they share with some of the other businesses there. It's kind of a unique  
40 shopping plaza or property because you have a business that's on the  
41 corner. You have a gym that's very prominent. And as far as accessing the  
42 other businesses there, I mean you have several entrances but not of them  
43 are very easy to see the other businesses. So it was just a comment I  
44 wanted to make just based on the signing where it's located and also the  
45 fact that they have the other businesses listed there.

1 Kaiser: Soft denial. It's a new one.  
2  
3 Ochoa: I didn't want to be too harsh.  
4  
5 Kaiser: I'm just trying to understand here. So basically, the order of events were  
6 the applicant submitted an application for a permit to install this third sign.  
7 And during the course of staff's review, it was not caught that they were  
8 already at their maximum. And it was also not noticed that they're missing  
9 specific information related to the placement of the sign. So staff approved  
10 it. The applicant went and built it. And now, six months later staff is saying  
11 you need to come back for a variance and we're recommending the soft  
12 denial. Is that ...  
13  
14 Ochoa: Mr. Chair. That kind of sums it all up. That is correct.  
15  
16 Kaiser: Okay. So my next question is ...  
17  
18 Ochoa: I would say yes, but ...  
19  
20 Kaiser: Did the applicant, did they pay any fees for this variance application?  
21  
22 Ochoa: Mr. Chair. Yes, they did pay all required application fees as well as public  
23 notification fees which includes notice letters, signage, and advertisement  
24 in Sun News as well as all associated sign permit fees as well.  
25  
26 Kaiser: Okay. So they paid for a variance application. If it's to be denied tonight  
27 then the result would be removal of the sign, correct? Which would cost  
28 additional money out of their pocket?  
29  
30 Ochoa: Mr. Chair. That is correct. And then they would also, they'll have the option  
31 to appeal the denial to City Council which would be further costs. Not only  
32 the fee, advertisement requirements as well, sir.  
33  
34 Kaiser: Okay. So basically, they have a situation where staff messed up and the  
35 applicant's bearing all the cost?  
36  
37 Ochoa: I believe that's fair to say. Yes, sir.  
38  
39 Kaiser: I have a problem with that.  
40  
41 Ochoa: Definitely don't disagree with you with that on that, sir. And staff did, I guess  
42 supervisory staff did discuss this issue with staff so, yes, sir, understood.  
43  
44 Kaiser: Okay. I mean based on that I think it's; I mean we just got done talking  
45 about sort of homeowners doing their due diligence on whether or not they  
46 need a building permit for a carport. And now we have sort of the opposite.

1 The City didn't do their due diligence and now the applicant is paying the  
2 price for all of that. I personally think that this is one that we've got to own.  
3 And I think in my opinion the applicant should be able to retain that sign and  
4 I think I'm going to vote to approve this variance so those are just my  
5 thoughts. Please go ahead.  
6  
7 Pitts: Tim Pitts, Deputy Director for Community Development. I think that's a  
8 reasonable compromise. And I think a condition that says the extra sign  
9 goes away when one of them comes down. That way the business isn't  
10 harmed by the thing but we will gain compliance at some point in the future.  
11  
12 Kaiser: So in other words, what you're saying is if the business that's there now with  
13 the sign on this new sign goes away that the new business doesn't get to  
14 put a new sign up?  
15  
16 Pitts: No, the third sign goes away. So if over the time they decide they wish to  
17 take one down for whatever reason, until that time, we're not talking about  
18 the faces on the sign, we're talking about the sign itself. That when that  
19 sign gets approved for redevelopment purposes, they come in and they  
20 want to do something and a sign comes down, we wouldn't allow it to go  
21 back up. But if all they do is replace the face of the sign which is the name  
22 of the businesses, I think it would be a fair thing because I think the business  
23 did everything they thought they needed to. And if that's the will of the  
24 Commission I think that staff did make a mistake. And it's tough to want to  
25 punish a business for staff's mistake.  
26  
27 Kaiser: Okay. Yes, I understood. So do you have any recommendation for  
28 language in that condition?  
29  
30 Ochoa: Yes. Mr. Chair. If I could? You could always vote to approve with the  
31 conditions that at any time in the future if any one of the three freestanding  
32 signs voluntarily gets removed, they will only be allowed to have the two  
33 freestanding or a total of two freestanding signs on the property.  
34  
35 Kaiser: Okay. Thank you.  
36  
37 Ochoa: Apologies, Chair. I did talk to the property owner and their representative  
38 and they are amenable to that condition, just to clarify.  
39  
40 Kaiser: Okay. Thank you. I think that's fair from our perspective. Before we go to  
41 the public, Commissioner Smith do you have a comment?  
42  
43 Smith: Just a clarification as far as our options. We can still vote yes to approve or  
44 we can vote yes with the conditions, either one of those. They're still on the  
45 table, correct?  
46

## Agenda Item #8.2.

1 Ochoa: Mr. Chair, Commissioner Smith. That is correct. You can just vote yes or  
2 when you do your motions, whoever does the motion, they could do, that's  
3 where it needs to start. When you do your motion, whoever is going to do  
4 the initial motion will have to do a motion with conditions and state that  
5 condition. The second will be, and then you'll take the vote with that. If not,  
6 whoever wants to make a motion just to approve, they could just make a  
7 motion to approve, second it, and so on and so forth.  
8  
9 Kaiser: Okay. I'm going to go to public comment now. Is there anybody in the  
10 audience who wishes to speak on this item? Okay. Seeing none. We'll  
11 come back unless there's any additional comments we'll go ahead and  
12 make a motion to approve.  
13  
14 Bennett: I'm just going to make a motion to approve 9.5.  
15  
16 Vega: I second.  
17  
18 Baum: Board Member Acosta.  
19  
20 Acosta: I vote yes to approve based on monetary hardship and the potential to spur  
21 economic business.  
22  
23 Baum: Board Member Smith.  
24  
25 Smith: I vote yes to approve based on frequent site visits. Also based on the  
26 hardship because of the error. And also, having driven down Idaho many  
27 times that that is actually a well-placed sign to help promote those  
28 businesses that are located within that plaza.  
29  
30 Baum: Board Member Vega.  
31  
32 Vega: I vote yes to approve based on the financial hardship and the staffing errors.  
33  
34 Baum: Board Member Bennett.  
35  
36 Bennett: I vote to approve based on physical and monetary hardship.  
37  
38 Baum: Board Member Murray.  
39  
40 Murray: I vote to approve based on monetary hardship and staff error.  
41  
42 Baum: Chair Kaiser  
43  
44 Kaiser: Yes, based on monetary hardship and staff error.  
45  
46 Baum: Motion passes.

1  
2 Kaiser: Okay. Thanks for all the presentations tonight.

3  
4 **10. DISCUSSION**

5  
6 Kaiser: Is there any discussion or staff announcements?

7  
8 Ochoa: Any discussion with the Commission you need to bring up? Is no.

9  
10 **11. STAFF ANNOUNCEMENTS**

11  
12 Ochoa: Okay, so staff announcements. It is almost that time of year. It's still hot  
13 but the holidays are coming around. So staff did want to bring up the  
14 November Planning and Zoning Commission meeting and the December  
15 Planning and Zoning Commission meeting. As of now, we still have them  
16 scheduled for the fourth Tuesday of the month which would essentially be  
17 November 28th which would be the Tuesday after Thanksgiving. And then  
18 in December, it would be on December 26th which that's definitely going to  
19 be an issue because staff will not be here.

20  
21 So I guess if we could come to a decision tonight if we wanted to move one,  
22 both then to the third Tuesday or potentially even moving the November one  
23 to the fifth Tuesday of the month that's a possibility as well. So we leave  
24 that up to the Commission with what they would like to do.

25  
26 Kaiser: So I think the 28th works. It's after the Thanksgiving holiday. I think that's  
27 more than fine. Yes, okay. So we'll keep the 28th. And then yes definitely  
28 would agree with the 26th. I think probably move it to before so that would  
29 be the 19th. I think that's obviously fair for staff and certainly the public. I  
30 think that's amenable as well.

31  
32 Ochoa: Sounds good. We'll go ahead and make those changes, sir. And so you  
33 all will be getting either packets and everything either earlier or later than  
34 usual on those two months so just keep an eye on them those for them.

35  
36 Also, I just wanted to update. We are finalizing you all's flash drives. So  
37 those flash drives should be delivered probably with your next P&Z packets  
38 for the next meeting. So they're pretty cool. Economic Development bot us  
39 these really nice wooden ones so they're not junky. They look pretty cool.  
40 So sorry Commissioner Vega, but thank you so much for being here though.  
41 Thank you ma'am. Appreciate your time here.

42  
43 Vega: I didn't expect to cry at my last Planning and Zoning meeting but thank you  
44 for the opportunity to serve and work with all of you. It's been a pleasure. I  
45 really appreciate it. And however, I can help in finding a replacement I  
46 certainly will.

1  
2 Kaiser:       Awesome. Well, once again best of luck and we'll see you out on the  
3               bicycle.  
4

5 **12.    ADJOURNMENT (7:52)**  
6

7 Kaiser:       All right. Go ahead and need a motion to adjournment tonight.  
8

9 Murray:       I make a motion to adjourn tonight's meeting.  
10

11 Smith:        I second.  
12

13 Kaiser:       All in favor?  
14

15 MOTION PASSES UNANIMOUSLY.  
16

17 Kaiser:       Thank you all for coming out tonight.  
18  
19  
20  
21

22  
23 \_\_\_\_\_  
Chairperson



# CITY OF LAS CRUCES

## *Planning & Zoning Commission 9/26/2023*

### **CASE 23ZO0500006: STERN DRIVE REZONING**

|                              |                                                                                                          |
|------------------------------|----------------------------------------------------------------------------------------------------------|
| <b>STAFF CONTACT:</b>        | Vincent Banegas, (575) 528-3058,<br><a href="mailto:vbanegas@las-cruces.org">vbanegas@las-cruces.org</a> |
| <b>OWNER:</b>                | Michael Clute, Hacienda RV LLC                                                                           |
| <b>REPRESENTATIVE:</b>       | Ted Scanlon, Borderland Engineers and Surveyors                                                          |
| <b>DISTRICT:</b>             | District #4                                                                                              |
| <b>SITE ADDRESSES:</b>       | 780 Stern Drive                                                                                          |
| <b>EXISTING ZONING:</b>      | EE (Single-Family Equestrian Estate and Agriculture)                                                     |
| <b>REQUEST:</b>              | Rezone from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity).     |
| <b>RELATED APPLICATIONS:</b> | N/A                                                                                                      |
| <b>STAFF RECOMMENDATION:</b> | Approval                                                                                                 |

#### **SUMMARY OF CASE 23ZO0500006:**

A zone change request from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for property ± 1.78 acres in size and located at 780 Stern Drive. Submitted by Ted Scanlon, Borderland Engineers, and Surveyors on behalf of Michael Clute, Hacienda RV LLC.

#### **SUMMARY OF RECOMMENDATION:**

Staff is recommending **APPROVAL** based on the findings listed below:

- The subject property is vacant and there are no imminent plans for development.
- The subject property falls within the Suburban Neighborhood place type. This classification provides for low-to-moderate density residential land uses intermixed with areas of commercial development.
- The request is consistent with what the Suburban Neighborhood place type provides.



- Currently, land uses along Stern Drive from Avenida de Mesilla south to Boutz Road consist of residential (RV Park), office (Agricultural Dept. and a “spec” building), regional commercial/service (RV sales and service) and vacant land. No neighborhood commercial retail exists currently along that segment.
- The northwest boundary for the Suburban Neighborhood place type is shared with the adjacent Regional Commercial place type.
- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).

**PROPOSAL AND LAND USE HISTORY**

**DETAILED DESCRIPTION:**

The property owner is seeking rezoning from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) to accommodate the applicant’s desire to market the property as commercial. This request is speculative in nature in that there are presently no plans for development.

The property owner, through his representative, is aware that upon development, all applicable regulations will need to be met including those requiring buffers/screens to adjoining properties that either have less intensive uses or zoning designations if vacant. The purpose of these buffers/screens is to help lessen potential development impacts between said uses.

To help facilitate this zone change request, staff required that the applicant carry out early notification to the surrounding neighborhood pursuant to code. To date, staff are not aware of any input received that would indicate opposition to this request.

**LAND USE HISTORY:**

The subject property is part of the Hacienda de Mesilla No. 6 subdivision, approved circa 2019. The property is undeveloped and is currently zoned primarily for larger lot (1-acre min.) residential development.

**ZONING DECISION CRITERIA AND POLICIES**

| POLICY                                              | DOES IT COMPLY? |
|-----------------------------------------------------|-----------------|
| <u>Neighborhood Character and Compatibility</u>     | Yes             |
| <u>Elevate Las Cruces Comprehensive Plan</u>        | Yes             |
| <u>Thoroughfare Plans</u>                           | Yes             |
| <u>Purpose and Intent of the Code: Section 38-2</u> | Yes             |
| <u>Criteria for Decisions: Section 2-382</u>        | Yes             |

**NEIGHBORHOOD CHARACTER AND COMPATIBILITY:**

In large part, the area surrounding the subject property (west and south) consists primarily of low-density residential lots. In fact, Banmoor Estates, an approximately 20-acre subdivision, is the newest development approved in that area. Residential (RV park), office and commercial/service (RV sales and service) uses exist to the north. Zoning in this area is comprised of R-1a, R-1aC, R-4, C-3, and C-3C, A-2, RE-C. Given the development pattern described, there should be limited impact to the surrounding neighborhood in terms of use, development character and compatibility.

**COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:**

According to the Future Development Map in the Elevate Las Cruces Comprehensive Plan, the subject parcel falls within the Suburban Neighborhood place type. This place type is characterized as providing for low-to-moderate density residential land uses intermixed with areas of commercial development.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the proposed Zone Change:

- Community Environment:
  - Goal CE-1: Balanced Growth – Encourage efficient land use development patterns that accommodate projected growth in a sustainable manner.
    - Policy CE-1.2. – Promote investment within older areas of the city through redevelopment.
      - Action CE-1.2.3 - Partner with property owners of vacant land for infill opportunities.
    - Policy CE-2.1. – Promote infill development strategies to sustain the City's established neighborhoods and historic residential areas.
- Community Prosperity:
  - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.
    - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
  - Goal CP-3: Entrepreneurship – Create a nurturing regulatory environment that generates entrepreneurship and small business investment.
- Community Livability:
  - Goal CL-2: Neighborhood Conservation - Strengthen neighborhood condition through improvements to the built-environment.
    - Policy CL-2.2 – Encourage redevelopment of vacant properties within neighborhoods.

As the proposed zoning for the subject property is congruous to the Suburban Neighborhood place type and is supported by various comprehensive goals and policies, staff feels the application is justified and should pose no significant conflict with the existing neighborhood.

**COMPLIANCE WITH THOROUGHFARE PLAN:**

Access to the subject property will come from Stern Drive. Stern Drive is an improved minor arterial roadway that provides adequate right-of-way (ROW) width, curb, gutter, sidewalks, and lighting. Please note that some infrastructure will be installed upon development of adjacent properties. Stern Drive has approximately 43 feet of paved width. Access to this portion of Stern Drive will primarily come from Avenida de Mesilla or Boutz Road which are principal and minor arterial roadways respectively. Collectively, these three roadways will provide all necessary access to the property irrespective of the use ultimately developed on site.

**CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:**

Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed zone change include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- D. Encourage mixed-land uses to decrease the length of trips for work and/or shopping and encourage the consolidation of trips and alternative modes of travel.
- K. Encourage development of vacant properties within established areas.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- M. Foster a more rational relationship between different land uses for the mutual benefit of all.
- N. Conserve the value of buildings and land.

Review by City of Las Cruces staff determined the proposed zone change would not adversely impact the surrounding area. Future uses that may be authorized by the proposed district will be in keeping with the surrounding area per section 38-2 of the 2001 Zoning Code, as amended.

**CRITERIA FOR DECISIONS:**

Per Section 2-382 of the Las Cruces Municipal Code, the Planning and Zoning Commission shall determine the following:

- A. The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:
  - 1. Impair an inadequate supply of light and air to adjacent property or otherwise adversely adjoining properties.
  - 2. Unreasonably increase the traffic in public streets.
  - 3. Increase the danger of fire or endanger the public safety.
  - 4. Deter the orderly and phased growth and development of the community.
  - 5. Unreasonably impair established property values within the surrounding

- area.
6. In any other respect, impair the public health, safety, or general welfare of the city.
  7. Constitute a spot zone, and therefore, adversely affect adjacent property values.
  8. Be in harmony with the purpose and intent of the zoning code, sign code, design standards, and other companion codes.
- B. The commission shall take care that the development of the city, in accordance with present and future needs, best promotes the health, safety, morals, order, convenience, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.
  - C. The commission shall encourage the proper use and development of land, shall seek to create, and maintain an aesthetic urban setting, and protect and preserve the quality of the water, air, and other environmental, natural, historical, and cultural resources for the city.
  - D. The commission shall use the comprehensive plan as a guide in making all future decisions concerning land use and development, and in the financing and location of capital improvements.
  - E. Before taking any action concerning land use and development and financing and location of capital improvements, the commission shall review the relationship between the proposed action and the comprehensive plan.

Upon internal review, Staff did not identify any issues that would deter the Planning and Zoning Commission from making an affirmative recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate with a recommendation of approval.

#### **DEVELOPMENT STANDARDS**

---

##### **SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:**

The subject property is currently zoned EE. This zoning district allows for large lot residential development by right. Given the lot size of the parcel in question, only one lot can be developed pursuant to code, two if a variance to the one-acre lot size minimum is sought and approved. With the different land uses in the area, the EE district can be seen as providing a land use transition between the non-residential uses to the north and the low-density residential uses to the south and west. That said, the EE zone can also be seen as somewhat out of character to the surrounding area when considering the property's proximity to heavily travelled arterials in the vicinity.

##### **SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:**

If the subject property is rezoned as proposed, the size of the lot and the road access allow development of future yet to be determined commercial to take place. All development would then follow the requirements of the C-3 zoning district.

##### **ADEQUACY OF PUBLIC FACILITIES AND SERVICES:**

City water and gas is currently in proximity of the subject property and is accessible to the property owner. The available city utilities will not be negatively impacted by this zone change request and any of the proposed uses being considered.

### **STAFF AND PUBLIC COMMENTS**

---

#### **PUBLIC NOTIFICATION AND INPUT:**

Notification letters were mailed to property owners within 500 feet of the subject property. Staff has not received any input regarding the pending zone change action as of packet preparation.

#### **STAFF COMMENTS:**

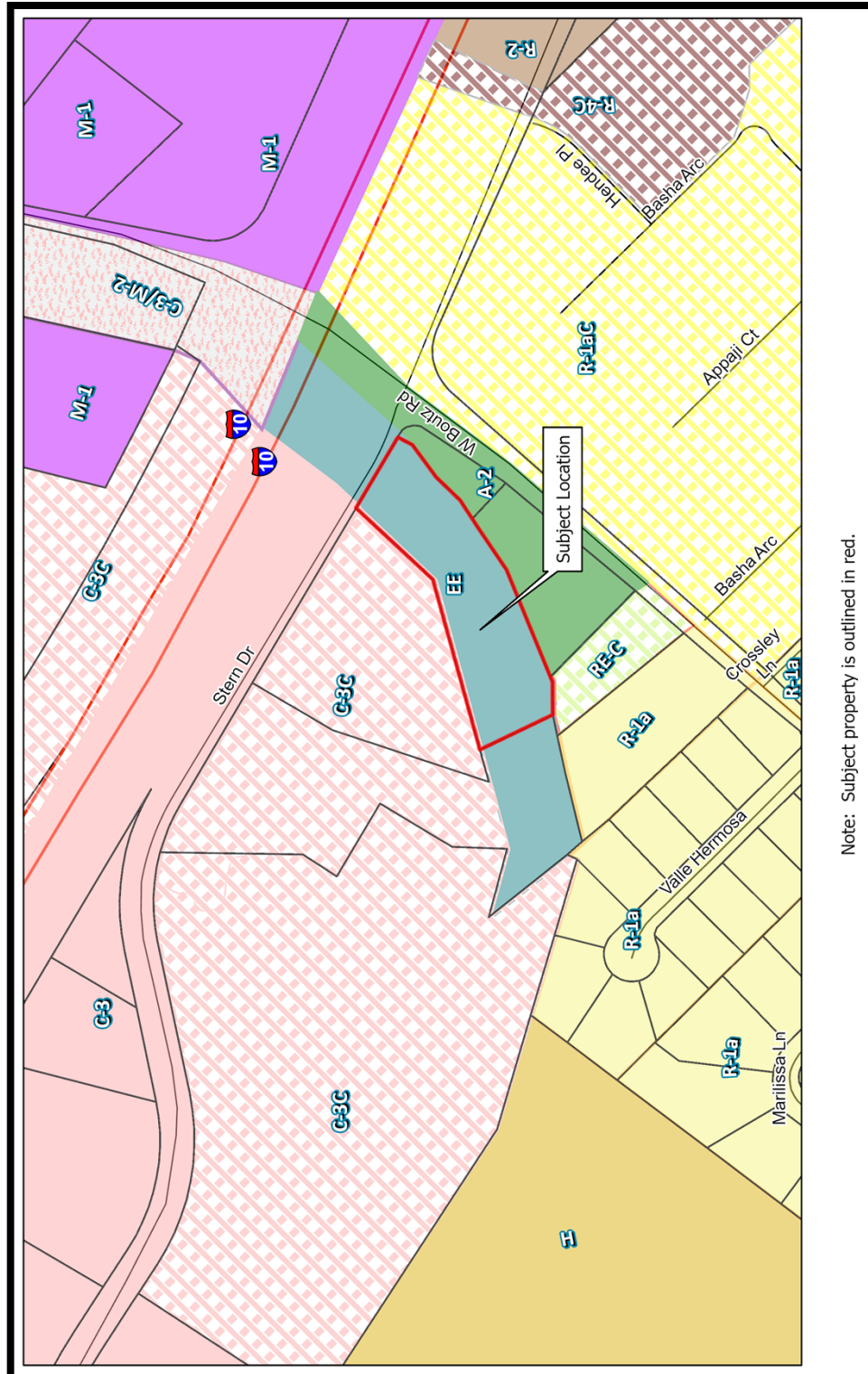
There were no reviewing department comments that would prohibit consideration of this request by the Planning and Zoning Commission.

#### **ATTACHMENTS:**

1. Zoning Map
2. Aerial Map
3. Department Review Comments

# **ATTACHMENT 1**

## **Zoning Map**





**ATTACHMENT 2**  
**Aerial Map**



Note: Subject property is outlined in red.

## **ATTACHMENT 3**

### **Department Review Comments**

**Department: Planning**

Status: APPROVED

**Department: Transportation**

Status: NOT REQUIRED.

**Department: Engineering**

Status: NOT REQUIRED

**Recreation**

**Department: Utility**

STATUS: APPROVED

**Department: Fire**

Status: APPROVED

**Department: MPO**

Status: NOT REQUIRED

**Department: Flood Review**

Status: APPROVED W/ CONTINGENCY

**Department: Econ Dev**

Status: NOT REQUIRED





**3056; Council  
Bill 24-014**

# City Council Action and Executive Summary

Type of Action:  
☐ Resolution  
☒ Ordinance  
☐ TIDD Resolution

|              |                                                                                                                                                                                                                                                            |                   |                       |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------|
| District:    | <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> N/A                                                  |                   |                       |
| 1st Reading: | December 18, 2023                                                                                                                                                                                                                                          | Adopted:          | January 2, 2024       |
| Drafter:     | Vince Banegas                                                                                                                                                                                                                                              | Department:       | Community Development |
| Program:     | Community Planning                                                                                                                                                                                                                                         | Line of Business: | Community Planning    |
| Title:       | AN ORDINANCE APPROVING A ZONE CHANGE FROM R-2/C-2 (MULTI-DWELLING LOW DENSITY/COMMERCIAL MEDIUM INTENSITY) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR PROPERTY LOCATED AT 806 EAST BOWMAN AVENUE. SUBMITTED BY NICOLE E. AND PHILIP EHRGOTT, PROPERTY OWNER. |                   |                       |

TYPE OF ACTION:    ☐ Administrative    ☐ Legislative    ☒ Quasi-Judicial

**PURPOSE(S) OF ACTION:**  
Zone change.

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**  
The City Council is required to review and take final action on zone changes per Section 38-10.B.2.b. and 38-13.A. of the 2001 Las Cruces Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulation uniformly governs the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity) for property approximately ± 0.402 acres in size and located at 806 East Bowman Avenue within the South Mesquite Overlay (SMO) district. The property owners require the zone change in that a vast majority of the property is R-2 (small portion adjacent to the alley is C-2) and the R-2 district does not allow for the desired cottage industry and retail uses the applicants wish to establish on-site in addition to the residential component already in place. For clarity's sake, a cottage industry is defined within the 2001 Las Cruces Zoning Code, as amended as any manufacturing, compounding, and/or assembly process, including food preparation, which is subordinate to a primary use of retail sales or service. This use is not to be confused with or treated as a home occupation. The cottage industry in this case will involve the small-scale manufacturing of hand-crafted furniture products that will be sold on the premises. The retail sale of natural nutrition products and home goods will also take place on-site. All uses will follow the applicable provisions authorized in the C-2 zoning district within the SMO if this zone change request is approved. Additionally, the property will be required to meet all applicable access, parking, and landscaping requirements pursuant to code in that the proposed use represents a change in use for the property.

The proposed zone change is consistent with the Elevate Las Cruces Comprehensive Plan and several goals, policies and actions contained therein. Policy supporting the request speaks in part to encourage the reuse of vacant/underutilized property, promoting investment in older areas of the city, and promoting infill opportunities to sustain established neighborhoods and historic residential areas. The property is within the Urban Neighborhood place type which encourages a variety of housing styles in medium to high densities with low-to-

### Agenda Item #8.3.

moderate density residential land uses intermixed with areas of commercial development. The proposed use is consistent with the intent of the Urban Neighborhood place type.

Per the requirements of the zoning code, the proposed zone change required a recommendation consideration by the Historic Preservation Commission (HPC) to the Planning and Zoning Commission (P&Z). On September 21, 2023, staff received a letter of support for the request by the HPC which was shared with P&Z.

On September 26, 2023, this case was heard by P&Z at their regular meeting with an approval recommendation on consent by a vote of 6-0-0 (one Commissioner absent). It should be noted that prior to the P&Z meeting, the applicant carried out early notification pursuant to Code and neither the applicant, nor staff received any input regarding the request.

#### **SUPPORT INFORMATION:**

[EXHIBIT "A" - Vicinity Map](#)

[EXHIBIT "B" - Findings](#)

[ATTACHMENT "A" - Approved 9.26.23 P&Z Minutes](#)

[ATTACHMENT "B" - Staff Report](#)

#### **PLAN(S):**

Elevate Las Cruces

#### **COMMITTEE/BOARD REVIEW:**

Historic Preservation, P&Z

#### **DOES THIS AMEND THE BUDGET?:**

☐ Yes

☒ No

#### **Does this action amend the Capital Improvement Plan (CIP)?**

☐ Yes

☒ No

#### **Does this action align with Elevate Las Cruces?**

☒ Yes

☐ No

#### **OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 806 E. Bowman Avenue will be rezoned from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity).

2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current zoning will remain in place and require the property owner to seek an alternative zoning designation for their purposes.

3. Vote to "Amend"; this would allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.

4. Vote to "Table"; this would allow the City Council to table/postpone the Ordinance and direct staff accordingly.

**ORDINANCE 3056; COUNCIL BILL 24-014**

**AN ORDINANCE APPROVING A ZONE CHANGE FROM R-2/C-2 (MULTI-DWELLING LOW DENSITY/COMMERCIAL MEDIUM INTENSITY) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR PROPERTY LOCATED AT 806 EAST BOWMAN AVENUE. SUBMITTED BY NICOLE E. AND PHILIP EHROTT, PROPERTY OWNER.**

The City Council is informed that:

**WHEREAS**, Nicole E. and Philip Ehrott, property owners, have submitted a request for a zone change from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity); and

**WHEREAS**, the subject property is approximately 0.402 acres in size, developed, and requires the requested zone change in order to facilitate the development vision the owners have put forth; and

**WHEREAS**, the proposed C-2 (Commercial Medium Intensity) zone change is consistent with the Urban Neighborhood place type per the Elevate Las Cruces Comprehensive Plan and is supported by various goals, policies, and actions contained therein; and

**WHEREAS**, the proposed zone change meets the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

**WHEREAS**, the Planning and Zoning Commission, at their regular public hearing on September 26, 2023, recommended via the consent agenda, that the zone change request be approved by a vote of 6-0-0 (one Commissioner absent).

**NOW, THEREFORE**, Be it Ordained by the Governing Body of the City of Las Cruces:

**(I)**

**THAT** the land as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-2 (Commercial Medium Intensity).

**(II)**

**THAT** the zoning is based on the findings contained in Exhibit "B", attached hereto and made part of this Ordinance.

**(III)**

**THAT** the zoning of said property be shown accordingly on the City Zoning Atlas.

**(IV)**

**THAT** City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

**DONE AND APPROVED this** day of

APPROVED

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

**Moved by:**

**Seconded by:**

**AYES**

**NAYS**

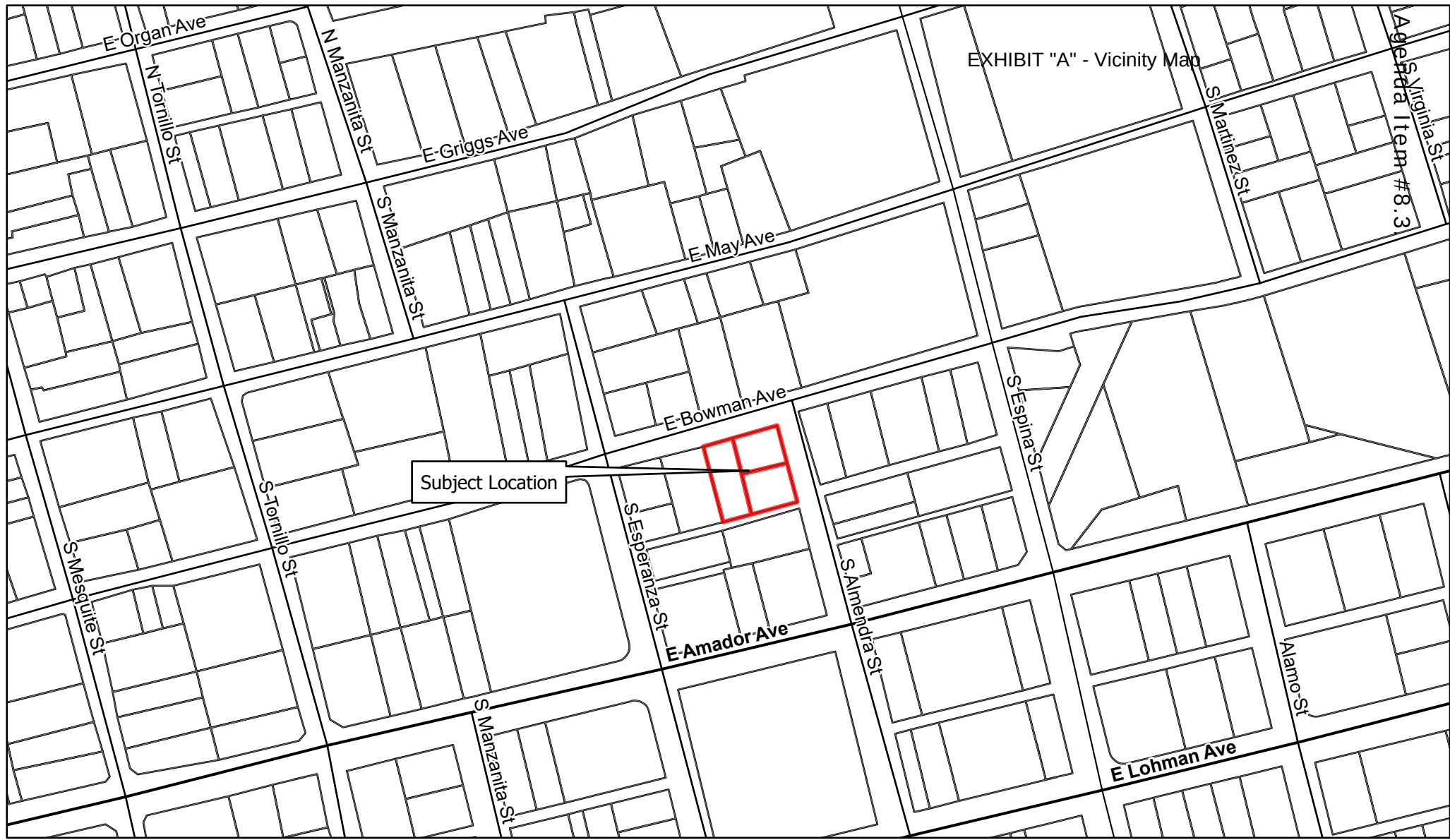
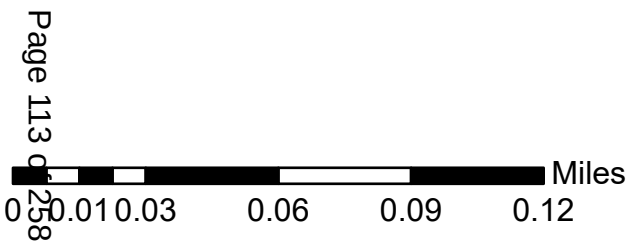


EXHIBIT "A" - Vicinity Map

Agenda Item #8.3

Subject Location

Note: Subject property is outlined in red.



# Legend

- parcel
- RoadCenterline
- Road Class
- Collector
- Local Streets
- DAC\_Parcel
- Heather Hills Zoning
- Major Arterial

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- The property under consideration is within the South Mesquite Overlay District (SMO).
- This overlay establishes land use and architectural/site design criteria which will be met by the property owners when preparing the subject property for commercial/residential use.
- Previously, the property was used as a residence, office, and contractor's yard in what staff believes was a violation of the 2001 Las Cruces Zoning Code, as amended. The intended use via this request seeks to remedy compliance issues.
- The Historic Preservation Commission (HPC) Chair, on behalf of the HPC, has provided a letter of support for the request as presented. Said letter will be provided during staff presentation in that preparation of the letter followed compilation of this report.
- The property owners wish to reside and establish commercial retail and a cottage

industry uses on the premises all of which is consistent with the C-2 zoning district and its application within the SMO.

- The subject property falls within the Urban Neighborhood Place Type. This classification is characterized by a variety of residential housing types at medium to high densities and areas of supporting neighborhood commercial development. The classification is consistent with what the C-2 (SMO) provides and what the property owners seek to accomplish.
- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).
- The surrounding area immediately north, east, and west is primarily residential in use and zoned R-2 (SMO). Areas south of the subject property are residential and commercial within a C-2 zone (SMO).



**PLANNING AND ZONING COMMISSION  
FOR THE  
CITY OF LAS CRUCES  
City Council Chambers  
September 26, 2023 at 6:00 p.m.**

**BOARD MEMBERS PRESENT:**

- Scott Kaiser, Chair
- Enrico Smith, Vice-Chair
- James Bennett, Secretary
- Vanessa Vega, Member
- Joaquin Acosta, Member
- Connor Murray, Member

**BOARD MEMBERS ABSENT:**

- Vanessa Porter, Member

**STAFF PRESENT:**

- Tim Pitts, Deputy Director Building Development
- Adam Ochoa, Senior Planner/Building Inspection Supervisor
- Vincent Banegas, Interim Planner
- Brad Douglas, Deputy City Attorney
- Becky Baum, Recording Secretary, RC Creations, LLC

**1. CALL TO ORDER (6:00)**

Kaiser: All right. Good evening. It is 6:00 p.m. on September 26th and we will go ahead and call this meeting to order. It is the City of Las Cruces Planning and Zoning Commission meeting. Before we get started, we've got a couple of housekeeping items tonight. The first is I've been informed that I believe that big screen up there is out of order but we do have this smaller screen on either side of me so if you do want to move up or feel like you need to move up to be able to see the presentations tonight, I encourage you to do so.

The second item is I want to extend my thanks and gratitude to Commissioner Smith for covering last month while I was out. First month as Vice Chair and threw you into the deep end, and so I appreciate you covering for me and really did a great job. So thank you.

And then finally, if the rumors are true this is Commissioner Vega's final meeting with us here on the Commission. I speak for myself but certainly colleagues of up here, it's been a pleasure working with you the last year-



1 plus for myself, and certainly longer for others. And we wish you all the best  
2 and hope to see you around town.

3  
4 Vega: You will, on my bike.

5  
6 Kaiser: Sounds great. All right.

7  
8 **2. CONFLICT OF INTEREST**

9  
10 Kaiser: So with that we will go ahead. Are there any conflicts of interest from the  
11 Commission tonight? All right. Seeing none.

12  
13 **3. APPROVAL OF MINUTES – July 25, 2023**

14  
15 Kaiser: We'll go to the approval of minutes. Before we do that were there any  
16 corrections or edits that folks would like to make? I just have a couple just  
17 to clarify on the attendance. It should be Commissioner Bennett listed as  
18 the Secretary and Commissioner Smith listed as the Vice-Chair. So we can  
19 make those corrections and then looking for a motion to approve.

20  
21 Bennett: I make a motion to approve the minutes.

22  
23 Smith: I second.

24  
25 Baum: Board Member Acosta.

26  
27 Acosta: Yes.

28  
29 Baum: Board Member Smith.

30  
31 Smith: Yes.

32  
33 Baum: Board Member Vega.

34  
35 Vega: I abstain. I was not here.

36  
37 Baum: Board Member Bennett.

38  
39 Bennett: Yes.

40  
41 Baum: Board Member Murray.

42  
43 Murray: Yes.

44  
45 Baum: Chair Kaiser.

1 Kaiser: I abstain as I was absent.

2

3 Baum: Thank you. Passes.

4

5 **4. POSTPONEMENTS**

6

7 Kaiser: All right. Moving onto the acceptance of the agenda, or I actually should  
8 clarify there are no postponements tonight; is that correct?

9

10 Ochoa: Nothing tonight, sir. No.

11

12 **5. ACCEPTANCE OF THE AGENDA**

13

14 Kaiser: So go ahead and looking for a motion approve tonight's agenda?

15

16 Ochoa: I make a motion to approve tonight's agenda.

17

18 Murray: I second.

19

20 Baum: Board Member Acosta.

21

22 Acosta: Yes.

23

24 Baum: Board Member Smith.

25

26 Smith: Yes.

27

28 Baum: Board Member Vega.

29

30 Vega: Yes.

31

32 Baum: Board Member Bennett.

33

34 Bennett: Yes.

35

36 Baum: Board Member Murray.

37

38 Murray: Yes.

39

40 Baum: Chair Kaiser.

41

42 Kaiser: Yes.

43

44 Baum: Passes.

45

46 **6. PUBLIC PARTICIPATION**

1  
2 Kaiser: All right. Moving onto public participation. Is there anybody in the audience  
3 who wishes to speak on an item that is not on tonight's agenda? Please  
4 raise your hand. Okay. Seeing none.  
5

6 **7. CONSENT AGENDA**  
7

8 Kaiser: We will move onto the consent agenda in which we have three, yes, three  
9 items on the consent agenda. Can I get a motion to approve tonight's  
10 consent agenda?  
11

12 Vega: I make a motion to approve the consent agenda.  
13

14 Smith: I second.  
15

16 Baum: Board Member Acosta.  
17

18 Acosta: Yes.  
19

20 Baum: Board Member Smith.  
21

22 Smith: Yes.  
23

24 Baum: Board Member Vega.  
25

26 Vega: Yes.  
27

28 Baum: Board Member Bennett.  
29

30 Bennett: Yes.  
31

32 Baum: Board Member Murray.  
33

34 Murray: Yes.  
35

36 Baum: Chair Kaiser.  
37

38 Kaiser: Yes.  
39

40 Baum: Passes.  
41

42 **8. OLD BUSINESS**  
43

44 Kaiser: Okay. Moving on. We do not have any old business tonight.  
45

46 **9. NEW BUSINESS**

1  
2       **9.1   Case No. 22ZO0500085:** A zone change request from R-4 (Multi-Dwelling  
3       High Density and Limited Retail and Office) to C-3 (Commercial High  
4       Intensity) for a property located at 3250 Northrise Drive and encompassing  
5       2.5 acres in size. Submitted by Mark Heck, property owner. Council District  
6       6.

7  
8   Kaiser:       So we'll move onto new business and begin with item 9.1, A zone change  
9               request from R-4 to C-3 located at 3250 Northrise Drive. Staff, please take  
10              it away.

11  
12   Banegas:     Good evening, Commissioners. Vincent Banegas, Interim Planner for the  
13               record, presenting tonight's case involving 3250 Northrise Drive. It is a zone  
14               change request seeking zone change from R-4 to C-3. It is Case  
15               22ZO0500085.

16  
17               Current conditions on the case at hand, the zoning is R-4 which is our multi  
18               dwelling, high density and limited retail and office zone. Limited retail and  
19               office in the sense that there are perhaps more office uses than retail and  
20               retail home occupation that type of thing is allowed. But otherwise, it's well  
21               suited for the multi dwelling component of our land use spectrum. It is  
22               roughly 2.5 acres in size and it was rezoned from A-2 to R-4 back in 2014.

23  
24               The property is currently vacant and from a grading or elevation perspective  
25               it does sit lower than some of the properties around it. In fact to that end,  
26               there's some fill dirt being requested to help elevate the site so that it is  
27               more developable, easier to develop in that regard.

28  
29               It is one of several of 2.5 acre lots that were annexed back in the day with  
30               the East Mesa U.S. 70 annexation that took place in 1986. The A-2 zone  
31               was used quite extensively during that time. And for many of these parcels  
32               as a placeholder, if you will, in that future consideration, future development  
33               was going to be thought through and then a rezoning would be brought forth  
34               at that time. So there's still several that are A-2 in nature and that's what  
35               prompted the rezoning back in 2014 for this particular parcel.

36  
37               Many of the properties in question around the subject property and including  
38               the subject property were platted with access easements serving as a legal  
39               method to gain access to the property. But from a broader perspective  
40               doesn't provide any great surety in completing or providing for a suitable  
41               road network further south of Northrise.

42  
43               The property in question has approximately 35 feet of Northrise Drive  
44               frontage, barely enough to comply with the ingress/egress requirements of  
45               the code or design standards. The transportation issue going back to that  
46               because there is a general lack of roadway system south of Northrise, a

1 blueprint to address those type of issues is currently underway. In fact, the  
2 City has hired a consultant to aid in that effort and they are holding a  
3 meeting I believe tomorrow if I'm not mistaken. And the expected  
4 completion date is approximately four months from now, so end of year.

5  
6 The property currently sits in the suburban neighborhood place type and as  
7 we now know that supports low to moderate residential densities and allows  
8 pockets of commercial development. The property is directly south and  
9 west of the regional commercial neighborhood place type. In fact, the  
10 majority of that place type sits north of Northrise Drive and then does wrap  
11 around on the southwest corner of Rinconada Boulevard and Northrise.

12  
13 The current R-4 zoning helps address some of the housing related issues  
14 that we are well aware of through the planning efforts of late. Specifically,  
15 the missing middle housing that we are trying to fill the gap for, and also  
16 housing affordability. So those are a couple of the housing related issues  
17 that play a role in this current request.

18  
19 The surrounding neighborhood is multifamily residential both west and  
20 southwest, office and commercial, north, northeast and east and southeast,  
21 and vacant to the south of the subject property. The supporting zoning for  
22 those uses is an alphabet soup, as you can see there's PUD, R-4, EE, A-2,  
23 and so on. There's no immediate plans to develop the property. Certainly,  
24 none that were mentioned to staff.

25  
26 So here's a zoning map that shows the location of the subject parcel here.  
27 Northrise Drive sits here. And the property as shown is currently R-4. You  
28 do have EE which is our equestrian estates and agriculture zoning district  
29 allowing up to one dwelling unit on a minimum of a one-acre lot size. The  
30 other A-2 zone parcels kind of speak to that zoning effort back in the '80s  
31 and based on what I know from the efforts back then those are the  
32 placeholders.

33  
34 You do have some plethora of other uses up in here. Some vacant, some  
35 are developing right now but you have some office and commercial uses  
36 further west of the property along Roadrunner. And of course, you do have  
37 significant commercial uses beginning further east of the property along  
38 Northrise out towards Rinconada with Walmart, etc., taking place in that  
39 region.

40  
41 The aerial view of the subject property. You do have this area here which  
42 is not currently serviced, that's the area that is being referenced when I  
43 speak of lack of road network. Connectivity for any roadway from Northrise  
44 down to Calle Jitas intersection with Sonoma Ranch for instance once you  
45 get past that it's kind of no man's land. There is the school further south of  
46 subject property, an arroyo that separates some of the land in question.

1  
2 A lot of these parcels, these 2.5-acre parcels are individually owned and  
3 some have a grouping in terms of ownership. We refer to one as the tetras  
4 parcel which has a shape of a tetra's game piece and has multiple 2.5-acre  
5 lots assembled under a single ownership.  
6

7 So the proposal given is R-4 to C-3 speculative in nature. Speculative in  
8 the sense that that's a necessary step to get to market the property and  
9 ultimately develop the property. Staff is aware of that but the applicant has  
10 indicated that there's a need to change the zoning to commercial to help  
11 offset some of the costs that are associated with grading and making the  
12 parcel marketable and developable.  
13

14 This is a plat showing the parcel in question. It's a little hard to read but you  
15 see that small amount of frontage right along Northrise Drive which runs at  
16 this location here. And you do see some of the easements, road easement,  
17 in this case it looks to be a 33-foot road and utility easement here. A lot of  
18 those parcels have very similar easements identified.  
19

20 Some of the photos taken out on site. Here's the sign that's seeking clean  
21 fill to help elevate the parcel. There is a fairly significant drop depending  
22 where you stand from the top of surface here adjacent to Northrise Drive on  
23 down to the subject parcel. Another shot. And then looking at either  
24 direction both west and east along Northrise Drive and that's what these  
25 photos represent. A lot of vacant land or underdeveloped land.  
26

27 So in terms of analysis, there's no health, safety, or welfare issues that are  
28 identified by staff through the review process. However, we do consider the  
29 fact that the proposed zoning maybe compatible to some of the properties  
30 east of the subject location. What I'm referring to are some of the  
31 commercial properties there but again the regional commercial place type  
32 that starts looping down along Rinconada lends credence to that  
33 compatibility.  
34

35 Staff feels that allowing further intrusion, if you will, of the regional  
36 commercial or commercial uses I should say in an area that's already  
37 identified as a suburban place type kind of minimizes the importance of that  
38 suburban placed type and may provide added pressure for additional  
39 property owners to seek rezoning to a commercial designation. So staff  
40 feels that the areas north of Northrise Drive and east, south at the southwest  
41 corner of Rinconada and Northrise Drive already allow commercial and so  
42 limiting commercial to those areas is prudent.  
43

44 So the property is within that suburban place type. We do encourage a  
45 variety of residential development at low to moderate densities with areas  
46 of commercial as we have identified in previous cases. I've also stipulated

1 that the deficient road network is a concern and the planning effort  
2 underway at the present time will hopefully shed some light on how we can  
3 handle that for future development.

4  
5 The proposed zoning that is being requested in terms of the C-3 does allow  
6 residential densities. I don't want to lead you to believe that it will not. It  
7 does allow a minimum of 10 dwelling units per acre and up to 40 dwellings  
8 units per acre as well. So that can be done. The question is will it be done  
9 or will we see additional commercial development? Again, based on the  
10 grading issues and the information provide, staff would suspect that  
11 commercial would probably be a likely development scenario for that lot.

12  
13 In terms of public notice and input, notice was sent in accordance with the  
14 2001 Zoning Code as amended. And we really did not receive any feedback  
15 from property ownership within the 500 feet of the subject property.

16  
17 Staff recommendation and findings. This is going to be a little different than  
18 most cases that you hear. Staff is recommending denial based on the  
19 following findings. Property south of the subject property do not have  
20 adequate road network to service those properties. Many of the properties  
21 are platted with access easements which provide legal access but no surety  
22 of developing right-of-way and efficient connectivity.

23  
24 The CLC consultant is currently studying developing the blueprint in an area  
25 concentrating on transportation issues and needs. And that hasn't come to  
26 fruition yet so we feel rezoning is a little premature at this point given that.  
27 The property is in the suburban neighborhood place type. Again, low to  
28 moderate residential densities with supporting commercial.

29  
30 The regional commercial place type primarily takes place north of Northrise  
31 Drive, directly north of the subject property wrapping around to Rinconada  
32 and Northrise. And so commercial areas and opportunities for development  
33 already exist. The further introduction of commercial in this suburban  
34 neighborhood place type kind of minimizes its purpose, that's kind of how  
35 we feel. There's an ongoing need for apartments which the R-4 can satisfy  
36 addressing the missing middle and housing affordability.

37  
38 And so, we feel that the proposal is not substantially supported by Elevate  
39 Las Cruces Comprehensive Plan in that it doesn't meet the purpose and  
40 intent of the 2001 Las Cruces Zoning Code. The subject property is  
41 surrounded largely by commercial, office, multifamily, and vacant property,  
42 and zoned a variety of zoning designations. So a little different here in terms  
43 of options. Staff would recommend you vote in affirmative like you would  
44 any other case. But in this case if you vote yes, you're voting to approve  
45 the zone change to C-3 in which case the findings that I've already identified  
46 in the presentation you need to know do not support the request so you'd

1 have to identify findings of fact that are different from those I've just  
2 presented. If you vote no, then you deny the request and you can also vote  
3 yes amend with conditions, or you vote to table. And that concludes that  
4 presentations. And I stand for question. And I know the property owner's  
5 in attendance might want to say a few words regarding his request.  
6

7 Kaiser: All right. Well, before we come to the Commission, would the applicant,  
8 property owner wish to make a presentation or provide statements? Before  
9 you start can you state your name for the record so I can swear you in?

10  
11 Heck: Full name is John Mark Heck.

12  
13 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
14 truth and nothing but the truth under penalty of law?

15  
16 Heck: Yes.

17  
18 Kaiser: Okay. Please go ahead, sir.

19  
20 Heck: Good afternoon. Good evening. He failed to mention that that is a massive  
21 sewer line across the, what I would call the southwest portion of the  
22 property. It's already in existence. It's probably an 18-inch sewer line. It  
23 serves Walmart and all the commercial area on upstream.

24  
25 There's also an easement on what I would call the northeast side which is  
26 a utility easement with an existing powerline. It's the only property in that  
27 entire area that fronts Northrise. And it's also one of the deepest points  
28 along Northrise elevation and topographical, so it needs to be filled in, and  
29 you're talking approximately 35 to 40 feet of fill on 2.5 acres, that is a  
30 considerable amount of fill. That's going to be incredibly expensive in most  
31 cases.

32  
33 Also, he did not mention that there is an existing arroyo that often flows that  
34 goes around what I would call the west point of the property. That's going  
35 to have to be addressed. I do not think that residential property can be built  
36 on that area that would overcome those expenses that's why we need to go  
37 commercial in that property. And I do have a prospective restaurant that  
38 has looked at it and were thinking about it, but we don't know what the  
39 zoning is going to be and we don't know whether they would qualify or not.

40  
41 It seems like that's all I can think of that needs to be addressed. Other than  
42 there's nothing but commercial property on both sides of it except for the  
43 south portion and across the road it's all commercial in that area. I don't  
44 understand why it has to be residential when you have so much other  
45 property there and when they address the access needs that that could not  
46 be developed more efficiently and at a lower cost. Thank you.



1  
2 Kaiser: Thank you. All right. Coming to the Commission, are there any questions  
3 or comments?  
4

5 Acosta: I've got one. So looking at the, a statement you said Vincent about it being  
6 perhaps too premature. In terms of the steps that would need to be making  
7 it appropriate for rezoning could you clarify that for me?  
8

9 Banegas: Certainly. Mr. Chairman, Commissioner Acosta. The statement of being  
10 premature is referring to the planning effort for the blueprint in terms of  
11 identifying how to provide for transportation networks, road networks in that  
12 southern area. It could be that as Mr. Heck indicated that the property in  
13 question that has perhaps the only access at least for some of those A-2  
14 zoned and EE zoned parcels that's the only one that has the frontage could  
15 be impacted in some form or fashion in terms of the provision for access.  
16

17 So we don't know what's going to come from the planning effort. We truly  
18 don't. We would like to wait and see and see what they come up with policy  
19 wise, idea wise in terms of road network.  
20

21 Acosta: And so just to clarify that, it comes from the City of Las Cruces before a  
22 property owner could do what he needs to do as far as developing that? Or  
23 can property owner, or if he sells it somebody come in there and do the  
24 blueprints or propositions?  
25

26 Banegas: The City of Las Cruces in working with the consultant have made contact to  
27 the various property owners in the vicinity trying to assemble them, trying to  
28 setup a meeting. In fact, that meeting as I recall talking with Sara about,  
29 will take place tomorrow. And so the purpose is to convey what is being  
30 proposed and start assembling some of the ideas and the thoughts of those  
31 property owners in terms of making this a reality, making the road network  
32 a reality for this region.  
33

34 Acosta: Okay. Thank you.  
35

36 Kaiser: Yes. Go ahead, Commissioner Smith.  
37

38 Smith: I have a question or concern. I did a site on this area and it is highly  
39 commercial and now looking at the zoning map, seeing that this one parcel  
40 that's zoned residential. What is the likelihood that that area would be  
41 developed for residential? I know of course the property owner would have  
42 to sell it and then someone would have to purchase it and decide to build  
43 residences there but what is that likelihood because of the highly  
44 commercial and the fact that it's zoned EE and also A-2 that that would  
45 happen sooner than say zoning it for commercial and having another  
46 business there?

1  
2 Banegas: Mr. Chairman, Commissioner Smith. That's a difficult question and the only  
3 thing I can point to is some areas that have previously undergone master  
4 planning that have identified multifamily as a use on property as part of the  
5 master plan. Staff has received in the past immense pressure to convert  
6 those parcels that were identified as multifamily over to a commercial  
7 designation from a use perspective and then change the zoning to support  
8 that. Staff has resisted that in the past and it took a while but we finally got  
9 apartments exactly where the master plan intended them to be. And this  
10 was an area along Sonoma Ranch.

11  
12 In this case, it's likely. I can't indicate that some of these areas that are  
13 south of the subject property will not ever be multifamily in nature. Keep in  
14 mind that the suburban neighborhood place type encourages residential  
15 with pockets of commercial. So commercial isn't outright banned. It's  
16 allowed but we want to see, from our perspective residential is often,  
17 especially multifamily is often the stepchild of master plans. Those tend to  
18 come last.

19  
20 Smith: All right. Thank you.

21  
22 Kaiser: I just want to go back to Commissioner Acosta's question. So as it stands  
23 right now R-4 is the current zoning. So if they wanted to move ahead with  
24 a residential project is it staff's position that at this time due to the circulation  
25 constraint concerns that it would also be premature to develop that type of  
26 project now as well?

27  
28 Banegas: Mr. Chairman. Based on the fact that the existing zoning is in place, staff  
29 would encourage them to hold on but we wouldn't restrict them from  
30 proceeding with development plans.

31  
32 Kaiser: Okay. Thank you. And if you could go back to the slide that showed the  
33 easement.

34  
35 Banegas: If I could find it. Let's see. There.

36  
37 Kaiser: That one, yes. So if I'm reading this correctly, the easements I guess would  
38 be the eastern edge of the parcel, correct?

39  
40 Banegas: That's correct.

41  
42 Kaiser: So I'm just trying to think because that would be if they were to develop say  
43 a residential project right now. Would that presumably be the access point?  
44 I mean because they would have access, I'm assuming through that  
45 easement back to Northrise.  
46

1 Banegas: Mr. Chairman, Commissioners. You might also reference this little detail.  
2 Based on that detail, I'd have to assume that their intent for primary access  
3 to this property will be right at that frontage. The detail kind of illustrates a  
4 driveway detail that is being at least proposed per this plat. I don't know if  
5 that's going to change in terms of their development proposal, they would  
6 ultimately submit but.  
7  
8 Kaiser: Okay. Thank you. Yes. This seems like a headache to be honest given  
9 the lack of circulation there. I do want to kind of touch on the point that  
10 Commissioner Smith kind of alluded to. And part of my concern is that, and  
11 staff I think you've made this point in your presentation that we only ever  
12 see these zone changes from residential to commercial on our multifamily  
13 parcels. And I'm really concerned about that because we don't have a lot  
14 of that to begin with. And every single time we do these, one instance. It's  
15 always one instance. Well soon we're at 1,000 instances and we've lost a  
16 tremendous amount of opportunity to develop multifamily and the missing  
17 middle types of housing that the comprehensive plan is wanting to see.  
18  
19 We never see the opposite. We never see commercial being proposed to  
20 be rezoned for multifamily residential, and we sure as heck do not see  
21 single-family being rezoned either to commercial or multifamily. So I am  
22 very concerned that by us giving this away it's another two acres. I mean  
23 back in July I think we had another zone change off of multifamily residential  
24 to commercial in urban core. It's just another example of this maybe one,  
25 2.5-acre parcel but you do that 25 times, 30 times, 40 times suddenly we're  
26 left with nothing else.  
27  
28 And so, I'm just very concerned. I'm also concerned that I mean I think  
29 you've got to do some sort of master plan here. It sounds like the blueprint  
30 may address some of it but I just think there's got to be some bigger vision  
31 aside from just one, 2.5-acre parcels. So that's just my perspective there.  
32 Any other questions or comments from, yes, Commissioner Smith?  
33  
34 Smith: Would you once again just clarify how we're to vote on this proposal?  
35  
36 Banegas: Yes.  
37  
38 Smith: Thank you.  
39  
40 Banegas: If I could before I leave this slide, Mr. Chairman, Commissioner Smith. I just  
41 wanted to point out that this EE is the tetras piece that I mentioned. They're  
42 knocking. Okay, they've already come and they're aware of the planning  
43 effort but they're holding off until that goes through. Okay..  
44  
45 So going back to Commissioner Smith's question. The report that you've  
46 read and my presentation are recommending denial. Staff would like for

1 you to vote. Make a motion in the affirmative and if you do so the findings  
2 that I presented are based on a denial position. So you'd have to come up  
3 with findings of fact that would support approval. Now, I do have some  
4 standard ones that are in our com plan that could support that if you feel it's  
5 warranted. But otherwise, if you vote no, you're siding with the packet,  
6 you're siding with this presentation and you're denying the request. Okay.  
7 Is that clear, because it is a little convoluted.

8  
9 So if you want to approve it, these are some of the elements in our  
10 comprehensive plan that speak to commercial development growth,  
11 development of not necessarily older areas but vacant areas infill  
12 development generating employment opportunities. Those are some of the  
13 ones that we've used in the past. So I offer them up but staff recommends  
14 denial.

15  
16 Kaiser: Okay. I'm going to go to the public now. Are there anyone in the audience  
17 who wishes to speak on this item? Please raise your hand. All right. Seeing  
18 none. We'll come back to the Commission. Any final questions or  
19 comments? All right. Looking for a motion to approve.

20  
21 Bennett: I make a motion to approve 9.1.

22  
23 Vega: I second.

24  
25 Baum: Board Member Acosta.

26  
27 Acosta: I vote yes to approve based on some of the findings that he had given us  
28 there, balanced growth I would say, and I think infill development as well  
29 would support my vote.

30  
31 Baum: Board Member Smith.

32  
33 Smith: I vote no based on staff recommendation. I feel that this needs to be more  
34 of a master plan for this entire zoning area.

35  
36 Baum: Board Member Vega.

37  
38 Vega: I vote no based on staff recommendation.

39  
40 Baum: Board Member Bennett.

41  
42 Bennett: I vote no based on staff recommendation.

43  
44 Baum: Board Member Murray.

45  
46 Murray: No based on staff recommendation.

Baum: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion fails.

**9.2 Case No. 23ZO0500006:** A zone change request from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for one parcel located at 780 Stern Drive and encompassing 1.78 acres in size. Submitted by Ted Scanlon, Borderland Engineers and Surveyors on behalf of Michael Clute, Hacienda RV LLC. Council District 4.

Kaiser: Okay, moving onto item 9.2. This is a zone change request from EE to C-3 located at 780 Stern Drive and I'll turn it over to staff.

Banegas: Once again, Mr. Chairman, Commissioners. Vincent Banegas for the record, Interim Planner presenting tonight's case involving 780 Stern Drive. The property is currently zoned EE and they are seeking the designation to C-3. And you may draw some I guess the proper term would be corollaries from what we just heard to this case. And if you have any questions, I think I can answer them as to why one is denial and this one is approval.

But this case has the following current conditions. It's located along Stern Road between Boutz Road to the south and the Avenida de Mesilla to the north. It's 1.78-acre parcel and it's our equestrian estate and agricultural district. Again, allowing one dwelling unit for a minimum of one acre lot size. It's within the suburban neighborhood place type per the Elevate Las Cruces Comprehensive Plan and immediately adjacent on the north side of this property is our commercial place type, literally just due north.

The applicant's request in this case at least early discussions with them are speculative in nature. But like the last case, we do recognize it's a necessary step in the marketing, sale, and development of property. The existing EE as indicated can be developed residentially, in fact that's what it calls for. But given the minimum lot sizes, you're going to see one lot based on the current acreage of this property developed unless they were to seek a variance to allow additional homes on the property.

The area has limited commercial office uses that exist between Avenida de Mesilla and Boutz. The commercial uses are largely coming from the RV sales right off of Avenida de Mesilla. Office uses, you have the Department of Agriculture not too far from this subject property. And you do have other I think it's a spec building on the east side of Stern. I didn't see any signs and couldn't come up with a specific use but it looks to be a spec building at this point in time, perhaps also for an office.

1  
2 Stern Drive and Avenida de Mesilla are both minor arterials. Boutz Road is  
3 a major collector. So you have adequate road infrastructure in this case to  
4 support the commercial zoning that is immediately northwest of the subject  
5 property. In fact, the zoning here is C-3C and you have additional C-3 not  
6 too far off of Stern.

7  
8 Now, in here you have what some of you may recall Banmore Estates, a  
9 residential subdivision that was approved by you all, single-family detached  
10 homes. You have an existing neighborhood in here. All this is R-1aC in  
11 terms of zoning. Some of the existing older properties in the area, you have  
12 fairly large R-1a tract here. I think some of that was used for agricultural  
13 purposes as well. You have an A-2 sliver right up against Boutz Road and  
14 right along the south boundary of the EE existing parcel in question. So you  
15 do have much of that is underutilized property at the present time. So again,  
16 even though you have C-3 zoning a lot of that is office and/or service  
17 related.

18  
19 Here is an aerial view of the subject property. You can see Banmore  
20 Estates is well on its way. The Department of Ag building, RV park which  
21 is residential in nature but nonetheless an RV park, RV sales further down  
22 the road there. This is that spec building that I couldn't identify as to what it  
23 is.

24  
25 Staff is of the understanding that U-Haul seeks to develop here on this  
26 portion, this lot. To my knowledge, we haven't seen any plans submitted  
27 yet but that's what we hear is coming. So the proposal is to rezone to C-3.  
28 Again, staff has not been informed of any specific development proposal for  
29 this lot in question. The staff feels that this proposed zoning is in  
30 accordance with Elevate Las Cruces. The early notification efforts that staff  
31 requested of the applicant's representative were undertaken and to the best  
32 of my knowledge staff did not receive any input from the neighborhood as  
33 a result of that effort. And as I recall the representative indicated they had  
34 received none as well.

35  
36 A couple of photos. This was right off of Stern looking west. A vacant  
37 property right now. This is part of that A-2 strip on the south side of the  
38 property line. You can kind of tell what's going on there. Looking down  
39 Stern Drive due north, the Department of Ag building. And looking south  
40 there's Banmore Estates going in right here, right at the corner of Boutz and  
41 Stern.

42  
43 So staff did not identify any health, safety, or welfare issues related to this  
44 proposal. We do find that the zoning district that is being proposed provides  
45 some compatibility with existing uses in the surrounding neighborhood. It  
46 is within the suburban place type and would offer the commercial

1 component that is allowed as per the suburban place type, and as such it is  
2 found to be consistent with Elevate.

3  
4 As we know it's low to moderate density residential development with  
5 intermixed commercial uses. There are some buffers that will have to be  
6 maintained if this property goes to a C-3 designation and those are  
7 anywhere adjacent to lower density or less intense parcels. For instance,  
8 those residential parcels on the southside. So regardless of the zone  
9 change if it goes through that is an element of protection that can be  
10 maintained pursuant to code for those residential single-family or lesser  
11 zoned properties.

12  
13 Public input notice was carried out as indicated. Early notification efforts  
14 were conducted. Staff's efforts, we sent out letters pursuant to code. We  
15 did not receive any inquiry as of this meeting date. So staff's  
16 recommendation and finding is approval based on the following findings.  
17 The property is 1.78 acres in size and has limited development potential for  
18 providing a significant buffer, if you will, between the regional commercial  
19 place type and the suburban place type. So since it's immediately adjacent,  
20 we felt that impacts would be rather limited.

21  
22 The applicant has no imminent plans for development. And if approved the  
23 supporting road network, Stern Drive, etc., Boutz Road and Avenida de  
24 Mesilla could easily provide for access to the property. And we all know  
25 suburban supports that. Several goals, policies, and actions from Elevate  
26 are identified for support of the proposed request as well as the 2001 Las  
27 Cruces Zoning Code in terms of its purpose and intent.

28  
29 And your options this evening with this one is to vote "yes" and approve,  
30 vote "no" and deny, in which case you'd have to come up with your own  
31 findings of fact, you could vote "yes" with conditions, or vote to table. And  
32 that concludes staff's that presentation. And I believe the owner and/or  
33 representative are in attendance if they'd like to speak to their case.

34  
35 Kaiser: All right. Thank you very much. Would the owner/applicant wish to speak  
36 before we turn this over for Q&A? If you could just state your name for the  
37 record.

38  
39 Scanlon: My name is Ted Scanlon. Address 2990 North Main Street.

40  
41 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
42 truth and nothing but the truth under penalty of law?

43  
44 Scanlon: I do.

45  
46 Kaiser: Go ahead.

1  
2 Scanlon: Okay. I don't have a whole lot to add to Vince's very concise and thorough  
3 presentation here but it was -- one thing I wanted to bring up is the fact that  
4 we subdivided this property and created that lot to go back a certain  
5 distance from Stern Drive and leave a big buffer for ponding area and  
6 landscaping adjacent to the existing houses along there. And we're only  
7 asking for rezoning on that lot that was created and not on the area that's  
8 adjacent to the existing residential development. That will stay undeveloped  
9 with no buildings or anything on it for certain.

10  
11 I believe the property was originally zoned equestrian estates because  
12 there's a gentleman that owns a property right on Boutz Road. His name is  
13 Ken Mills and he kept horses back there. And he would graze those horses  
14 on our property. And for the record, I'm one of the owners of this property  
15 besides being the applicant and the representative. But we allowed him to  
16 graze horses back there forever.

17  
18 But now, we've sold the RV park. We've sold the parcel to U-Haul. We sold  
19 the parcel to USDA and this is the last piece of property on that area that  
20 we still own that we need to dispose of, to sell and have developed as a  
21 commercial site. I don't know if I have anything more to add to that or not,  
22 but I would appreciate an affirmative vote. Thank you.

23  
24 Kaiser: Thank you very much. All right. Any questions or comments from the  
25 Commission? All right. Seeing none. We'll turn to the public now. Is there  
26 anybody in the audience who wishes to speak on this item? Please raise  
27 your hand. All right. Seeing none. We'll come back to the Commission and  
28 looking for a motion.

29  
30 Vega: I'll make a motion to approve item 9.2.

31  
32 Murray: I'll second.

33  
34 Baum: Board Member Acosta.

35  
36 Acosta: I vote yes based on staff recommendation.

37  
38 Baum: Board Member Smith.

39  
40 Smith: I'll vote yes based on site visit and staff recommendation.

41  
42 Baum: Board Member Vega.

43  
44 Vega: I vote yes based on staff recommendation and Elevate Las Cruces.

45  
46 Baum: Board Member Bennett.



1  
2 Bennett: I vote to approve based on staff recommendation. This meets the  
3 neighborhood character and compatibility Elevate Las Cruces and purpose  
4 and intent of the code.

5  
6 Baum: Board Member Murray.

7  
8 Murray: I vote yes based on staff recommendation.

9  
10 Baum: Chair Kaiser.

11  
12 Kaiser: Yes. Based on staff recommendation and consistency with Elevate Las  
13 Cruces.

14  
15 Baum: Motion passes.

16  
17 **9.3 Case No. 23VO0500101:** A variance request to deviate twenty-four (24)  
18 feet from the required twenty-five (25) foot front yard setback for a carport  
19 addition to a home located at 4093 Winters Street. The property is  
20 approximately 0.12 + acres in size and zoned R-1bC (Single-Family High  
21 Density- Conditional). Submitted by Catherine Silva, property owner.  
22 Council District 1.

23  
24 Kaiser: Okay, moving onto item 9.3. This is a variance request to deviate from the  
25 front yard setback at 4093 Winters Street. Staff, all yours.

26  
27 Gonzales: Good evening, Commission. Sara Gonzales, Senior Planner, City of Las  
28 Cruces. This is for a variance request for 4093 Winters Street. Currently,  
29 the property is about 649 feet north of its intersection with Holly Drive and  
30 Winters Street. It is approximately 0.12 acres in size. The property was  
31 rezoned to R-1bC back in 2006, which is single-family high density  
32 conditional. At that time, there was six acres left and the developer wanted  
33 to reduce the lot sizes in order to fit in 35 more single-family homes.

34  
35 As stated, this does have a single-family residence on the property. Here's  
36 an aerial map of the subject property. These are the properties that went  
37 into essentially a higher density as opposed to the surrounding neighbors.  
38 They are probably about a third to half an acre in size and then we move  
39 into a mobile home park that's located on the west side.

40  
41 Here's a zoning map of the surrounding area. As you can see, it is primarily  
42 single-family residential. We do have a few nodes of multifamily on the  
43 south side. However, those are also developed with single-family  
44 residences.

1 Per chapter 38 of the 2001 Zoning Code, setbacks for an R-1b zoning  
2 designation for a garage or carport is to be at 25 feet. The applicant is  
3 seeking to retain the carport addition to the existing dwelling that was placed  
4 in the front yard of the property. The variance would allow the applicant to  
5 maintain a one-foot setback from the property line. Here's a site plan of the  
6 property. As you can see within this area, this designation here shows that  
7 this is 25 feet back already originally for the original garage. So with that,  
8 with the 25 foot setback, you essentially take up that entire space covered  
9 with a carport structure leaving one foot. One of the concerns, and I'm only  
10 bringing it up now and I'll reiterate it later is that there is a 12-foot utility  
11 easement that runs along the front of the property. Structures, buildings are  
12 not permitted to be within those utility easements as you have line  
13 connections, El Paso Electric. Anything that has to be done there would  
14 have to be modified. So as part of our recommendation, I will provide those  
15 findings and to elaborate later.

16  
17 Here are the site photos of the property. As you can see it is extended out.  
18 This would be where we measure from whenever we actually measure  
19 carports. It's never to the edge of it, it is to the actual overhang because  
20 that is the part that is actually extending up to the furthest point of the  
21 property line. The posts are pushed back. However, we do only have about  
22 one foot to that property line.

23  
24 The applicant did provide a letter that was provided within your staff packets  
25 that she was unaware that the codes and regulations were going to require  
26 the building permit or the status of that application or to them to be permitted  
27 to be put into place. There are medical reasons in which she has requested  
28 that carport to be maintained and it also protects vehicles from weather  
29 damage.

30  
31 As identified, staff did not see any health, safety, or welfare issues. Our  
32 only identification was that the utility easement is in place and that  
33 structures are not to be within a utility easement. However, we also  
34 analyzed that the 24-foot variance to the minimum required 25-foot setback  
35 does not meet the criteria for a variance. Whenever you look at variances,  
36 we are looking at topographic constraints on a property. We are looking at  
37 does it spur economic development? Is there a monetary hardship on a  
38 property in which you would be forced to do something that's going to cost  
39 you more than what you would need as far as putting it in a different  
40 location?

41  
42 So with that staff is recommending denial as it does not meet the criteria  
43 outlined in the 2001 Zoning Code to meet 25-foot setback. We are also  
44 saying that it does not follow the standards for criteria to approve the  
45 variance based on the three criteria listed: topographic constraints, spur

1 economic development, and then monetary hardship. And the carport was  
2 constructed unfortunately without a building permit.

3  
4 Notice was sent to the surrounding properties. The only phone call that I  
5 ever received as far as the carports being in placed is if this one were to be  
6 approved does everybody in the neighborhood now get one? The response  
7 I did provide to the person who contacted me via phone was that every  
8 variance case is a case-by-case basis. We are looking at every request  
9 that comes in here as a single case. The adjacent property owners do not  
10 set precedence. We are not looking for those to move forward. Variances  
11 stay with the land and it's based on the justification provided by the  
12 applicant.

13  
14 If the P&Z Commission decides to approve the case, staff is recommending  
15 that these conditions be placed upon it. Both of the sides of the structure  
16 remain open just for visibility whenever you back up into the oncoming  
17 traffic. The structure does need to be attached to the residence as you are  
18 not permitted to have accessory structures located within your front yard.  
19 Making it attached makes it now an addition to your structure. They must  
20 obtain a building permit and require all inspections, and we are requesting  
21 that it be built or cut down to meet the 12-foot setback out of that utility  
22 easement.

23  
24 With that your options are to vote "yes" and approve, if you choose to vote  
25 and approve, please provide new findings of fact as everything presented  
26 to you this evening has been in denial. You can vote "no" and deny, you  
27 can vote "yes" with conditions, or you can vote to table. The applicant is  
28 here as well. And then I do believe there is public to speak on behalf. And  
29 if you have any questions, I stand for those as well.

30  
31 Kaiser: Thank you very much. Any questions or comments from the Commission?

32  
33 Bennett: How much of that needs to be cut off for the utility easement? Just a  
34 ballpark.

35  
36 Gonzales: Mr. Chair, Commissioner Bennett. That would be 11 feet just because we  
37 only have ...

38  
39 Bennett: Thank you.

40  
41 Gonzales: That one foot. So to get out of that 12 feet, we have that 11 foot deviation.

42  
43 Murray: And then are these underground utilities or above ground?  
44

1 Gonzales: Mr. Chair, Commissioner Murray. These are going to be underground  
2 utilities. A lot of times in the 12-foot utilities what we find are El Paso  
3 Electric, Comcast, Quest, Lumen, your phone, your electrics.  
4  
5 Kaiser: All right. Thank you. Any other questions or comments? Commissioner  
6 Smith.  
7  
8 Smith: Could you go back to the photo of the vehicles underneath the carport?  
9 Thank you.  
10  
11 Kaiser: All right. If the applicant wishes to speak, you're welcome to come forward  
12 before we get a public comment. You're not obligated to. And before you  
13 begin can you please state your name?  
14  
15 Silva: Catherine G. Silva.  
16  
17 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
18 truth and nothing but the truth under penalty of law?  
19  
20 Silva: I do.  
21  
22 Kaiser: Please go ahead.  
23  
24 Silva: Well, the reason I did it it's because for my daughter's protection. She's on  
25 medication. She can't be under the sun because of her medication. It's  
26 medical reasons. And when it's raining, we can't be running into our vehicle  
27 and slip and fall besides myself too. I'm injured too. So that's why I got it  
28 done and it's expensive. And to remove it, it's another expense for myself  
29 and I'm a single parent. So hopefully, I get it approved and it's for her  
30 protection.  
31  
32 And I don't have no shade for her and I can't keep her inside the house all  
33 the time. And that's the only place I take her outside. She loves to color so  
34 I take her outside on a chair and she colors out there. And that's all I have  
35 to say.  
36  
37 Kaiser: Okay. Thank you very much.  
38  
39 Silva: Okay.  
40  
41 Kaiser: All right. Is there anybody in the audience who wishes to speak? Please  
42 raise your hand. Okay. Yes, ma'am. Please come forward. I'll give you  
43 three minutes. We have a timer here. It will count down but I've been told  
44 the beeper sound doesn't work so if you hear this gentleman here beep  
45 that's your time. Before you begin can you please state your name for the  
46 record?

1  
2 Chavez: My name is Bertha Chavez.  
3  
4 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
5 truth and nothing but the truth under penalty of law?  
6  
7 Chavez: I do.  
8  
9 Kaiser: Go ahead.  
10  
11 Chavez: What I wanted to add as they need just a caregiver for Ms. Silva's daughter.  
12 And I do take her outside. She loves to color. She loves to be outside for  
13 a while but due to her medical condition I can only keep her out for a while.  
14 So this was serving a purpose and a need for her daughter and also Ms.  
15 Silva. That's all I have to say. Thank you.  
16  
17 Kaiser: Thank you very much. All right. Anybody else in the audience who wishes  
18 to speak on this item? Okay. Seeing none. We'll come back to the  
19 Commission. Any final comments? Commissioner Smith.  
20  
21 Smith: I just have a question for the applicant. Did you hire a commercial contractor  
22 to build this? Was this something that was done by a family member who  
23 is capable of building it?  
24  
25 Silva: It was done from a family member's friend. That was it. It wasn't a  
26 contractor or nobody.  
27  
28 Smith: So this person is not a contractor themselves?  
29  
30 Silva: No.  
31  
32 Smith: Okay. Thank you.  
33  
34 Silva: But he did a good job. It's welded.  
35  
36 Smith: The reason I ask that question is that I mean any type of structure that's  
37 being built like this requires a permit and is something that any contractor  
38 would definitely know and should inform you of. And even if it's a family  
39 member if they're capable of building something like this, they should know  
40 that a permit is ...  
41  
42 Silva: Well, we didn't know. I didn't know I had to get ...  
43  
44 Smith: Required. All right. Thank you, ma'am.  
45  
46 Silva: I didn't know I had to get a permit.

1  
2 Kaiser: All right. Any other comments or questions from the Commission? We're  
3 looking for a motion to approve.  
4  
5 Bennett: I make a motion to approve 9.3.  
6  
7 Vega: I second.  
8  
9 Baum: Board Member Acosta.  
10  
11 Acosta: I vote no to deny based on staff recommendation.  
12  
13 Baum: Board Member Smith.  
14  
15 Smith: Sorry. I vote no to deny based on staff recommendation.  
16  
17 Baum: Board Member Vega.  
18  
19 Vega: I vote no based on staff recommendation.  
20  
21 Baum: Board Member Bennett.  
22  
23 Bennett: I vote to approve based on monetary hardship and medical reasons.  
24  
25 Baum: Board Member Murray.  
26  
27 Murray: I vote is to approve based on medical reasons and monetary hardship.  
28  
29 Baum: Board Member Kaiser.  
30  
31 Kaiser: No, based on staff recommendation.  
32  
33 Baum: Motion denied.  
34  
35 **9.4 Case No. 23VO0500106:** A variance request to deviate twenty (20) feet  
36 from the required twenty-five (25) foot front yard setback for a carport  
37 addition to a home located at 4053 Winters Street. The property is  
38 approximately 0.108 + acres in size and zoned R-1bC (Single-Family High  
39 Density- Conditional). Submitted by Tracie Stevenson, property owner.  
40 Council District 1.  
41  
42 Kaiser: Okay. Moving onto item 9.4. This is another variance request from the front  
43 yard setback. This time 4053 Winters Street. Back to you staff.  
44  
45 Gonzales: Sara Gonzales, Senior Planner once again for the record. This is a variance  
46 request for 4053 Winters Street. The property is approximately 200 feet

1 north of its intersection of Holly Drive and Winters Street. The property is  
2 0.108 acres in size. Once again, is zone R-1bC which is single-family, high  
3 density conditional and there is currently a single-family residence on the  
4 property.

5  
6 Here's an aerial map of the subject property. As you can see the carport is  
7 highlighted essentially in white as to its location. Surrounding neighborhood  
8 is residential in nature as all the adjacent properties are either single-family,  
9 mobile home, or multifamily to the south.

10  
11 Per code, Chapter 38, 2001 Zoning Code, the property is required to meet  
12 the 25-foot yard setback for a garage or carport. And the applicant is  
13 seeking to retain the carport addition that was put up into the front of the  
14 property for the existing dwelling. The variance would allow the applicant  
15 to maintain a five-foot setback from the property line. Here is a site plan of  
16 the subject property. You can see we do have the 12-foot utility easement  
17 that also runs along the front of Winters continuously through the  
18 subdivision. The building or the structure is a 20 x 20 so that's why you  
19 have a five-foot deviation as far as it coming from that 25-foot setback. So  
20 all garages in this area were built at a 25-foot setback leaving no additional  
21 room for any of these carports to be placed onto the property.

22  
23 Here is an image of the property, as far as you can see here is the structure.  
24 It is pushed back a little bit further. As you can tell there is a five-foot  
25 setback from this property boundary. The applicant has provided the  
26 justification in the letter that was provided within your staff report. It was an  
27 anniversary gift to the applicant as part of the, for their anniversary to protect  
28 their vehicles from weather damage. Once the structure did go up, it did  
29 provide some type of safety as far as the applicant was concerned once it  
30 was in place.

31  
32 Staff did not identify any health, safety, or welfare issues. Once again, there  
33 is that condition of where we see the 12-foot utility easement in which  
34 structures are not to be constructed upon. We did see that the 20-foot  
35 variance does not meet the criteria that is outlined within a variance. There  
36 are no topographic constraints. We do not see any spur of economic  
37 development, and the monetary hardship would be essentially from not  
38 receiving a building permit prior to where they would be notified that the  
39 monetary value would be essential.

40  
41 Monetary hardship is definitely determined by if you had to do something  
42 outside or make it impossible to reconstruct or build something on a  
43 property then that is considered a monetary hardship. We had a previous  
44 case to where it is, in order to construct a home, you had to move the well,  
45 that is a monetary hardship constraint.

1 So with this staff is recommending denial based on the carport does not  
2 meet the requirement of the 25-foot setback with any residential zoning  
3 district. We also are saying that it does not meet the essential guidelines to  
4 permit a variance request for the three identified as topographic, monetary,  
5 or for a spur of economic development, and it was constructed without a  
6 building permit.

7  
8 Public notice was sent out. The same phone call was in direction to both  
9 as these neighborhoods are very close to one another. Notification was  
10 sent to everybody essentially twice. And so, it gave two opportunities for  
11 everyone to be notified within the neighborhood.

12  
13 Once again if Commission decides to approve this case, please be aware  
14 to add the conditions as to the structure must remain open. The structure  
15 needs to be attached to the home as it is not considered accessory  
16 structure. It needs to be added. Must obtain a building permit and all  
17 required inspections and be removed up until the 12-foot utility easement.

18  
19 Your options are to vote "yes" and approve. If you choose to vote to  
20 approve you do need to find new facts of finding not found within your staff  
21 report. Vote "no" and deny, vote "yes" with conditions, or vote to table. The  
22 applicant is here as well and I stand for any additional questions.

23  
24 Kaiser: All right. Thank you. Coming to the Commission. Any questions?

25  
26 Smith: Once again would you please go back to the photo of the, thank you. I have  
27 a question for the applicant. Was this carport constructed by the same  
28 people, person, because they look almost identical?

29  
30 T. Stevenson: No, they are. They do ...

31  
32 Kaiser: Before you answer that question, ma'am. Can you please state your name  
33 for the record?

34  
35 T. Stevenson: My name is Tracie Stevenson.

36  
37 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
38 truth and nothing but the truth under penalty of law?

39  
40 T. Stevenson: Yes, I do.

41  
42 Kaiser: Go ahead.

43  
44 T. Stevenson: This isn't, we don't have the same person who built, mine went up first in  
45 our neighborhood. And actually, the way this all came about was back in  
46 January my husband wanted to give, we were going to plan something for



1 our 43rd wedding anniversary. And I told him I'm putting this on you  
2 because I plan them all and he said he'll do it.

3  
4 And then didn't hear anything. February comes rolling around. I don't see  
5 anything happening. Like he hasn't made any plans. And we had an  
6 automotive business here in town and he was a very, very busy man. March  
7 comes rolling around and March 3rd is a Friday and we were having  
8 breakfast and he was getting ready for work, and he comes back in and he  
9 has a massive heart attack right in front of me. And all my attempts to try  
10 to save him were gone.

11  
12 And you go through all the motions of a funeral and all and then I did. April  
13 comes running around. My anniversary was April 12th. April comes  
14 around, the first week of April and I get somebody rang my doorbell. I go to  
15 the door and it was a grandfather, a father, and a son, and they said that  
16 they were here to put up an awning for me. Well you can imagine how  
17 excited I was because this was something we always wanted, both of us.  
18 And I know Roger. Roger always liked to do things correct. He never, if he  
19 knew he was supposed to have a permit, I know he would have looked into  
20 that because he was very adamant about that kind of a thing.

21  
22 And so, you can imagine how excited I was. I said yes, please put it up. I  
23 was thrilled. A permit never even crossed my mind. It was just, I literally  
24 got weak at the knees. Well next morning comes, I was there. They came  
25 and put it up and I watched them. They did the first two poles there; I saw  
26 them dig the holes. It's three feet down into the ground with, they put a lot  
27 of cement. It's bolted towards the end of the garage very securely. I mean  
28 it's not going anywhere. It's structurally sound.

29  
30 And so, I was thrilled and then of course I was, codes comes probably about  
31 three days later. I guess he said he was going through the neighborhood  
32 and saw it. And he put a notice on my door. And so, then I right away called  
33 here and said what do I need to do to get a permit for this? And he sent me  
34 through all the motions and I did them all because I want to keep it. It's the  
35 last gift I'll ever receive from my late husband and he was like my best friend.  
36 And I just really feel, I just really don't want to see it dismantled and taken  
37 away. It's that special.

38  
39 Now, she said it didn't provide any safety features. Now, this does provide  
40 safety features. Last winter, I actually slipped outside while we were  
41 clearing off our windshields. And it does provide elements from the  
42 weather. I mean it's a 20 x 20 and it's structurally, has beautiful curb appeal.  
43 And I also presented some letters from my surrounding neighbors that it did  
44 not even propose a threat to them. They were absolutely thrilled about it  
45 and didn't give me any heartache about it whatsoever. I was just, I didn't  
46 know.

1  
2 So I just thought I would come here today and just kind of give you a little  
3 bit of insight how special it really is to me. And I hope I'm able to keep it  
4 and I hope you all can find it in your hearts to allow me to have it and maybe  
5 purchase a permit and be able to keep it. We all don't know how long we're  
6 going to be here. I mean everything we have can be gone just like that.  
7 And I just want to present my case and see if that's obtainable.

8  
9 Now it's not attached but I did get a contractor to come over and look at it.  
10 And he said that is attachable. He said it's just so close and he said that he  
11 would do that for me. So I'm willing to do what I have to do to keep it and  
12 enjoy it for as long as I can. I don't plan on selling my home. I plan on living  
13 in it. And now that I'm alone, it does provide some safety for me. I stand  
14 up here literally broken going through all this. And I just have to let you  
15 know that if you would allow me to obtain a permit, I would be forever  
16 grateful respectfully. Thank you.

17  
18 Kaiser: Thank you. Any other questions? Commissioners Smith.

19  
20 Smith: Ma'am I just wanted to offer my deepest condolences to you and your family  
21 for the loss of your husband. And I know that this carport means a lot to  
22 you. It's difficult for us as a Commission here. We get many cases where  
23 carports are built in the City without permission and it's a challenging job for  
24 codes because they're doing their job. And although this has special  
25 meaning to you, the carport is no different than the previous applicant as far  
26 as the amount of the variance that you're requesting.

27  
28 And so, our hearts are with you and your family. We have a decision that  
29 we'll have to make and so it will be a difficult one but we'll make the best  
30 decision that this Commission can make based on the information we've  
31 been provided.

32  
33 Vega: I also want to say that regardless of what decision we come to you can  
34 always appeal to the City Council; is that correct? So that's just something  
35 else to share with you as well.

36  
37 Kaiser: I also extend my condolences as somebody who unexpectedly lost a family  
38 member within the last year. I certainly understand what you've been going  
39 through. I think the difficulty here is there's rules in place and it's the  
40 responsibility of all of us to be aware. I know this seems like something you  
41 probably would never think of but the reality is these types of home projects  
42 they are regulated.

43  
44 And honestly hearing you explain what they did to put the posts in the  
45 ground, I'm just very thankful nobody hit something they would regret hitting

1 especially if they were not aware. So call before you dig. But I think this is  
2 just kind of unfortunate but there are rules in place. So that's all I'll say.

3  
4 Is there anybody in the audience who wishes to speak on this item? Yes,  
5 ma'am. Please come forward and please state your name for the record.

6  
7 Vulco: Sarah Vulco.

8  
9 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth  
10 and nothing but the truth under penalty of law?

11  
12 Vulco: Yes, sir.

13  
14 Kaiser: I'll give you three minutes.

15  
16 Vulco: Okay. So when Tracie called me and asked me to look at the scenario that  
17 had been presented to her from the City, I was of course wanted to help in  
18 any way that I could. My background is that I am a general contractor and  
19 I'm also a civil engineer. I work for the City at one point in the Public Works  
20 Department. And then at this point, I'm a Regional Project Manager for the  
21 State of New Mexico.

22  
23 Based on my background what I wanted to present respectfully is that in the  
24 case of building \$30 to \$50 million structures for the State of New Mexico,  
25 there are situations where User Department buys a plat of land and there is  
26 a utility easement right down the middle of the property. And so, at that  
27 point we're coming together and collaborating with the design professional  
28 saying, my gosh, how do we build anything on this plat of land?

29  
30 And so, we try to take a more ethical approach. And what we do is often  
31 times we'll build a building maybe with an outdoor courtyard that's over that  
32 easement. And what we tell the User Department at that time is that we will  
33 build the structure but they will have to resume the cost of remove and  
34 replacement in the case that the utility easement, a project comes through  
35 that requires them to access the utility easement.

36  
37 And so, a lot of times we construct these buildings like I said with the  
38 courtyard in the middle and that's the portion that's over the easement so  
39 that it's predominantly flat work which is sidewalks things like that. So the  
40 User Department would then tear that up and remove and replace it. And  
41 so, there's an addendum to the contract when we do something like that.

42  
43 My request is that if Tracie would be willing to sign some sort of an  
44 addendum or some sort of paperwork that would say in the case of these  
45 utilities needing to be accessed that she would remove and resume the cost  
46 of removing the carport at that time. This isn't saying that she keeps the

carport for 20 years. It's not saying that she keeps the carport forever. It's saying during this time when emotions are raw and there's newly broken hearts that they would be able to keep the carport. And that's my request. Thank you for your time and consideration.

Kaiser: Thank you. Anybody else in the audience that wishes to speak? Yes, ma'am. Please come forward. Please state your name for the record.

Morgan: My name is Vicki Morgan.

Kaiser: And do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Morgan: Yes.

Kaiser: You have three minutes. Please go ahead.

Morgan: I am writing this letter on behalf of Tracie, my dear friend since grade school, to attest to her impeccable character and extraordinary circumstances surrounding the awning in question.

Throughout our years of friendship, Tracie has consistently shown herself to be an individual of outstanding character. She possesses a rare combination of qualities that can only be described as extraordinary. She is caring, always placing the needs and concerns of others above her own. She exudes positivity even when faced with challenges that would overwhelm many. Her resilience, her generosity and her kindness are qualities I have witnessed firsthand for many years.

The awning which stands at the heart of dispute represents more than just a mere structure to her. It was one of the last gifts given to her by her late husband before his untimely passing. Every time she looks at it, she is reminded of the love they shared and the memories they created together. It's a testament to their bond and an emblem of the life they built. While some may view it as just an awning, for Tracie it holds profound sentimental value.

Furthermore, beyond the emotional significance, the financial burden of removing the awning would be undue and harsh especially given the heartache she has already endured. I kindly request that you consider the exceptional circumstances of this case. Removing the awning would not only be financially expensive for Tracie but would also mean erasing a tangible reminder of her husband. I sincerely hope that a compassionate resolution can be reached in this matter taking into account both the character of my dear friend and the significant emotional implications of

1 removing such a treasured memento. Thank you for your time and  
2 consideration.

3  
4 Kaiser: Thank you very much. Anybody else that wishes to speak? Yes, ma'am.  
5 Please come forward. State your name for the record.

6  
7 Gennings: Hi. My name is Lindsey Ray Gennings.

8  
9 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
10 truth and nothing but the truth under penalty of law?

11  
12 Gennings: Yes, I do.

13  
14 Kaiser: Please go ahead.

15  
16 Gennings: All right. So everybody has kind of hit upon the emotional aspect of Tracie  
17 losing her husband which was very sad. But I would like to provide a  
18 different perspective on the structure.

19  
20 So I work for Wet Dog Mobile Grooming Services. And I am out there  
21 probably at least once a month for the last seven years to groom her dogs,  
22 make sure they're nice and clean. And I've never seen a weed in her yard.  
23 Her house is always kept up really nice. That structure is really nicely built.  
24 I complimented her on it the first time I came out and saw it. I was like this  
25 is really nice.

26  
27 It doesn't really block anybody's view. And it's so hot in Las Cruces that  
28 Tracie likes to put out water for the stray cats in the neighborhood. And it's  
29 very nice for me to see someone taking initiative to prevent unneeded  
30 cruelty to the cats, where Las Cruces takes them and spays them, neuters  
31 them and then places them back where they found them. We don't need to  
32 be cruel to the cats so it's nice to see.

33  
34 I've been out there several times. I get to see the cats getting a nice cool  
35 drink of water. It provides shade for her car so the paint doesn't get eaten.  
36 And it seems to me that if the utilities are underground already, they're going  
37 to have to go under the concrete slab so I don't think that it's a problem  
38 having the carport there. And I'm sure that if it is for the utilities in the future  
39 that she would be willing to remove it or replace it or whatnot.

40  
41 And I'm sure that she didn't know about a permit because of her husband  
42 being the last gift that she was given from him. So I would like to see Tracie  
43 be able to keep the carport. That's it.

44  
45 Kaiser: Thank you. Anybody else? Please state your name for the record.  
46

Agenda Item #8.3.

1 Allen: My name is James Allen.

2

3 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
4 truth and nothing but the truth under penalty of law?

5

6 Allen: I do.

7

8 Kaiser: Go ahead.

9

10 Allen: So I do not know Ms. Tracie by any means or length measure. I did listen  
11 to her testimony and narrative. There were some things that were brought  
12 up to me knowing now she was in her emotional state after having recently  
13 lost her husband. She was presented by three gentlemen. I know that in  
14 Las Cruces having had family members who are small business  
15 contractors, she was presented as that this was something that was  
16 arranged for her.

17

18 She has stated that she is willing to retain a permit and take care of any  
19 fees that were unnecessarily missed with this. But I do question, she was  
20 presented with three individuals who were stated that they were contracted  
21 to do this job. So with her emotional state at the time and with her  
22 knowledge, I mean most people in town do not know building code but it  
23 seems that she may have been led to believe that this was a permitted job  
24 at the time. And she later found out that she did not have proper contractors  
25 so I believe that is something to be taken into consideration in this case.

26

27 Kaiser: Thank you. Okay. Is there anybody else who wishes to speak? Yes, sir.  
28 And before you come up can I just see hands so we just have an idea of,  
29 okay. So this gentleman is going to be the last one. Please come forward.  
30 Please state your name for the record.

31

32 B. Stevenson: Hi. My name is Brent Stevenson.

33

34 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
35 truth and nothing but the truth under penalty of law?

36

37 B. Stevenson: Yes.

38

39 Kaiser: Go ahead.

40

41 B. Stevenson: Yes. Well, I'm up here just to kind of talk. This is my mother and I do know  
42 that my father after hearing or seeing that she did fall in the driveway. I  
43 mean I know you took it upon himself to make sure that it will never happen  
44 again. And I'm sure that's the reason why he did purchase this awning.

45

1 As her son and the rest of her family, we're concerned about her, about her  
2 safety of course. And now that she does live alone, we are concerned that  
3 we just want her to be safe. And I think that if you're able to grant this  
4 variance I mean I know that she'll be more than grateful. We'll all be grateful  
5 and we'll do whatever it takes to conform with your policies and everything  
6 if that were possible. It does protect the driveway from its elements, from  
7 snow, from rain, from the heat. I just see more positives with this and I just  
8 wanted to talk about that. Thank you.  
9

10 Kaiser: Thank you. Okay. Coming back to the Commission. Commissioner Smith.  
11

12 Smith: I just have one more question for staff. Did you state that there was also a  
13 12-foot easement with this property also, or it was just the previous  
14 proposal?  
15

16 Gonzales: Mr. Chair, Commissioner Smith. There is a 12-foot utility easement that  
17 runs along every property within this subdivision in the front of those  
18 property boundaries. A lot of times what we see in newer subdivisions is  
19 that is essentially where all the utilities are being placed. There used to be  
20 in the old part of town where we would get utility easements in the back, on  
21 the side of the properties. Now everything is generally ran through the front  
22 of the properties and it's 12 feet wide as generally the distance we see.  
23

24 Smith: Okay. Thank you.  
25

26 Kaiser: All right. Any other questions, comments? All right. Looking for a motion  
27 to approve.  
28

29 Vega: I make a motion to approve item 9.4.  
30

31 Smith: I second.  
32

33 Baum: Board Member Acosta.  
34

35 Acosta: I vote yes to approve with the conditions that the City staff had outlined.  
36

37 Kaiser: You need to provide a ...  
38

39 Acosta: Sorry, can I go back to that page if that's the case? So I guess it would just  
40 be all four lines of that. Should I read that out?  
41

42 Kaiser: No. I was just looking for there, based on what was your rationale for voting  
43 to approve with the conditions.  
44

45 Acosta: I'm sorry about that. Okay. So just based on the emotional impact and the  
46 willingness to work with City staff to keep the structure alive in whatever

compliant capacity and willingness to pay for that. So I think if they'd be willing to work under that condition then they need to perhaps preserve a structure that had that much more sentimental value.

Baum: Board Member Smith.

Smith: I vote yes to approve. I know that this case is very similar to the previous applicant. There are some extraordinary circumstances I think in this particular case based on the fact that the homeowner was not aware that she was even going to be receiving the carport. And that the people who presented it, who arrived to construct it may not have told her that whether they were actually contractors or not. And there is room for compassion, there is room for just the circumstances under which this particular carport was constructed as opposed to the previous one. And so, that is why I'm voting yes to approve.

Baum: Board Member Vega.

Vega: I echo Commissioner Smith's comments. I also vote yes to approve based not only on the financial hardship. Also, the suggestion for easement. I have an easement in my backyard, it's totally different but always something to consider. Thanks.

Vega: Board Member Bennett.

Bennett: I vote to deny based on staff recommendation.

Vega: Board Member Murray.

Murray: I vote to deny based on staff recommendation.

Vega: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion denies due to a tie.

**9.5 Case No. 23VO0500107:** A variance request to deviate one (1) freestanding sign to the maximum permitted two (2) freestanding signs and a to deviate seven (7) feet to the minimum required fifteen (15) foot freestanding sign front yard setback for a property located at 1300 El Paseo. The property is 5.50 + acres in size and zoned C-3 (Commercial High Intensity). Submitted by Burke Sign Company, LLC., representative. Council District 3.



1 Kaiser: All right. Our final item this evening is item 9.5. A variance to request to  
2 deviate from the maximum permitted signs. This is at 1300 El Paseo. And  
3 do we have staff to make a presentation?  
4

5 Ochoa: Sorry for the delay. Adam Ochoa, Senior Planner, Community  
6 Development Department for the record. The last case we have tonight for  
7 you folks is case number 23VO0500107. It is a request for a variance for a  
8 property located at 1300 El Paseo Road.  
9

10 A little case specifics of the subject property. It is located on the southwest  
11 corner of El Paseo Road and Idaho Avenue. Currently zoned C-3  
12 commercial, high intensity encompasses roughly 5.5 acres in size. There  
13 is an existing business/shopping center on the property. And just a  
14 reference are two existing previously permitted freestanding signs on the  
15 property.  
16

17 Here's showing the property on the zoning map here. A large parcel here  
18 is zoned C-3 and in what is just a sea of commercial zoning, so definitely  
19 one of our major commercial hubs in the City of Las Cruces with a lot of  
20 traffic going off El Paseo and Idaho Avenue.  
21

22 Showing here on the aerial map the shopping center, if you will, kind of L-  
23 shapes along the back with parking along the front. The two existing  
24 freestanding signs that were permitted previously, a number of years ago  
25 of course, is one located right on the corner of Idaho and El Paseo and  
26 another one essentially right around here in the entry along El Paseo.  
27

28 The third sign which we'll be discussing here today is located off of Idaho.  
29 Here are the pictures of the two distant signs as they currently exist. And I  
30 just wanted to bring up the fact as well that what is the Planet Fitness sign  
31 itself does conform with current requirements for a freestanding sign. The  
32 larger sign to the left of all the different tabs in it, that's a nonconforming  
33 sign, so just a little bit of reference for you all.  
34

35 So what we're looking at today is in Chapter 36, the Las Cruces sign code.  
36 We're looking at two different sections because this is essentially two  
37 different variances under this case. One is Article 2, Section 36-46 (b) (6).  
38 This is essentially dictating the number of freestanding signs allowed for  
39 what are C-2, C-3 in our industrial zoning designations where essentially it  
40 states in the City of Las Cruces each commercial property is allowed to have  
41 one freestanding sign with the exception with lots that exceed a frontage of  
42 600 linear feet which this property does. In those cases, those properties  
43 are allowed up to two freestanding signs. That is the absolute max that is  
44 permitted by code.  
45

1 The other that we're looking at here is under Appendix 1, Table 2, also of  
2 the Las Cruces sign code. There is a minimum of 15-foot front yard setback  
3 required for all freestanding signs located along what are collector roadways  
4 and arterial roadways which are El Paseo and Idaho Avenue.  
5

6 Here's a picture of that sign that has been constructed that third  
7 freestanding sign. So again, so the variance would be a variance of one  
8 freestanding sign to allow for three freestanding signs on the subject  
9 property and a variance of eight feet to allow the sign to stay where it is  
10 existing at its current location which is roughly about seven feet from the  
11 front property line there on Idaho Avenue.  
12

13 A little bit of analysis, a little bit of what happened essentially here is  
14 essentially the sign was permitted and issued by error by staff, some  
15 misinterpretations, some misinformation unfortunately was provided and  
16 the sign permit application was essentially approved by staff and it was  
17 issued. The sign permit application was missing some information. It did  
18 not show the existing two freestanding signs on the site plan nor did it show  
19 setbacks on there. Something staff should have taken the consideration  
20 but like I said it was issued by error.  
21

22 The applicant was unaware of these requirements, essentially of the  
23 requirements as stated. And after he was made aware of the issuing of the  
24 permit, he was made aware of the error of the sign being the third sign and  
25 its setback, was made aware after we issued the permit and he already  
26 installed the sign.  
27

28 So additional analysis. So the way you approve a variance under the 2001  
29 Zoning Code on Article 2, Section 38-K. Staff kind of went back and forth  
30 on this one. Where we could see both ways how this variance could  
31 potentially be denied or approved. First, of course, I want to touch base on  
32 your physical hardship which is relative to the property. The first thing that  
33 staff looked at and we saw there's no real topographical constraints, any  
34 right-of-way takes or anything that would impinge on them having to meet  
35 code. But we also saw the potential of a, if we go back here, how the layout  
36 of this existing shopping center exists. How this back row kind of lies along  
37 the back instead of closer to the street. We could potentially see that the  
38 business is located in that further back portion from the street of El Paseo  
39 could potentially benefit. And so that's kind of a physical hardship being  
40 located further back away from the street. So we saw that as a potential  
41 physical hardship so just keep that in mind.  
42

43 Second, the spurring of additional economic development. This may not  
44 considering the shopping center is existing. It's fully built out, that's what  
45 staff saw essentially. But the potential for now those businesses in the back  
46 which as a person who reviews all business permits that come in from a

1 building standpoint, we get a number of them, a lot of turnaround in the back  
2 portion of this shopping center so it potentially for business opportunities or  
3 economic opportunities for those in those suites located in the back portion  
4 of the property.

5  
6 And third, of course, for monetary hardship. There is the cost of the already  
7 built and erected sign that was located on the property due to error  
8 unfortunately.

9  
10 With that note, staff does still recommend kind of a soft denial for this case.  
11 That being said, staff does not see any significant safety, health, or welfare  
12 issues associated or identified for the proposed variance. Findings stated  
13 here in you find in your staff report, essentially the two code requirements,  
14 maximum two freestanding signs, required setback. And of course staff in  
15 the end after much deliberation came with a soft denial because we feel it  
16 does not meet the Section 38-10J of the 2001 Zoning Code.

17  
18 I did want to mention, staff did also send out a public notification to the  
19 surrounding property owners. We received nothing until yesterday morning.  
20 We did get a phone call from; they didn't want to state who they were or  
21 what business they were but they're a business in that shopping center.  
22 They have their name on that sign and they find to get a little more flow into  
23 their business now. So they appreciate the sign as they stated. Again, no  
24 name, no business unfortunately.

25  
26 But with that the Commission's options tonight, one to vote "yes" and  
27 approve the proposed variance. Again, new findings will be required if you  
28 do vote to approve. Two, to vote "no" and deny as recommended by staff.  
29 Three, to vote "yes" with conditions. And four, table or postpone and direct  
30 staff and the applicant accordingly. The applicant and I believe her  
31 representative who erected the sign are here if you have any questions for  
32 them. I stand for questions as well.

33  
34 Kaiser: All right. Thank you. Any questions, comments from the Commission?

35  
36 Smith: I just have a comment. I'm very familiar with this shopping area. I live very  
37 close to El Paseo and Idaho. And the other businesses are setback from  
38 El Paseo. Of course, the Planet Fitness has their own sign. It is also a sign  
39 that they share with some of the other businesses there. It's kind of a unique  
40 shopping plaza or property because you have a business that's on the  
41 corner. You have a gym that's very prominent. And as far as accessing the  
42 other businesses there, I mean you have several entrances but not of them  
43 are very easy to see the other businesses. So it was just a comment I  
44 wanted to make just based on the signing where it's located and also the  
45 fact that they have the other businesses listed there.

1 Kaiser: Soft denial. It's a new one.  
2  
3 Ochoa: I didn't want to be too harsh.  
4  
5 Kaiser: I'm just trying to understand here. So basically, the order of events were  
6 the applicant submitted an application for a permit to install this third sign.  
7 And during the course of staff's review, it was not caught that they were  
8 already at their maximum. And it was also not noticed that they're missing  
9 specific information related to the placement of the sign. So staff approved  
10 it. The applicant went and built it. And now, six months later staff is saying  
11 you need to come back for a variance and we're recommending the soft  
12 denial. Is that ...  
13  
14 Ochoa: Mr. Chair. That kind of sums it all up. That is correct.  
15  
16 Kaiser: Okay. So my next question is ...  
17  
18 Ochoa: I would say yes, but ...  
19  
20 Kaiser: Did the applicant, did they pay any fees for this variance application?  
21  
22 Ochoa: Mr. Chair. Yes, they did pay all required application fees as well as public  
23 notification fees which includes notice letters, signage, and advertisement  
24 in Sun News as well as all associated sign permit fees as well.  
25  
26 Kaiser: Okay. So they paid for a variance application. If it's to be denied tonight  
27 then the result would be removal of the sign, correct? Which would cost  
28 additional money out of their pocket?  
29  
30 Ochoa: Mr. Chair. That is correct. And then they would also, they'll have the option  
31 to appeal the denial to City Council which would be further costs. Not only  
32 the fee, advertisement requirements as well, sir.  
33  
34 Kaiser: Okay. So basically, they have a situation where staff messed up and the  
35 applicant's bearing all the cost?  
36  
37 Ochoa: I believe that's fair to say. Yes, sir.  
38  
39 Kaiser: I have a problem with that.  
40  
41 Ochoa: Definitely don't disagree with you with that on that, sir. And staff did, I guess  
42 supervisory staff did discuss this issue with staff so, yes, sir, understood.  
43  
44 Kaiser: Okay. I mean based on that I think it's; I mean we just got done talking  
45 about sort of homeowners doing their due diligence on whether or not they  
46 need a building permit for a carport. And now we have sort of the opposite.

1 The City didn't do their due diligence and now the applicant is paying the  
2 price for all of that. I personally think that this is one that we've got to own.  
3 And I think in my opinion the applicant should be able to retain that sign and  
4 I think I'm going to vote to approve this variance so those are just my  
5 thoughts. Please go ahead.  
6  
7 Pitts: Tim Pitts, Deputy Director for Community Development. I think that's a  
8 reasonable compromise. And I think a condition that says the extra sign  
9 goes away when one of them comes down. That way the business isn't  
10 harmed by the thing but we will gain compliance at some point in the future.  
11  
12 Kaiser: So in other words, what you're saying is if the business that's there now with  
13 the sign on this new sign goes away that the new business doesn't get to  
14 put a new sign up?  
15  
16 Pitts: No, the third sign goes away. So if over the time they decide they wish to  
17 take one down for whatever reason, until that time, we're not talking about  
18 the faces on the sign, we're talking about the sign itself. That when that  
19 sign gets approved for redevelopment purposes, they come in and they  
20 want to do something and a sign comes down, we wouldn't allow it to go  
21 back up. But if all they do is replace the face of the sign which is the name  
22 of the businesses, I think it would be a fair thing because I think the business  
23 did everything they thought they needed to. And if that's the will of the  
24 Commission I think that staff did make a mistake. And it's tough to want to  
25 punish a business for staff's mistake.  
26  
27 Kaiser: Okay. Yes, I understood. So do you have any recommendation for  
28 language in that condition?  
29  
30 Ochoa: Yes. Mr. Chair. If I could? You could always vote to approve with the  
31 conditions that at any time in the future if any one of the three freestanding  
32 signs voluntarily gets removed, they will only be allowed to have the two  
33 freestanding or a total of two freestanding signs on the property.  
34  
35 Kaiser: Okay. Thank you.  
36  
37 Ochoa: Apologies, Chair. I did talk to the property owner and their representative  
38 and they are amenable to that condition, just to clarify.  
39  
40 Kaiser: Okay. Thank you. I think that's fair from our perspective. Before we go to  
41 the public, Commissioner Smith do you have a comment?  
42  
43 Smith: Just a clarification as far as our options. We can still vote yes to approve or  
44 we can vote yes with the conditions, either one of those. They're still on the  
45 table, correct?  
46

### Agenda Item #8.3.

1 Ochoa: Mr. Chair, Commissioner Smith. That is correct. You can just vote yes or  
2 when you do your motions, whoever does the motion, they could do, that's  
3 where it needs to start. When you do your motion, whoever is going to do  
4 the initial motion will have to do a motion with conditions and state that  
5 condition. The second will be, and then you'll take the vote with that. If not,  
6 whoever wants to make a motion just to approve, they could just make a  
7 motion to approve, second it, and so on and so forth.  
8  
9 Kaiser: Okay. I'm going to go to public comment now. Is there anybody in the  
10 audience who wishes to speak on this item? Okay. Seeing none. We'll  
11 come back unless there's any additional comments we'll go ahead and  
12 make a motion to approve.  
13  
14 Bennett: I'm just going to make a motion to approve 9.5.  
15  
16 Vega: I second.  
17  
18 Baum: Board Member Acosta.  
19  
20 Acosta: I vote yes to approve based on monetary hardship and the potential to spur  
21 economic business.  
22  
23 Baum: Board Member Smith.  
24  
25 Smith: I vote yes to approve based on frequent site visits. Also based on the  
26 hardship because of the error. And also, having driven down Idaho many  
27 times that that is actually a well-placed sign to help promote those  
28 businesses that are located within that plaza.  
29  
30 Baum: Board Member Vega.  
31  
32 Vega: I vote yes to approve based on the financial hardship and the staffing errors.  
33  
34 Baum: Board Member Bennett.  
35  
36 Bennett: I vote to approve based on physical and monetary hardship.  
37  
38 Baum: Board Member Murray.  
39  
40 Murray: I vote to approve based on monetary hardship and staff error.  
41  
42 Baum: Chair Kaiser  
43  
44 Kaiser: Yes, based on monetary hardship and staff error.  
45  
46 Baum: Motion passes.

1  
2 Kaiser: Okay. Thanks for all the presentations tonight.

3  
4 **10. DISCUSSION**

5  
6 Kaiser: Is there any discussion or staff announcements?

7  
8 Ochoa: Any discussion with the Commission you need to bring up? Is no.

9  
10 **11. STAFF ANNOUNCEMENTS**

11  
12 Ochoa: Okay, so staff announcements. It is almost that time of year. It's still hot  
13 but the holidays are coming around. So staff did want to bring up the  
14 November Planning and Zoning Commission meeting and the December  
15 Planning and Zoning Commission meeting. As of now, we still have them  
16 scheduled for the fourth Tuesday of the month which would essentially be  
17 November 28th which would be the Tuesday after Thanksgiving. And then  
18 in December, it would be on December 26th which that's definitely going to  
19 be an issue because staff will not be here.

20  
21 So I guess if we could come to a decision tonight if we wanted to move one,  
22 both then to the third Tuesday or potentially even moving the November one  
23 to the fifth Tuesday of the month that's a possibility as well. So we leave  
24 that up to the Commission with what they would like to do.

25  
26 Kaiser: So I think the 28th works. It's after the Thanksgiving holiday. I think that's  
27 more than fine. Yes, okay. So we'll keep the 28th. And then yes definitely  
28 would agree with the 26th. I think probably move it to before so that would  
29 be the 19th. I think that's obviously fair for staff and certainly the public. I  
30 think that's amenable as well.

31  
32 Ochoa: Sounds good. We'll go ahead and make those changes, sir. And so you  
33 all will be getting either packets and everything either earlier or later than  
34 usual on those two months so just keep an eye on them those for them.

35  
36 Also, I just wanted to update. We are finalizing you all's flash drives. So  
37 those flash drives should be delivered probably with your next P&Z packets  
38 for the next meeting. So they're pretty cool. Economic Development bot us  
39 these really nice wooden ones so they're not junky. They look pretty cool.  
40 So sorry Commissioner Vega, but thank you so much for being here though.  
41 Thank you ma'am. Appreciate your time here.

42  
43 Vega: I didn't expect to cry at my last Planning and Zoning meeting but thank you  
44 for the opportunity to serve and work with all of you. It's been a pleasure. I  
45 really appreciate it. And however, I can help in finding a replacement I  
46 certainly will.

1  
2 Kaiser:       Awesome. Well, once again best of luck and we'll see you out on the  
3               bicycle.  
4

5 **12.   ADJOURNMENT (7:52)**  
6

7 Kaiser:       All right. Go ahead and need a motion to adjournment tonight.  
8

9 Murray:       I make a motion to adjourn tonight's meeting.  
10

11 Smith:        I second.  
12

13 Kaiser:       All in favor?  
14

15 MOTION PASSES UNANIMOUSLY.  
16

17 Kaiser:       Thank you all for coming out tonight.  
18  
19  
20  
21

22  
23 \_\_\_\_\_  
Chairperson





# CITY OF LAS CRUCES

## *Planning & Zoning Commission 9/26/2023* **CASE 22ZO0500108: BOWMAN AVENUE REZONING**

|                              |                                                                                                                    |
|------------------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>STAFF CONTACT:</b>        | Vincent Banegas, (575) 528-3058,<br><a href="mailto:vbanegas@las-cruces.org">vbanegas@las-cruces.org</a>           |
| <b>OWNER:</b>                | Nicole E. and Philip Ehrgott                                                                                       |
| <b>REPRESENTATIVE:</b>       | Same                                                                                                               |
| <b>DISTRICT:</b>             | District #1                                                                                                        |
| <b>SITE ADDRESSES:</b>       | 806 E. Bowman Avenue                                                                                               |
| <b>EXISTING ZONING:</b>      | R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity)                                                   |
| <b>REQUEST:</b>              | Rezone from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity). |
| <b>RELATED APPLICATIONS:</b> | N/A                                                                                                                |
| <b>STAFF RECOMMENDATION:</b> | Approval                                                                                                           |

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### **SUMMARY OF CASE 22ZO0500108:**

A request to approve the rezoning of property from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity) for property located at 806 E. Bowman Avenue. The property is ± 0.402 acres in size and is within Council District 1. Submitted by Nicole E. Ehrgott, property owner.

### **SUMMARY OF RECOMMENDATION:**

Staff is recommending **APPROVAL** based on the findings listed below:

- The property under consideration is within the South Mesquite Overlay District (SMO).
- This overlay establishes land use and architectural/site design criteria which will be met by the property owners when preparing the subject property for commercial/residential use.
- Previously, the property was used as a residence, office, and contractor's yard in what staff believes was a violation of the 2001 Las Cruces Zoning Code, as amended. The intended use via this request seeks to remedy compliance issues.

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N

- The Historic Preservation Commission (HPC) Chair, on behalf of the HPC, has provided a letter of support for the request as presented. Said letter will be provided during staff presentation in that preparation of the letter followed compilation of this report.
- The property owners wish to reside and establish commercial retail and a cottage industry uses on the premises all of which is consistent with the C-2 zoning district and its application within the SMO.
- The subject property falls within the Urban Neighborhood Place Type. This classification is characterized by a variety of residential housing types at medium to high densities and areas of supporting neighborhood commercial development. The classification is consistent with what the C-2 (SMO) provides and what the property owners seek to accomplish.
- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).
- The surrounding area immediately north, east, and west is primarily residential in use and zoned R-2 (SMO). Areas south of the subject property are residential and commercial within a C-2 zone (SMO).

**PROPOSAL AND LAND USE HISTORY**

**DETAILED DESCRIPTION:**

The property owner is seeking rezoning from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity) to accommodate the applicant’s desire to reside and conduct a retail and retail related business (cottage industry) on the premises. The cottage industry will involve the small-scale manufacturing of hand-crafted furniture products that will be sold on the premises. The retail sale of natural nutrition products and home goods will also take place on site. All uses will follow applicable provisions authorized in the C-2 zoning district within the SMO. The property will be required to meet all applicable access, parking, and landscaping requirements pursuant to code in that the proposed use represents a change in use for the property thereby triggering the need.

To help facilitate this request, staff requested that the applicant carry out early notification to the surrounding neighborhood. To date, staff is not aware of any input that would indicate opposition to request.

**LAND USE HISTORY:**

The subject properties are part of the Lohman La Point 107 Subdivision which is within the Mesquite Street - Original Townsite Historic District (State of NM boundary). The property is developed and contains a residence and a detached garage.

**ZONING DECISION CRITERIA AND POLICIES**

| POLICY                                              | DOES IT COMPLY? |
|-----------------------------------------------------|-----------------|
| <u>Neighborhood Character and Compatibility</u>     | Yes             |
| <u>Elevate Las Cruces Comprehensive Plan</u>        | Yes             |
| <u>Thoroughfare Plans</u>                           | Yes             |
| <u>Purpose and Intent of the Code: Section 38-2</u> | Yes             |
| <u>Criteria for Decisions: Section 2-382</u>        | Yes             |

**NEIGHBORHOOD CHARACTER AND COMPATIBILITY:**

In large part, the area surrounding the subject property consists of residential lots on the north side of Bowman Avenue and immediately east and west of the subject properties. R-2 zoning supports these uses. South of the subject property uses tend to transition from residential to commercial the closer one gets to Amador Avenue. C-2 and C-3 zoning support these uses. Given the development pattern described, there should be limited impact to the surrounding neighborhood in terms of use, development character and compatibility.

**COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:**

According to the Future Development Map in the Elevate Las Cruces Comprehensive Plan, the subject parcel falls within the Urban Neighborhood Place Type. The Urban Neighborhood Place Type is characterized as providing a variety of housing styles in medium to high densities with low-to-moderate density residential land uses intermixed with areas of commercial development.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the proposed Zone Change:

- Urban Neighborhood Place Type Development Strategies
  - Provide transitions in development scale between the major thoroughfare and surrounding neighborhoods.
  - Transition between land uses at intersecting streets and alleys and avoid incompatible uses facing each other.
- Community Environment:
  - Goal CE-1: Balanced Growth – Encourage efficient land use development patterns that accommodate projected growth in a sustainable manner.
    - Policy CE-1.2. – Promote investment within older areas of the city through redevelopment.
      - Action CE-1.2.3 - Partner with property owners of vacant land for infill opportunities.
    - Policy CE-2.1. – Promote infill development strategies to sustain the City's established neighborhoods and historic residential areas.
  - Goal CE-5: Building and Site Design – Establish standards to integrate new development with surrounding built and natural features while mitigating long-term natural resources and climate impacts.
    - Policy CE-5.1 – Promote building form and scale that complements surrounding neighborhoods and creates strong linkages between the development site, the street, and other public grounds.
      - Action CE-5.1.2 – Provide gradual transitions between developments with residential lots of varying size and building heights.
- Community Prosperity:
  - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.

- Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
  - Goal CP-3: Entrepreneurship – Create a nurturing regulatory environment that generates entrepreneurship and small business investment.
    - Policy CP-3.1 – Encourage entrepreneurship by creating programs that support residents wishing to start a business.
  - Goal CP-9: Housing Diversity – Provide a diverse range of housing options to accommodate residents at all stages in life.
- Community Livability:
  - Goal CL-2: Neighborhood Conservation - Strengthen neighborhood condition through improvements to the built-environment.
    - Policy CL-2.2 – Encourage redevelopment of vacant properties within neighborhoods.

As the uses proposed for the subject property are congruous to the urban place type and are well supported by various comprehensive goals and policies, staff feels the application is justified and should pose no conflict with the existing neighborhood.

**COMPLIANCE WITH THOROUGHFARE PLAN:**

Access to the subject property will come from either Bowman Avenue or Almendra Street. Both are improved local roadways that provide adequate right-of-way (ROW), curb, gutter, sidewalks, and lighting. Both roadways have approximately 30 feet of paved width. Access to these roadways will primarily come from Amador Avenue, a fully improved principal arterial roadway located south of the subject property. These roadways will provide all necessary access to the property, and they are adequate to accommodate the intended uses proposed for this location.

**CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:**

Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed zone change include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- B. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- H. Encourage the conservation of energy in the use of structures, buildings, and land.
- J. Improve the design, quality, and character of new development.
- K. Encourage development of vacant properties within established areas.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- M. Foster a more rational relationship between different land uses for the mutual benefit of all.
- N. Conserve the value of buildings and land.

Review by City of Las Cruces staff determined the proposed zone change would not adversely impact the surrounding area. Future uses that may be authorized by the proposed district will be in keeping with the surrounding area per section 38-2 of the 2001 Zoning Code, as amended. Additionally, the proposed action will eliminate the issue with the property's non-conforming issues thus, allowing development pursuant to code.

**CRITERIA FOR DECISIONS:**

Per Section 2-382 of the Las Cruces Municipal Code, the Planning and Zoning Commission shall determine the following:

- A. The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:
  - 1. Impair an inadequate supply of light and air to adjacent property or otherwise adversely adjoining properties.
  - 2. Unreasonably increase the traffic in public streets.
  - 3. Increase the danger of fire or endanger the public safety.
  - 4. Deter the orderly and phased growth and development of the community.
  - 5. Unreasonably impair established property values within the surrounding area.
  - 6. In any other respect, impair the public health, safety, or general welfare of the city.
  - 7. Constitute a spot zone, and therefore, adversely affect adjacent property values.
  - 8. Be in harmony with the purpose and intent of the zoning code, sign code, design standards, and other companion codes.
- B. The commission shall take care that the development of the city, in accordance with present and future needs, best promotes the health, safety, morals, order, convenience, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.
- C. The commission shall encourage the proper use and development of land, shall seek to create, and maintain an aesthetic urban setting, and protect and preserve the quality of the water, air, and other environmental, natural, historical, and cultural resources for the city.
- D. The commission shall use the comprehensive plan as a guide in making all future decisions concerning land use and development, and in the financing and location of capital improvements.
- E. Before taking any action concerning land use and development and financing and location of capital improvements, the commission shall review the relationship between the proposed action and the comprehensive plan.

Upon internal review, staff did not identify any issues that would deter the Planning and Zoning Commission from making an affirmative recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate with a recommendation of approval.

## **DEVELOPMENT STANDARDS**

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### **SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:**

The subject property is currently zoned R-2/C-2. This zoning district exists with a vast majority of the property zoned R-2. The C-2 component is located on the south side of the property and appears to be a result of the adjacent C-2 zoning boundary encroaching past the alley instead of ending midway in the alley right-of-way as code would otherwise dictate. Due to the uncertainty with this boundary, the zone change as presented is being put forth which will allow the proposed uses as described and help clean up these zoning district boundary issue.

### **SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:**

If the subject property is rezoned as proposed, the size of the lot and the access provided via Almendra Street and Bowman Avenue allow development of the proposed uses as envisioned by the property owner to take place. All development would then follow the requirements of the C-2 zoning district.

### **ADEQUACY OF PUBLIC FACILITIES AND SERVICES:**

City water, gas, and sewer services are currently provided to the subject property. The available city utilities will not be negatively impacted by this zone change request and any of the proposed uses being considered.

## **STAFF AND PUBLIC COMMENTS**

---

### **PUBLIC NOTIFICATION AND INPUT:**

Notification letters were mailed to property owners within 500 feet of the subject property. Staff has not received any input regarding the pending zone change action as of packet preparation.

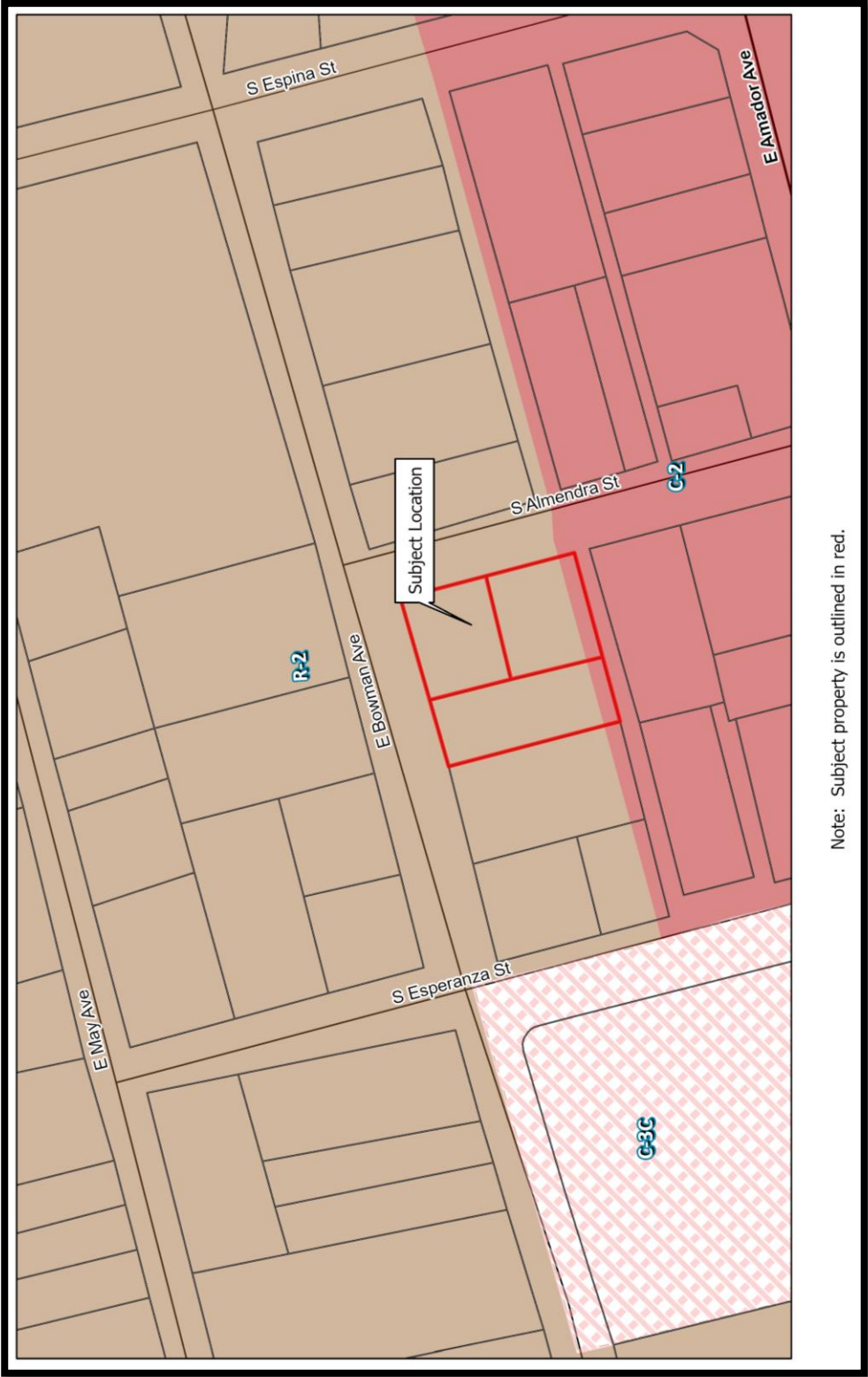
### **STAFF COMMENTS:**

There were no reviewing department comments that would prohibit consideration of this request by the Planning and Zoning Commission. All requested changes,

### **ATTACHMENTS:**

1. Zoning Map
2. Aerial Map
3. Request Letter
4. Department Review Comments

**ATTACHMENT 1**  
**Zoning Map**





**ATTACHMENT 2**  
**Aerial Map**



Note: Subject property is outlined in red.



## **ATTACHMENT 3**

### **Request Letter**

#### **NICOLE & PHILIP EHROGOTT**

806 E Bowman Ave Las Cruces, NM 88001 · (210)2439172

Email · Nicole.ehrgott@gmail.com

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Dear Members of the Community Development Team, Zoning Board, & City Council:

We are writing to seek a zoning change for our proposed business at 806 E Bowman Ave, Las Cruces, NM 88001. Currently the property consists of a home dwelling, a parking lot, and a commercial business building divided into a workshop, office, and a showroom. The previous owners used the property as their home and ran Econopro Painters from the workshop/commercial building on the property.

Current zoning rules place this property as an R-2 zoned property. We are to understand that the previous owners operated their business under a legal non-conforming status, and that we must bring this property into compliance in order to open the proposed businesses.

We are excited to contribute to the local landscape and business offerings in this beautiful and historic neighborhood. Our plan is to operate a retail store (The Local Nut LLC) selling natural nutrition products and home goods from the office and showroom end of the building, leaving the workshop space as a woodworking studio for Flip Studio LLC. We feel that this offering will fit perfectly into the area adding value to the current business offerings that are developing in this unique area of downtown Las Cruces. We have both owned and operated like businesses previously and look forward to beginning this new endeavor here in Las Cruces.

We are requesting a zoning change for this property as a C-2 property in order to utilize the space as stated. We hope that you will see the value in our offerings and grant us this zoning change so that we may begin doing business in this beautiful city we now call home.

Respectfully Submitted,

  
Nicole & Philip Ehrgott

## **ATTACHMENT 4**

### **Department Review Comments**

**Department: Planning**

Status: APPROVED

**Department: Transportation**

Status: REVISIONS REQUIRED (underway)

- 1) Driveway aprons due to their width require one-way identification per code and pkg lot design.
- 2) Proximity of driveway aprons to applicable street centerline will require engineering variance.

**Department: Engineering**

Status: APPROVED

**Department: Utility**

STATUS: APPROVED

**Department: Fire**

Status: APPROVED

**Department: MPO**

Status: NOT REQUIRED

**Department: Flood Review**

Status: APPROVED W/ CONTINGENCY

**Department: Econ Dev**

Status: NOT REQUIRED



**3057; Council  
Bill 24-015**

# City Council Action and Executive Summary

Type of Action:  
☐ Resolution  
☒ Ordinance  
☐ TIDD Resolution

|              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                   |                       |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------|
| District:    | <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> N/A                                                                                                                                                                                                                                                                              |                   |                       |
| 1st Reading: | December 18, 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Adopted:          | January 2, 2024       |
| Drafter:     | John Castillo                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Department:       | Community Development |
| Program:     | Community Planning                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Line of Business: | Community Planning    |
| Title:       | AN ORDINANCE APPROVING A ZONE CHANGE FROM C-1 (COMMERCIAL LOW INTENSITY) AND R-3 (MULTI-DWELLING MEDIUM DENSITY) TO C-3 (COMMERCIAL HIGH INTENSITY) ON A PROPERTY ENCOMPASSING 1.436 ± ACRES. THE ZONE CHANGE REQUEST SEEKS TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 2001 LAS CRUCES MUNICIPAL CODE, AS AMENDED, ALLOWING FOR THE CURRENT BUSINESS EXPANSION AS WELL AS ENCOURAGING FUTURE DEVELOPMENT ON THE PROPERTY. THE SUBJECT PROPERTY IS LOCATED AT 2460 MISSOURI AVENUE. |                   |                       |

TYPE OF ACTION:    ☐ Administrative    ☐ Legislative    ☒ Quasi-Judicial

**PURPOSE(S) OF ACTION:**  
Zone Change.

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The City Council is required to review and take final action on zone changes per Section 38-10 B. 2. b. and 38-13 A. of the 2001 Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulations uniformly govern the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density) to C-3 (Commercial Medium Intensity) on a partially developed parcel of land located at 2460 Missouri Avenue. The purpose for the proposed zone change is to bring the property into compliance with the 2001 Las Cruces Municipal Code, as amended as it currently does not meet the maximum gross floor square footage of 2,500 as outlined in the development standards of the C-1 zoning district and is considered a legal non-conforming property that has two buildings that encompass 6,276.88 ± square feet in total. In addition, it will allow for expansion of the commercial development that exists on the property spurring economic development, as well as provide an expansion of uses for both non-residential and residential development.

The property is zoned C-1 (Commercial Low Intensity) which has a 2,500 sq ft maximum building gross floor area requirement as outlined in the development standards Section 38-32D (Table) as well as, having an R-3 zoning district. The proposed zone change request will allow for the increase in attraction and retention of businesses at this location while bringing the property into compliance with the 2001 Zoning Code, as amended as the developed site exceeds the maximum gross floor area requirement. The surrounding neighborhood has a mixture of retail, office and residential land uses. Based on the existing neighborhood, the proposed zone change is compatible with the surrounding area, specifically the commercial corridor, and would be in harmony with Section 38-2 of the 2001 Zoning Code.

## Agenda Item #8.4.

The proposed zone change is consistent with the intent and purpose of Elevate Las Cruces Comprehensive Plan and several of its Goals, Policies, and Actions. Missouri Avenue and Triviz Drive are classified as arterial roadways by Elevate Las Cruces' Future Thoroughfare Map and by the Mesilla Valley MPO Future Thoroughfare Plan. The subject property is also located within the Urban Neighborhood Place Type, as indicated by Elevate Las Cruces' Future Development Map. The Urban Place Type is defined as a variety of housing types with medium-to-high densities and areas of supporting neighborhood commercial development. The Urban Place Type accommodates small-scale commercial uses or mixed-use buildings on major thoroughfares and provides a transition in development scale between major thoroughfares and surrounding neighborhoods.

On October 24, 2022 the Planning and Zoning Commission (P&Z), per Section 38-10 B. 2. B. of the 2001 Zoning Code, as amended, recommended approval of the proposed zone changes by a vote of 6-0-0 (One Commissioner's Seat Vacant) based on the following findings, also reflected in Exhibit "B":

- The zone change request will allow for the attraction and retention of businesses at this location through the expansion of potential uses.
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the subject property (2001 Zoning Code, Section 38-33).
- The subject property is located at the intersection of two minor arterial roadways where it is recommended for C-3 zoning and uses (2001 Zoning Code, Section 38-32 D).
- Based on staff's analysis the proposed zone change request meets the purpose and intent of the Zoning Code and is supported by Elevate Las Cruces Comprehensive Plan.
- The proposed zone change meets the purpose and intent of the 2001 Zoning Code, as amended (2001 Zoning Code, Section 38-2).

The case was publicly noticed in accordance with the City's notification provisions; staff received no phone calls in support or remonstrance for the zone change prior or during the P&Z hearing.

### **SUPPORT INFORMATION:**

[Exhibit "A"- Site plan](#)

[Exhibit "B" - Findings](#)

[Attachment "A" - 2460 Missouri Staff Report](#)

[Attachment "B" - 10.24.23 P&Z Minutes Approved](#)

### **PLAN(S):**

Elevate Las Cruces

### **COMMITTEE/BOARD REVIEW:**

P&Z

### **DOES THIS AMEND THE BUDGET?:**

☐ Yes

☒ No

### **Does this action amend the Capital Improvement Plan (CIP)?**

☐ Yes

☒ No

### **Does this action align with Elevate Las Cruces?**

☒ Yes

☐ No

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval.
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z.
3. Vote to "Amend"; this could allow City Council to modify the Ordinance by adding conditions as determined appropriate.
4. Vote to "Table"; this could allow City Council to table/postpone the Ordinance and direct staff accordingly.

**ORDINANCE 3057; COUNCIL BILL 24-015**

**AN ORDINANCE APPROVING A ZONE CHANGE FROM C-1 (COMMERCIAL LOW INTENSITY) AND R-3 (MULTI-DWELLING MEDIUM DENSITY) TO C-3 (COMMERCIAL HIGH INTENSITY) ON A PROPERTY ENCOMPASSING 1.436 ± ACRES. THE ZONE CHANGE REQUEST SEEKS TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 2001 LAS CRUCES MUNICIPAL CODE, AS AMENDED, ALLOWING FOR THE CURRENT BUSINESS EXPANSION AS WELL AS ENCOURAGING FUTURE DEVELOPMENT ON THE PROPERTY. THE SUBJECT PROPERTY IS LOCATED AT 2460 MISSOURI AVENUE.**

The City Council is informed that:

**WHEREAS**, Oscar Luevano, representative, has submitted a request for a zone change from C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density) to C-3 (Commercial High Intensity) for 2460 Missouri Avenue; and

**WHEREAS**, the proposed C-3 zoning designation will allow for retention of the existing business and the attraction of future businesses, as well as, bring the property into compliance with the 2001 Las Cruces Municipal Code, as amended; and

**WHEREAS**, the proposed site is in the Urban Neighborhood Place Types as shown on the Future Development Map within Elevate Las Cruces Comprehensive Plan which supports neighborhood commercial development and a variety of residential housing types; and

**WHEREAS**, the Planning and Zoning Commission, after conducting a public hearing on October 24, 2023, recommended that said zone change request be approved by a vote of 6-0-0 (one Commissioner seat vacant).

**NOW, THEREFORE**, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

**THAT** the lands, as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-3 (Commercial High Intensity).

(II)

**THAT**the zoning is based on the findings contained in Exhibit "B", attached hereto and made part of this Ordinance

(III)

**THAT** the zoning of said property be shown accordingly on the City Zoning Atlas.

(IV)

**THAT** City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

**DONE AND APPROVED this** day of

Agenda Item #8.4.

APPROVED

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

**Moved by:**

**Seconded by:**

**AYES**

**NAYS**

# COLLEGE PARK NO. 3 REPLAT, REPLAT NO. 5,

A CONSOLIDATED REPLAT OF A 1.436 ACRE TRACT, BEING LOTS 2 AND 3,  
OF COLLEGE PARK NO. 3 REPLAT, REPLAT NO. 3, IN PLAT BOOK 17, PAGE 173, FILED MAY 8, 1992,  
AND BEING LOT 1A2, OF COLLEGE PARK NO. 3 REPLAT, REPLAT NO. 4,  
IN PLAT BOOK 18, PAGE 271, FILED JUNE 9, 1995,  
LOCATED WITHIN A PROJECTED SECTION 21, T. 23 S., R. 2 E.,  
N.M.P.M. OF THE U.S.G.L.O. SURVEYS,  
LAS CRUCES, DONA ANA COUNTY, NEW MEXICO  
SCALE 1"=60' SEPTEMBER 21, 2018

## EXHIBIT "A"





## EXHIBIT “B”

# FINDINGS

- The zone change request will allow for the attraction and retention of businesses at this location through the expansion of potential uses.
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the subject property (2001 Zoning Code, Section 38-33).
- The subject property is located at the intersection of two minor arterial roadways where it is recommended for C-3 zoning and uses (2001 Zoning Code, Section 38-32 D).
- Based on staff’s analysis the proposed zone change request meets the purpose and intent and is supported by Elevate Las Cruces Comprehensive Plan.
- The proposed zone change meets the purpose and intent of the 2001 Zoning Code, as amended (2001 Zoning Code, Section 38-2).



**City of Las Cruces**  
MOUNTAINS OF OPPORTUNITY

**Planning & Zoning Commission 10/24/2023**

**CASE 23ZO0500085: REZONING**

|                              |                                                                                                        |
|------------------------------|--------------------------------------------------------------------------------------------------------|
| <b>STAFF CONTACT:</b>        | John Castillo, (575) 541-2288,<br><a href="mailto:jcastillo@lascruces.gov">jcastillo@lascruces.gov</a> |
| <b>OWNER:</b>                | A&M Group LLC                                                                                          |
| <b>REPRESENTATIVE:</b>       | Oscar Luevano                                                                                          |
| <b>DISTRICT:</b>             | District #1                                                                                            |
| <b>SITE ADDRESS:</b>         | 2460 Missouri Avenue                                                                                   |
| <b>EXISTING ZONING:</b>      | C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density)                                 |
| <b>REQUEST:</b>              | Rezone to C-3 (Commercial High Intensity)                                                              |
| <b>RELATED APPLICATIONS:</b> | N/A                                                                                                    |
| <b>STAFF RECOMMENDATION:</b> | Approval                                                                                               |

**SUMMARY OF CASE 23ZO0500085:**

A zone change request application from C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density) to C-3 (Commercial High Intensity) on a property encompassing 1.427 ± acres. The purpose of the rezoning is to bring the property into compliance with the 2001 Zoning Code, as amended, and to expand on the potential uses of the subject property as well as future expansion of the current business on the property.

**SUMMARY OF RECOMMENDATION:**

Staff is recommending **APPROVAL** based on the findings listed below:

- The zone change request will allow for the attraction and retention of businesses at this location through the expansion of potential uses.
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the subject property (2001 Zoning Code, Section 38-33).
- The subject property is located at the intersection of two minor arterial roadways where it is recommended for C-3 zoning and uses (2001 Zoning Code, Section 38-32 D).
- Based on staff's analysis the proposed zone change request meets the purpose and intent and is supported by Elevate Las Cruces Comprehensive Plan.

- The proposed zone change meets the purpose and intent of the 2001 Zoning Code, as amended (2001 Zoning Code, Section 38-2).

**PROPOSAL AND LAND USE HISTORY**

**DETAILED DESCRIPTION:**

The applicant is seeking a zone change to bring the parcel into compliance with current code for future expansion of a cannabis-based business on the property and to allow for potential future development. The subject property is 1.427 ± acres in size with two structures that encompass 6,276.88 ± square feet in size total. Under the existing C-1 zoning designation a maximum building gross floor area of 2,500 square feet cannot be exceeded. Currently the property does not meet this requirement and the cannabis-based business wishes to expand its business.

The proposed zone change to C-3 will bring the property into compliance with the 2001 Zoning Code, as amended. This will allow the current business the ability to grow on the property as well as bring in future development to spur additional economic growth within the City.

**LAND USE HISTORY:**

The subject property was originally a part of the College No.3 replat subdivision that was recorded in June of 1965. The property underwent several replats and is currently shown in College Park No. 3 Replat, Replat No. 5 that was recorded in July of 2019. The property was originally zoned C-1 and R-3 prior to 1990. Currently the property is underutilized with development at the corner of Missouri Ave. and Triviz Dr. The subject property has direct access from Triviz Drive as well as John Street.

**ZONING DECISION CRITERIA AND POLICIES**

| POLICY                                              | DOES IT COMPLY? |
|-----------------------------------------------------|-----------------|
| <u>Neighborhood Character and Compatibility</u>     | Yes             |
| <u>Elevate Las Cruces Comprehensive Plan</u>        | Yes             |
| <u>Thoroughfare Plan</u>                            | Yes             |
| <u>Purpose and Intent of the Code: Section 38-2</u> | Yes             |
| <u>Criteria for Decisions: Section 2-382</u>        | Yes             |

**NEIGHBORHOOD CHARACTER AND COMPATIBILITY:**

Missouri Avenue and Triviz Drive are primarily mixed-use corridors that run through the length of the City providing connections to other major thoroughfares. Missouri Avenue is dominated by a variety of commercial, office, retail and multi-family housing land uses. The subject property has C-2 zoning directly to the north and east of Interstate 25, and R-3 zoning to the west and south. The property is adjacent to offices and a church to the north and west. There is also a large mixed residential neighborhood that currently exists to the south.

**COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:**

The subject property is located in an area designated as an Urban Neighborhood Place Type as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. The Urban Neighborhood Place Type area includes a variety of

residential housing types at medium to high density and areas of supporting neighborhood retail and office uses.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the proposed zone change:

- Community Environment:
  - Goal CE-3: Centers and Corridors – Support community growth through concentrated development at activity centers and along key corridors.
    - Policy CE-3.2 – Allow for a mix of development type and intensity along major thoroughfares that reflects surrounding urban, suburban, and rural contexts.
  - Goal CE-4: Complete neighborhoods - develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
    - Policy CE-4.2: Incorporate employment and shopping nodes into new and redeveloping neighborhoods that incorporate a wide range of recreational, commercial and civic uses.
- Community Prosperity
  - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.
    - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
      - Action CP -2.2.2 – Identify and promote places of employment to minimize commutes and increase accessibility to other transportation modes to create a job-housing balance.
  - Goal CP-4: Diversification - Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.
    - Policy CP-4. - Support efforts to be regionally and nationally competitive in regard to retaining and growing businesses, jobs, and students.

The request to rezone the property from C-1 and R-3 to C-3 is not out of context with Elevate Las Cruces. The Urban Neighborhood Place Type encourages a diverse assortment of commercial and professional services that would be made available by allowing a broader spectrum of uses. Also utilizing the following development strategies: “Promote higher development intensities along major thoroughfares, especially those with transit services.” and “incorporate small-scale commercial uses or mixed-use building on major thoroughfares.”

#### **COMPLIANCE WITH THOROUGHFARE PLANS:**

Missouri Avenue and Triviz Drive are designated as minor arterial roadways by both the Elevate Las Cruces Future Thoroughfare Map and the Mesilla Valley Metropolitan Planning Organization (MPO) Future Thoroughfare Plan. These types of roadways are designed to support the proposed zoning designation and any potential future development.

**CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:**

Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed zone change include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- B. Encourage innovations in land development and redevelopment.
- C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- H. Encourage the conservation of energy in the use of structures, buildings, and land.
- J. Improve the design, quality, and character of new development.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- M. Foster a more rational relationship between different land uses for the mutual benefit of all.
- N. Conserve the value of buildings and land.

Review by City staff has determined that the proposed zone change would not adversely impact the surrounding area. Any potential future expansion in uses is in keeping with the surrounding area as per Section 38-2 of the 2001 Zoning Code, as amended.

**CRITERIA FOR DECISIONS:**

Per Section 2-382 of the Las Cruces Municipal Code, the Planning and Zoning Commission shall determine the following:

- A. The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:
  - 1. Impair an inadequate supply of light and air to adjacent property or otherwise adversely adjoining properties.
  - 2. Unreasonably increase the traffic in public streets.
  - 3. Increase the danger of fire or endanger the public safety.
  - 4. Deter the orderly and phased growth and development of the community.
  - 5. Unreasonably impair established property values within the surrounding area.
  - 6. In any other respect, impair the public health, safety, or general welfare of the city.
  - 7. Constitute a spot zone, and therefore, adversely affect adjacent property values.
  - 8. Be in harmony with the purpose and intent of the zoning code, sign code, design standards, and other companion codes.
- B. The commission shall take care that the development of the city, in accordance with present and future needs, best promotes the health, safety, morals, order, convenience, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.
- C. The commission shall encourage the proper use and development of land, shall seek to create and maintain an aesthetic urban setting, and protect and preserve the quality of the water, air and other environmental, natural, historical and cultural resources for the city.

- D. The commission shall use the comprehensive plan as a guide in making all future decisions concerning land use and development, and in the financing and location of capital improvements.
- E. Before taking any action concerning land use and development and financing and location of capital improvements, the commission shall review the relationship between the proposed action and the comprehensive plan.

Upon internal review, Staff did not identify any issues that would deter the Planning and Zoning Commission from making a positive recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate for recommendation of approval.

**NEW MEXICO CASE LAW:**

- 1. There was an error when the existing zoning map pattern was created; or
- 2. Changed neighborhood or community conditions justify the change; or
- 3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other applicable City master plan(s), even though criterion (1) or (2) above do not apply because
  - a. there is a public need for a change of the kind in question, and
  - b. that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

**DEVELOPMENT STANDARDS**

---

**SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:**

The subject property is currently partially developed . The existing buildings exceed the maximum gross floor area development standard of the C-1 zoning district, therefore, making the property non-conforming. The R-3 zoned portion of the property can be used for future development of various types of residential development.

**SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:**

The zone change request to C-3 would allow the applicant to bring the property into compliance with the 2001 Zoning Code, as amended, and allow the current business on the property to further expand. The proposed zone change would also allow for a variety of residential and/or non-residential development to occur on the vacant portion of the subject property. All development standards of the C-3 zoning district shall be required to be met.

**ADEQUACY OF PUBLIC FACILITIES AND SERVICES:**

City water, gas and sewer are currently serving the property and will not be negatively impacted by the zone change request. Missouri Avenue and Triviz Drive provides adequate paved access, sidewalks, and lighting adjacent to the subject property.

### **STAFF AND PUBLIC COMMENTS**

---

#### **PUBLIC NOTIFICATION AND INPUT:**

Notification letters were mailed to property owners within 500 feet of the subject property. Staff has not received any input at the time this was written.

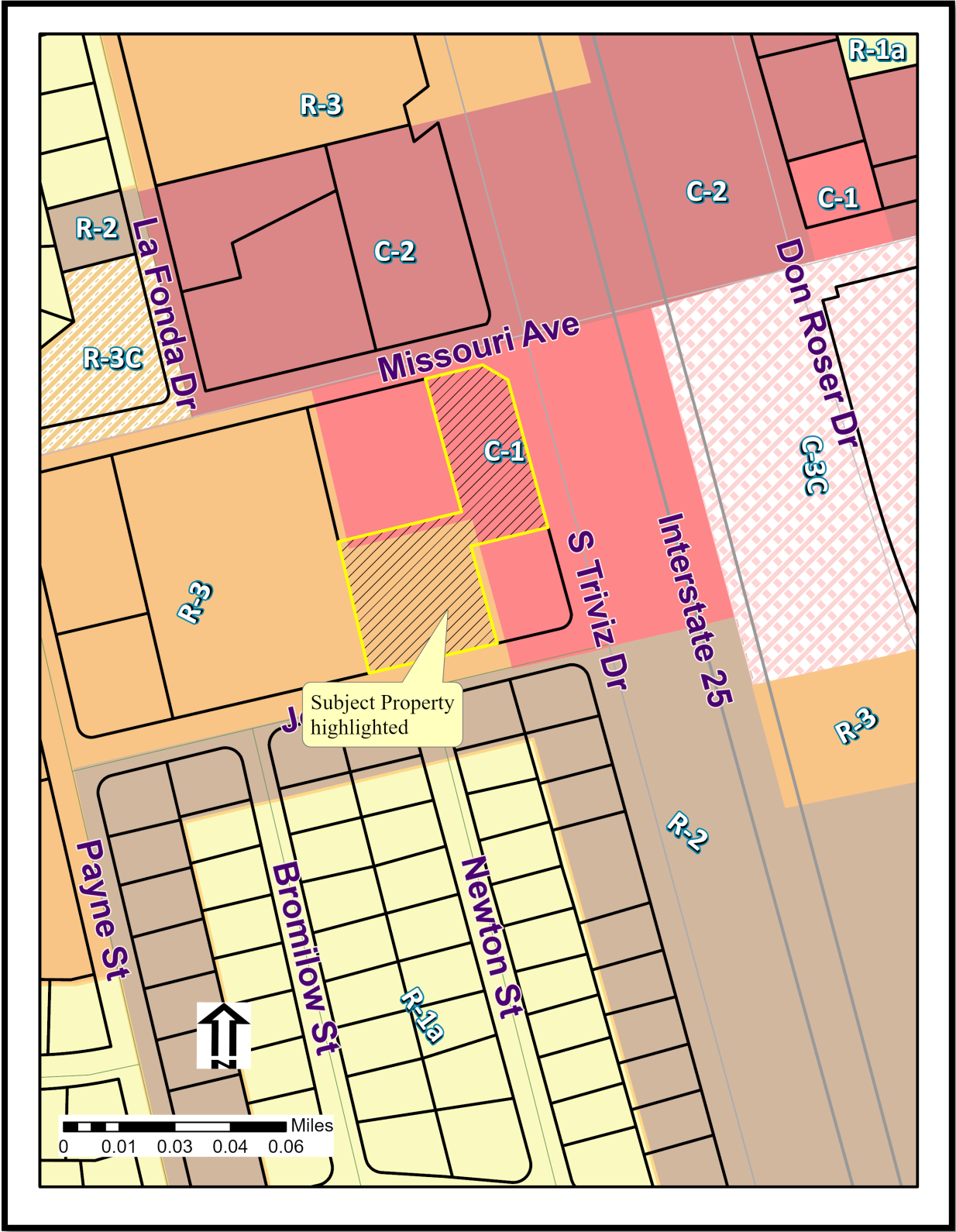
#### **STAFF COMMENTS:**

No reviewing department had any negative comments nor have any reviewers objected to the proposed rezoning.

#### **ATTACHMENTS:**

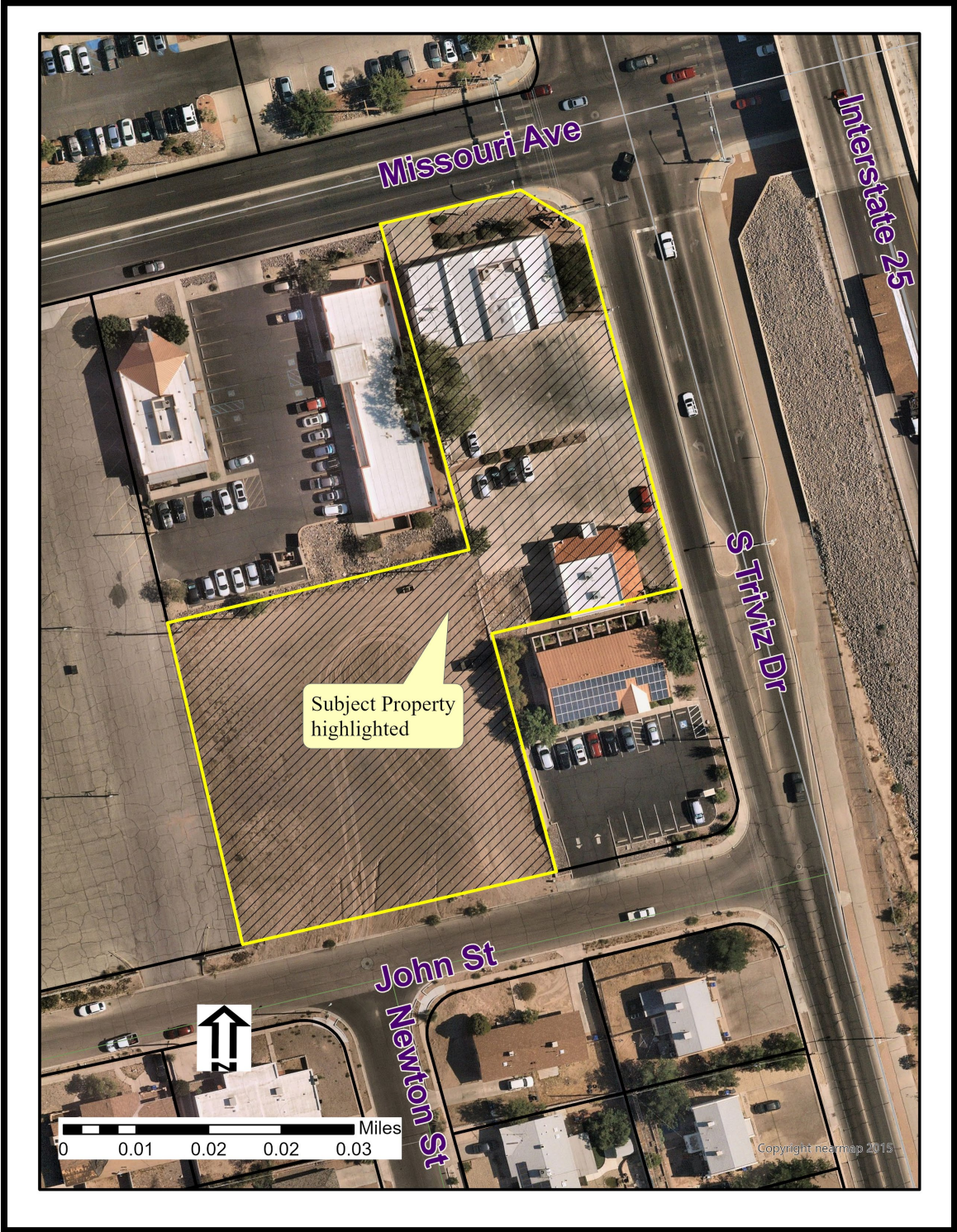
1. Zoning Map
2. Aerial Map
3. Department Review Comments

**ATTACHMENT 1**  
**Zoning Map**





ATTACHMENT 2  
Aerial Map



## **ATTACHMENT 3**

### **Department Review Comments**

**Department: Planning**

Status: YES

**Department: Traffic Engineering**

Status: YES

**Department: Engineering**

Status: YES

**Department: Utility Engineering**

STATUS: YES

**Department: Fire**

Status: YES

**Department: City MPO**

Status: YES



# CITY OF LAS CRUCES

**PLANNING AND ZONING COMMISSION  
FOR THE  
CITY OF LAS CRUCES  
City Council Chambers  
October 24, 2023 at 6:00 p.m.**

**BOARD MEMBERS PRESENT:**

Scott Kaiser, Chair  
Enrico Smith, Vice-Chair  
James Bennett, Secretary  
Joaquin Acosta, Member  
Connor Murray, Member  
Vanessa Porter, Member

**STAFF PRESENT:**

David Weir, Deputy Director Community Planning  
Adam Ochoa, Senior Planner/Building Inspection Supervisor  
Sara Gonzales, Senior Planner  
Vincent Banegas, Interim Planner  
John Castillo, Planner  
Brad Douglas, Deputy City Attorney  
Becky Baum, Recording Secretary, RC Creations, LLC

**1. CALL TO ORDER (6:00)**

Kaiser: All right. Good evening, folks. It is 6:00 p.m. on October 24th. We'll go ahead and call this meeting of the Planning and Zoning Commission to order.

**2. CONFLICT OF INTEREST**

Kaiser: Do we have any conflicts of interest from the Commissioners tonight? All right. Seeing none.

**3. APPROVAL OF MINUTES – September 26, 2023**

Kaiser: Are there any comments on the minutes from the September 26th meeting? None. Can I get a motion to approve?

Bennett: I make a motion to approve the September 26th meeting.

Smith: I second.

## Agenda Item #8.4.

1 Baum: Board Member Smith.

2

3 Smith: Yes.

4

5 Baum: Board Member Murray.

6

7 Murray: Yes.

8

9 Baum: Board Member Porter.

10

11 Murray: Abstain.

12

13 Baum: Board Member Bennett.

14

15 Bennett: Yes.

16

17 Baum: Chair Kaiser.

18

19 Kaiser: Yes.

20

21 Baum: Passes.

22

### 23 **4. POSTPONEMENTS**

24

25 Kaiser: Okay. I don't think there's any postponements tonight. Is that correct?

26

27 Ochoa: No, sir. None tonight.

28

29 Kaiser: All right.

30

### 31 **5. ACCEPTANCE OF THE AGENDA**

32

33 Kaiser: So before we go to the acceptance of the agenda, I'd like to pull item 7.1  
34 and 7.2 from the consent agenda tonight for discussion. So we will make  
35 those our first order of business. So with that change can I get a motion to  
36 accept the agenda?

37

38 Bennett: I make a motion to accept the agenda.

39

40 Smith: I second.

41

42 Baum: Board Member Smith.

43

44 Smith: Yes.

45

46 Baum: Board Member Murray.

1  
2 Murray: Yes.

3  
4 Baum: Board Member Porter.

5  
6 Murray: Yes.

7  
8 Baum: Board Member Bennett.

9  
10 Bennett: Yes.

11  
12 Baum: Chair Kaiser.

13  
14 Kaiser: Yes.

15  
16 Baum: Passes.

17  
18 **6. PUBLIC PARTICIPATION**

19  
20 Kaiser: Okay. Going to public participation. Is there anybody in the audience  
21 tonight who wishes to speak on an item that is not on tonight's agenda  
22 please raise your hand? Okay. Seeing none.

23  
24 We'll go ahead and move forward. So there's no additional items of the  
25 consent agenda so we will go ahead and start.

26  
27 **7. OLD BUSINESS**

28  
29 Kaiser: And there's also no old business.

30  
31 **8. CONSENT AGENDA**

32  
33 **7.1 Case # 23CS0500158: Moved to New Business.**

34  
35 Kaiser: So we'll go ahead and start with item 7.1. And if staff has a presentation,  
36 I'll be happy to entertain that.

37  
38 Castillo: Good evening, Commission. Staff has created a presentation. If you guys  
39 want to hear it, we can. If you would just like to ask any questions about  
40 the development, we can also do that as well.

41  
42 Kaiser: I think I'd prefer a presentation mainly because some of the attachments  
43 made it really difficult to sort of reconcile what was in the staff report versus  
44 what's on those attachments so a presentation would be great.

1 Castillo: Sounds good. So this is John Castillo for the record. Tonight, we have all  
2 the Organ Mountain Plaza master plan. It's currently located on the  
3 northwest corner of Bataan Memorial West and McGuffey Street. The  
4 address is 4299 Bataan Memorial West. It's located within Council District  
5 5. It encompasses 9.525 acres. The current zoning designation is a  
6 stacked zoning of M-1, M-2 and C-3, which is our industrial standard and  
7 commercial high intensity.

8  
9 As the property sits right now, it's currently a vacant, undeveloped parcel of  
10 land. As you can see from the aerial image, the highlighted part is what  
11 we're looking at right now. Here is the zoning of the tract of land and these  
12 are some street views. It is quite a stretch of land so it was hard to get a lot  
13 of pictures in there.

14  
15 So the master plan proposes a multiphase, nonresidential development. It's  
16 going to propose anywhere between 20 to 30 lots for commercial and  
17 industrial land uses. The subject property is to be developed in phases  
18 utilizing either the alternate summary subdivision process or the preliminary  
19 plat process. If the developer wishes to use alternate summary subdivision  
20 process, the 9.525 acre parcel will get divided into various lot sizes, meeting  
21 either the C-3 development standards or the M-1/M-2 development  
22 standards. If they wish to go through forward with the preliminary plat, he  
23 can develop in phases either as one single lot or individual lots. Here's an  
24 image of the proposed master plan. The item down here at the bottom is  
25 what we're looking at.

26  
27 Public input was sent to all relevant agencies and departments. All of them  
28 supported the proposed master plan. Notice was sent to surrounding  
29 properties within 500 feet. Staff did receive a couple of phone calls  
30 regarding development on the master planned area and just general  
31 questions regarding the property as a whole as well as the master planned  
32 area.

33  
34 This went before our Development Review Committee or DRC, which was  
35 conducting a meeting on October 4th. The DRC reviews subdivisions from  
36 an infrastructure, utilities, and improvement standpoint. There was  
37 discussion regarding the proposed access points along Bataan Memorial  
38 West and NMDOT's approval of those access points. Based on that  
39 discussion staff gave a unanimous approval as a recommendation.

40  
41 Today staff recommends approval as well as DRC recommending approval  
42 based on the following findings. The proposed master plan meets the  
43 objectives of a master plan as required by the subdivision code based on  
44 relevant City staff review. The proposed master plan complies with all  
45 requirements of the 2001 Zoning Code as amended as well as the City of  
46 Las Cruces' designs standards. The proposed master plan also fulfills the



1 intent and purpose of Elevate Las Cruces Comprehensive Plan. It also  
2 meets the purpose and intent requirements of Section 38-2 of the Zoning  
3 Code as well as the Section 2-382 of the Las Cruces Municipal Code. And  
4 DRC also gave their recommendation of approval on October 4th.

5  
6 Today your options are to vote "yes" to approve, "no" to deny, vote to  
7 amend, or vote to table.

8  
9 Kaiser: Thank you. I certainly have some questions but I'll turn to my colleagues  
10 first. Does anyone have any questions or comments? So I think my first  
11 question is I think you kind of alluded to it just now but it was in the staff  
12 report. It says there's 20, the development would allow for 20 to 30 lots in  
13 phases but that does not appear to be shown anywhere in the I guess  
14 proposed master plan in attachment three, so I'm just wondering if you could  
15 clarify what that is? And what that looks like?

16  
17 Castillo: Mr. Chair, Commission. Speaking with the developer they would be  
18 utilizing, like I said before, either the alternate summary subdivision. So  
19 based on land uses that would go in, they would parcel out the tract of land  
20 into various sized lot sizes which could range anywhere between 20 to 30  
21 lots on the property based on land uses and what the proposed use is going  
22 to require.

23  
24 Kaiser: Okay. So I guess I'm confused as to what is the plan. What are we, I mean  
25 I see one giant tract of land that you're saying could be split up in an infinite  
26 number of ways depending on what the developer chooses to do in the  
27 future, but we're being asked to approve a master plan. What's the plan?

28  
29 Castillo: Mr. Chair, Commission. So the master plan for the property is to look at the  
30 overall utility infrastructure that would be on the property as well as propose  
31 any type of infrastructure regarding roadways. They are going to be using  
32 shared access points between all of it. I'm going to let Sara speak real  
33 quick.

34  
35 Gonzales: Mr. Chair and Commission. Sara Gonzales with Community Development.  
36 The process for a master plan is basically used for developers in order to  
37 create an administrative process for subdividing the land. Property is  
38 already zoned, it just allows the applicant to come forth and utilize basically  
39 the alternate summary process to say this person may need an acre in size.

40  
41 If we go and develop each piece, they would have to come back to P&Z  
42 every time they cut out a portion. So the master plan is used in order to  
43 alleviate that process because it already meets the intent of the code and it  
44 meets the zoning. So this process is just allowing them to have it zoned  
45 and master planned in a way to where they can come in and now utilize the  
46 administrative process.

1  
2 Kaiser: Okay. Thank you for that clarification. I guess along those lines there, let's  
3 see. Let me find it on my page here. Yes, here we go. So the purpose of  
4 a master plan process is to advance the goals and objectives of the City's  
5 Comprehensive Plan and to address a variety of environmental and social  
6 issues that are being proposed in the development. So could you speak to  
7 what some of those issues might be? And how this master plan addresses  
8 them?  
9

10 Castillo: Mr. Chair, Commission. Keeping in line with Elevate Las Cruces, the  
11 southern half of Bataan Memorial East is considered a regional commercial  
12 zone. I don't believe it's a part of a mixed use corridor but it is a major  
13 thoroughfare within our City. So keeping with that this would enhance that  
14 regional commercial corridor moving forward to the north creating a buffer  
15 between any type of residential development.  
16

17 It also provides once again depending on the type of use that goes in, it can  
18 fill the need for any type of food desert that maybe there or provide some  
19 other kind of amenity to the neighborhood.  
20

21 Kaiser: Okay. Thank you. All right. I don't have any further questions. I'm just sort  
22 of struggling with we're being asked to approve a master plan but there's no  
23 plan. But I don't know if that's a flaw in the process or the requirements in  
24 the code but it's one lot. We're saying that they can develop it you know 50  
25 different ways to Sunday but we don't what. We're just giving them the go  
26 ahead to go ahead and do that. And as long as it adheres to the master  
27 plan then they're good to go but I just don't know what the plan is. So I don't  
28 know what we can do about it here tonight but that's just a concern I have,  
29 so I appreciate it. Thank you.  
30

31 Are there any other questions or comments from the Commission? No. All  
32 right. Going to the public. Is there anybody in the public who wishes to  
33 comment on this item? All right. Seeing none. I'll come back to the  
34 Commission. If there's no other comments or questions looking for a motion  
35 to approve.  
36

37 Bennett: I make a motion to approve 7.1.  
38

39 Smith: I second.  
40

41 Baum: Board Member Acosta.  
42

43 Acosta: I vote yes based on staff recommendation and Elevate Las Cruces.  
44

45 Baum: Board Member Smith.  
46



1 Smith: I vote yes based on staff recommendation.

2  
3 Baum: Board Member Murray.

4  
5 Murray: Yes, based on staff recommendation.

6  
7 Baum: Board Member Porter.

8  
9 Porter: I vote yes based on staff recommendations and Elevate Las Cruces.

10  
11 Baum: Board Member Bennett.

12  
13 Bennett: I vote to approve based on staff recommendation and DRC  
14 recommendation.

15  
16 Baum: Chair Kaiser.

17  
18 Kaiser: No, based on the fact that I just I don't have enough information. I don't  
19 know what I'm approving as part of this master plan.

20  
21 Baum: Passes five to one.

22  
23 **7.2 Case # 23ZO0500124: Moved to New Business**

24  
25 Kaiser: Okay. Moving onto item 7.2. This is a zone change request from R-4 to C-  
26 2 at 6281 Reynolds Drive. Go ahead, staff. If you have a presentation.

27  
28 Ochoa: Good evening, Commission. Adam Ochoa with Community Development.  
29 I'm actually covering this case for another staff that couldn't make it tonight  
30 unfortunately. So bear with me when I go through this for you all and I'll try  
31 to answer as many questions as I can to clarify for you all.

32  
33 So currently the property is zoned R-4 which stands for multi dwelling, high  
34 density and limited retail and office. The property encompasses roughly  
35 0.812 acres and is currently undeveloped. Surrounding area which is kind  
36 of, we go a little forward first, the southern portion if you will, of Bataan  
37 Memorial here between I believe what is Dunn and Porter to the west. It's  
38 surrounded commercial properties to the west which are owned by the City  
39 to be utilized for the East Mesa campus that's to be developed in the future.  
40 Religious institutions, single-family uses, multifamily uses as well. And then  
41 vacant multifamily development as well right along that area of Reynolds.

42  
43 This area is categorized by Elevate Las Cruces and it is suburban place  
44 type which actually does encourage that variety of uses, multifamily, single-  
45 family, and different ranges of densities. Commercial nodes, if you will, to  
46 support those and multifamily zoning as well.

Again, you're showing here the subject property here. Right next to what is that vacant commercial area that is currently zoned by the City of Las Cruces. A little further west you can see the East Mesa Complex there. Highlighted property here, religious institution to the east, multifamily, vacant commercial property that's all City owned, and just a sea of what is large lots, single-family residential lots to the south.

The applicant is proposing to rezone the subject property to C-2 which is commercial medium intensity property. It only requires a C-2 zone designation because it doesn't require a C-3 commercial high intensity because the lot isn't large enough to require that. It will allow for the development of either a commercial shopping center as what the applicant is really trying to propose or possibly a ministorage unit facility as well. A zone change will not eliminate the existing multifamily land use as we all know commercial does allow for multifamily and allows that flexibility if that is wanted in the future at a higher density as well. Here's just a quick site plan of that vacant piece of property. Bataan Memorial to the north. Reynolds to the south.

So when staff analyzed the proposed zone change, we did see no real health, safety, or welfare issues associated with the zone change. The proposed zoning district would provide the capability for, I guess the surrounding area kind of utilize actual commercial area. I don't know if you all had a chance to drive it out there. There's really limited commercial uses, service uses, in this area. So staff saw that this is something that is supported by Elevate Las Cruces and the suburban place type adding this additional commercial property on the actual commercial zoning on the property.

Showing here kind of what I reiterated. To get to any services in the area, it's a limited access highway as we all know. The State of New Mexico, we love our limited access highways. So to get to any type of services, there is a small commercial node here or commercial use, if you will, gas station right on the corner on the north side. But then you'd have to come all the way down to Mesa Grande to really reach any other type of services of commercial land uses for this area. Really everything to the south is either single-family zoning designations or rural single-family zoning designations so just a large cluster of it in this area.

With that staff does recommend approval for the proposed zone change. We believe that it does meet the intent of the 2001 Zoning Code. A zone change will allow for a multitude of commercial land uses on the subject property. It is located along a minor arterial roadway and a local roadway to the south, but would allow additional commercial uses in the area. And the proposed zone change is supported by Elevate Las Cruces

1 Comprehensive Plan and meets the purpose and intent of Section 38-2 of  
2 the 2001 Zoning Code.

3  
4 Let's see here. City of Las Cruces staff, we did send required public notice  
5 to all surrounding properties. We did receive no input from anybody around  
6 the area.

7  
8 With that, ladies and gentlemen, your options tonight is one, vote "yes" to  
9 approve the proposal or recommend approval for the proposed zone  
10 change to City Council. Two, to vote "no" and deny, recommend denial for  
11 the proposal and change. Of course, reminder, any denial - staff findings  
12 are for approval, so any vote for a denial will require new findings of fact.  
13 Three, to vote "yes" and amend the proposal and change. And four, table  
14 or postpone and direct staff accordingly.

15  
16 The applicant is here if you have any questions for them. And I stand for  
17 questions as well.

18  
19 Kaiser: Thank you. Before I ask my questions, anyone on the Commission have  
20 questions or comments? Commissioner Smith.

21  
22 Smith: I just want a clarification. So basically, this is just giving them an option to  
23 maintain a residential zone and also the opportunity to develop as a  
24 commercial zone also?

25  
26 Ochoa: Commissioner Smith, Chairman Kaiser. Correct. It kind of gives them a  
27 little step up in the ability to develop this property. As you know, R-4 you're  
28 allowed multifamily high density which basically it's the same density that is  
29 allowed also in the proposed C-2 zoning. But on top of that R-4 allows  
30 limited office and retail. Very limited office and retail on the property. And  
31 it requires certain types of development to occur on there, limited uses. But  
32 the C-2 would allow a lot more potential commercial land uses as well. So  
33 just opens the options for this property to be developed more than what its  
34 current zoning designation allows.

35  
36 Smith: All right. Thank you.

37  
38 Ochoa: Yes, sir.

39  
40 Kaiser: Any other Commissioners have questions? Go ahead.

41  
42 Porter: I wanted to know so we're approving basically either a storage unit or a  
43 shopping center, right, basically, that's kind of what he's requesting, right?  
44 I know that he's saying that there's not really any other like shopping centers  
45 unless you go around to Mesa Grande and this will put this one at Reynolds.  
46 But how would we know what we're approving if we're approving a storage

1 unit or if we're approving another shopping center which would benefit the  
2 community on that spot because that's what the presentation is coming off  
3 to me. When would we, like that's no clarification to me right now as in if  
4 it's a storage unit or if it's going to actually be something that will be able to  
5 provide a little bit more for the residents in that area.

6  
7 Ochoa: Sure. Commissioner Porter, Chairman Kaiser. Those two uses are just  
8 what the applicant is currently looking at potentially developing the property  
9 for. But really, it's any C-2 use would be allowed on the property. Anywhere  
10 from, like I said before, multifamily to that shopping center, the storage unit  
11 facility, and a plethora of other things as well. A standalone restaurant could  
12 go there. Offices can go there. Even mixed use development can occur  
13 over there as well as long as densities and heights and all other  
14 development standards will be met. So those are just two examples of what  
15 they're thinking of developing, but it's not really set in stone yet.

16  
17 Porter: Okay. Thank you.

18  
19 Ochoa: Yes.

20  
21 Kaiser: So I have very similar concerns as my colleagues up here. I think my  
22 biggest concern is that we're not guaranteed residential units under a C-2  
23 zone, right. I mean the applicant is indicating that that's not their intent. And  
24 I have serious reservations about that because we already have limited  
25 opportunities to develop something other than single-family residential units  
26 in this City.

27  
28 We've got housing affordability issues and you know this is one, I think it's  
29 what, less than an acre in size? So we can sit here and say well it's not that  
30 big of a deal, it's less than an acre. But the problem in my mind is that  
31 everyone of these is just another chip off the block that we no longer have  
32 the opportunity to go develop that into residential units. And so, I'm very  
33 concerned that we're going to approve this tonight and they're going to go  
34 develop a ministorage unit. That's hugely problematic to me.

35  
36 Even if they decide to do a commercial center, I still have reservations  
37 because under the R-4, you're saying that there is limited retail opportunity  
38 there. So my question would be what is the applicant not able to get out of  
39 that R-4 zone as far as retail or commercial? I mean could they not get or  
40 put in a market that would actually serve the residents of this community?

41  
42 Ochoa: Mr. Chair. The actual list of permitted commercial are service uses under  
43 the R-4 is extremely limited. Top of that it is also limited on square footage  
44 as well. So it would extremely restrict how much that property can be  
45 developed for any type of commercial use. So even if an office went in there  
46 or let's say like you stated like a grocery store, the square footage of it would

1 be extremely limited than just if we went with the C-2 zoning designation.  
2 That's the major difference just extreme constraints. And for instance, we  
3 currently had ...  
4

5 Kaiser: Do you have your code by any chance?  
6

7 Ochoa: Let me get those exact numbers for you. If you give me one minute, sir.  
8

9 Kaiser: Yes. And while we're waiting. I guess I understand the constraints part and  
10 I think that's the whole point, right, is we're trying to get the residential units.  
11 We're trying to require that. So I understand that there's constraints on the  
12 commercial because what we want to see with R-4 zone is residential. You  
13 know, I'd be curious to know you know what the applicants thoughts are as  
14 far as the R-4 and what may or may not be possible.  
15

16 The other concern I have is this is next to the west of it, there's already I  
17 think there's a C-3 parcel. So I mean there's opportunity already right there  
18 to develop a commercial development. Yes. And I think it was earlier in  
19 your presentation you had the zoning on it. Yes, there you go. So it is a  
20 C-3 already. So I mean there's opportunity there. So I'm concerned that  
21 we would be giving up residential opportunities here.  
22

23 And then also the location next to the park. I mean it just doesn't make  
24 sense to me that we would put in a ministorage unit next to a park. I mean  
25 that's a perfect opportunity for residential development. So I have a lot of  
26 concerns and I think that pretty much covers the extent for me.  
27

28 From the use perspective while you're looking. I would mainly be curious  
29 about the retail pieces of it, like what they could do?  
30

31 Ochoa: Mr. Chair. To answer your question. So for instance, retail it's even more  
32 limited. It's really just services that would be allowed there. Offices use is  
33 what would be allowed there. Accountant's office, professional offices so  
34 on and so forth. Limiting maximum of either 35% coverage of the property  
35 or 1,500 square feet max of the entire property would be allowed for  
36 commercial or I guess really office use, if you will.  
37

38 On top of that though, I did want to clarify that piece of property to the left is  
39 owned by the City of Las Cruces, the vacant commercial property, and that's  
40 for the future continued growth of what is the East Mesa Complex out there,  
41 sir.  
42

43 Kaiser: Okay. So our plan to do future park improvements expansions is that ...  
44

45 Ochoa: I believe that's still in the plan. Yes, sir.  
46

1 Kaiser: Okay. So it would be right next door to a park that's expanding. I mean  
2 that seems like a great place to have an apartment complex or some other  
3 multifamily development. Any other questions or comments from the  
4 Commission? All right. Go ahead and go to public comments. Is there  
5 anybody in the audience who wishes to speak on this item tonight? Okay.  
6 Seeing none. Coming back to the Commission. If there's no additional  
7 comments or questions, looking for a motion to approve.  
8  
9 Bennett: I make a motion to approve 7.2.  
10  
11 Smith: I second.  
12  
13 Baum: Board Member Acosta.  
14  
15 Acosta: I vote yes to approve based on staff recommendation and Elevate Las  
16 Cruces.  
17  
18 Baum: Board Member Smith.  
19  
20 Smith: I vote yes to approve based on staff recommendation and this is consistent  
21 with the purpose and intent of the zoning ordinance.  
22  
23 Baum: Board Member Murray.  
24  
25 Murray: I vote yes based on Elevate Las Cruces and staff recommendation.  
26  
27 Baum: Board Member Porter.  
28  
29 Porter: I vote no due to recent findings.  
30  
31 Baum: Board Member Bennett.  
32  
33 Bennett: I vote to approve based on staff recommendation.  
34  
35 Baum: Chair Kaiser.  
36  
37 Kaiser: No. Based on the potential impact of affordable housing in this community  
38 and the inconsistency with policies of Las Cruces.  
39  
40 Baum: Passes four to two.  
41  
42 **9.1 Case No. 23ZO0500091:** A request to approve a Special Use Permit (SUP)  
43 to allow a cannabis-based business less than the required 300-foot buffer  
44 distance from another cannabis-based business. The subject property is  
45 located at 1760 W. Hadley Avenue, encompassing 1.02 ± acres and is

1           zoned M-1/M-2 (Industrial Standard). Submitted by Martin Camarena,  
2           representative. Council District 4.

3  
4   Kaiser:       Okay. Moving onto item 9.1, a request to approve a Special Use Permit to  
5           allow a cannabis-based business within the 300-foot buffer distance at 1760  
6           West Hadley Avenue.

7  
8   Castillo:     Good evening Commission. Once again, this is John Castillo for the record.  
9           Today, we have a Special Use Permit located at 1760 West Hadley. This  
10          will be a cannabis microbusiness. The current conditions of the property,  
11          it's zoned M-1/M-2 which is our industrial standard. It was originally  
12          developed as a warehouse storage facility in 1975. And it has had various  
13          commercial and industrial land uses go in and out of the property. The  
14          property is located 1760 West Hadley and it's approximately 1.02 acres in  
15          size.

16  
17                The surrounding neighborhood contains similar uses to what is being  
18                proposed. There are other larger cannabis grow facilities in the area as well  
19                as some other microbusinesses within the area. The zoning map here  
20                shows the subject property that's highlighted. It's all M-1/M-2, then you  
21                have some commercial development within the area as well. The aerial  
22                map as you can see once again the highlighted area, we have some  
23                commercial buffering, a mobile home park, an already existing RV and I  
24                believe mobile home park in the area, as well as a small public park.

25  
26                So the proposal is to allow a SUP for a grow and manufacturing cannabis  
27                that doesn't exceed 200 mature plants. The buffer distance between the  
28                cannabis microbusiness area permit or closest cannabis microbusiness  
29                area permit boundary is approximately 80 feet which does not meet our 300  
30                foot required buffer. However, this does meet all over buffer distances such  
31                as single-family zoning districts and school/daycare properties. They will  
32                also follow all of the City of Las Cruces and State of New Mexico regulations  
33                governing cannabis and related retail activity.

34  
35                As you can see, the subject business is going to be located at the far end  
36                of this facility right here. And this is just a street view of what we see it  
37                looking from Hadley. This is the proposed business right here. This is an  
38                existing cannabis microbusiness as well. The two closest points together  
39                are approximately 80 feet. I think it's like 78 point something.

40  
41                All relevant City staff reviewed the application and had no comments  
42                regarding the proposed establishment. Notice was sent out to all  
43                surrounding properties within 500 feet. Staff did receive a phone call  
44                regarding general information of the business that was going in, not so  
45                much about the Special Use Permit itself just the business.

1 Today, staff recommends a conditional approval. The condition being that  
2 the business will be required to bring the property into compliance with all  
3 development standards as outlined in the 2001 Zoning Code. This includes  
4 everything from parking, landscaping, and whatever other building code  
5 requirements that may be needed if they make any improvements to the  
6 building.

7  
8 The findings for approval are the subject property meets the distance  
9 separation requirements from any school, nursery, daycare, and single-  
10 family residential district. It already exists and is surrounded by commercial  
11 and industrial uses in the area. The subject parcel is compatible with  
12 several other nonresidential properties along Hadley Avenue. Meets the  
13 purpose and intent of Section 38-2 and it will meet all requirements outlined  
14 in the Zoning Code and those stipulated by the State of New Mexico. Meets  
15 the intent and purpose of Elevate Las Cruces Comprehensive Plan as it's  
16 located adjacent to a mixed use corridor and it's also found within the  
17 business park and industrial place type.

18  
19 Today, your options are to vote "yes" to approve, vote "no" deny, vote to  
20 amend, or vote to table.

21  
22 Kaiser: Thank you. Can you go back? So this is conditional approval, that's staff's  
23 recommendation where the, okay. So it's just the compliance bit. You  
24 mentioned something somewhere about the 200-plant capacity. Is that also  
25 part of the condition?

26  
27 Castillo: No. That is as part of the definition of our microbusiness. They're only  
28 allowed to grow up to 200 mature plants.

29  
30 Kaiser: Got it. Okay. Thank you. Any questions or comments from the  
31 Commission? All right. Seeing none. We'll go ahead and open it for public  
32 comment. Can I get a show of hands of anyone who wishes to speak on  
33 this item tonight? Okay. I see one from this gentleman here. Go ahead  
34 and come forward, sir. I'll give you three minutes.

35  
36 Hoban: Good evening.

37  
38 Kaiser: And before you get started, sir. Can I have you state your name so I can  
39 swear you in?

40  
41 Hoban: Kevin Hoban.

42  
43 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
44 truth and nothing but the truth under penalty of law?

45  
46 Hoban: So help me God.



1  
2 Kaiser: Go ahead.

3  
4 Hoban: I am diametrically opposed to allowing for a Special Use Permits waivering  
5 the 300-foot separation of cannabis related facilities. The buffer was put in  
6 for a reason and I notice there are several agenda items requesting the  
7 same Special Use Permit and exemption. And I feel that it does not meet  
8 the intent of having that 300-foot buffer in the first place. And I believe it's  
9 a slippery slope that we go down when we start making the exceptions  
10 become the rule.

11  
12 I'm not a big fan of cannabis having recovered from several things during  
13 my lifetime. But you know the State of New Mexico has decided to do that.  
14 They came up with a fairly comprehensive way to do it adopted by our local  
15 governments, and I think we should continue to follow those  
16 recommendations and not necessarily make exceptions just to fill space.  
17 Thank you very much.

18  
19 Kaiser: Thank you. All right. Is there anybody else in the audience that wishes to  
20 speak on this item? All right. Seeing none. I will come back to the  
21 Commission. Any final comments or questions? All right. Seeing none.  
22 Go ahead, Commissioner Smith.

23  
24 Smith: I would just like to address the gentleman who just came up. I know that  
25 you know we previously voted to approve a deviation from the 300-foot  
26 buffer. And I know that this Commission, we've been very careful as far as  
27 making sure that if we do approve and when we have approved those  
28 deviations has been based on you know proximity to schools and daycare  
29 centers and places of that type.

30  
31 I know as I look at this one, it's close to another cannabis business and  
32 they're requesting quite a, you know deviation from that, approximately 80  
33 feet. In this situation, I look at where this place is located. It's an industrial  
34 area. It's not near any schools or residences. And I kind of take the  
35 approach of a bar/restaurant. You know you go downtown and you know  
36 there's a bar beside a bar and a restaurant beside a restaurant. And you  
37 know they're in a warehouse type environment. You know I mean it's  
38 competition. I know they're close to each other.

39  
40 So I think on a case-by-case basis we look at these and I definitely agree  
41 with you as far as you know we have to look closely at how often we approve  
42 the deviations. And that's what we attempt to do very carefully in this  
43 Commission.

44  
45 Kaiser: Thanks, Commission Smith. And I'll just clarify too, the code allows for an  
46 applicant to come forward and ask for this relief under the Special Use

1 Permit. So these aren't exceptions. The code allows an applicant to come  
2 forward. And if they fall within 300 feet of a residential neighborhood or  
3 another cannabis establishment, they can seek a Special Use Permit on  
4 their existing code. So I just wanted to clarify that point. If there's no other  
5 comments, looking for a motion to approve, and keep in mind there's that  
6 one condition.  
7  
8 Bennett: I make a motion to approve 9.1 with the condition stipulated in the staff  
9 report.  
10  
11 Smith: I second.  
12  
13 Baum: Board Member Acosta.  
14  
15 Acosta: I vote yes to approve with conditions based on staff recommendation and  
16 just based on the supply and demand of the industry there as you're looking  
17 at actually growing and producing that product there. The industry is still  
18 very, very behind in a big industrial complex like that. The more competition  
19 the merrier. They still have an uphill battle from there. It's definitely not a  
20 golden ticket to a million bucks by any means. So we do still need the  
21 medicine out there.  
22  
23 Baum: Board Member Smith.  
24  
25 Smith: I vote yes based on staff recommendation for the conditional approval.  
26  
27 Baum: Board Member Murray.  
28  
29 Murray: I vote yes based on staff recommendation and the industrial area that it's  
30 located in.  
31  
32 Baum: Board Member Porter.  
33  
34 Porter: I vote yes based on staff recommendations with conditions.  
35  
36 Baum: Board Member Bennett.  
37  
38 Bennett: I vote to approve based on staff recommendation. This also meets the  
39 purpose and intent of the code and the criteria for decisions.  
40  
41 Baum: Chair Kaiser.  
42  
43 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las  
44 Cruces.  
45  
46 Baum: Motion passes.

**9.2 Case No. 23ZO1000109:** A request to approve a Special Use Permit (SUP) to allow a cannabis-based business less than the required 300-foot buffer distance from another cannabis-based business and single-family residential zoning district. The subject property is located at 750 S. Solano Drive, zoned C-2 (Commercial Medium Intensity), and encompasses 1.41 ± acres. Submitted by Alter Ego Holdings, LLC, representative. Council District 3.

Kaiser: Okay. Moving onto item 9.2. This is another request to approve a Special Use Permit to allow a cannabis-based business within the 300-foot buffer. This is at 750 South Solano Drive.

Gonzales: Chair and Commission. Sara Gonzales with Community Development. As stated, this is a Special Use Permit for 750 South Solano. The property is located on the northwest corner of Solano Drive and Colorado Avenue. It's approximately 1.41 acres in size. It is zoned C-2 which is commercial medium intensity, and currently has storage units as well as an additional business located on the property but does have underutilized commercial retail space still available.

Under the code requirements of Chapter 38, the applicants must come forth for a Special Use Permit if they do not meet the requirements of the 300-foot buffer from schools or daycares, residential zoning districts, or retailers or microbusinesses that are currently in operation.

The applicant is proposing a drive-through retail cannabis only. So this will only be for drive-through. There will be no walk-in. There will be no parking on site. So this is just to basically pick up and receive their retail services and then leave the site. They'll be utilizing 600 square feet of the existing building, and they will meet all the requirements for the State of New Mexico regulations as far as cannabis-related retail goes.

The buffer distance in which is in question is we do have another case that will be presented after mine. So we have two cannabis retailers that will be about 262 feet separation from an existing cannabis retailer and 170 feet from another one that is going to be proposed this evening. They also have a buffer requirement of 181 feet from a single-family residential zoning district.

As you can see on the zoning map, you can see that there's commercial properties along Solano Drive, that is one of our mixed use corridors. Colorado is mixed uses which is multifamily, single-family, and then has also some commercial located on the south side. This is essentially the aerial map of the subject property and its current location as to where it would be to the other cannabis retailers and the residential district. As you

1 can see, there is 170 feet from the current cannabis retailer that is in  
2 operation. The proposed one that is coming forth after this will be 262 feet  
3 away. And you have 181 feet to the residential zoning district. We go to  
4 the zoning district boundary line not to the residential property line because  
5 district lines are different, they run to the middle of the street.

6  
7 One thing to note that I did notice within the applications as they were  
8 submitted. The property located on this corner was submitted on May 8th.  
9 The current application that is being reviewed right now in front of Planning  
10 and Zoning Commission was May 9th and the one just after is on May 15th.  
11 So all of these applications came in at the same timeframe. So at any point  
12 in time, these Special Use Permits would have come forth to the  
13 Commission for consideration.

14  
15 Here is a site plan of the subject property. As you can see, this is the  
16 existing storage unit facility. Their customers will be coming in through  
17 Solano, going through their drive-through window and then exiting out onto  
18 Colorado Avenue. Once again, it is just for drive-through purposes only.  
19 Here is some images of the subject property as well as along Solano. So  
20 you would have Solano here. This is currently where the retail space that  
21 is used for the storage units. There's also another business inside this  
22 building and then their business would be on the very end in order to meet  
23 that 100-foot stacking lane that's required for any drive-throughs within Las  
24 Cruces.

25  
26 This is if you're looking at the property. This would be where they're located  
27 on the corner. Across the street is where the current cannabis business is  
28 located. This is on the south side where you see the other commercial  
29 services being provided. With this, the applicant has justified the Special  
30 Use Permit because it is just a strictly drive-through establishment. You will  
31 not see as many cars parking. You will not have as increased traffic as  
32 anybody who is coming by to pick up their services or their retail and leave.

33  
34 It is also providing a 24-hour service which then in turn will provide security  
35 for the existing property. The owner at this time has a chain link fence  
36 around the property and its storage units, and so there are several damages  
37 taking place. So this now puts someone on site to actually do security for  
38 that site as well as generating the GRT for the City.

39  
40 So with this, staff did not find any health, safety, or welfare issues identified.  
41 This is a retail establishment that is often similar to the ones we do see  
42 currently being utilized and approved throughout the City of your coffee  
43 shops, your gas stations, you generally see multiple in similar locations.  
44 And it's utilizing an additional portion of a building that can generate the  
45 GRT for City.

1 So with this, these are the findings that were found within your staff report.  
2 It does meet the distance and requirements for any schools or nurseries  
3 and daycares. It is compatible with the surrounding area and land uses as  
4 far as it is a commercial retail service. And so along Solano is where we  
5 continue to see our commercial that is being restored as far as vacant  
6 buildings being utilized.

7  
8 The site does attract vehicle traffic but it's coming from Solano which is our  
9 designated minor arterial as opposed from the local streets. All of that traffic  
10 will be coming off of a roadway that's already designated to handle that  
11 impact. It meets the purpose and intent of the 2001 Zoning Code and it  
12 meets all of the requirements that are outlined as far as the State of New  
13 Mexico has indicated with the Special Use process.

14  
15 Staff did send out notification to the surrounding property owners. We did  
16 receive seven letters in support. You also received two additional in front  
17 of you this evening that were printed and provided. With that you have three  
18 renters that are renting around this location as well as six property owners.  
19 We did receive one phone call that was not in support with the concerns of  
20 there may be increased traffic along Colorado Avenue due to the hours of  
21 operation and that it may take away business from the existing cannabis  
22 location now.

23  
24 So with that your options are to vote "yes" and approve, vote "no" and deny.  
25 Once again, if you choose to vote to deny, please provide alternate findings  
26 of fact that were not found within your staff report. Vote "yes" with  
27 conditions, and vote to table. I stand for any questions and the applicant is  
28 here as well.

29  
30 Kaiser: Thank you. Any questions or comments? I have just a couple of minor  
31 questions. So the drive-through element, it looks like this is one-way traffic.  
32 Is there going to be a need for signage to control that at all, or is it self-  
33 explanatory when you pull up?

34  
35 Gonzales: Mr. Chair and Commissioner. The applicant will be required to update the  
36 site in order to provide the proper signage to locate. And then also as his  
37 customers come in, give that information as they tend to purchase. If they  
38 have the availability, all of these will be detoured so that way you can  
39 understand which way to get into the site for that drive-through.

40  
41 Kaiser: Okay. Is it a drive-through strictly or could somebody walk up to this window  
42 as well?

43  
44 Gonzales: Mr. Chair and Commission. It is drive-through strictly. There are no  
45 windows to walk up to and there are no doors in order to open it and actually  
46 access the retail services.

1  
2 Kaiser: But somebody could walk up to the drive-through window and purchase a  
3 product? They have to be in a vehicle?  
4  
5 Gonzales: Mr. Chair. Let me ask the applicant. Mr. Chair. The applicant has stated it  
6 has to be in a vehicle. That the customer has to be in a vehicle.  
7  
8 Kaiser: Okay. And then I guess when they exit the property, it looks like a building  
9 or I guess two buildings directly across the street on Colorado. One looks  
10 like a residential structure. The other, I can't really tell. Would the potential  
11 hours of operation have an impact on that residence perhaps? I don't know  
12 if there's going to be restrictions on that hours of operation, I'm just thinking  
13 24-hour drive-through, you know headlights coming into a bedroom at 2:00  
14 a.m. would be pretty obnoxious.  
15  
16 Gonzales: Mr. Chair and Commission. Based on the aerial if you can see this would  
17 be the drive entrance right now. Currently, you would be coming out. This  
18 is the commercial property. This would be the residential property. So I  
19 think by the time you'd actually turn there is that possibility of lights. But I  
20 think we see that regardless in most commercial and residential areas.  
21 You're going to see some type of light that may come out. The driveway is  
22 located over here so it should not impact at least the access coming in for  
23 that residential property, but it would be more just to these streets right here  
24 do not have as many on street parking for vehicles because they are  
25 commercial related, so you don't have that extra traffic at night.  
26  
27 Kaiser: Okay. And then I'm assuming there's no limitations on hours of operation?  
28 This is 24 hours. Yes. Okay.  
29  
30 Gonzales: Mr. Chair. Correct. It would be a 24-hour service.  
31  
32 Kaiser: Okay. Thank you. Any other questions, comments from the Commission?  
33 Okay. Looking to the public. Is there anybody who wishes to speak on this  
34 item tonight? Please raise your hand. I see three individuals. I'm going to  
35 start with this gentleman here in the front row. Please come forward and I'll  
36 give you all three minutes each. Please state your name for the record.  
37  
38 Cortner: John Cortner.  
39  
40 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
41 truth and nothing but the truth under penalty of law?  
42  
43 Cortner: Yes.  
44  
45 Kaiser: Go ahead.  
46

1 Cortner: So my name is John Cortner and I'm the CEO and one of the cofounder of  
2 Casa Verde Cannabis. We're actually the cannabis dispensary that's  
3 already there supplying to both these. I did bring my sales data. I don't  
4 know if you guys want to see any data. I just have some information.  
5  
6 Kaiser: Yes. Bring it up.  
7  
8 Cortner: That's our sales to date. The main reason why we're here is we are, us  
9 three, we're small business owners here. We've been just recently  
10 established you know just for about six weeks. We do not feel that having  
11 two dispensaries open up within 300 feet of us is going to be good for us.  
12 Honestly, it's going to kill a small business. If there's one you know maybe  
13 that's okay, but having two open up within 300 feet, honestly, it's going to  
14 be really tough for us.  
15  
16 Also, I don't feel that having a drive-through coming down Solano where it  
17 turns from two lane to a one lane. I think it's going to impede traffic pretty  
18 badly right there. So I think it's going to make Solano kind of like back up  
19 right there. But the biggest focal point of this is going to be we are a small  
20 business. We're trying to survive here and bringing two dispensaries that  
21 close to us is not going to be good for us.  
22  
23 Kaiser: Thank you.  
24  
25 Cortner: That's it for me. Thank you.  
26  
27 Kaiser: Do you want your data back or ...  
28  
29 Cortner: It applies for the second one too so.  
30  
31 Kaiser: Okay. We'll hold onto it for now. Thank you. And then the gentleman in  
32 the back please come forward. Please state your name for the record.  
33  
34 Escobar: Jason Escobar.  
35  
36 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
37 truth and nothing but the truth under penalty of law?  
38  
39 Escobar: Yes, sir.  
40  
41 Kaiser: Go ahead.  
42  
43 Escobar: Good evening. First off, I would like to thank the Planning and Zoning for  
44 making this possible today. My name is Jason Escobar, owner and operator  
45 of Alter Ego Cultivation, a dispensary here in Las Cruces. My family that  
46 consists of my parents, Francisco and Jenny, and my two siblings, Brandon

1 and Ariana, moved here from Arizona in April of 2022 with one goal in mind,  
2 to bring in an amazing seed to sale experience to the Las Cruces  
3 community. Every day we strive towards this goal working with the great  
4 people we've met along the journey.

5  
6 We're ready to serve the community of Las Cruces seven days a week with  
7 a 24 hours a day with a knowledgeable and friendly staff. As a drive-through  
8 only dispensary, we offer a unique and divergent experience to our City's  
9 cannabis enthusiasts giving opportunity to those who may not be seeking  
10 the traditional cannabis experience. I'm sorry, the traditional dispensary  
11 experience. We are very pleased to become a part of the cannabis  
12 community that Las Cruces has created. We thank you for supporting our  
13 small business and making our dreams come true. Thank you for your time  
14 today and have a great day.

15  
16 Kaiser: Thank you.

17  
18 Escobar: I also have some sales reports here as well from the whole of Solano. From  
19 all the way up to Lohman back down to the 750 Solano location.

20  
21 Kaiser: All right. Thank you very much.

22  
23 Escobar: Thank you for hearing me. That will be all.

24  
25 Kaiser: Please come forward and you can just restate your name for the record and  
26 go ahead.

27  
28 Hoban: Because I understand I'm still sworn in. Kevin Hoban. Besides my previous  
29 comments on the other issue. I work with a facility here in the south Solano  
30 area. Looking at three applications within five blocks and we're in the 1100  
31 block, 1135. And next door we have a cannabis retail space and I'm just  
32 wondering if creating a high-density cannabis or any other business, liquor  
33 stores or anything like that that's not designed that way like an  
34 entertainment district, is a wise thing to do especially since Solano is  
35 surrounded mostly by a residential area.

36  
37 So again, I would ask you to preferably consider making these, they are  
38 exceptions, I mean you can call it anything you want, but they are  
39 exceptions to a recommendation to create buffers between these  
40 businesses. Okay. And also, the cannabis was referred to as medicine. It  
41 is medicine for some people but the proliferation of these shops came about  
42 when recreational cannabis was legalized in the State of New Mexico. So  
43 let's not fool ourselves into thinking that these are just delivering medicine  
44 to people. Thank you.



1 Kaiser: Thank you. Is there anybody? Yes, sir. Please come on down. Please  
2 state your name for the record.  
3  
4 Barber: Good evening, ladies and gentlemen. My name is Jordan Barber.  
5  
6 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
7 truth and nothing but the truth under penalty of law?  
8  
9 Barber: I do.  
10  
11 Kaiser: Go ahead.  
12  
13 Barber: So yes, I represent the 725 South Solano Drive location. We're with Round  
14 House Reserve. We currently have a storefront off of Lohman and Solano,  
15 200 South Solano Drive, in which we also a location out in Sunland Park,  
16 New Mexico.  
17  
18 I just want to clarify. We are submitting for a Special Use Permit in regard  
19 to being able to retail. However, that is not the main purpose of what we  
20 are looking to do here. The property that we are putting to use is going to  
21 primarily be for manufacturing because we're located in a C-2 zoning  
22 cottage district. We're also located in an Infill District in which this building  
23 has been vacant, an eyesore, land of the free to the homeless population in  
24 that area. And we know the landlord personally.  
25  
26 We also are looking towards bringing in a testing facility in which we've  
27 spoken to Carolina Barrera which is the Deputy Director of CCD to southern  
28 New Mexico. So our primary use of the 725 South Solano Drive is not going  
29 to be retail even though we will be offering retail. So I just want to clarify  
30 that. And we're not opposed to this drive-through taking place because we  
31 believe in collaboration over competition. And as said before, there's not  
32 enough manufacturers, producers. And we have zero testing in this area.  
33 That will conclude what I have to say.  
34  
35 Kaiser: Thank you.  
36  
37 Barber: Thank you.  
38  
39 Kaiser: Okay, final show of hands. Anybody else who wishes to speak on this item  
40 tonight? All right. Seeing none. I will come back to the Commission. Any  
41 final comments or questions? Commissioner Smith.  
42  
43 Smith: I have a question for staff. What is the current number of cannabis  
44 businesses in Las Cruces that are licensed and operating at this time? The  
45 last I heard it was 68 but that was about two months ago.  
46

- 1 Gonzales: Mr. Chair, Commissioner. That is correct. We are still at that number. We  
2 are still within 60 at this point, 60 to 70.  
3
- 4 Smith: I just want to make a comment. I live very close to El Paseo and Wyatt and  
5 there are a number of cannabis businesses there. As a matter of fact, I  
6 jokingly call it cannabis corner. There are about five, possibly six, cannabis  
7 businesses in that area that are pretty close to each other. So you know  
8 once again to address the gentleman in the back there.  
9
- 10 I know that you know there's this fear that we're going to have like this you  
11 know area that's just like a strip of cannabis businesses, but you know I go  
12 back to the fact that they're competing with each other as far as business.  
13 It's capitalism. It's business. And you know it's going to be the best  
14 business wins. People have choice you know. You can go to a number of  
15 different places to shop, eat, and it's going to be no different with the  
16 cannabis business.  
17
- 18 So you know when you enter a business, I was in business for a long, long  
19 time. I ran a fitness business. I competed with gyms and other personal  
20 you know training facilities. And I just took that risk and went out there and  
21 competed for 12 years. So you know these people who are here making  
22 this application at this point are basically in the same situation where they  
23 have to establish a business and compete to do well.  
24
- 25 Kaiser: All right. Looking for a motion to approve.  
26
- 27 Bennett: I make a motion to approve 9.2.  
28
- 29 Smith: I second.  
30
- 31 Baum: Board Member Acosta.  
32
- 33 Acosta: I vote yes to approve based on staff recommendation and Elevate Las  
34 Cruces free market where it will (*inaudible*) the top. New Mexico is in a  
35 unique situation. We have no cap on licensing. So again, people will be  
36 able to fizz it out eventually.  
37
- 38 Baum: Board Member Smith.  
39
- 40 Smith: Yes, based on site visit and staff recommendation.  
41
- 42 Baum: Board Member Murray.  
43
- 44 Murray: Yes, based on staff recommendation.  
45
- 46 Baum: Board Member Porter.

Porter: Yes, based on staff recommendations.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation, this meets the 2001 Zoning Code and Elevate Las Cruces.

Baum: Chair Kaiser.

Kaiser: Yes, based on the staff recommendation and consistency with Elevate Las Cruces.

**9.3 Case No. 23ZO1000118:** A request to approve a Special Use Permit (SUP) to allow a cannabis related business less than the required 300-foot buffer distance from another cannabis related business. The subject property is located at 725 S. Solano Drive, zoned C-2 (Commercial Medium Intensity), and encompasses 0.225 ± acres. Submitted by Jordan Andrew Barber, representative. Council District 3.

Kaiser: Okay. Item 9.3., another request to approve a Special Use Permit to allow a cannabis related business within the 300-foot buffer. This time at 725 South Solano Drive.

Ochoa: Good evening again, Commission. Adam Ochoa for the record again. So can I just say ditto. My apologies. A bad joke. So 725 South Solano, it is a proposed Special Use Permit for the subject property. The property is located on the east side of Solano Drive, roughly about 165 feet north of its intersection with the Colorado Avenue.

The property encompasses roughly 2.25 acres in size and is zoned C-2 commercial medium intensity. The property is a developed, vacant, and badly deteriorating commercial property as it currently exists. It has been vacant for a number of years.

What we're looking at here under Section 30-3, the conditional uses under the 2001 Zoning Code is not meeting one of the buffer requirements which is retail to macro business distance requirements of 300 feet. This one is a little bit more of a different proposal. This is, I believe the applicant for this one spoke before. This is retail but it's also a cottage industry so it's more of a microbusiness where they'll be manufacturing as well. So essentially, you're looking at like a third different type of cannabis related business on Solano.

So as the applicant calls it out, it is a cannabis fully vertical licensure with retail and associated cottage entry uses. Buffer distances that we're looking

1 at is the 262 feet that's from the drive-through that was just currently  
2 approved, and 177 feet from the one directly south at, I believe 795 South  
3 Solano who are both just strictly cannabis retailers.

4  
5 With an SUP, staff does examine the potential impacts in the surrounding  
6 area and just the existing conditions. And just on top of that we do look and  
7 make sure that it meets all other requirements of the City of Las Cruces and  
8 the State of New Mexico regulations for governing cannabis related retail  
9 activity.

10  
11 Here you're looking at the zoning map. Subject property located here.  
12 Actually, it encompasses two properties but from building a building. Here's  
13 the one that was barely approved and the other one located right now on  
14 Colorado. As you can see, Solano and unfortunately, I don't have a wider  
15 shot, but Solano is a commercial corridor. It is what El Paseo is just a strictly  
16 commercial corridor. It eventually gets into residential basically, when you  
17 get past Missouri is when you finally get some residential in that area.

18  
19 Showing here the distances again. About 262 feet from the one that was  
20 just recently approved, and roughly about 177 feet from the existing  
21 cannabis retailer located here. And just for clarification, you do see some  
22 homes located near this but they are not zoned for single-family. So only  
23 the one Special Use Permit is required. One variance or SUP is required  
24 for this one from cannabis to cannabis related business.

25  
26 Here are some pictures of the subject property. As you can see, they've  
27 already been doing some work with it. Some light demolition work.  
28 Cleaning it out. When we did a site visit, I turned around and we did see  
29 some vagrants on the property so vacant property that will now be utilized  
30 on Solano is the big push for this one. Which during our analysis staff did  
31 see no health, safety, and welfare issues identified with the proposed  
32 Special Use Permit.

33  
34 And as I stated before, it would allow for the redevelopment for a vacant  
35 commercial property. And really also to bring it into compliance as well.  
36 The property as you can see was two separate properties so a replat will be  
37 required. Parking will have to be updated. Landscaping will have to be  
38 updated so on and so forth. And the whole property will be utilized  
39 whenever they bring in their testing site as well, so that's definitely a plus.

40  
41 So again, this is an area where commercial properties have a history of high  
42 vacancy rates. Business will trigger nonconformities as I stated before and  
43 it is supported by several comprehensive plan goals, policies, and actions.

44  
45 With that staff does recommend approval for the proposed Special Use  
46 Permit with the findings shown there. That it does meet all other distance

1 requirements from daycares and schools and single-family residential  
2 zoning districts. It's an area of large variety of compatible uses in zoning,  
3 located along a designated minor arterial roadway where these types of  
4 uses are encouraged. It is supported by the 2001 Zoning Code and also  
5 the Elevate Las Cruces Comprehensive Plan.  
6

7 Staff did send out a public notice to surrounding properties. For this case  
8 stat did not receive any public input to date, minus what we heard tonight  
9 from the adjacent property owner.  
10

11 These are your options tonight, one to vote "yes" and approve the Special  
12 Use Permit as recommended by staff. Two, to vote "no" and deny. Of  
13 course, new findings of fact will be required if you vote that way. Three, to  
14 vote "yes" with any conditions are deemed appropriate by the Commission.  
15 And four, vote to table to postpone and direct staff and the applicant  
16 accordingly. You have heard from the applicant previously. He's here for  
17 any additional questions you might have for him. And I stand for questions  
18 as well.  
19

20 Kaiser: Thank you. Any comments or questions?  
21

22 Smith: I have a question for the applicant, Mr. Barber. You stated that primarily  
23 your goal for your business is to grow and produce. That's your initial  
24 primary goal as far as establishing your business and then the retail will  
25 possibly come later. Because I know that you did state that you know that  
26 you want to really become a producer.  
27

28 Barber: So I'll be completely transparent. Retail is not our primary use. We don't  
29 aim to take care of the retail as the primary priority, part of the phasing.  
30 However, we do have a couple of code requirements and things that  
31 necessary adjustments that need to be made to the property to bring it up  
32 to speed, which we're very close to achieving.  
33

34 However, you know rent still needs to be paid. So if retail does end up being  
35 phase one then that maybe the direction. However, what I will say is it is  
36 going to be very small scale. We will be manufacturing so it's more of a  
37 place for us to service other cannabis businesses. So our first cannabis  
38 business in Las Cruces is located on 200 South Solano Drive. It's two rock  
39 throws away from this building.  
40

41 You know so for us to put another retail cannabis business there is kind of  
42 crazy. But what we're looking to do for testing and manufacturing and  
43 assisting producers with processing you know their material; we're looking  
44 to inevitably break into the market that is underserved and go that route.  
45

#### Agenda Item #8.4.

1 Smith: Okay. Yes. I kind of see it as in some way you will be helping other  
2 cannabis businesses also.  
3  
4 Barber: A 100%. That's the goal here.  
5  
6 Smith: All right. Thank you.  
7  
8 Barber: Thank you.  
9  
10 Kaiser: Any other questions, comments? No. Go ahead and turn it to the public.  
11 Is there anybody in the audience who wishes to speak on this item this  
12 evening? Please raise your hand. Yes, sir. Come on down. Just restate  
13 your name for the record and then you can go ahead.  
14  
15 Escobar: Jason Escobar. Yes, sir. I was just wanting to say that we absolutely  
16 support the approval of this SUP and it couldn't go to a better person.  
17 Jordan is a great person. Round House as a company is a great company  
18 and I can't wait for the things that they're going to do for the community.  
19 Thank you.  
20  
21 Kaiser: Thank you. All right. Anybody else who wishes to speak? All right. Seeing  
22 none. I'm going to come back to the Commission. If there's no additional  
23 ... Commissioner Smith.  
24  
25 Smith: I just have one comment. I had a site visit at that building location and you  
26 know I live near that area so I drive down Solano quite often. And that  
27 particular building has been quite an eyesore for I don't know how many  
28 years but quite a while. Just seeing what they've done so far, I mean this  
29 is a type of you know renewal in existing businesses that will elevate Las  
30 Cruces, the comprehensive plan attempts to do. The businesses don't  
31 matter. It's the fact that you know we're helping to utilize buildings that have  
32 been sitting you know empty for a long, long time. And you know this is part  
33 of what we want to do in the City to help it to grow.  
34  
35 Kaiser: All right. Looking for a motion to approve.  
36  
37 Bennett: I make a motion to approve 9.3.  
38  
39 Murray: I second.  
40  
41 Baum: Board Member Acosta.  
42  
43 Acosta: I vote yes based off staff recommendation and Elevate Las Cruces.  
44  
45 Baum: Board Member Smith.  
46

1 Smith: I vote yes based on site visit and staff recommendation.  
2  
3 Baum: Board Member Murray.  
4  
5 Murray: Yes, based on staff recommendation and utilizing a vacant building.  
6  
7 Baum: Board Member Porter.  
8  
9 Porter: I vote yes based on staff recommendations, Elevate Las Cruces, and site  
10 visit.  
11  
12 Baum: Board Member Bennett.  
13  
14 Bennett: I vote to approve based on staff recommendation.  
15  
16 Baum: Chair Kaiser.  
17  
18 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las  
19 Cruces.  
20  
21 Baum: Motion passes.  
22  
23 **9.4 Case No. 23ZO0500105:** An Infill Development Process request to allow  
24 for site deviations for the redevelopment of a commercial property located  
25 at 1325 El Paseo Road. The subject property is zoned C-2 (Commercial  
26 Medium Intensity) and encompasses 0.60 ± acres. Submitted by Express  
27 Trade LLC, property owner. Council District 3.  
28  
29 Kaiser: Okay. Moving onto item 9.4. This is an Infill Development Process request  
30 to allow for site deviations for redevelopment project at 1325 El Paseo  
31 Road.  
32  
33 Banegas: Mr. Chairman, Commissioners. Vincent Banegas, Interim Planner for the  
34 record presenting this evening's case regarding the Infill Development  
35 request at 1325 El Paseo Road. Current conditions are as follows; the  
36 property is currently C-2 which is our commercial medium intensity district.  
37 It is 0.68 acres in size plus or minus. Our zoning atlas shows the property  
38 as two lots but I think in the assessor's office there's multiple smaller lots  
39 that make up or comprise the property in question.  
40  
41 They are in the process of replatting those properties into one and staff is  
42 awaiting further feedback and/or input from the surveyor in order to proceed  
43 with that process, but they're close.  
44  
45 The property was originally developed in 1978 making it fall under our 1969  
46 Zoning Code back in the day. And I talked to that issue because it was

1 developed as Dunkin' Donuts and then later was used as Style America and  
2 then sat vacant for about three years or so. While it was a Dunkin' Donuts,  
3 I'm kind of going back and reflecting back as a teenager, going there to have  
4 a donut, etc., I believe there was a window, a service window drive-through  
5 window at that time.

6  
7 Our code back then did not speak to drive-through windows. It didn't have  
8 any provisions for them. So staff feels that at some point in time the window  
9 was put in and we have no record of when that was or how that occurred.  
10 But that was the reason for bringing that point up.

11  
12 Due to the vacancy period that I spoke to, there's a need to comply with the  
13 current code requirements for this property. The property is within the Infill  
14 Development area or overlay and we refer to that as either the IDO or IDP  
15 depending on what you want to use. It's also within the El Paseo blueprint  
16 study area and falls within the urban neighborhood place type as part of our  
17 Elevate Las Cruces Comprehensive Plan.

18  
19 The surrounding neighborhood is largely commercial service. You have  
20 office and there is some residential uses in the vicinity. C-2 and C-3 largely  
21 make up the zoning along El Paseo Road both north and south. And then  
22 R-1a, R-2, R-3, and R-4 represents the residential uses southeast and east  
23 of the subject property.

24  
25 Here's a zoning map showing the properties in question outlined in red. You  
26 can see either the pink or the light red if you will showing the C-2, C-3 zoning  
27 and then your residential off to the southeast and east of the subject  
28 property. An aerial map showing the same location and some of the  
29 buildings in proximity to the site. You have Arby's located here. Wendy's  
30 here. And Grandy's, I believe they're called located here.

31  
32 This was a case that came before you all for rezoning. It's now C-3. It went  
33 to City Council with your recommendation of approval and City Council  
34 approved that.

35  
36 You have El Paseo Road along this portion of the image here. Idaho  
37 Avenue on the north side. You have Durazno Street here and then Foster  
38 Road on the south. So the proposal being presented through the IDP is for  
39 a pharmacy with drive-through service. There are two deviations or  
40 flexibility requests that are part of the proposal.

41  
42 The first is to use the sole legal route for egress as part of the proposed  
43 drive-through stacking line. In our code, our stacking lanes are required to  
44 be 10-foot wide. They can go down to nine feet at the service window.  
45 Driving aisles for egress purposes when there's no parallel parking on either  
46 side or parking on either side can be 12 feet. So you combine those two



1 together, 22 feet is a requirement. Ten feet exists at the narrowest segment  
2 of that route.

3  
4 The second deviation talks to landscaping. Our design standards call for  
5 50 percent of the landscape area to be within the front of the property and  
6 that's between the building and the front property line. They're proposing  
7 862 square feet of the 3,400 roughly square feet to require to be placed in  
8 the front. In exchange, they're providing 41 additional square feet of  
9 landscape area and their plant material quantities will satisfy code  
10 requirements. Staff has less concern with item number two as opposed to  
11 item number one.

12  
13 This is an image of the site plan that was submitted for consideration. The  
14 top image, and I apologize, there's a lot going on with this but the top one  
15 is primarily showing the entire site, again both parcels as part of our zoning  
16 atlas. The bottom left is a blowup of the front portion of the lot. And then  
17 this one on the bottom right is a blowup showing the back portion of the lot.  
18 So with this site plan you have parking, there's 19 stalls that are provided  
19 on site pursuant to this site plan. A vast majority of them are located in this  
20 area here. All 90-degree stalls meeting code and 27 feet back-up aisles  
21 meets code, etc. You also have two ADA stalls here. Those are great  
22 pursuant to code. They satisfy the ADA requirements. And you have a few  
23 stalls located here. And then you have this 45-angle parking stall coming  
24 right off of El Paseo onto the property in this area here.

25  
26 The shaded image or portion of the image at this location is a ped access,  
27 pedestrian access from the sidewalk to the front door of the business, the  
28 existing building. Ingress comes from here. You have a fairly wide access  
29 aisle or curb cut. This area in here separates the ingress portion from the  
30 egress portion. And so you'd come into the property along this route and  
31 then either park at this location or take a left right here which begins the  
32 stacking aisle or stacking lane for the service window, the drive-up window.

33  
34 The length of the stacking lane is 100 feet, that meets code. But where staff  
35 has considerable concern is in the width of the stacking lane/driving aisle  
36 for egress purposes. They have 10 feet from property line to the building  
37 wall. Presently there's two feet of concrete or concrete ribbon along the  
38 building primarily I think to separate cars from the building. And they are  
39 willing to make accommodations to either raise the level of the asphalt or  
40 get rid of that concrete ribbon to make a full 10-foot width. But right now,  
41 there's eight foot passable.

42  
43 The window is located right here in this vicinity of the building. So they  
44 would then, after conducting business, exit at this location and out onto El  
45 Paseo Road. The concern is that with the width of the stacking aisle and  
46 driving aisle being 10 feet at the best-case scenario there could be an

instance as we probably all been through it where you get to the window and your prescription isn't ready or there's a problem with insurance covering the prescription. And there's quite a lengthy discussion between pharmacist and the customer. And in this case, if that does occur then you have a cuing problem. You have people wanting to get off or out of the property through the only egress that exists. So you'll have cars cuing up and staff kind of foresees one of four scenarios taking place and that is after the recommended or I should say the intended business practice has been implemented. The applicant has indicated that there's less of a concern for that cuing issue for a variety of reasons, a couple of reasons I should say. One is they don't anticipate a lot of vehicles here coming on site to conduct their business. The code, I believe, if I'm not mistaken requires five stalls. They provided 19. So I'm not quite sure whether there's an intended business at this location that will require more stalls than what the code seeks to provide as a minimum or what the situation is there. But nonetheless, with 19 cars it's very likely that there will be a cuing situation.

The applicant and representative have indicated that another business practice that would be implemented should there be a delay at the window is to ask the customer to leave the window and return for additional time in order to carry out the necessary business. Staff sees one of four scenarios taking place. Either the customer is not going to want to leave, the cuing will continue to get worse and either cause a conflict between customers. That's scenario one.

Scenario two is they will agree to leave and they will try to take an immediate left on this egress aisle, driving aisle, onto this one-way lane that goes northbound. There's no southbound direction here for this drive-in aisle that serves this 45-degree stall. So you may have conflict with cars backing up here and going against the direction of the intended drive-in aisle at this location looping back around and then trying to resolve the business. That's scenario two.

Scenario three is they agree to leave and they may try to be rather quick about it but take an immediate left and enter onto El Paseo back into the ingress property not realizing there's a median that separates northbound traffic from southbound traffic. And that's a concern staff has in terms of health, safety, welfare of the transportation system and the users of that system.

Another scenario is likely to have the customer leave the site, in which case they're going to take the wide loop. They're going to take a right on El Paseo and go east on Idaho, go south on Durazno, west of Foster and then back up and into the property. Either way, I think staff believes the business practice is an unreasonable one to think would work in this scenario. It's unrealistic and we think it's dangerous for users of our transportation

1 network. It also provides a scenario where people leaving the property to  
2 adjacent properties could cause some traffic issues on those properties.  
3 The Arby's drive-through, for instance, isn't too far off from the property line  
4 that separates the two. So you might have cars causing conflicts there and  
5 elsewhere. So those are some of the concerns we have with that driving  
6 aisle.

7  
8 The only other concern staff has is with this 45-degree stall. Cars come in  
9 off of El Paseo taking a right may not negotiate the geometry that's  
10 presented here successfully enough. You have this area here that is a  
11 planter for landscape purposes. You've got an area there that's a planter  
12 for landscape purposes. And then you have that ped access right off of the  
13 sidewalk right adjacent to the 45-degree angle. So not only would you have  
14 potential delay of cars moving into the lot causing backup onto El Paseo but  
15 when they left, and this is an ADA stall, when they left at a 45-degree angle  
16 sometimes people overestimate, underestimate, I guess how far back they  
17 are, and which case they could conflict with pedestrians on the sidewalk  
18 and then have trouble navigating the geometry here to come out on the  
19 egress portion and then head northbound on El Paseo.

20  
21 Staff had recommended that there be some consideration given for the  
22 removal of this stall. And in so doing, they could either increase the  
23 landscaping. Or another option is to create the possibility for a two-way  
24 driving aisle that might allow cars to leave the window, come back around,  
25 etc., and also go the other direction. That's still a little dicey but nonetheless  
26 a little better if this goes away. So that is kind of our concern in a nutshell.

27  
28 The one thing we all must consider is that there's no formal shared access  
29 agreement at this time with any of the adjacent properties. The applicant  
30 has tried. I don't believe Wendy's have responded in any way, shape, or  
31 form. Arby's told them no based on applicant information. And the property  
32 that was recently rezoned, I think they've approached them but I don't know  
33 if they've heard back at this point in time.

34  
35 This is the landscape plan part of which I've discussed already. Again,  
36 showing the planters adjacent to the ped access and the 45 stall. The bulk  
37 of the landscaping will be here on the north side of the property and south  
38 side of the property. Their drainage is intended to go here at this location.

39  
40 A couple of photos showing the property in question. It is presently boarded  
41 up but you have a front view of the property. Off to your right is the ingress  
42 and off to the left is the egress. And this is the width that you're actually  
43 dealing with for both stacking lane and egress purposes. A better shot kind  
44 of going in reverse showing the ingress lane. The back of the property. Just  
45 one thing to note is they'll have to comply with other requirements of the

1 code, so there will be a need for dumpster enclosure. Right now, it's just  
2 set out on the side. Improvement of the parking lot, striping, etc.

3  
4 This is a shot just looking east on the property. You do have between  
5 Wendy's here and the subject property a little concrete ribbon that over time  
6 cars have traversed back and forth and some of the dirt has filled up. So  
7 even though there's curbing there, it's not much of a deterrent for cross  
8 traffic. This is an alley, at least it's treated as an alley in the back of that  
9 one building that was recently rezoned.

10  
11 Looking north towards Arby's, I mentioned the drive-through not being too  
12 far from the side property line. And this is showing the recently rezoned C-3  
13 property, and perhaps one of the most promising areas in which to secure  
14 a shared access agreement in my opinion. This is just looking north on El  
15 Paseo. South on El Paseo. There's that median that I mentioned that  
16 separates northbound, southbound traffic.

17  
18 In terms of analysis, staff has no problem with the pharmacy. We think a  
19 pharmacy would be a very valid, very good use given the mixed use  
20 corridor, given the place type that the area falls within in terms of  
21 Comprehensive Plan. Where staff feels the proposal runs afoul is in the site  
22 design features that are being promoted or proposed. We just feel that  
23 there's a lot of health, safety, and general welfare type issues that would  
24 affect users of the transportation system. And again, the angled parking,  
25 the shared stacking lane, egress type issues.

26  
27 We also feel that those same site design elements have anticipated impacts  
28 and safety concerns for adjoining properties. Again, through unauthorized  
29 or unintended vehicular access. I mentioned the shared access agreement  
30 does not exist. But if one was secured, I might add, if one was secured that  
31 would open up a significant opportunity for the property to be developed  
32 beyond what I'm presenting here because we could kind of balance the  
33 egress with alternative egress. Allow other opportunities for other uses  
34 perhaps on the property, which was originally submitted earlier. And this is  
35 the ultimate plan that has come out of this whole review process.

36  
37 I mentioned that staff could support the landscape deviation. We have no  
38 problem with that. And I also mentioned that other provisions onsite will  
39 have to comply with code. And some of those are the curb cut type issues  
40 they'll have to get with our engineer to deal with, either a variance, a  
41 deviation to those standards given the nature of the curb cuts that exist,  
42 provide dumpster enclosure, etc.

43  
44 Because of those site design impacts, it subjects the proposal to goals, both  
45 policies, and actions that don't necessarily support the overall request. And  
46 the same can be said for the purpose and intent of our Zoning Code.

Public notice was sent out in accordance to code and we received no input one way or the other from property owners in the area. Staff, based on my presentation in the packet, are recommending denial based on the findings. The property has been vacant for several years triggering compliance need with current code. The property falls within the Infill Development which affords flexibility but we think in this case it's a bit much, at least for those two issues.

The proposed land use is consistent with our urban neighborhood place type in terms of what it promotes. Again, but those site design elements kind of throw a wrench into that and make it run afoul. It's within a mixed use corridor. It's part of the El Paseo Community Blueprint. And the applicant proposed a method for resolving some of those conflicts at the service window; we just don't feel are very reasonable or practical and we feel that's dangerous to a large degree.

Keep in mind that alternative recommendations were provided by staff. Staff did request that they consider eliminating the drive-up window. If that was the case, we felt that we could support a two foot deviation to the 12-foot driving aisle that the code would otherwise require. But the applicant didn't feel that was warranted for business purposes and they wanted to keep that as an item for their business intentions there.

The parking stall as well. We talked about a possibility of eliminating that and either adding landscaping or doing something else and they wanted to hold onto that as well. So given those issues again, there's the issues with our goals, policies, and actions - a lot of those speak to transportation related matters and the users of our transportation system and the safety for that.

And that concludes that presentation. I do have the options here. And I want to indicate and clarify that the vote "yes" to approve in this case because my presentation packet speak to denial, would require new information or findings of fact that I have not provided. You could vote "no" and deny it, that would be consistent with staff's recommendation. You can vote "yes" and amend with conditions, or vote to table. The property owner and the design representative are in attendance and can speak to this matter as well. So that concludes that presentation.

Kaiser: Thank you. And would the applicant or applicant representative wish to speak? Yes, sir. Please come forward. And if you could state your name for the record, I'll swear you in.

Atieh: My name is Yazid Atieh.

1 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
2 truth and nothing but the truth under penalty of law?

3  
4 Atieh: Correct.

5  
6 Kaiser: Please go ahead.

7  
8 Atieh: Okay. So the property, the main idea is ...

9  
10 Kaiser: Excuse me. Can you speak closer to the mike?

11  
12 Atieh: Sure.

13  
14 Kaiser: Thank you.

15  
16 Atieh: So the property is an existing property since long time. And it's vacant since  
17 few years. Bringing it to the new code might be like whoever designed it  
18 back in the day was compliant. It was operational and it was safe. Now,  
19 what's happening is every while the City cannot improve the code in order  
20 to comply and be more you know more of any kind of modern or any kind  
21 of up to date, let's say. So it was before it existed.

22  
23 So what we're seeking is to do a pharmacy which is really a good  
24 importance there. This is going to do a good competition like we mentioned  
25 but a competition is really good just to serve the people with the best  
26 service. A drug store will be very nice there.

27  
28 Now the safety and stacking of, whoever goes to our pharmacy. Everyone  
29 of you goes to our pharmacy. And sometimes, they are asked to leave.  
30 And I haven't seen anybody, like I'm a pharmacist and I own Healthcare  
31 Pharmacy on Lohman. The Healthcare Pharmacy on Lohman is an  
32 established pharmacy and it's newer than this building. So it complies with  
33 the code for that building.

34  
35 Now, being vacant for two years, it brings it up all the way like 20 years later.  
36 It's not very much practical in life. Here's like you're moving and your  
37 moving a decade or two decades actually in the code. It's an existing  
38 building and it used to be safe. There is shared access that is already  
39 accessible like you see in the plan here. There is shared access right here.  
40 There is already in the images for this area that already exists and  
41 established. So it's established access that nobody obligated about.

42  
43 A lot of businesses in town have showed accesses and they never know  
44 each other and they don't have to get a solid information. Because like what  
45 happens is that I ask Arby's and Arby's will not give me that because they  
46 have no mutual benefit and they have their parking lot and they're happy.

1 So I mean they're happy with that. Now, when I ask that it's not of their  
2 concern to access my parking lot. It's my concern because the City is  
3 asking me unrealistic demands. And these demands can over and over and  
4 over demands that was not realistic at all and not practical.  
5

6 So the help I'm seeking from the Committee is to approve the Infill process  
7 where actually you're saying that the Wendy's next store, the inside going  
8 this way is actually the same width of going backway from Wendy's. And  
9 then this way, I measured it myself, and it's actually nine foot here and it's  
10 actually 10 foot here. There is a designed window here. So I'm not sure  
11 about this stacking of cars.  
12

13 Now, there's a couple of things. If you go - I'm going to give you an example.  
14 If you go to Si Senior on Lohman and see how it's blocking in Lohman at  
15 the evening at 8:00 when they want to just grab a sandwich and food and  
16 they want to make it and go. So what we're suggesting is if a stacking will  
17 start happening, we'll have to have them move. And they have actually the  
18 option to turn around here and it's not unsafe. He's actually presenting the  
19 case like if you're in a gage here. And if you're in a gage here then you  
20 can't exit from here because you're blocked right here and you're blocked  
21 from that. And the stacking of these are one, two, three. The car is six feet.  
22 So there's one, two, three, four, five. I'm sorry, six cars here which are going  
23 to be busier than Walgreen's and busier than CVS that way. And that's not  
24 reasonable.  
25

26 So given an opportunity for a pharmacy to develop in here is great for  
27 people. It's a good alternative and we have services that are different from  
28 Walgreens and other chain and big box companies. We have services that  
29 are different. You're going to find it in an individual pharmacy. You're not  
30 going to find it in a chain pharmacy.  
31

32 Now, we're already operating a Healthcare Pharmacy on Lohman and we  
33 don't have a drive-through and we feel that's an obstacle because the  
34 drive-through will be convenient much more for people because you're  
35 driving your car will be convenient for people. I don't see what is the safety  
36 issue arises from. There's no safety issue. They should access a very  
37 established since years here. And it shared access to that corner one.  
38

39 And by the way the code doesn't require by lecture or by any kind of  
40 statement to get a shared access and grant signed from each neighbor or  
41 from one of the neighbors in order to guarantee access because I don't see  
42 that reasonable. There's three neighbors. So if this one was mean to me  
43 and said, I'm going to block all this. I'm going to build here or something  
44 then this will still be open and this will still be open. I don't see where is the  
45 reasonable being like this will be mean and block, and this will be mean  
46 unblock me, this will be mean unblock me. The cars will be stopped here

1 and it's unsafe because they're waiting on a prescription and the pharmacist  
2 is right here discussing why this controlled substance is going to be due  
3 after two days. And the patient doesn't want to go.  
4

5 So all these scenarios are not reasonable at all. And back in here, the  
6 parking lot here where is the walkway for the public is right here. There is  
7 some kind of parking for, we agreed. They've been taking parking lot one  
8 by one and making it very much uncomfortable to do this project which we  
9 feel that it's kind of intentional or obnoxious, I don't know how. But I'm just  
10 saying here this thing if you're back right here. I did back several times and  
11 I have a truck also. So if you back right here and if you don't know how to  
12 drive, you don't have to drive a car. If you know how to drive then you drive  
13 a car.  
14

15 Because you put in scenarios that it's going to be like right here is, one  
16 scenario is going to be like here and then you're going to go like right here  
17 which is against the drive. This is going to be against the law to drive  
18 against the street. So the street goes this way. How come he's going to  
19 come here and go like this? So if this happens this person needs to get a  
20 ticket but it has nothing to do with the pharmacy. It has nothing to do with  
21 the pharmacy design. It has nothing to do.  
22

23 So my main concern is it's an existing building. We wish to have this  
24 granted as a pharmacy. It will be really nice to have a drive-through for  
25 people to be more comfortable. You know, because otherwise if we  
26 eliminate the drive-through what we're going to do is we're going to still do  
27 it because we think in our mind, back of my head, I think that's intentional  
28 the reason they put in so much obstacles at the City. But I don't know for  
29 real because I can't read people's mind. Like I can say here, we're going to  
30 put right here behind the building where the people can park right here and  
31 we can come to a fence after they can rest like Sonic. In that way we can  
32 just go out through the fence and hand them their prescriptions because it's  
33 convenient. You know what I mean?  
34

35 I don't see any dangers. I don't see any dangers. The stacking lane back  
36 here is like two cars or three cars. So you're by McDonalds and I saw a  
37 couple of examples and I did show them to several people. If you're by  
38 McDonalds, okay and you want to get your sandwich, it's either you stay in  
39 the line or go to the other line and go. And there's a way to go like right  
40 here, right here. There's a way to go right here. The stacking is in the  
41 corners. The stacking right here is in the corners. And there will be stacking  
42 in the corners here but it's too long to stack that much. It's probably stacking  
43 cars, let's say, three or four. So the stacking will be by the corners. Right  
44 here they can back and go to anywhere if you know how to drive.  
45



1 But if you have you know a big car you still need to know how to drive in  
2 order for you to drive. But honestly, we got to do this curb. So we're going  
3 to go with the project and get it hopefully like as a apply for permit separately  
4 if that doesn't get approved. But I wish from the Committee, and I do respect  
5 all your input today and it was wonderful. But I think that it's a pharmacy.  
6 It's a very necessary to have a diversity in town and to have a variety of  
7 pharmacies. And then it's necessary to have a drive-through. It's  
8 comfortable. Because if you're tired by after your working, you need to  
9 maybe sit down and have your juice and just pick up your prescription. And  
10 if the pharmacist asks you to leave and come back in 15, 20 minutes either  
11 you come the next day. It's like any other pharmacy.

12  
13 It's not going to be the magical pharmacy. So you get good all the scenarios  
14 in the world that are not reasonable. We're going to be a pharmacy like  
15 other pharmacies. We might be better than them but we're not the magical  
16 pharmacy that you can put any scenario in the world. It's bringing all  
17 scenarios and I do apologize for just presenting everything because that's  
18 what's been happening to me. That's what I've been important to me. And  
19 thank you so much.

20  
21 Kaiser: Thank you and don't go far because I'm sure there will be questions for you.  
22 But I do want to make sure that you can get to resolution tonight.

23  
24 Atieh: Thank you.

25  
26 Kaiser: So coming to the Commission. Are there any initial thoughts or comments?  
27 Yes, Commissioner Acosta.

28  
29 Acosta: So I think probably you and I are probably the two guys in this room who  
30 have successfully opened pharmacies without drive-throughs before. You  
31 obviously have enough you know to expand. Congratulations. I'm very  
32 happy to see expansion and more independence.

33  
34 Atieh: Thank you.

35  
36 Acosta: What I do see is a really big parking lot. I see a big mess right there by El  
37 Paseo. I think you might get a little busier than you even anticipate. And  
38 that drive-through where you have you know disabled people and all kinds  
39 of people trying to not only walk and drive in a very clustered situation.

40  
41 I really would just employ you to maybe consider either replanning that  
42 drive-through completely or you know eliminating it so you can get your  
43 pharmacy started because this drive-through does create a lot of situations  
44 there that are just kind of a mess just based off of, yes. Based off of the  
45 way that the property got put in the '70s, sure. So it was our downtown  
46 location. There's not much we can do about that. You can't put a drive-

1 through there unless you coridored it out did a whole mess. Like it just  
2 didn't work. So I would just employ you to think to try to do it without that  
3 drive-through.  
4

5 Atieh: I actually definitely if I can answer? Would I be able to answer?  
6

7 Kaiser: Let's just hold on for a second. Let's see if there's other Commissioners  
8 who have specific questions for you and then we'll give you a chance to  
9 respond. Commissioner Smith.  
10

11 Smith: I have several questions. The first one is for staff. The User Access  
12 Agreement, I know the applicant said that there is nothing that says the  
13 Access Agreement has to be in place; is that correct?  
14

15 Banegas: Mr. Chairman, Commissioner Smith. The Las Cruces design standards  
16 encourages Shared Access Agreements between properties to help with  
17 the congestion on those adjacent roadways, etc. But there's no requirement  
18 for it, I guess.  
19

20 Smith: And I have comments also if I may take that time now. Once again, I'm very  
21 familiar with that corridor at El Paseo, Idaho. I live near there. I've been  
22 living in that area for 25 years and it has grown significantly over the years.  
23 One area, one location business that hasn't really been talked about is that  
24 right on that corner there is a gas station. extremely busy gas station. They  
25 compete with a gas station across the street. Prices go up and down. I see  
26 it all the time. There's a grocery store there, Albertsons, and also a little bit  
27 further away. But the number of cars over there on a daily basis, it's already  
28 highly congested.  
29

30 I have done a site visit on your location. As Commissioner Acosta has said,  
31 you can drive-through and drive around but with the amount of traffic that's  
32 there, there will be congestion, even if there's no stacking there will be  
33 congestion just you know for accessing and also for egress.  
34

35 Atieh: It's the same like next door? I mean why don't you just take Wendy's as an  
36 example?  
37

38 Kaiser: Please let Commissioner Smith finish his thought. Thank you.  
39

40 Smith: And I'm sympathetic for that. I mean you drive around town. I mean like  
41 Chick-fil-A, you know, I mean you know on Lohman, I mean they have just  
42 cars you know coming in. But they've come up with a system. They've  
43 managed a way to address the stacking. I mean you know you see you  
44 know employees standing out there taking orders. And so, it happens all  
45 the time. Starbucks, you know. I mean if you're going to go through a drive-  
46 through because I am not a drive-through person. I have people tell me it's

1 faster to sit in your car wasting gas and go through a drive-through than it  
2 is to walk in, order something, get it and walk out. I never use drive-through  
3 just because of time and it's wasting my fuel in my car.  
4

5 So you know but I see drive-through all over town. You being the business  
6 that has a drive-through window, they will be stacking. But in this situation,  
7 just the congestion and there are some risk factors. I would assume that a  
8 number of your clients are going to be elderly. They're going to be driving  
9 around the back of a building. It's narrow unless that brush gets cleared. I  
10 mean that's still going to be an issue. And then coming out onto El Paseo  
11 with the amount of traffic that's there. I know you're licensed to drive. If  
12 you're licensed to drive, you should be able to operate your vehicle safely  
13 but as a City, we have to look at the possibility of the risk that could occur if  
14 you operate a business where there's so much traffic and congestion.  
15

16 That's something that you as a business owner really should take into  
17 consideration because if your customers, your potential customers, have  
18 issues getting in and out, you won't have customers.  
19

20 Atieh: I don't think so.  
21

22 Smith: You know I'm just giving you know my opinion. I know as a business owner,  
23 you want it to operate itself.  
24

25 Kaiser: Sir, please let us get through our questions and answers. And I will give  
26 you a chance to respond, I promise. But I want to make sure that we can  
27 get to a decision.  
28

29 Atieh: If I answer one by one it will be better, before we move on and the thing  
30 comes like really forgotten, you know.  
31

32 Kaiser: I understand it and some of us are going to have comments. And some of  
33 us are going to have very specific questions. And I'll give you a chance to  
34 respond when we're done with our questions. And some of these are not  
35 going to necessarily be questions directly to you. So just be patient with us  
36 so that we can get to a resolution. Thank you.  
37

38 Smith: I'm just throwing these out there because these are, if I am having these  
39 thoughts, I would think that some of the other Commissioners are having  
40 some of the same thoughts. So you know I'm throwing out some of these  
41 issues that are popping up in my head. I just want you know be prepared  
42 to have those you know issues you know be answered. And so, that's why  
43 I'm just bringing them up. You know, I'm just bringing up the ones that I  
44 have, but I'm just one Commissioner. And we have others that are about  
45 to speak.  
46

1 Kaiser: And I can echo just briefly that some of our comments probably will be  
2 consistent. So I'll give you a chance to respond to that.  
3

4 Murray: I have two questions for staff. I can't read dimensions well, but I'm assuming  
5 that the one-way drive aisle is less than the required 27 feet needed for the  
6 two-way.  
7

8 Banegas: Mr. Chairman, Commissioner Murray. The one-way driving aisle basically  
9 serves as your drive-in aisle for that 45. And this line that is very lightly  
10 shown is your 15-foot building setback that they are showing. So yes, it is  
11 less than 20. If it were to be a two-way, it'd require 24 feet.  
12

13 Murray: Okay. And then what about the drive aisle line to the back parking?  
14

15 Banegas: So this is I believe roughly 16 feet wide and in similar, if there was no  
16 stacking lane on this side, 12 feet. It would be allowed for egress purposes.  
17 And the same holds true here of 12 feet. So they exceed the 12 foot  
18 requirement on the ingress side.  
19

20 Murray: Okay. And then say we deny this based on the current plan, are they  
21 allowed to take the comments that you've given, that we've given, and  
22 rework the site plan and then resubmit?  
23

24 Banegas: Mr. Chairman, Commissioner Murray. The applicant, let's assume that you  
25 did oppose and recommend or decide to deny the case this evening. The  
26 applicant could, for instance, do away with the stacking lane for the drive-  
27 up window. They could do away with that 45-degree stall and then submit  
28 for a permit just like any other business would. And we would consider  
29 those issues.  
30

31 The one thing that would have to be recognized is the landscaping  
32 deviation, that would be something if you separated those issues out then  
33 they could proceed with the permit given support for the landscaping by this  
34 Commission.  
35

36 Murray: Okay. Perfect. That is all my questions but I just do want to give you a  
37 comment. I am not an architect but I work at Desert Peak Architects  
38 downtown. So I have gone through numerous projects with the City. It all  
39 depends on how much time you want to lay out. I recommend that you  
40 would do away with the drive-through and you would get rid of the 45-  
41 degree park spot.  
42

43 I think based on site constrictions, there's no way that you're going to be  
44 able to get the required 50 percent of the landscaping in the front. And the  
45 City is going to recognize that and they won't be able to approve that as  
46 such. But if you continue to go on the path where you have the drive aisle,

1 you have the 45-degree parking spot, you're just going to run into problems  
2 when you go to the permitting process and your architect may be able to  
3 give you this information too. But you'll go, you'll just go through numerous  
4 rounds of permitting.

5  
6 And the permitting process, you have to do the preapplication which is going  
7 to take you two weeks. And then if there are any comments that you need  
8 to fix from that, you'll then have to do the first round of permitting which is  
9 another two weeks and so forth.

10  
11 Banegas: Mr. Chairman, Commissioner Murray. Just to clarify my answer. If this  
12 Commission denies the request as presented, the applicant also has an  
13 opportunity to appeal to City Council. So they could either vote in line with  
14 this Commission or contrary to it, but that is another option afforded the  
15 applicant.

16  
17 Kaiser: All right. Any other questions or comments? So I've got I think I guess one  
18 question and then a few comments. But my question to staff if we could go  
19 back or go to the landscaping slide? Yes. So based on the landscaping  
20 plan, you're blocking your access. Like you were talking about to the site to  
21 the, I guess that's the north and south.

22  
23 So you really don't have that access as you were speaking to earlier  
24 because you're going to be landscaping it. And we obviously wouldn't be  
25 wanting drivers to just drive through your landscaping. So the reality is  
26 based on the site plan, which you would be required to comply with when  
27 you go to your site improvements. You basically have one option for  
28 ingress/egress and that's what's being presented here tonight. So I just  
29 wanted to clarify that in my own mind but also point that out. So thanks for  
30 going back to that slide.

31  
32 I love the pharmacy idea. I think it's a great location. I think it would do a  
33 great service to the neighborhood. The drive-through element, it's a square  
34 peg in a round hole. It just doesn't work. No matter how hard you try to  
35 squeeze this out, there's tremendous safety risk to other users who may be  
36 passing by your site, who may be trying to access your site. Not everybody  
37 has a car. Not everybody drives a car all the time. And the way that this is  
38 laid out even with that driving aisle right on the back of the sidewalk as a  
39 pedestrian, you've got cars flying by you on El Paseo. And suddenly, you've  
40 got cars that could potentially hit you from the other side of the sidewalk.

41  
42 Atieh: There's no pedestrians.

43  
44 Kaiser: I mean there's no pedestrians because we made it pretty much impossible  
45 for pedestrians to exist in that space. The El Paseo Community Blueprint  
46 is specifically trying to reverse course, make this less of an automobile

1 dependent environment. Make it more accommodating for other road  
2 users. They do exist. Cars are expensive to operate. They're expensive  
3 to buy. I mean I had to unfortunately buy a new car recently and it's insane  
4 how expensive they are.

5  
6 So I mean there's other factors. There's other people out in the world that  
7 don't sit in a car and drive through the drive-through at every business  
8 establishment. So the way that this is laid out, in my opinion, it just doesn't  
9 work. There's too much at risk and I understand that the scenarios that  
10 were presented to us tonight, you're right, 99% of the time you may have  
11 no issues, but that one percent could be bad. I mean just trying to get out  
12 of that driving aisle, that angle alone you're requiring the driver to essentially  
13 turn their heads all the way, 180 degrees, to see oncoming traffic.

14  
15 And then you've got pedestrians potentially walking towards them on the  
16 sidewalk. I mean there's just too much there to make this feasible. I mean  
17 it just doesn't work. And I encourage you to look at whether or not you can  
18 do away with the drive-through because I think that what you're proposing  
19 is fantastic, but the drive-through, it just doesn't work. It doesn't work.

20  
21 So those are my comments. I will give you two minutes on the timer to  
22 respond to us and then we'll open it up for public comment.

23  
24 Atieh: Sure. So based on this, there's a little curb right here. And this curb is we  
25 are agreeing to make it only a drivable curb which makes the distance  
26 around 10 feet and here nine feet. And I measured it personally, and  
27 somebody can go and measure it though. And the angle here, it's taking in  
28 the angle, if you decide yourself anywhere, I'm not sure why I'm on an odd  
29 situation myself, but I mean if you decide to go this way then you need to  
30 wait until you get out.

31  
32 But we're saying we're going to try our best not to have this car wait more  
33 than five minutes then everybody else should clear up faster. But if you  
34 decide to go here just like if you had a Cane's, Cane's is a new  
35 establishment of a restaurant and they have a curb, and between the curb  
36 is a restaurant. And if you get in there, if you get into Si Senior, if you get in  
37 there you stop. You need to wait until you're gone. Why is everybody can  
38 wait and then in this situation there's a one percent chance of having a  
39 pedestrian coming through. A one percent chance of having somebody  
40 want to back off after they decide to go there so they can wait. We can  
41 make it faster, as fast as possible.

42  
43 Now driving in that aisle is still will leave some space to the right and left.  
44 We're not going to allow trucks. So it's going to be a left and there will be  
45 height and there will be width is allowable. And there will be lanes that are

1 going. I don't see no reason of the rejections that's been happening here.  
2 I don't see that.

3  
4 I mean the shared access if you're saying there is some landscaping, the  
5 shared access is not required. And we found out that, okay. They're telling  
6 us get shared access and if it's by law. And then we found out today that  
7 this shared access doesn't exist and it's not required. So this shared access  
8 now will make the opportunity of this to be approved. But now, the shared  
9 access is not required so why is it not approved?

10  
11 Kaiser: That was the end of your two minutes. We had the timer going.

12  
13 Atieh: There's ways of going here and here or over here. That's taken all the time.

14  
15 Kaiser: I understand. Yes. Thank you.

16  
17 Atieh: Thank you so much.

18  
19 Kaiser: Okay. I'm going to go to the public now. Is there anybody in the audience?  
20 I see one, two individuals. So I'll go this gentleman first and then you.  
21 Please state your name for the record.

22  
23 Oroyinyin: My name is Waheed Oroyinyin and I'm the architect on this project.

24  
25 Kaiser: And do you swear or affirm that the testimony you're about to give is the  
26 truth and nothing but the truth under penalty of law?

27  
28 Oroyinyin: Yes. I do.

29  
30 Kaiser: I'll give you three minutes. Go ahead.

31  
32 Oroyinyin: Okay. Anyway, talking to the staff and what we're trying to do really is be  
33 able to bring, if you look at the drawing there's only one access to come in.  
34 And there's only one access to go out. So the stacking lane that Mr.  
35 Banegas was talking about, whether I would do the stacking lane or not,  
36 that is the only exit to come out. So all the traffic, you know the safety that  
37 Mr. Banegas is talking about is you're going to have it because that's the  
38 only access to get out of that side is on the north side.

39  
40 And as far as Mr. Banegas request that put out as stacking lane and a  
41 drive-by lane. Well, the stacking lane doesn't affect anybody except people  
42 on the site. There is no car that is going to come all the way from the  
43 stacking lane on the north side of the building that's going to come all the  
44 other way around to affect anybody. So all the cars is going to be, I mean  
45 they're going to go through the stacking lane you know are going to be on  
46 the side. They don't affect the traffic. You know and like I said right now

1 the existing parking spaces in the front of the building you know is the way  
2 it's run. You know, I mean and we are providing more landscaping in the  
3 front of the building you know so at least that meets the requirements that  
4 Mr. Banegas wants.

5  
6 You know so to me as far as we're concerned there is no safety issue  
7 regarding people coming out of the site because no matter what we do, a  
8 stacking lane or no stacking lane, that's the only exits from that building. So  
9 the stacking lane doesn't affect any safety that Mr. Banegas is talking about.  
10 You know, so as far as I'm concerned that's not an issue that we need to  
11 worry about.

12  
13 Now, again, I know Mr. Banegas is talking about landscaping. There is no  
14 way to provide a landscape to meet the requirements. It's an existing  
15 building. You know everything is fixed. There's no way you can add to it.  
16 There's nothing you can do to it. You can't add to the, I mean the width of  
17 the landscape. I mean the width of the access to come in and the width of  
18 the access to get out. Everything is fixed.

19  
20 You know, so to me really there's nothing that has to do with the safety issue  
21 yet. You know because like I said no matter what you do you have to get  
22 out that site from the same area. You know there is no other way to get out.  
23 You know the stacking lane, the access to the window for the drive-through,  
24 it doesn't affect anything. You know people can line up through the whole  
25 parking lot, they're not going to be coming out to the street, no.

26  
27 Kaiser: Okay. Thank you very much. Unfortunately, that's time.

28  
29 Oroyinyin: Okay.

30  
31 Kaiser: Thank you. All right. This gentleman please come forward. State your  
32 name for the record and you may begin.

33  
34 Hoban: Kevin Hoban. Owner of the property at 515 Foster which is a daycare  
35 Montessori school. I appreciate the work that staff has done in looking at  
36 the traffic issues because it is a real problem. There's already a barrier  
37 between the gas station and that proposed drive-through that exists. So I  
38 don't think that shared use is an option there either.

39  
40 Additionally, the traffic on El Paseo going north is a mess. They constantly  
41 are cutting through the gas station in order to avoid traffic at the traffic light  
42 and I can see by Mr. Smith's head nodding that he has observed that too  
43 because that is my neighborhood as well. So these are just additional  
44 problems of traffic behavior that creates a problem here. I would love to  
45 see this pharmacy there. We could use some competition in that area but  
46 that drive-through is just a mess. It was better when it was a Dunkin' Donuts



1           though. I used to take my ambulance over there but that's not going to  
2           happen.

3  
4           And then as far as I don't know if you all were going to mention, but as far  
5           as the issues of code compliance. Any time you change these in my  
6           experience with codes, any times you change occupancy the building has  
7           to be brought to current code, okay. Whether it's electrical, water, whatever  
8           like that. And that's the example that you're setting here as well, okay. And  
9           I appreciate that.

10  
11           So you know with that being said, I'd love to see the pharmacy there and  
12           address the you know maybe curbside delivery rather than drive-through in  
13           that back parking lot might be a good option. Don't know what the pharmacy  
14           rules are on that but I appreciate it. Thank you very much.

15  
16   Kaiser:       Thank you. All right. Anybody else in the audience wish to speak on this  
17           item tonight? Okay. Seeing none. I will come back to the Commission for  
18           any Commissioners. Yes.

19  
20   Smith:       I have just one question for the applicant. You stated that you currently  
21           have a pharmacy on Lohman?

22  
23   Atieh:       Correct.

24  
25   Smith:       And that location you do not have a drive-in window? And you're doing,  
26           your business is doing well at that location?

27  
28   Atieh:       Not much.

29  
30   Smith:       Okay. I mean but it's operating --

31  
32   Atieh:       It's doing fine. It's doing fine.

33  
34   Smith:       It's operating. So the reason why I asked those questions is that I mean  
35           this drive-in window that you want to put in is definitely has some issues  
36           with it. And I just ...

37  
38   Atieh:       Again, I accommodated with drawings. We can accommodate it with signs.  
39           We can accommodate it with lines. We can do whatever but ...

40  
41   Smith:       Right. But my question is ...

42  
43   Atieh:       It's easier or more convenient with a drive-through definitely.

44  
45   Smith:       But my question is you know you could open it; we welcome having you  
46           know a local independent pharmacy at that location to compete with

1 Walgreens. And it appears that you're willing to keep fighting for that drive-  
2 in window when you could actually not have that window right now and open  
3 your business and have your second location because people will drive  
4 through, I mean drive in, park and go inside and access you know your  
5 pharmacy just like they do at Lohman. Just like you know in the other  
6 location that doesn't have drive-through.

7  
8 So I just you know this entire Commission, we just feel that we welcome  
9 your business. We support you but we feel that you should really take some  
10 time to think about how important that drive-in through window is for you at  
11 this time because it seems like it's going to hinder your ability to move  
12 forward with this project.

13  
14 Atieh: We can if you would let me answer?

15  
16 Kaiser: Yes. I'll give you 30 seconds.

17  
18 Atieh: Okay. We can actually eliminate the drive-through here which actually gives  
19 a great comfortability for people. I don't see a lot of reasons of this is being  
20 stacking too much. That's not an issue. But we can do like at curbside  
21 pickup here with a fence. That's what we were planning to do. I don't see  
22 why, are we voting on getting, are you guys voting onto approving the drive-  
23 through or, because this is a remodel. So it needs to be remodeled into a  
24 pharmacy. Are you approving the drive-through? Or if I eliminate the drive-  
25 through then you'll approve it as it is or not? Because I don't want to run  
26 into different problems because there's shared access here. So I don't have  
27 to have somebody come again and say, I need a signature here, I need a  
28 signature here, I need a signature here.

29  
30 Kaiser: So I'll let staff answer that question but before you do I was going to ask a  
31 similar question. So if they were to eliminate the drive-through component  
32 of this. Presumably you no longer need, I don't have a mouse but on the El  
33 Paseo, that driving aisle, yes, so would that be required? And then could  
34 you get more landscaping in the front? I guess what is the purpose of that  
35 aisle.

36  
37 Banegas: Well, Mr. Chairman, Commissioners. As I understand it the sole purpose  
38 of this 45-degree angle stall was just to have an ADA stall at the front of the  
39 building. Keep in mind, they do have two others back here.

40  
41 This driving aisle is just to allow the backup of this vehicle in this 45-degree  
42 stall to exit one way onto El Paseo. Again, just to reiterate, the geometry of  
43 that seems difficult for me anyway to kind of wrap my head around in terms  
44 of navigating successfully. But it's also a concern in that the backup could  
45 end up encroaching into the sidewalk, could end up encroaching into that

1 ped access there. But it is intended to answer your question specifically to  
2 allow egress from this stall out onto El Paseo.  
3  
4 Kaiser: Okay. And presumably current code gives them flexibility in the location of  
5 that stall?  
6  
7 Banegas: Yes. In fact, they don't need it, Mr. Chairman. They've got two back here  
8 that satisfies code requirements. So they could eliminate that.  
9  
10 Kaiser: And then if they did they probably could get all their landscaping  
11 requirement in the front?  
12  
13 Banegas: That's correct. At least a good portion of it in the front. And correct me if  
14 I'm wrong because what I heard the applicant say is they might be willing to  
15 forego the drive-up window, is that correct?  
16  
17 Atieh: Yes. I can take off the drive-up window.  
18  
19 Weir: Mr. Chair.  
20  
21 Kaiser: Yes. Please go ahead.  
22  
23 Weir: This is David Weir in Community Development Department. Just what I  
24 heard you say in the conversation that has taken place. If they were to  
25 eliminate the pickup window, they would then have an entry way or egress  
26 to the property that would have met code. They would then have an exiting  
27 that would meet code. If they eliminated the parking in front, they would  
28 provide additional landscaping. And then based on the Commission's  
29 comments this evening, staff could entertain and would approve a flex for  
30 that reduction of landscape in the first part. And all that could be done  
31 administratively and there's not a need for an Infill approval by the Planning  
32 and Zoning Commission. So I think that's what you were kind of asking.  
33  
34 Kaiser: Yes. That's exactly where I was headed with that. So I mean if the applicant  
35 is willing to go that route, I'm not sure what our big postpone indefinitely.  
36 Would that be our ...  
37  
38 Banegas: Mr. Chairman, Commissioners. What you could do is just approve the  
39 request but make it subject to elimination of the drive-through window and  
40 the elimination of that 45-degree stall. And then you could approve it.  
41 Would have to come up with findings. There's a lot of findings in Elevate  
42 that talk to economic development, jobs, housing, balance, etc.  
43  
44 Kaiser: Okay. So we could recommend approval with the condition that the drive-  
45 through be eliminated, the handicap stall at the front of the property be  
46 removed and replaced by landscaping. Correct? Okay.

1  
2 Weir: Mr. Chair. You could also approve that as part of the Infill, the reduction in  
3 landscaping.  
4  
5 Banegas: Correct.  
6  
7 Kaiser: Okay. I'll just speak for myself but if we're going to eliminate that space, I'd  
8 rather that eliminates the need to have that additional aisle. And I would  
9 prefer to see some landscaping up there. So I'm seeing head nods from  
10 the Commission. If someone remembered all that and wishes to make a  
11 motion.  
12  
13 Murray: I make a motion to approve, what is it, 9.5 with the conditions that the drive  
14 aisle be removed. 9.4, my apologies. The drive aisle be removed, the  
15 45-degree parking spot and drive aisle in the front be removed, and  
16 landscaping with most likely reduction of the 50 percent of it being the front.  
17  
18 Banegas: Mr. Chairman, Commissioners. Just a point of clarification. You meant with  
19 the elimination of the drive-up window, correct?  
20  
21 Murray: Window, yes.  
22  
23 Acosta: I second.  
24  
25 Baum: Board Member Acosta.  
26  
27 Acosta: So yes, I vote to approve based on the conditions that we outlined with the  
28 findings from Elevate Las Cruces such as spurring economic development,  
29 increasing our El Paseo corridor with obviously everything that we want as  
30 well.  
31  
32 Baum: Board Member Smith.  
33  
34 Smith: I vote yes to approve based on the conditions that have been brought forth.  
35 And also, that it would meet the zoning decision criteria in this case.  
36  
37 Baum: Board Member Murray.  
38  
39 Murray: Yes, to approve with conditions based on Elevate Las Cruces and bringing  
40 competition to other businesses.  
41  
42 Baum: Board Member Porter.  
43  
44 Porter: I vote yes with conditions based on Elevate Las Cruces and recent findings.  
45 And as well as bringing some good local business here.  
46

1 Baum: Board Member Bennett.

2

3 Bennett: I vote to approve. This will spur economic development.

4

5 Baum: Chair Kaiser.

6

7 Kaiser: Yes, based on consistency with Elevate Las Cruces and the need for Infill  
8 Development on the El Paseo corridor.

9

10 Baum: Motion passes.

11

12 Kaiser: Thank you, sir. I appreciate it. Thanks for coming down tonight. Good luck.

13

14 **9.5 Case No. 23ZO0500085:** A zone change request from C-1 (Commercial  
15 Low Intensity) and R-3 (Multi Dwelling Medium Density) to C-3 (Commercial  
16 High Intensity). The subject property is encompassing 1.436 ± acres and  
17 located at 2460 Missouri Avenue. The request will bring the property into  
18 compliance with the 2001 Zoning Code, as amended for future  
19 development. Submitted by Oscar Luevano, representative. Council District  
20 2.

21

22 Kaiser: Okay. I think we've got one more on the docket tonight. So this is item 9.5,  
23 a zone change request at 2460 Missouri Avenue.

24

25 Castillo: Good evening Commission. I'll try to make this as quick as possible. Once  
26 again, it's John Castillo for the record. We have a zone change request  
27 today from C-1 and R-3. The C-1 being our commercial light intensity and  
28 the R-3 being multiple dwelling, medium density, to C-3 which is our  
29 commercial high intensity at 2460 Missouri Avenue.

30

31 So the property is located at the corner of Missouri and Triviz. The address  
32 is once again 2460 Missouri. It's a developed and vacant undeveloped lot  
33 that encompasses 1.427 acres. It is a split zoned designated property. It  
34 contains C-1 which is a commercial low intensity and R-3 the multi-dwelling  
35 medium density.

36

37 It's located along a commercial corridor that is acting as a buffer to various  
38 types of residential housing such as multifamily housing, single-family  
39 housing. It also fronts two arterial roadways that being Missouri and Triviz.

40

41 As you can see from the zoning map, the R-3 portion is this south end of  
42 the property. It has been sitting vacant for many years. The C-1 is going  
43 to be over here. There's a couple of businesses already on the property.  
44 That side of the property has been developed for many years. Here we go.  
45 We have the aerial image. These are the two businesses that are on the  
46 property. Once again, this is the vacant property. As you can see, there's

1 commercial. Here's a church. Some multifamily, single-family residential,  
2 or single-family housing, I believe it's zoned multifamily as well.

3  
4 On the other side of the highway, we have some more commercial. I guess  
5 I'll swap out those pictures. Sorry about that. So the proposal today is to  
6 rezone the property from C-1 and R-3 to C-3. This is to realign existing  
7 uses to fit today's current 2001 Las Cruces Zoning Code as amended,  
8 eliminating the nonconformities on the property. The C-1 zoning has a  
9 maximum gross floor area square footage of 2,500 square feet. Both  
10 buildings on the property as they exist exceed that square footage.

11  
12 The C-3 zoning designation that they're proposing is the most compatible  
13 for the subject property and the neighborhood. This would also increase  
14 the attraction for future development as well as retain current businesses  
15 on the property.

16  
17 Here's the replat that the property underwent over time to what we see it as  
18 today. Public notice and input was sent to all relevant agencies. All  
19 supported the proposed zone change request. Notice was sent to all  
20 surrounding properties within 500 feet. Staff did receive two phone calls  
21 regarding it. The first one being general questions of the zone change and  
22 the existing cannabis business that was on the property. The second one  
23 was in regards to how the zone change is going to affect the neighborhood  
24 as far as property values. Is it going to bring any changes to what may  
25 happen on the property?

26  
27 So the staff recommendation today is to provide an approval of the zone  
28 change request. It will allow for the attraction and retention of businesses  
29 at the location through the expansion of potential uses while keeping with  
30 the C-3 zoning districts. The expanded uses allowed by this zone change  
31 are consistent with existing uses in proximity to the subject property.

32  
33 It's located along a minor arterial roadway which is recommended for  
34 commercial land uses. The proposed zone change request is supported by  
35 the Elevate Las Cruces Comprehensive Plan and meets the purpose and  
36 intent of the 2001 Zoning Code.

37  
38 And today your options are to vote "yes" to approve, vote "no" to deny, vote  
39 to amend, or vote to table.

40  
41 Kaiser: Thank you. Any questions, comments from the Commission? I just have  
42 one about the C-3. So you've got R-3 and then is the rest of the commercial  
43 that's C-1? So we're going to have R-3, C-1, and then C-3? Is that going  
44 to be a problem?

#### Agenda Item #8.4.

- 1 Castillo: So the C-1 and the R-3 are going to get eliminated and it's all going to  
2 become a C-3 property.  
3
- 4 Kaiser: But the surrounding uses are - there's no other C-3 on Triviz, correct?  
5
- 6 Castillo: No. There is no other C-3 on Triviz. There maybe some a bit further down,  
7 but outside of the range of what we see here. The map extent I should say.  
8 But most of this has been previously zoned prior to the Zoning Code as of  
9 1981 if not before then. The R-3 as stated in our staff report, not presented  
10 in this presentation, but the R-3 has been there prior to the '81 Zoning  
11 District. The same thing for the C-1. Through time over subdivision  
12 processes the C-1 was actually three lots spanning from John Street all the  
13 way to Missouri, then it was R-3. And over time, it's just either gone through  
14 a zone change or through various code updates it's been changed through  
15 map amendments.  
16
- 17 Weir: Mr. Chair. I just might add to information that John provided you. The  
18 primary difference between the C-1, C-2, and C-3 is lot size. And so, when  
19 you have a lot greater than an acre, it has to be a C-3 not to create a  
20 nonconformity situation. The land uses are primarily the same. There is  
21 some building size but the primary reason they had to request a C-3 was  
22 because it's greater than an acre in size. From a technical  
23 standpoint, we would not consider that a spot zone because there's  
24 adjacent commercial zoning and uses in that area.  
25
- 26 Kaiser: Okay. Thank you. That was my only question. Any other comments? All  
27 right. We'll go to the public. Is there anyone in the audience who wishes to  
28 speak on this item tonight? All right. Seeing no show of hands. So I'll come  
29 back to the Commission. Looking for a motion to approve.  
30
- 31 Bennett: I make a motion to approve 9.5.  
32
- 33 Smith: I second.  
34
- 35 Baum: Board Member Acosta.  
36
- 37 Acosta: I vote yes based on staff recommendation.  
38
- 39 Baum: Board Member Smith.  
40
- 41 Smith: I vote yes based on staff recommendation and that lot has been empty for  
42 a long time. I was always wondering why it hadn't been developed over the  
43 years.  
44
- 45 Baum: Board Member Murray.  
46

1 Murray: Yes, based on staff recommendation.

2  
3 Baum: Board Member Porter.

4  
5 Porter: Yes, based on staff recommendations.

6  
7 Baum: Board Member Bennett.

8  
9 Bennett: I vote to approve based on staff recommendations.

10  
11 Baum: Chair Kaiser.

12  
13 Kaiser: Yes, based on staff recommendations and consistency of Elevate Las  
14 Cruces.

15  
16 Baum: Motion passes.

17  
18 **9. DISCUSSION AND STAFF ANNOUNCEMENTS**

19  
20 Kaiser: All right. Any other discussion or staff announcements before we adjourn  
21 tonight?

22  
23 Gonzales: Mr. Chair, Commission. Staff does not have any additional  
24 announcements.

25  
26 Kaiser: Sounds good.

27  
28 **10. ADJOURNMENT (8:27)**

29  
30 Kaiser: Looking for a motion to adjourn.

31  
32 Bennett: I make a motion to adjourn.

33  
34 Smith: I second.

35  
36 Kaiser: All in favor.

37  
38 MOTION PASSES UNANIMOUSLY.

39  
40 Kaiser: Thank everyone for coming out tonight.

41  
42  
43  
44  
45  
46 \_\_\_\_\_  
Chairperson





**3058; Council  
Bill 24-016**

# City Council Action and Executive Summary

**Type of Action:**  
☐ Resolution  
☒ Ordinance  
☐ TIDD Resolution

|                     |                                                                                                                                                                                                                                                                        |                          |                       |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----------------------|
| <b>District:</b>    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 6 <input type="checkbox"/> N/A                                                              |                          |                       |
| <b>1st Reading:</b> | January 2, 2024                                                                                                                                                                                                                                                        | <b>Adopted:</b>          | January 16, 2024      |
| <b>Drafter:</b>     | Adam Ochoa                                                                                                                                                                                                                                                             | <b>Department:</b>       | Community Development |
| <b>Program:</b>     | Community Planning                                                                                                                                                                                                                                                     | <b>Line of Business:</b> | Community Planning    |
| <b>Title:</b>       | <b>AN ORDINANCE APPROVING A ZONE CHANGE FROM M-1/M-2 (INDUSTRIAL STANDARD) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR A PROPERTY ENCOMPASSING 8.25 + ACRES AND LOCATED AT 4201 DEL REY BOULEVARD. SUBMITTED BY NEW REPUBLIC DESIGN CO., REPRESENTATIVE. (23ZO0500140).</b> |                          |                       |

**TYPE OF ACTION:**    ☐ Administrative    ☐ Legislative    ☒ Quasi-Judicial

**PURPOSE(S) OF ACTION:**  
Zone change.

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**  
The City Council is required to review and take final action on zone changes per Section 38-10 B. 2. b. and 38-13 A. of the 2001 Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulations uniformly govern the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from M-1/M-2 (Industrial Standard) to C-3 (Commercial High Intensity) for property approximately 8.25 acres in size and located at 4201 Del Rey Boulevard. The purpose for the proposed zone change is to allow for the redevelopment of the vacant property for a new charter school for grades 9 through 12.

The subject property's existing M-1/M-2 zoning designation does not permit the proposed school. A school is permitted in the proposed C-3 zoning district with multiple conditions, including minimum property size requirements, buffering requirements, and roadway designation requirements. The subject property meets all required conditions of a C-3 zoning district. The subject property is immediately surrounded by vacant/undeveloped commercial and industrial zoned properties. There are some developed industrial and commercial properties further north of the subject property and a mixture of single-family and multi-family residential uses on the east side of Del Rey Boulevard. There is also an existing preschool/daycare further south along Del Rey Boulevard. Given the large mixture of development patterns in the area, there should be no adverse impact to the surrounding neighborhood in terms of character and compatibility.

The property is located in a suburban neighborhood place type as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. Suburban neighborhoods are intended to provide for low-to-moderate density residential land uses intermixed with areas of commercial development. Predominant land uses include single-family and multi-family residential development, retail and office uses, and other ancillary institutional and public uses such as schools, parks, and places of worship. Following the description of the

## Agenda Item #10.1.

suburban neighborhood place type and the related land use goals and policies, the proposed zone change is supported by the Elevate Las Cruces Comprehensive Plan.

On November 28, 2023, the case was heard by the Planning and Zoning Commission at their regular meeting. The zone change request had no opposition from area property owners. Staff did receive one phone call supporting the proposed zone change. The Planning and Zoning Commission voted 4-0-0 (one Commissioner vacancy, one Commissioner absent) to recommend approval for the proposed zone change. The zone change was approved on the consent agenda.

### **SUPPORT INFORMATION:**

[Exhibit "A" - Site Plan](#)

[Exhibit "B" - Findings](#)

[Attachment "A" - 4201 Del Rey Staff Report](#)

[Attachment "B" - 11-28-23 PNZ Minutes](#)

### **PLAN(S):**

Elevate Las Cruces

### **COMMITTEE/BOARD REVIEW:**

P&Z

### **DOES THIS AMEND THE BUDGET?:**

☐ Yes

☒ No

### **Does this action amend the Capital Improvement Plan (CIP)?**

☐ Yes

☒ No

### **Does this action align with Elevate Las Cruces?**

☒ Yes

☐ No

### **OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 4201 Del Rey Boulevard will be rezoned from M-1/M-2 (Industrial Standard) to C-3 (Commercial High Intensity).
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current M-1/M-2 (Industrial Standard) zoning designation will remain, and the proposed school will not be permitted.
3. Vote to "Amend"; this could allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.
4. Vote to "Table"; this could allow the City Council to table/postpone the Ordinance and direct staff accordingly.

**ORDINANCE 3058; COUNCIL BILL 24-016**

**AN ORDINANCE APPROVING A ZONE CHANGE FROM M-1/M-2 (INDUSTRIAL STANDARD) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR A PROPERTY ENCOMPASSING 8.25 + ACRES AND LOCATED AT 4201 DEL REY BOULEVARD. SUBMITTED BY NEW REPUBLIC DESIGN CO., REPRESENTATIVE. (23ZO0500140).**

The City Council is informed that:

**WHEREAS**, New Republic Design Co., representative, has submitted a request for a zone change from M-1/M-2 (Industrial Standard) to C-3 (Commercial High Intensity); and

**WHEREAS**, the subject property is approximately 8.25 acres in size, and the proposed zone change will allow for the redevelopment of the vacant commercial property for a new school; and

**WHEREAS**, the proposed C-3 (Commercial High Intensity) zone is consistent with the Suburban Neighborhood Place Type per the Elevate Las Cruces Comprehensive Plan and is supported by various goals and policies contained therein; and

**WHEREAS**, the proposed zone change meets the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

**WHEREAS**, the Planning and Zoning Commission, after conducting a public hearing on November 28, 2023, recommended that the zone change request be approved by a vote of 4-0-0 (one Commissioner vacancy, one Commissioner absent).

**NOW, THEREFORE**, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

**THAT** the land as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-3 (Commercial High Intensity).

(II)

**THAT** the zoning is based on the findings contained in Exhibit "B", attached hereto and made part of this Ordinance.

(III)

**THAT** the zoning of said property be shown accordingly on the City Zoning Atlas.

(IV)

**THAT** City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

**DONE AND APPROVED this** day of

Agenda Item #10.1.

APPROVED

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

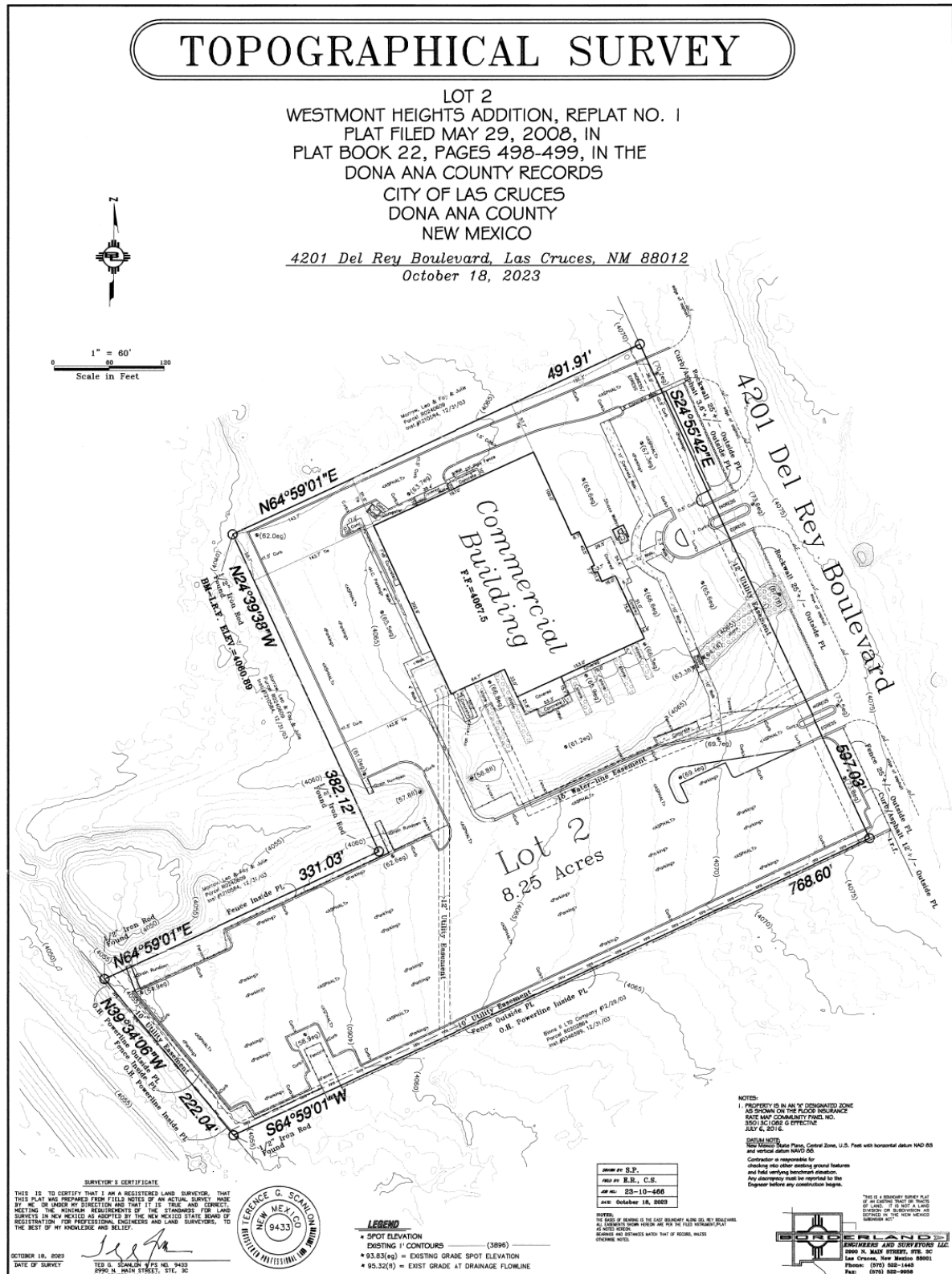
**Moved by:**

**Seconded by:**

**AYES**

**NAYS**

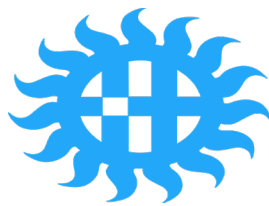
# SITE PLAN



## EXHIBIT “B”

### FINDINGS:

1. The proposed zone change will allow for the innovative redevelopment of the vacant commercial property (2001 Zoning Code, Section 38-2 B & K).
2. The proposed zone change will help conserve the value of the existing vacant commercial building and land (2001 Zoning Code, Section 38-2 N).
3. The subject property is located on a principal arterial roadway, Del Rey Boulevard, where schools (K-12) are conditionally required to be located (2001 Zoning Code, Section 38-53).
4. The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).



## *Planning & Zoning Commission 11/28/2023* **CASE 23ZO0500140: Zone Change**

**STAFF CONTACT:** Adam Ochoa, (575) 528-3204, [aocchoa@las-cruces.org](mailto:aocchoa@las-cruces.org)

**OWNER:** B.H. 4201 Del Rey, LLC

**REPRESENTATIVE:** New Republic Design Co.

**DISTRICT:** District #5

**SITE ADDRESS:** 4201 Del Rey Boulevard

**EXISTING ZONING:** M-1/M-2 (Industrial Standard)

**REQUEST:** Rezone to C-3 (Commercial High Intensity)

**CONCURRENT APPLICATIONS:** N/A

**RECOMMENDATION:** Approval

### **SUMMARY OF REQUEST CASE 23ZO0500140:**

The applicant is requesting a zone change from M-1/M-2 (Industrial Standard) to C-3 (Commercial High Intensity) for a property encompassing 8.25 ± acres and located at 4201 Del Rey Boulevard.

### **SUMMARY OF RECOMMENDATION:**

Staff is recommending **Approval** based on the findings listed below:

- The proposed zone change will allow for the innovative redevelopment of the vacant commercial property (2001 Zoning Code, Section 38-2 B & K).
- The proposed zone change will help conserve the value of the existing vacant commercial building and land (2001 Zoning Code, Section 38-2 N).
- The subject property is located on a principal arterial roadway, Del Rey Boulevard, where schools (K-12) are conditionally required to be located (2001 Zoning Code, Section 38-53).
- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).

## **PROPOSAL AND LAND USE HISTORY**

### **DETAILED DESCRIPTION:**

The applicant is seeking a zone change for the subject property located at 4201 Del Rey Boulevard for the purpose of redeveloping the existing vacant commercial property for a new school for grades 9 through 12. A school is permitted in the C-3 zoning district with multiple conditions, including minimum property size requirements, buffering requirements, and roadway designation requirements. The subject property meets all required conditions.

### **LAND USE HISTORY:**

The subject property is part of the Westmont Heights Addition Replat No. 1 that was filed on May 29, 2008. The existing M-1/M-2 zoning designation was placed on the subject property by Ordinance 440 in June of 1982 and development took place in 1983

## **ZONING DECISION CRITERIA AND POLICIES**

| <b>POLICY</b>                                              | <b>DOES IT COMPLY?</b> |
|------------------------------------------------------------|------------------------|
| <b><u>Neighborhood Character and Compatibility</u></b>     | Yes                    |
| <b><u>Elevate Las Cruces Comprehensive Plan</u></b>        | Yes                    |
| <b><u>Mesilla Valley MPO Thoroughfare Plan</u></b>         | Yes                    |
| <b><u>Purpose and Intent of the Code: Section 38-2</u></b> | Yes                    |
| <b><u>Criteria for Decisions: Section 2-382</u></b>        | Yes                    |
| <b><u>New Mexico Case Law</u></b>                          | Yes                    |

### **NEIGHBORHOOD CHARACTER AND COMPATIBILITY:**

The subject property is immediately surrounded by vacant/undeveloped commercial and industrial zoned properties. There are some developed industrial and commercial properties further north and a mixture of single-family and multi-family on the east side of Del Rey Boulevard. There is an existing preschool/daycare further south along Del Rey Boulevard. Given the large mixture of development patterns in the area, there should be no adverse impact to the surrounding neighborhood in terms of character and compatibility.

### **COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:**

- Goal CE-3 - Centers and corridors: Support community growth through concentrated development at activity centers and along key corridor.
  - Policy CE-3.1: Promote the development of mixed-use centers to support surrounding neighborhoods and serve as focal points for community life.
  - Policy CE-3.2: Allow for a mix of development type and intensity along major thoroughfares that reflect surrounding urban, suburban, and rural contexts.
- Goal CE-4 – Complete neighborhoods: Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
  - Policy CE-4.4: Integrate parks, schools, and other civic space into neighborhoods.



- Goal CP-6 – Community Schools: Utilize schools as an integral component of neighborhood development and community life.
  - Policy CP-6.2: Promote the use of schools as the foundation for neighborhood development.

The property is located on a suburban place type overlay as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. Suburban neighborhoods are intended to provide for low-to-moderate density residential land uses intermixed with areas of commercial development. Predominant land uses include single-family and multi-family development, retail and office uses, and other ancillary institutional and public uses such as schools, parks, and places of worship. Following the description of the suburban place type and the goals and policies listed above, the proposed zone change is supported by the Elevate Las Cruces Comprehensive Plan.

**COMPLIANCE WITH MPO THOROUGHFARE PLAN:**

Del Rey Boulevard is designated as a principal arterial roadway by the Mesilla Valley Metropolitan Planning Organization (MPO) and the Elevate Las Cruces Comprehensive Plan. Commercial zoning and institutional land uses, such as what is being proposed for the subject property, are encouraged along these designated thoroughfares due to the capacity of the roadways and their ability to provide support these types of land uses and zoning designations.

**CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:**

Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed zone change include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- B. Encourage innovations in land development and redevelopment.
- C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- H. Encourage the conservation of energy in the use of structures, buildings, and land.
- J. Encourage development of vacant properties within established areas.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- M. Foster a more rational relationship between different land uses for the mutual benefit of all.
- N. Conserve the value of buildings and land.

Staff has determined that the proposed zone change would not adversely impact the surrounding area and would be in harmony with Section 38-2 of the 2001 Zoning Code.

**CRITERIA FOR DECISIONS:**

Per Section 2-382 of the Las Cruces Municipal Code, the Planning and Zoning Commission shall determine the following:

The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth;
- Impairment of the public health, safety or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, design standards and other companion codes.

Based on reviews of applicable codes and policies, City Staff did not identify any issues associated with the proposed zone change, nor did staff identify any public health, safety, or welfare issues with the proposed zone change. The proposed land use should not unreasonably contradict the purpose and intent of the Code.

**NEW MEXICO CASE LAW:**

1. There was an error when the existing zoning map pattern was created; or
2. Changed neighborhood or community conditions justify the change; or
3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other applicable City master plan(s), even though criterion (1) or (2) above do not apply because;
  - a. there is a public need for a change of the kind in question, and
  - b. that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

The extended area has a variety of land uses including single-family, multi-family, institutional, industrial, and commercial which are compatible with the proposed use being requested by the applicant and will further assist in making this a more complete neighborhood.

**DEVELOPMENT STANDARDS**

---

**SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:**

The subject property is zoned M-1/M-2 and approximately 8.25 acres in size. The existing zoning designation allows for a variety of office, commercial and industrial land uses. The property is currently a developed vacant commercial property.

**SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:**

The proposed zone change will allow the property owner to utilize the developed vacant parcel for a proposed new school. The subject property lends itself nicely for the proposed new use and redevelopment.

**ADEQUACY OF PUBLIC FACILITIES AND SERVICES:**

City water, gas and sewer are currently available for the subject property and will not be negatively impacted by the zone change request. Del Rey Boulevard provides adequate paved access to the property. The redevelopment of this lot will require the installation of sidewalks for the entire frontage of the subject property along Del Rey Boulevard reducing the sidewalk gap in the area.

**STAFF AND PUBLIC COMMENTS**

---

**PUBLIC NOTIFICATION AND INPUT:**

Notification letters were mailed to property owners within 500 feet of the subject property. Staff has received no public input for the proposed zone change request.

**STAFF COMMENTS:**

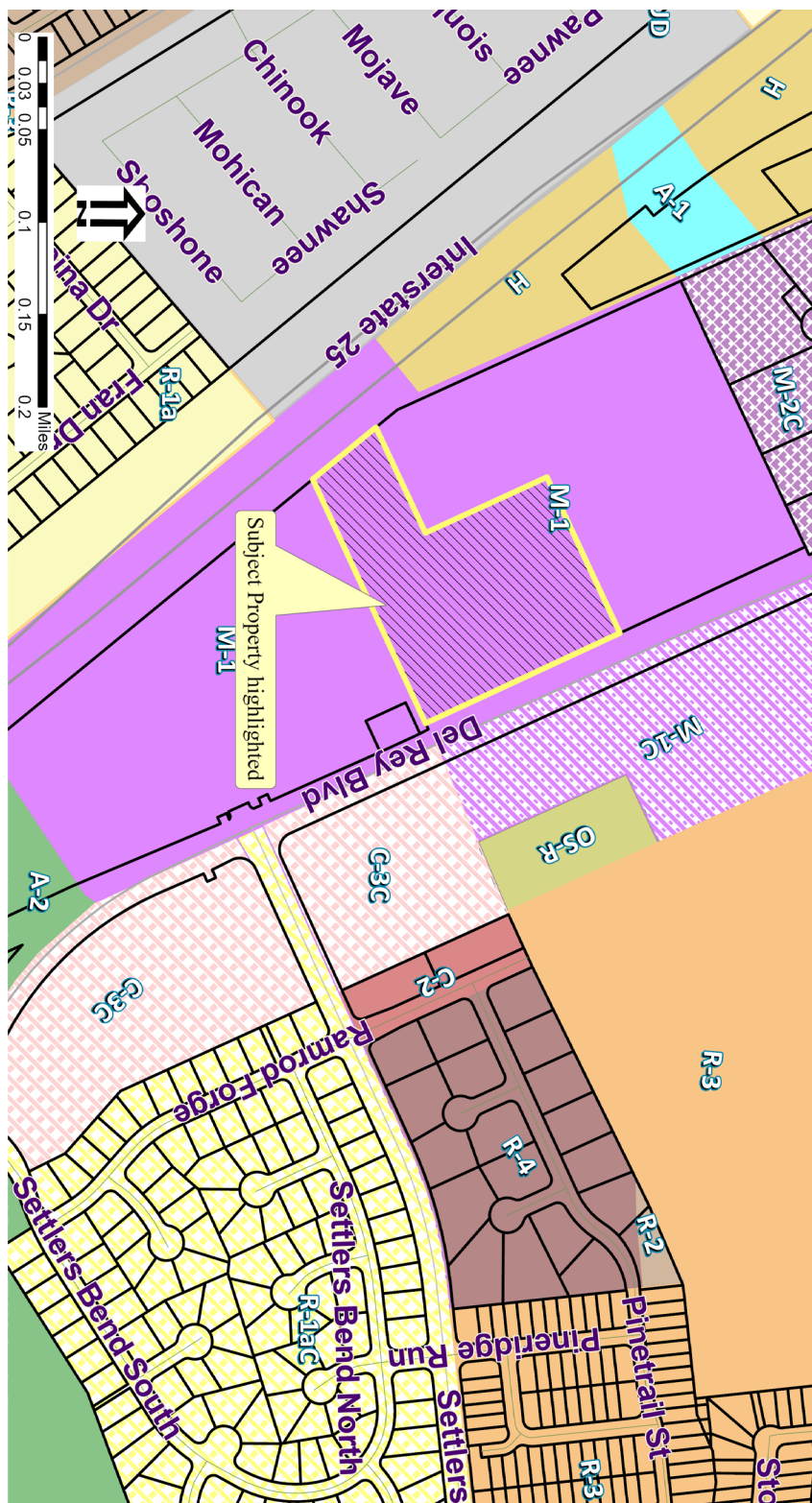
No reviewing department had any negative comments and there have been no objections to the proposed rezoning.

**ATTACHMENTS:**

1. Zoning Map
2. Aerial Map
3. Site Plan/Survey
4. Department Review Comments

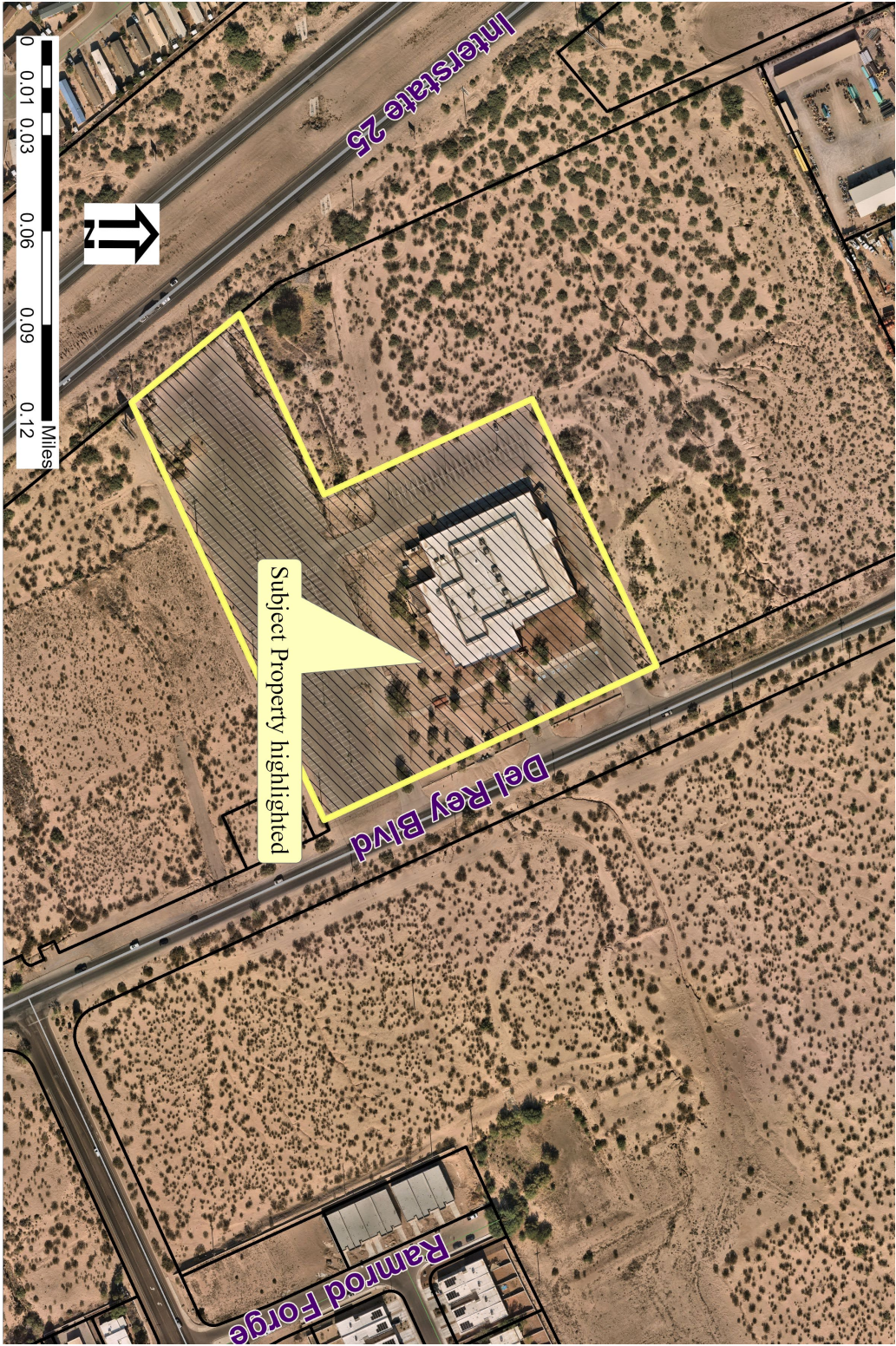
# **ATTACHMENT 1**

## **Zoning Map**



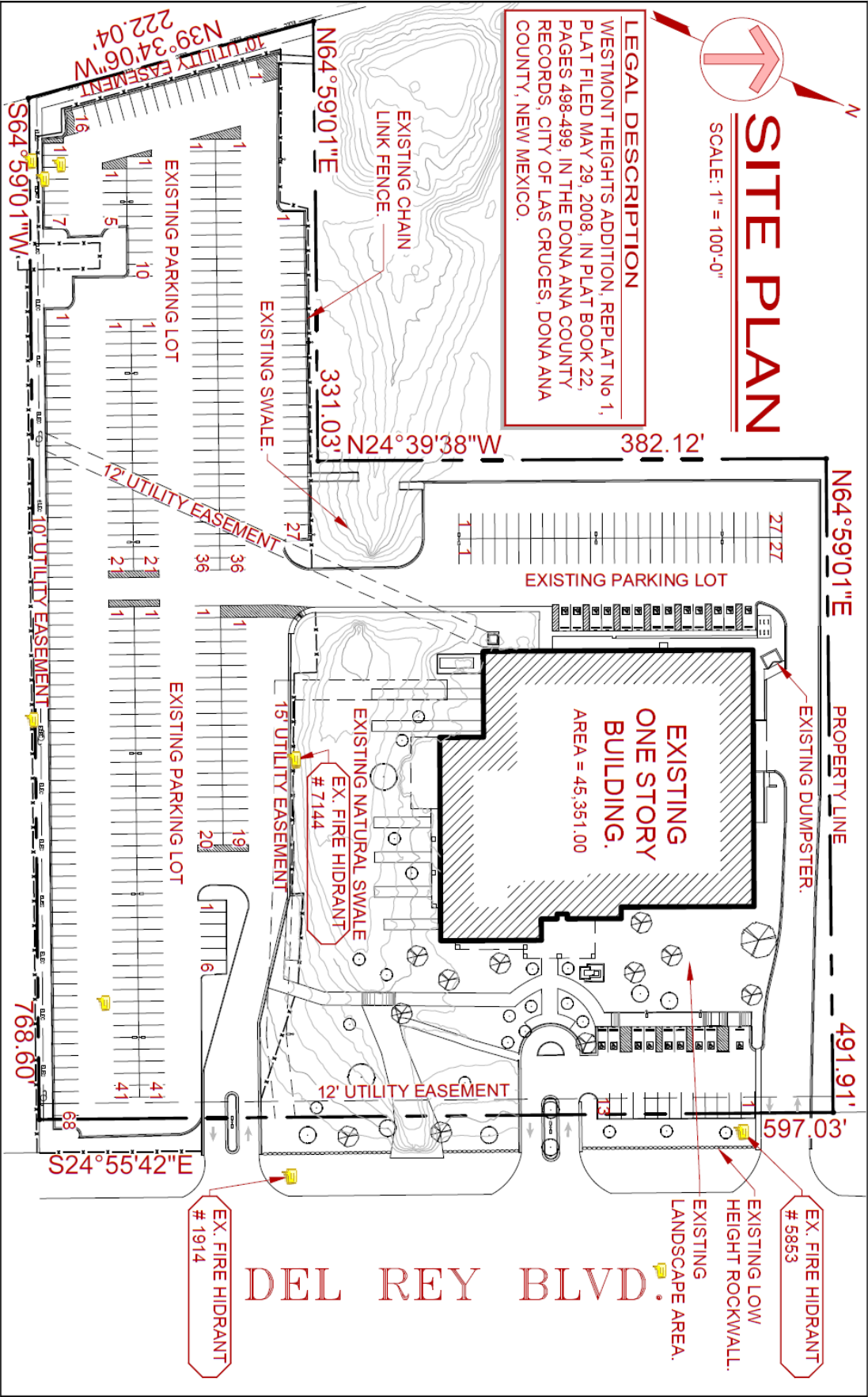


**ATTACHMENT 2**  
**Aerial Map**









## **ATTACHMENT 4**

### **Department Review Comments**

**Department: Planning**

Status: Approved with Contingencies – Per Section 26.103 of the Las Cruces Municipal Code, sidewalks will be required to be installed for the existing development, or an engineering variance will need to be submitted by your engineer, reviewed, and approved by the Public Works Department.

**Department: Traffic Engineering**

Status: Approved with Contingencies – Per Section 26.103 of the Las Cruces Municipal Code, sidewalks will be required to be installed for the existing development, or an engineering variance will need to be submitted by your engineer, reviewed, and approved by the Public Works Department.

**Department: Engineering**

Status: Not required

**Department: Utility Engineering**

STATUS: Approved

**Department: Fire**

Status: Approved

**Department: Parks and Recreation**

Status: Approved

**Department: City MPO**

Status: Not required

**Department: Flood**

Status: Approved





# CITY OF LAS CRUCES

**PLANNING AND ZONING COMMISSION  
FOR THE  
CITY OF LAS CRUCES  
City Council Chambers  
November 28, 2023 at 6:00 p.m.**

**BOARD MEMBERS PRESENT:**

Scott Kaiser, Chair  
Enrico Smith, Vice-Chair  
James Bennett, Secretary  
Connor Murray, Member

**BOARD MEMBERS ABSENT:**

Joaquin Acosta, Member  
Vanessa Porter, Member

**STAFF PRESENT:**

Larry Nichols, Director Community Development Department  
David Weir, Deputy Director Community Planning  
Adam Ochoa, Senior Planner/Building Inspection Supervisor  
Sara Gonzales, Senior Planner  
Vincent Banegas, Interim Planner  
Kyle Metzger, Planning Technician Senior  
Mark Dubbin, Fire Department  
John Castillo, Planner  
Mark Miller, Planner  
Christina Abeyta-Corella, Planner  
Jocelyn Garrison, City Attorney  
Adrian Guzman, Communications  
Becky Baum, Recording Secretary, RC Creations, LLC

**1. CALL TO ORDER (6:00)**

Kaiser: Good evening, ladies and gentlemen. Welcome to the November 28th City of Las Cruces Planning and Zoning Commission meeting. It is 6:00 p.m. We will go ahead and call this meeting to order. If folks could please take their seat, we would appreciate that so we can get underway here. We're going to do things slightly differently on the consent agenda so bear with me as I explain that when we get there.

**2. CONFLICT OF INTEREST**

Kaiser: But in the meantime, do we have any conflict of interest tonight? All right.

**3. APPROVAL OF MINUTES – October 24, 2023**

Kaiser: Are there any comments on the October meeting minutes? Looking for a motion to approve.

Bennett: I make a motion to approve the previous meeting's minutes.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Motion passes.

**4. POSTPONEMENTS**

Kaiser: Okay. And I believe, staff, we have one postponement this evening?

Ochoa: Yes, Mr. Chair. The case we are looking to postpone is case number 9.3, Case # 23ZO0500120, a proposed zone change from R-3 to C-1 for a property located at 541 South Campo. So we're looking to do a date specific postponement to the December 19th Planning and Zoning Commission meeting, sir.

Kaiser: Very good. Can I get a motion to postpone Item 9.3 to December 19th?

Bennett: I make a motion to postpone Item 9.3 to December 19th.

Murray: I second.

Baum: Board Member Smith.

## Agenda Item #10.1.

1 Smith: Yes.

2

3 Baum: Board Member Bennett.

4

5 Bennett: Yes.

6

7 Baum: Board Member Murray.

8

9 Murray: Yes.

10

11 Baum: Chair Kaiser.

12

13 Kaiser: Yes.

14

15 Baum: Motion passes.

16

### 17 **5. ACCEPTANCE OF THE AGENDA**

18

19 Kaiser: Okay. With that item postponed looking for a motion to accept tonight's  
20 agenda.

21

22 Bennett: I make a motion to accept tonight's agenda.

23

24 Smith: I second.

25

26 Baum: Board Member Smith.

27

28 Smith: Yes.

29

30 Baum: Board Member Bennett.

31

32 Bennett: Yes.

33

34 Baum: Board Member Murray.

35

36 Murray: Yes.

37

38 Baum: Chair Kaiser.

39

40 Kaiser: Yes.

41

42 Baum: Motion passes.

43

### 44 **6. PUBLIC PARTICIPATION**

45

1 Kaiser: Okay. We're going to go to public participation. Is there anybody in the  
2 audience tonight that wishes to speak on something that is not on tonight's  
3 agenda? Yes, ma'am. And before you begin may you state your name for  
4 the record? And swear you in.

5  
6 Lewis: I will. Good evening. My name is Irene Oliver Lewis and I live on Kansas  
7 Avenue, Lot 45 of the original Las Cruces townsite plat of 1849 or what is  
8 now known as the 2005 South Mesquite Overlay for issues of planning and  
9 zoning. My sister, Sylvia Camuñez and I are the third generation living in  
10 the original adobes built in 1906 on Kansas. Sylvia was one of the riders of  
11 the South Mesquite Overlay and past president of Las Esperanzas, the  
12 neighborhood preservation association.

13  
14 Historic preservation and cultural significant is in our DNA. I speak to you  
15 tonight because my perception as well as my neighbors is that the  
16 Community Development Department and staff approach historic  
17 preservation as an obstacle, a nuance for business development and  
18 housing, and resort to demolition or neglect of historic property, traditions,  
19 character, or quality of life.

20  
21 The P&Z is one of the most important commissions in city government, as  
22 you have to recommend zoning changes and have to balance the attraction  
23 and the retention of small businesses while maintaining the needs of the  
24 existing neighborhoods in traffic flow, in health, in safety, and the general  
25 quality of life for the residents to maintain their architectural character and  
26 their neighborhood.

27  
28 For the Mesquite Street historic neighborhood, the P&Z has to acknowledge  
29 the downtown development code as well as Elevate Las Cruces and how  
30 they complement the South Mesquite Overlay District. Therefore, I invite  
31 the P&Z to request from the Community Development staff while adhering  
32 to all the number of established ordinances and codes that they give priority  
33 to the established cultural, historic, and architectural significance of our one  
34 and only original townsite.

35  
36 It appears that the South Mesquite Overlay ordinance is given low priority  
37 on zoning changes from City staff. We have a Historic Preservation  
38 Commission and they are up to date on necessary cultural and architectural  
39 needs. Perhaps the P&Z and the Historic Preservation Commission can  
40 have a more cooperative relationship to issue the significance of our shared  
41 cultural historic neighborhoods. Muy gracias.

42  
43 Kaiser: Thank you very much. We appreciate that perspective. Is there anybody  
44 else in the audience tonight that wishes to speak on an item that is not on  
45 tonight's agenda? Okay. Seeing none. I will close public participation.  
46

**7. CONSENT AGENDA**

Kaiser: And we are going to move into the consent agenda where we're going to do things a little bit different this evening given that there are so many items on the Consent Agenda tonight. There's five in fact. What you see somewhere above me are the items that are on the Consent Agenda tonight. We have 7.1 through 7.5.

I will first ask our Commission if anybody wishes to pull any item for discussion? All right. Seeing none. It's my understanding that there might be some folks in tonight's audience who would like a discussion. So I'm going to go one at a time and I'm just going to ask for a raise of hands for those of you who wish to have a discussion.

So for Item 7.1 raise of hands. Okay, I see two. Item 7.2. I see no hands. Item 7.3. I see no hands. Item 7.4. Okay. I see several hands. And Item 7.5. All right. So 7.1, 7.4 and 7.5. So I request that we make motions to pull those three items. Can we do them as a group? We can do them as a group. So if I can get a motion to ...

Bennett: I make a motion to remove 7.1, 7.4, and 7.5 from the consent agenda.

Smith: I second.

Kaiser: Just to clarify, we're not moving it from discussion. We're just moving it from the consent agenda so we can approve everything else and then we'll come back to those.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Motion passes.

1 Kaiser: All right. So that leaves Items 7.2 and 7.3 on the consent agenda. So  
2 looking for a motion to approve the consent agenda.  
3  
4 Bennett: I make a motion to approve the consent agenda.  
5  
6 Smith: I second.  
7  
8 Baum: Board Member Smith.  
9  
10 Smith: Yes.  
11  
12 Baum: Board Member Bennett.  
13  
14 Bennett: Yes.  
15  
16 Baum: Board Member Murray.  
17  
18 Murray: Yes.  
19  
20 Baum: Chair Kaiser.  
21  
22 Kaiser: Yes.  
23  
24 Baum: Motion passes.  
25

26 **8. OLD BUSINESS**

27  
28 **9. NEW BUSINESS**

29  
30 **7.1 Case # 23CS0500113:** A request to approve a non-administrative replat  
31 known as Majestic Hills Subdivision No. 1 Replat No. 4. The proposed  
32 subdivision encompasses 1.9754 ± acres in size, zoned R-3 (Multi-Dwelling  
33 Medium Density) and located at 2969 Claude Dove Drive. The subdivision  
34 proposes to subdivide one existing lot and a portion of another existing lot  
35 into two new lots that are 0.443 ± and 1.531 ± acres in size. Submitted by  
36 Bohannon Huston, representative. Council District 2.  
37

38 Kaiser: Okay. Now, we will go into the discussion on Item 7.1.  
39

40 Gonzales: Sara Gonzales with Community Development. This is a proposed  
41 Subdivision Replat known as Majestic Hills Subdivision No. 1 Replat No. 4.  
42 The property is located at 2969 Claude Dove Drive. It is currently 1.974  
43 acres in size. It is zoned R-3 which is our Multi-Dwelling Medium Density  
44 and currently has an assisted living facility as well as a preschool childcare  
45 center on the property.  
46