



City of Las Cruces[®]

Planning and Zoning Commission Agenda

The following agenda will be considered by the Planning and Zoning Commission of the City of Las Cruces, New Mexico, at a public hearing held on March 22, 2022 beginning at 6:00 p.m. in Council Chambers at City Hall, 700 N. Main Street, Las Cruces, New Mexico.

1. Call To Order
2. Conflict Of Interest
3. Election Of Secretary
4. Approval Of Minutes
February 22, 2022

Documents:

[02-22-22 PNZ MINUTES.PDF](#)

5. Postponements
 1. Camino Hills Subdivision Master Plan: A request for a master plan known as Camino Hills Subdivision. The proposed subdivision encompasses 10.954 ± acres, is currently zoned R-1a (Single-Family Medium Density) and located northeast of El Camion Real and west of Spitz St. The subdivision proposes 52 single-family residential lots and multiple tracts dedicated for drainage. The proposed subdivision will provide four internal roadways that will provide access to Spitz St. and Hanson Ave. Submitted by Steve Calderazzo, representative. Council District 1 (22CS0500012)
 2. Camino Hills Subdivision Preliminary Plat: A request for a preliminary plat known as Camino Hills Subdivision. The proposed subdivision encompasses 10.954 ± acres, is currently zoned R-1a (Single-Family Medium Density) and located northeast of El Camion Real and west of Spitz St. The subdivision proposes 52 single-family residential lots and multiple tracts dedicated for drainage. The proposed subdivision will provide four internal roadways that will provide access to Spitz St. and Hanson Ave. Submitted by Steve Calderazzo, representative. Council District 1 (21CS0500069)
6. Public Participation
7. Consent Agenda

1. 725 McClure Road Non-Administrative Replat: A non-administrative replat known as October Sky Subdivision to replat the one existing lot, zoned R-1a (Single-Family Medium Density), into 2 new lots, 1 for residential purposes and the other will be purchased by the City of Las Cruces to utilize for drainage. Council District 1 (21CS0500128)
2. 1225 Chiquita Ave Infill Development Request: An infill development request for a construction storage yard and warehouse on two vacant parcels zoned C-2 (Commercial Medium Intensity). The infill request will be seeking deviations from landscaping, paving, replatting, minimum lot area and lot width for the C-2 zone, and a rear yard setback deviation. The combined property is ± 0.158 acres in size, and generally located along the north side of Chiquita Avenue between North Solano Drive and North Santa Fe Street. Submitted by Obed Molina, property owner. Council District 1 (22ZO5000001)

8. Old Business

1. **510 S Telshor Sign Variance:** A request for a variance to Chapter 36 of the City of Las Cruces Municipal Code, as amended, for a freestanding sign to allow one freestanding sign along a controlled access street and apply the applicable height and size standards associated with a principal arterial, E. Lohman. The applicant is also requesting a variance of ± 5'-3" to the required 15-foot front setback for a freestanding sign. Direct access to business is off Mesilla Valley Mall Drive, a private roadway. Submitted by PDG Prestige Inc, property owner. Council District 3 (21VO0500131)
2. **3999 Bataan Memorial West Zone Change Request:** A zone change request for a multi-zoned 28-acre parcel from R-2 (Multi-Dwelling Low Density, C-2 (Commercial Medium Intensity) and M-1/M-2 (Industrial Standard) to R-2 (Multi-Dwelling Low Density, C-3 (Commercial High Intensity) and M-1/M-2/C-3 (Industrial Standard/Commercial High Intensity). The property is generally located on the north side of Bataan Memorial West between McGuffy Street and Monte Sol Street. Submitted by Kent Thurston, property owner. Council District 5 (21ZO0500141)

9. New Business

1. 550 S Telshor Sign Variance: A request for a variance to Chapter 36 of the City of Las Cruces Municipal Code, as amended, for a freestanding sign. The request is for a variance of ± 3 feet 10 inches to the required 5-foot side setback for a freestanding sign along a local roadway. Submitted by PDG Prestige Inc, property owner. Council District 3 (21VO0500132)

10. Commission Commentary

11. Staff Announcements

12. Adjournment

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Community Development Department at least 48 hours before the meeting by calling 528-3043 (voice) or 1-800-659-8331 (TTY) if accommodations are necessary. This document can be made available in alternative formats by calling the same numbers listed above.

Posted: March 7, 2022

1
2 Baum: Board Member Smith.
3
4 Smith: Yes.
5
6 Baum: Board Member Vega.
7
8 Vega: Yes.
9
10 Baum: Board Member Guerrero.
11
12 Guerrero: Yes.
13
14 Baum: Board Member Kaiser.
15
16 Kaiser: Yes.
17
18 Baum: Chair Gordon.
19
20 Gordon: Yes.

21
22 **2. CONFLICT OF INTEREST**

23
24 Gordon: All right. Is there anyone who has a conflict of interest for tonight? If not,
25 okay.

26
27 **3. APPROVAL OF MINUTES - January 25, 2022**

28
29 Gordon: I need a motion to approve the agenda, I'm sorry, the minutes.

30
31 Vega Make a motion to approve the minutes.

32
33 Gordon: I need a second.

34
35 Guerrero: I'll second it.

36
37 Gordon: But before we do that, is there any corrections? If not, I have one. At the
38 top of the minutes they have the date Becky of December 28th, should be
39 January. You'll correct that. Okay. Are there any other corrections? All
40 right, seeing none. Can I vote please?

41
42 Baum: Board Member Guerrero.

43
44 Guerrero: Yes.

45
46 Baum: Board Member Vega.

1
2 Vega: Yes.
3
4 Baum: Board Member Smith.
5
6 Smith: Yes.
7
8 Baum: Board Member Kaiser.
9
10 Kaiser: Yes.
11
12 Baum: Chairman Gordon.
13
14 Gordon: Yes.
15
16 Baum: Thank you.
17
18 Gordon: Okay. Thank you.
19

20 **4. PUBLIC PARTICIPATION**
21

22 Gordon: All right, now is there anyone here this evening who wishes to address an
23 item that is not on the agenda this evening? You may have the
24 opportunity to speak, please raise your hand if you do. All right. Seeing
25 none. Then we'll move on.
26

27 **5. POSTPONEMENTS**
28

29 **5.1 3999 Bataan Memorial West Zone Change Request:** A zone change
30 request for a multi-zoned 28-acre parcel from R-2 (Multi-Dwelling Low
31 Density, C-2 (Commercial Medium Intensity) and M-1/M-2 (Industrial
32 Standard) to R-2 (Multi-Dwelling Low Density, C-2 (Commercial Medium
33 Intensity) and M-1/M-2/C-3 (Industrial Standard/Commercial High
34 Intensity). The property is generally located on the north side of Bataan
35 Memorial West between McGuffy Street and Monte Sol Street. Submitted
36 by Kent Thurston, property owner. Council District 5 (21ZO0500141)
37

38 **5.2 510 S Telshor Sign Variance:** A request for a variance to Chapter 36 of
39 the 2001 Zoning Code, as amended, to allow 1 freestanding sign on a
40 controlled access street, E Lohman Ave. The variance would allow the
41 sign to utilize the location, size, and height for signs located on a principal
42 arterial roadway in a commercial zoning district. The property is located at
43 510 S Telshor with frontage along E Lohman. Submitted by PDG Prestige
44 Inc, property owner. Council District 3 (21VO0500131)
45

1 **5.3 1390 Monte Vista Infill Development Request:** An infill development
2 request for an 8-unit apartment complex (4 units on lot 12 and 4 on lot 13)
3 and associated development standard waivers. The combined property is
4 ± .315 acres in size, zoned R-2 (Multi-Dwelling Low Density), and
5 generally located on the south side of Monte Vista between Solano Drive
6 and Kent Road. Submitted by Azzam Askar, property owner. Council
7 District 2 (21ZO5000139)
8

9 Gordon: On the agenda we have three postponements. The reason that they are
10 there is there is additional information that staff requires, and because
11 these items have been advertised, they have been brought to the agenda,
12 but going to have to figure out what is going to be best in order to
13 postpone this. What I'd like to do is to get a motion if it's agreeable to staff
14 that we postpone this to make a date of your approval. Katherine.
15

16 H-Rogers: Commissioner, members of the Commission. That would be fine. We
17 could state it that way and be more generalistic or we could actually
18 postpone these to a date certain. And I would recommend for next
19 month's meeting, which is March, I actually don't have that in front of me.
20 Let me look at a calendar.
21

22 Gordon: I just don't want to make it a date certain if we still have the same problem.
23

24 H-Rogers: Yes, I mean we always run into that. It is possible that we would advertise
25 and then have to postpone again.
26

27 Gordon: So you want to make it a date certain.
28

29 H-Rogers: I would prefer to make it a date certain. If we do it indefinitely you could
30 kill the project.
31

32 Gordon: Okay. So could you tell me what that date is in March.
33

34 H-Rogers: Let me look on my calendar. Bear with me one moment.
35

36 Baum: That would be the 22nd.
37

38 H-Rogers: Thank you.
39

40 Baum: You're welcome.
41

42 Gordon: Okay, thank you. Thank you. All right then can I get a motion to postpone
43 these items till the March 22nd Planning and Zoning meeting?
44

45 Baum: Mr. Gordon. What exactly are we postponing?
46

1 Gordon: I'm sorry items 5.1, 5.2, and 5.3. All right can I get a motion ... All right
2 Becky? Can I get a motion please?
3
4 Kaiser: Can we briefly clarify which three items? You said 5.1, 5.2, and then ...
5 I'm looking at I guess an old agenda that would be ...
6
7 Gordon: All right but there's been an amended agenda. So it would be 5.3. 5.1,
8 5.2, and 5.3.
9
10 Kaiser: I'll make a motion to postpone items 5.1, 5.2, 5.3 until the meeting March
11 22nd.
12
13 Gordon: Yes. I need a second please.
14
15 Guerrero: I'll second it.
16
17 Baum: Board Member Guerrero.
18
19 Guerrero: Yes.
20
21 Baum: Board Member Vega.
22
23 Vega: Yes.
24
25 Baum: Board Member Smith.
26
27 Smith: Yes.
28
29 Baum: Board Member Kaiser.
30
31 Kaiser: Yes.
32
33 Baum: Chair Gordon.
34
35 Gordon: Yes.
36
37 Baum: Thank you.

38
39 **6. CONSENT AGENDA**

40
41 **8.1 2225 Griggs Avenue Zone Change:** A proposed zone change request
42 from R-1a (Single Family Medium Density) to O-2 (Office, Professional-
43 Limited Retail) on a property encompassing 1.33 ± acres. The subject
44 property is located on northeast corner of Griggs Avenue and Walnut
45 Street (2225 E Griggs Ave). The zone change request seeks to increase
46 development of commercial office land use and bring the property into

1 compliance with the 2001 Zoning Code as, amended. Submitted by JAL
2 Properties, Owner. Council District 5 (21ZO0500020)

3
4 Gordon: All right. Then we can move on to the consent agenda. We have one
5 item on the consent agenda. Is there anyone here who wishes to speak
6 on this item? If not, can I get a motion to approve the consent agenda
7 item 6.1/
8

9 Guerrero: I'll make a motion to approve consent agenda.

10
11 Vega I second.

12
13 Baum: Board Member Guerrero.

14
15 Guerrero: Yes.

16
17 Baum: Board Member Vega.

18
19 Vega: Yes.

20
21 Baum: Board Member Smith.

22
23 Smith: Yes.

24
25 Baum: Board Member Kaiser.

26
27 Kaiser: Yes.

28
29 Baum: Chair Gordon.

30
31 Gordon: Yes.

32
33 Baum: Thank you.

34
35 Gordon: All right. Thank you.

36
37 **7. OLD BUSINESS**

38
39 **7.1 Bumble Bee Learning Center Master Plan:** A request for approval of a
40 master plan known as Bumble Bee Learning Center. The master plan
41 proposes the development of one (1) Commercial area with and one (1)
42 multi-family residential area that will be developed in phases and/or
43 through the Alternate Subdivision Summary Process for future commercial
44 and residential uses. The subject properties encompass 5.64 ± acres, is
45 currently zoned R-2 (Multi-Dwelling Low Density) and is located west of

1 Holman Road and north of Bataan Memorial West. Submitted by Souder
2 Miller and Associates, representatives. (21CS0500125)

3
4 Gordon: All right, next we move to old business. There are items 7.1, 7.2, and 7.3,
5 are under old business. What I'd like to do is to discuss but vote
6 separately, on items 7.1 and 7.2. So I need a motion to do that. If we can
7 make a motion to combine 7.1 and 7.2 to discuss them together but we
8 can vote on them separately.

9
10 Vega I make a motion to combine 7.1 and 7.2 and vote on them separately.

11
12 Smith: I second.

13
14 Baum: Board Member Guerrero.

15
16 Guerrero: Yes.

17
18 Baum: Board Member Vega.

19
20 Vega: Yes.

21
22 Baum: Board Member Smith.

23
24 Smith: Yes.

25
26 Baum: Board Member Kaiser.

27
28 Kaiser: Yes.

29
30 Baum: Chair Gordon.

31
32 Gordon: Yes.

33
34 Baum: Thank you.

35
36 Gordon: All right, we have a presentation from staff.

37
38 H-Rogers: Katherine Harrison Rogers with staff. I'm going to go ahead and talk
39 about the Bumble Bee Learning Center master plan and corresponding
40 zone changes. This particular property is vacant and undeveloped. It's
41 about five and a half acres. It's located just west of Holman road and
42 north of Bataan Memorial West, with direct access off of Bataan Memorial
43 West. It's currently zoned R-2.

44
45 Here is a map indicating, it's a little hard to see with that tan, but there's
46 the yellow line surrounding that. It's an odd shape. And that's the parcel
47

1 that we're discussing today. Here's an aerial. It's a little bit more clear
2 about where the parcel lies. What they're proposing is both a master plan
3 and then corresponding zone changes to align with that master plan. 4.12
4 or thereabouts is the acreage that's proposed to be modified from R-2 to
5 C-3. Commercial zoning districts would ultimately front Bataan Memorial
6 West with the multifamily dwelling residential land uses closer to that
7 Holman Road side.

8
9 There are some conditions that have been proposed by the applicant, one
10 of which is new. One is that the uses are limited to the uses specified in
11 attachment number three, and that's specifically for the C-3 properties.
12 You also received a handout this evening indicating what those uses are.
13 Additionally, there are limits to the building heights that require that the
14 buildings can't be higher than 35 feet. This is phased, ultimately, if these
15 are to be approved. This will be developed in individual lots via the
16 alternate summary subdivision process, which is an administrative
17 process. They're proposing no more than three parcels.

18
19 Ultimately during staff review this met the requirements of the Subdivision
20 Code, the Design Standards and the Zoning Code as amended. Just so
21 you have a clear picture of what's going on, the proposed C-3 uses, which
22 are those high intensity commercial uses, would be located essentially in
23 this area. And then the existing R-2 would remain, that's the multifamily
24 uses in this area.

25
26 Staff did send out public notice and there were also some other methods
27 of public notice that occurred during this process. Notice was sent to
28 surrounding properties prior to the P&Z meeting of December, this was
29 heard before. And then of course of this meeting tonight. Early
30 notification was also sent by the applicant. And I'll let the applicant speak
31 to what occurred at that meeting if you would like input regarding that.
32 And City staff did receive input from the public via phone as well as e-mail,
33 speaking about any future commercial development, and ultimately any
34 nuisances or impacts that could occur as part of that. I would like to point
35 out that the DRC, the Development Review Committee, also did review
36 this plan December 8, 2021, specifically, the master plan, not necessarily
37 the zoning, and that was recommended for approval.

38
39 I do want to speak to what occurred during the December 28, 2021 P&Z.
40 meeting. During that time, there was a lot of input both from the
41 Commission as well as from the public. Ultimately, some of the biggest
42 Commission concerns were in regard to access easements leading to any
43 future lots. And then the lack of the details in terms of site development.
44 There was an interest in really seeing sort of the fine details. And I'm
45 going to speak a little bit to where we are in the process and why perhaps
46 those details aren't provided. The public also spoke at length regarding

1 their concerns about increase in traffic, the potential for increased crime,
2 building heights being too high for the area, issues regarding solid waste
3 pickup, and ultimately nuisances that could come along with that.
4 Concerns about new lighting that may be problematic, noise, land values,
5 and then buffering. There were a couple of other comments, of course,
6 but those were the highlights.

7
8 Some of the modifications that came about as part of that were to the
9 master plan in particular, and as well as a proposed condition. Hearing
10 that there were some concerns about maybe having some buildings that
11 were too large, blocking views, things of that nature, the applicant did
12 propose a condition upon themselves to limit heights to 35 feet. That
13 would be in keeping with the same height limits that all of the other
14 surrounding properties currently have. Additionally, there was some
15 added language on the master plan regarding both internal and external
16 access, as well as some detailed information regarding the traffic
17 assumptions at that location.

18
19 I do want to speak a little bit about the development process and kind of
20 where we are or where the applicant is in terms of the process right now.
21 We're just at the beginning of the process. The applicant is essentially
22 here, master plan and zoning. There are a lot more steps that lead to
23 those specific site details that I know people had a lot of questions about
24 which is way over here at the very, very end when building permits
25 ultimately come in for site specific development. And so I did want to
26 outline what we're considering tonight are only the master plan and the
27 zoning and not site specific development, just because of where we are in
28 the process. And we're not quite at that stage in terms of having either the
29 engineering or the architecture available to view.

30
31 Ultimately, master plans are really intended to be conceptual. Basically,
32 could what's being proposed work at this location, would it work. And then
33 zoning of course establishes a range of uses and the standards that go
34 along with that. And ultimately, what we need to ask ourselves are the
35 range of uses appropriate at this location based on Elevate Las Cruces,
36 adjacent roadway classifications, the character of the area, as well as
37 other considerations. Some other things that I do want to point out is
38 again site specific development comes at the end of the process. And
39 right now they can't even design the site without having those established
40 regulations from which to design from.

41
42 Staff, of course, is not the final authority. We're just a recommending
43 entity. P&Z is the final authority on the master plan. And ultimately you're
44 a recommending body to City Council for the rezoning. The City Council
45 will determine whether or not the rezoning is appropriate at this location.
46 I'm requesting, and as should happen because these are two separate

1 projects, that individual motions happen for each proposal. We are
2 recommending approval of the master plan and then approval with
3 conditions for the zone change.
4

5 Of course, staff outlined those findings in the staff report and they're listed
6 here as well. And then again, some of the conditions have to do with the
7 land uses being limited. You all received a handout in regard to that, as I
8 understand it in speaking with the applicant's representative, those have
9 not been changed from what's in your packet. They're just reiterating what
10 uses are allowed and what's not allowed. And that the building heights be
11 limited to no higher than 35 feet.
12

13 At this point, you have some options, you can vote to approve, you can
14 vote to deny, yes with conditions, or to table. Denial requires alternate
15 findings that support that denial to be articulated by the Commission. And
16 of course, we do have the applicant here to talk about the details and
17 maybe answer any questions that you had or any concerns that were
18 brought up from the last meeting. They do have a presentation ready and
19 as I understand it there are several members of the public that also have
20 additional concerns or questions that would be available to speak as well.
21 So with that, I'm happy to answer any questions or turn it over to the
22 applicant.
23

24 Gordon: I guess we'd like to hear from the applicant. And it's not necessary to
25 state your name, it's Mr. Kirk Clifton, but you should for the record
26

27 Clifton: Kirk Clifton, AICP, Souder Miller and Associates.
28

29 Gordon: Okay. I'd to swear you in. You know the game. Do you swear and affirm
30 that the testimony you're about to give is the truth and nothing but the truth
31 under penalty of law?
32

33 Clifton: I do.
34

35 Gordon: Thank you,
36

37 Clifton: Thank you. Okay, once again my name is Kirk Clifton. I represent the
38 applicant. I'm with Souder, Miller and Associates. And I'm here to
39 hopefully guide us through the zone change and master plan process. It's
40 a pleasure to be before you on this side of the fence. It's been a while
41 Commissioner Gordon and staff, nice to see you once again as well. So
42 I'll try not to regurgitate too much of what's already been discussed. But I
43 would like to point out there are some things for the record that should be
44 noted.
45

1 The property is currently zoned R-2. The applicant has agreed that the
2 proposed C-3 parcel will have a maximum allowed height of 35 feet. C-3
3 typically allows up to 60 feet in height. And the proposed zoning of C-3
4 commercial high density on the parcel fronting Bataan Memorial only. The
5 R-2 piece remains as it was presented during the previous hearing. And
6 that is in this general vicinity. And as you can see, neither one of these
7 parcels have any access to Holman Road.
8

9 Project aerial. Here's a proposed master plan. As noted, this actually
10 shows the demarcation between the R-2 and the C-3 commercial use for
11 the master plan. I won't go through the purpose of a master plan but as
12 you know as a commission, master plan does occur when there are
13 multiple land uses involved or there could be potentially an alternate
14 summary subdivision process utilized on the commercial property as well.
15 In terms of zoning it is currently R-2. And again, the C-3 piece strictly
16 fronts on Bataan Memorial with R-2 behind it. Through the process with
17 staff and subsequent building permit submittals, an access agreement will
18 be established as noted on the master plan. The R-2 piece will have
19 access off Bataan Memorial West and not Holman Road, as you can see
20 there is no direct access through the neighborhood or to Holman Road.
21

22 Area traffic was briefly discussed as I read through the minutes and was
23 briefed on the previous meeting. It should be noted that Bataan Memorial
24 West is currently designated on the Mesilla Valley MPO Thoroughfare
25 Plan as a minor arterial. As such, the February 2022 traffic count data
26 shows a daily traffic volume on Bataan Memorial West of 1,789 vehicles
27 per day. The Highway Capacity Manual, which is essentially the bible of
28 all traffic engineering, indicates that this two lane roadway will carry
29 40,800 vehicles per day and 1,700 vehicles per hour. And I just kind of
30 want to you know lay out the transportation infrastructure that currently
31 exists as is. The access will be granted, permitted through the New
32 Mexico Department of Transportation to Bataan Memorial West, and the
33 traffic generated from the proposed master planned area will have no
34 impact on Holman traffic as previously stated. Access will solely be from
35 Bataan Memorial West, essentially a right in/right out.
36

37 I won't go through each of these, but these are the uses that have been
38 stricken from the commercial C-3 high intensity. I don't know staff do you
39 want me to read through these? I hope not. Thank you. I think the
40 audience thanks you as well. But there are several pages, it's the entire
41 list found within the zoning ordinance. So as zoned, as you're all aware
42 this is R-2. And as it stands today you could put what would equate to a
43 three story apartment complex, up to 35 feet in height. And on the C-3
44 piece that I'm talking about specifically that we're requesting the zone
45 change on, and as part of the master plan, you could get up to 62
46 apartment units in that facility.

1
2 And I know there were some concerns with setbacks and buffering, and I'd
3 like to just briefly talk about the R-2 setbacks for these apartment
4 structures. Under R-2 zoning you can get 15 dwelling units per acre.
5 That's a 20 foot front setback, seven foot rear, and a seven foot side, 35
6 foot maximum height. So that's as it stands today. And what we're
7 proposing on the piece fronting Bataan Memorial West is the C-3. And
8 what we do know today is that one of the uses that's going to be going on
9 there is an early childhood education facility called Bumble Bee Learning
10 Center. And this Learning Center serves as a pre-K and up facility for
11 children. And you know I can speak for myself being a parent of children
12 in the Las Cruces public school system, and having just gone through the
13 COVID situation, you know now more than ever we could really use a
14 facility like this. You know and I would ask you to consider the positives in
15 this application. And you know again we're not here to talk about site
16 design, site development, that comes later on in the process as Katherine
17 pointed out in her presentation as well. This is strictly about the zone
18 change and the use of the C-3 condition with the stricken uses and a
19 reduced height of 35 feet. And as our traffic experts have determined,
20 there are no significant impacts, there will be no traffic generated on to or
21 from Holman. The site will eventually you know essentially capture traffic,
22 maybe coming from the neighborhoods off Holman going into town, and
23 that's it. So with that said, I'd be prepared to answer any questions the
24 commission may have, or staff needs any additional information.

25
26 Gordon: All right. Thank you. Anybody from the Commission have any questions?
27 Go ahead.

28
29 Kaiser: I have a couple of questions. But I appreciate some of the clarity around
30 what would happen if there wasn't a zone change here. I was hoping if
31 either yourself or staff could answer the question about the access to the
32 remaining R-2 parcel. Reading through the staff report and the minutes
33 from when this appeared back in December, it sounded like there was a
34 requirement to have two forms of access to that remaining R-2, which
35 would require some sort of access easement across a private parcel to I
36 presume Holman Road. I was wondering if anyone could sort of speak to
37 that component and how that plays into this possible zone change.

38
39 H-Rogers: Members of the Commission, Commissioner Kaiser. I would like to speak
40 to that. Absolutely provide some clarification perhaps. I think during the
41 discussion one of the topics was, well how are they going to access. And
42 a number of options were laid out there. Well, most likely they would go
43 through the existing property with an easement established at the time of
44 subdivision to access that R-2. Another possibility could have been going
45 through the private property, but that's less likely because they would have
46 to negotiate with a private property owner to access through that to access

1 Holman Road. The likely scenario, and as was indicated by Mr. Clifton
2 here, was that they would be accessing through their existing property
3 from Bataan, utilizing an access easement ultimately established at the
4 time of subdivision.

5
6 Kaiser: Thank you for that. Another question about the uses that are being
7 proposed here. How exactly would that work? It seems like we're getting
8 into kind of an overlay zone territory here as far as if this site were to be
9 sold at a later point, how would the limited uses carry over? And how
10 would they play out for the I guess in perpetuity?

11
12 H-Rogers: Sure, I'm happy to answer that as well. This is not an uncommon practice
13 in the City of Las Cruces, where a developer or the Commission or even
14 City Council deems certain uses undesirable for adjacent neighborhoods
15 or generally the location being discussed. And what happens is those
16 become an exhibit as part of the ordinance and they're tied to that zoning
17 in perpetuity.

18
19 Kaiser: Thank you. I think my last question for the moment is, there's no question
20 this is a tough site to develop. But I think to sit here and say that there are
21 no impacts at all that would come as a result of the zone change, I don't
22 think it's necessarily a true statement. One is, across this country we're in
23 a desperate need of housing. So to take away potentially 62 units on this
24 parcel and have, I don't know one or two businesses including a childcare
25 center, that has almost no relation to the neighborhood behind it, because
26 of the access issues that we've just talked about. You are going to have
27 impacts. You are going to have traffic impacts. If someone wanted to,
28 from the neighborhood send their kids to this daycare center, they have no
29 choice but to drive, there's no pedestrian access. There's no other way to
30 get to the site safely. And I just want to kind of bring that up in that you
31 know there are impacts here. And I'm not sure if the applicant has
32 considered the types of uses and how they would service this particular
33 neighborhood. I guess that's just more of a comment than a question.

34
35 Clifton: Thank you Mr. Chair, Commissioners Kaiser. I appreciate your
36 comments. And really sure there's going to be some impacts, but they're
37 negligible. And as I demonstrated with the highway capacity as built
38 today, those impacts would not be filled. It's well below capacity. And
39 quite frankly you know most working class folks that live in the area that
40 would be utilizing a facility like this probably won't be walking, they'll
41 probably be driving on their way to work to drop their student off. So you
42 know I look at it from more of a global land use perspective and what's in
43 the area. And sure, yes we are lacking in some areas, some residential,
44 but there is quantifiable justification for mixed use development. And in
45 essence that could potentially reduce traffic patterns in other parts of the
46 City, where there could be an influx of people dropping their children off.

1 So this is you know paired up with that live/work/play type situation. And
2 as you've seen there's a sea of residential out there. And I can't think of a
3 better use than a childcare, early learning child facility such as this.
4
5 Kaiser: I certainly agree with the comment that this is a much needed service. But
6 I think there's questions about whether or not this is the right location, at
7 least in my mind.
8
9 Clifton: Okay. Thank you.
10
11 Gordon: Anyone else? I have one question. The application is titled a learning
12 center. And my concern, and I asked at the last meeting back in
13 December as to whether or not this is going to be a care center or a
14 learning center. I keep hearing two different stories. If it's going to be a
15 learning center, at what age are they going to start bringing in children,
16 four or five years old, three years old. I mean they're not going to bring in
17 a baby that's one year old and try to educate it. Or is it going to be a
18 daycare center and an education. Could send somebody please give me
19 a definitive answer as to what it is, because this is titled Bumble Bee
20 Learning Center.
21
22 Clifton: It is indeed, Mr. Chair, Members of the Commission. It is indeed a
23 learning center for children that are pre-K and slightly younger. What I
24 would envision it as, they have these facilities in other parts of the region.
25 But the Las Cruces Public Schools has a program called DD preschool
26 and that begins taking in students at age three. And although they're
27 young it's still an educational facility. So there's still a learning aspect of
28 them there. It's not just drop your kid off, we're going to babysit him, come
29 pick them up, you know when you're done working. It will have an
30 education component, and that's the core of the business is learning. It
31 might be younger students, but there'll be learning while they're there. It's
32 just it's not just a daycare facility.
33
34 Gordon: Okay. And just one other item. I have a question. If you can go back to
35 the map of the R-2 and C-3. Just to show that ... not that.
36
37 Clifton: The staffs map?
38
39 Gordon: No, just the, where it shows the property. That's it right there is fine. It
40 was stated that there's going to be some kind of an easement for people
41 to get from the Bataan Memorial to get to, we assume they're going to be
42 some kind of residences in R-2. And what kind of an easement? It just
43 seems to me that somebody is just going to drive up through C-3 and
44 make a right turn and go into R-2. I mean it's all one property.
45

1 Clifton: Yes, Mr. Chair, Members of the Commission. That is accurate. And you
2 know in working with commercial development for a number of years now,
3 it's actually quite common to have a shared access agreement with the
4 abutting parcel. So essentially, this will be an approved access by the City
5 of Las Cruces which will also include the Las Cruces Fire Department, that
6 will provide reasonable access, two-way access to the R-2 site for medium
7 Density multifamily housing. So that'll be established with the platting.
8
9 Gordon: I understand that.
10
11 Clifton: We'll show that on there.
12
13 Gordon: That's fine. All right. That's all I have. Thank you very much
14
15 Clifton: And real quick if I could, the actual applicant is here that could tell you a
16 little more about the facility if you'd like to hear it.
17
18 Gordon: Absolutely. We'd love to.
19
20 Clifton: Thank you.
21
22 Lira: Good evening Commissioners and Chairmen. Am I going to be starting
23 or? My name is Daisy Lira. Daisy Lira.
24
25 Gordon: Okay I have to swear you in please. Do you swear or affirm that the
26 testimony you're about to give is the truth and nothing but the truth under
27 penalty of law?
28
29 Lira: I do. Yes.
30
31 Gordon: Okay. Could you please speak a little louder into microphone so we can
32 hear you?
33
34 Lira: Yes. Okay so the question was asked, if we are a learning center or
35 childcare or daycare. We are learning center. Education starts in the
36 womb. So we do work with parents, even when they're pregnant with
37 moms, we give them the tools so that they could get their or take their
38 pregnancy to a healthy pregnancy throughout. We do serve children ages
39 six weeks to 12 years old. And so we do serve children that are babies,
40 and that's when they are learning the most. So from zero to five years old,
41 that's when a child learns the most and they're at their full potential. And
42 so our mission at the Bumble Bee Learning Center is in collaboration with
43 our parents and our community. It is to provide children with quality
44 childcare, and learning experience while providing excellent education and
45 a healthy and safe learning environment where children are prepared with
46 critical skills, developmental and social, creative and emotional, physical

1 and intellectual skills to reach their full potential. So learning starts at the
2 womb. And we do you know take care of our families, we take care of our
3 children. And I pride myself to be one of the best learning centers in New
4 Mexico. Yes. Did that answer your question Chair?

5
6 Gordon: All right. Thank you. Does anybody have any questions? All right, thank
7 you.

8
9 Lira: Thank you.

10
11 Gordon: All right, then we can go to the public. Is there anybody here this evening
12 who wishes to talk on this? Just please raise your hand. Just one person.
13 All right sir would you ... two people. All right. We'll start the gentleman in
14 the back. All right, come forward. That's you sir. Yes. Yes, I gave him
15 three minutes. We'll allow you to speak for three minutes. Just please
16 state your name and let me swear you in please.

17
18 Bulla: Yes sir. John Bulla.

19
20 Gordon: Okay. Do you swear or affirm that the testimony you're about to give is
21 the truth and nothing but the truth under penalty of law?

22
23 Bulla: Yes sir.

24
25 Gordon: Go ahead. Thank you.

26
27 Bulla: Thank you. Boy, where to start? The comment of no impact of Holman
28 Road traffic, I can't believe that would even be stated. That's just so
29 ridiculous. I have a photo here because as I had commented in
30 December about traffic, this is coming off of US 70 heading north on
31 Holman where the two elementary schools are located. Okay. So if
32 someone's coming east on 70 going to go to the daycare center, they
33 have to come around and do this, I'm from the Midwest, Michigan left, to
34 get into this daycare center. How are you going to deal with that kind of
35 traffic on top of what we already have? How can you say there's no
36 impact? They have obviously not been out there to see this type of traffic.
37 Shame on them. Shame on them.

38
39 So at the December meeting it was suggested and agreed the developer
40 to meet with the residents to discuss concerns and objections. That has
41 never happened. There is a daycare center less than four miles on the
42 north side of US 70. Wouldn't it be more beneficial to build a daycare
43 center/learning center, however you want to phrase it, on the south side of
44 US 70 as opposed to the north side? There's also was proposed and
45 again as a resident of that area, I have not been informed of any changes
46 to the master plan, any changes to what's coming in? What's going to be

1 put on these parcels? So the question of, brought up in December was a
2 self-storage facility. Well, there's one that's less than two miles away from
3 this proposed area already. And they're already expanding. So why do
4 we need another.

5
6 It was referred to a number of times in the December meeting about
7 Elevate Las Cruces and that plan that's been put in place and everything
8 that was put into developing that plan. So as per the approved final
9 document January 30, 2020, less than, or just over two years ago, it
10 shows and states the following, figure 3.4 the proposed land areas to be
11 used as a suburban neighborhood, definition suburban neighborhood by
12 the state or by the plan, low to moderate density residential land use,
13 predominant land use is single-family detached dwelling, but limited areas
14 may be developed for multifamily dwellings. And then also on figure 3.2
15 growth forecast, there's going to be an added 38,350 new residents
16 between 2018 and 2045, which equals 15,350 new households with an
17 additional 16,100 new housing units. All this on a report that's barely two
18 years old and already being asked to change to research and discovers.
19 What designated commercial properties now are going to be rezoned to
20 residential to accommodate the houses that we're losing by changing this
21 zone? And last but not least, I know I'm running a little bit over, very next
22 exit there's commercial property already for sale. It's already zoned. So
23 why are you coming to us when you don't even have to go two miles, it's
24 less than a mile away, land for sale already zoned commercial. Why
25 bother us? Thank you for your time.

26
27 Gordon: Thank you. In the first row. Please state your name, please.

28
29 Garcia: Crystal Garcia.

30
31 Gordon: All right, let me swear you in. Do you swear or affirm that the testimony
32 you're about to give is the truth and nothing but the truth under penalty of
33 law?

34
35 Garcia: Yes.

36
37 Gordon: Thank you. Go ahead. Three minutes.

38
39 Garcia: All right. Thank you for the opportunity to speak Commissioners. My
40 name, like I said is Crystal Garcia. I'm a local realtor here in the City. And
41 I actually live really close to the subject property. And I just simply wanted
42 to express my support for the rezoning of this parcel, in particular for the
43 C-3 zoning change that the Learning Center is seeking. As a realtor I
44 have seen more and more younger families with small children pour into
45 our City, and in particular up Highway 70, all the way up to NASA exit.
46 Although I know a lot of that is county.

1
2 There are two reasons why I'm in favor for this change. One is due to the
3 fact that the State of New Mexico is ranked dead last in public school
4 education. And early education centers like this can come and provide the
5 children in our communities a chance to improve their academics by
6 starting them early in their education, then I don't see why anyone
7 wouldn't want that. And then two, simply is to accommodate the
8 population growth, as was just stated. As cities grow the more land is
9 developed, yes, especially of highway 70. We're going to need more
10 amenities and I think this is going to help that cause. And then also last, I
11 believe that this development will help just that and will also help
12 complement the planned Elevate Las Cruces Comprehensive Plan that
13 you guys have. And that's all I have for tonight. Just wanted to show my
14 support for that development. And thank you again for letting me speak.
15 Thank you.

16
17 Gordon: All right. Thank you. Does the applicant wish to respond to any of these
18 comments?

19
20 Clifton: Thank you Mr. Chair, Members of the Commission. The only statement I'd
21 like to make at this time is that there will not be any storage units, that's
22 not even a use being considered tonight. As I mentioned, we discussed
23 the C-3 piece and the R-2 will remain R-2 as zoned for those permitted
24 uses.

25
26 Gordon: Is there some reason that I know we discussed at the December meeting
27 that there was supposed to be an attempt by the applicant to meet with
28 the community? And apparently that has not been done. Can anyone
29 answer to that? I think that it would have been nice to have had some
30 input from them at some kind of a meeting.

31
32 Clifton: Mr. Chair, Members of the Commission. My understanding is that there
33 was correspondence with the neighborhood through e-mail.

34
35 PEOPLE IN THE AUDIENCE SHOUTING OUT.

36
37 Gordon: Excuse me please. If you're going to speak, would you please state your
38 name and let me swear you in.

39
40 Johnson: My name is Michael Johnson.

41
42 Gordon: All right. Do you swear or affirm that the testimony you're about to give is
43 the truth and nothing but the truth under penalty of law?

44
45 Johnson: I do.

46

1 Gordon: Thank you. Go ahead.

2
3 Johnson: Early on in the process, we sent e-mails as part of the early notification
4 process to the residents. At that time, we had a proposed C-3 use on the
5 entire property that we're discussing today, the 5.1 acres. As a result of
6 the feedback we received from the neighborhood at that time, we've heard
7 discussion, the R-2 zoning was proposed to be a storage unit facility.
8 Based on the feedback we got from the neighborhood we received, I think
9 they're part of your packet, five or six e-mails, we changed that. We
10 removed the self-storage units and just left that as an R-2 zoning. And
11 that was a direct result of the feedback we received from the
12 neighborhood at that time. So we have just come forward to continue to
13 have the property that's fronting on Bataan as a C-3 zoning. And then we
14 would leave the back parcel as currently exists. So that's in response to
15 your question, Mr. Chairman.

16
17 One other comment I would like to make. My name is Michael Johnson. I
18 was a traffic engineer for the City of Las Cruces from 1984 to 2000. And
19 then I was in charge of traffic from 2006 to 2011. So I'm very familiar with
20 traffic in the City of Las Cruces. I'm very familiar with how it acts, how it's
21 going to respond. And those comments regarding traffic, maybe we
22 shouldn't have made an absolute statement that will have no impact, but
23 the impact that these residents or this business will have on the school
24 traffic of the elementary schools on Holman Road is very minimal at the
25 best. So I would like to put that on the record. And just so we are talking
26 that way. Thank you sir.

27
28 Gordon: All right. Thank you. Just let me think for a minute. I realize that
29 approving the master plan doesn't give us any information as to what's
30 going to go on this property. It might help us in thinking about what the
31 zoning change will mean. But I think at this point is there, I will go back to
32 the audience again. Is there anyone else who'd like to make a comment
33 now considering the fact that what was just said? All right. Well let's start
34 in the first row. This lady. I will give you just a couple of minutes to
35 respond to his comment. Be careful. Somebody helper her. Can you
36 please state your name?

37
38 Main: My name is Carol Main.

39
40 Gordon: All right. Let me swear you in. Do you swear or affirm that the testimony
41 you're about to give is the truth and nothing but the truth under penalty of
42 law?

43
44 Main: I do.

45
46 Gordon: Okay. Go ahead, ma'am. Two minutes.

1
2 Main: Okay. Yes. it was our understanding, as I believe was yours, we were
3 supposed to have a communication since the December meeting. That
4 has not happened. They did not address that. Yes we responded back
5 after we got the e-mail in August for it. And we talked about it at the
6 December meeting, but there has been no further communication since
7 December. That's the point. We don't know about all these changes until
8 he said it right now. Nobody told us anything. That's all I got to say.
9
10 Gordon: All right. Thank you. Someone else? Ma'am. Please state your name,
11
12 Ambriz: Eileen Ambriz.
13
14 Gordon: All right. Let me swear you in please. Do you swear or affirm the
15 testimony you're about to give us the truth and nothing but the truth under
16 penalty of law?
17
18 Ambriz: Yes.
19
20 Gordon: Go ahead. Two minutes.
21
22 Ambriz: One of my concerns is, once this is, if this rezoning happens, and these
23 individuals decide, oh we don't want to go forward with this Learning
24 Center we want to sell this property. Even though it has the 35 foot
25 implementation or whatever it is that you called it, they could go in and
26 easily put something else in there rather than a learning center, is that
27 correct?
28
29 Gordon: I believe so that they can do that. They have the right to sell the property.
30
31 Ambriz: Once it's rezoned. And that's a concern as well. With the property values
32 going up, commercial property, you know all properties, maybe be
33 beneficial to not do a daycare or do a learning center and we're going to
34 sell this and then something else come in, like Family Dollar or something
35 that we really don't need there.
36
37 Gordon: All right. But the problem at the moment, however, is that they're very
38 specific in what they're talking about on a property that is C-3 that they are
39 going to put in a learning center. I also believe that they talked back in
40 December that there was also going to be a couple of small businesses
41 attached to it. I don't really remember being very specific. But at this point
42 we don't know. But they're saying that that's what they're going to do, but
43 they do have the right to sell that property.
44
45 Ambriz: That's a concern that we have too.
46

1 Gordon: We don't know. I mean we have to go on what is being presented to us
2 this evening.
3

4 Ambriz: Right. But that's always a possibility. That's why the commercial zoning
5 ...
6
7

8 Gordon: It's always a possibility.
9

10 Ambriz: Is scary. It could happen. That's a concern.
11

12 Gordon: Well thank you. I understand your feelings. Does the gentlemen want to
13 make another comment? But I'll only give you two minutes this time.
14 Since you've already been sworn in, just repeat your name please.
15

16 Bulla: John Bulla. Out of curiosity, as far as the Learning Center is concerned,
17 how many students, children do you intend to have at this location?
18

19 AUDIENCE MEMBER SPEAKING, NOT AT THE MICROPHONE.
20

21 Bulla: So 7000 square foot building.
22

23 Gordon: Unfortunately, her answer is inaudible to us and to our recording person.
24 If somebody would like to just respond to that.
25

26 Lira: Okay, so we currently have facilities, I currently have four facilities, and all
27 my facilities are under 100 children. There's two facilities that are 50 and
28 the other two are 100. So it's under 100. We are a five star center. We
29 do strive to be the best high quality early learning center that you could
30 find in the State of New Mexico. And like I said, we have been since 2007
31 we've been doing this for a lot of lot of years. And that's just my biggest,
32 you know that's my passion to do. And I wouldn't sell it. I really wouldn't
33 sell it. I've been working you know for this for a lot of years and it's a
34 dream of mine. So I just want to continue to grow. And I really don't think
35 that there shouldn't be anything to worry about. I understand. And I
36 understand that ...
37

38 Gordon: Please talk into the microphone.
39

40 Lira: I understand. Everybody's concern. But yes, it's really, like I said it's a
41 high quality learning center. In regards to the schools, I know that you
42 mentioned the parents going in. This would alleviate actually traffic
43 because we have two vans, or depending on how many right, we have the
44 vans and we get all the children. So the parents go after six to pick them
45 up. And so would alleviate traffic from the schools at three, four, when
46 they get out.

1
2 Gordon: Is it possible that you can just tell me, is that the only thing that's going to
3 be on this piece of property is just the learning center? Excuse me sir.
4
5 Bulla: I'm sorry.
6
7 Lira: Well, no. My vision is for us to have the Learning Center. The other ones
8 would be, I don't know if you've heard of third party intervention specialists
9 so that they could help the children and the families. So Aprendamos,
10 Tresco, that's what I would want to see. So that the children that are in my
11 care, while they're in my care, they're able to get their apiece right next to
12 them. So we could just kind of make it a flow like more of a, I wouldn't
13 want anything else other than something that would help the children and
14 would work hand in hand with us.
15
16 Gordon: All right. Thank you. I'd like to end this discussion now.
17
18 Bulla: I have more if I may.
19
20 Gordon: Just one item and that's it.
21
22 Bulla: Okay. Also in December it was discussed that there would be an
23 easement between the building and the residences, which I am a member,
24 I am a resident that would be backed up against this property. It was
25 stated 15 feet. I'm curious, you got powerlines, does that 15 foot include
26 the eight foot easement for the power lines or is that going to be on top of,
27 so it's going to actually going to be 23 feet? And along those lines, why is
28 every other commercial property along that frontage road 40 feet away
29 from any residents? Thank you.
30
31 Gordon: All right then, I'd like to close this discussion. We have another
32 gentleman. All right sir. Are you going to say something other than what's
33 already been said or you just agree what has been said? Be careful.
34 Please state your name.
35
36 Breitag: My name is Brian Breitag
37
38 Gordon: Please speak into the microphone.
39
40 Breitag: I'm usually not accused of not speaking loud enough. So my name is
41 Brian Breitag.
42
43 Gordon: All right, let me swear you in. Do you swear or affirm that the testimony
44 you're about to give is the truth and nothing but the truth under penalty of
45 law?
46

1 Breitag: I do.
2
3 Gordon: All right. Go ahead. Two minutes.
4
5 Breitag: Yes. It won't take that long if I'm lucky. I still didn't get an answer. Is it 50
6 or is it 100 students?
7
8 Gordon: This is not a point for cross discussion. Would you please address the
9 Commission? And if necessary ...
10
11 Breitag: I didn't get an answer.
12
13 Gordon: If necessary, we'll get an answer.
14
15 Breitag: Okay. Thank you. Also, there was a list of non-uses that Mr. Clifton had
16 shown.
17
18 Gordon: Please talk into the microphone.
19
20 Breitag: I'm sorry.
21
22 Gordon: This is being recorded so she has to hear what you're saying.
23
24 Breitag: I understand. Sorry. I would like to see the list of what they're not going to
25 put in there. Now, that's something that should have been given to us
26 before this meeting. Doesn't anybody agree? Or does anybody think we
27 shouldn't have had that? Anyway, also, I understand that the lighting, the
28 wall height and all this will be discussed at a later date when we get to
29 planning? Is that correct?
30
31 Gordon: Yes.
32
33 Breitag: Okay, that's all I have.
34
35 Gordon: All right. Thank you. All right, that is the end of discussion. Are there any
36 questions from the Commission? Do you have a question?
37
38 Guerrero: No, not so much a question, but just a comment. You know just first of all
39 I just want to tell everybody that's here, you know we do appreciate you
40 being here. But unfortunately what we're discussing is just a zoning, it's
41 not what the property is going to be used for. So you know just would
42 appreciate moving forward if we can just kind of keep that going. That's it.
43
44 Gordon: All right. If not then I think that we're ready for a vote. So we have to vote
45 on these two particular items 7.1 and 7.2 separately. So I'm going to need
46 a vote on each one. Katherine, you have something to say?

1
2 H-Rogers: Mr. Chair, Members of the Commission. I just do want to remind you that
3 there are some recommended conditions associated with the zoning. So
4 if a motion is made and you are in agreement with those conditions, I
5 would recommend stating them. One being the height limited to 35 feet,
6 and the other limiting the uses to those that were outlined in attachment
7 number three
8
9 Gordon: Okay. And I want to also remind everyone that the zoning change will
10 have to go to the City Council, correct. And in that case, I should also
11 remind everyone who is, if the Commission does vote to approve this
12 zoning change, then you do have the right to appeal before City Council if
13 you object. So then I'm going to need a motion on 7.1
14
15 Guerrero: I'll make a motion to approve item number 7.1, which is a master plan.
16
17 Gordon: I need a second.
18
19 Vega: I second
20
21 Baum: Board Member Guerrero.
22
23 Guerrero: Yes. I approve based on just approving it.
24
25 Baum: Due to City ...
26
27 Guerrero: So I mean do to, first of all I mean it does fit the comprehensive plan, and I
28 mean, I personally believe a daycare probably would benefit the
29 community.
30
31 Baum: Thank you. Board Member Vega.
32
33 Vega: I vote yes, based on staff recommendations and it fits with the Elevate Las
34 Cruces Comprehensive Plan.
35
36 Baum: Board Member Smith.
37
38 Smith: I vote yes, based on staff recommendation and also meets the objective of
39 the master plan
40
41 Baum: Board Member Kaiser.
42
43 Kaiser: Yes, based on staff recommendation.
44
45 Baum: Chair Gordon.
46

1 Gordon: I vote yes, based on my site visit, the discussion this evening, it goes
2 along with Elevate Las Cruces, and our staff recommendations. So I vote
3 yes.

4
5 Baum: Thank you.

6
7 **7.2 Bumble Bee Learning Center Zone Change:** A proposed zone change
8 request from R-2 (Multi-Dwelling Low Density) to R-2 (Multi-Dwelling Low
9 Density) and C-3 (Commercial High Density) on a property encompassing
10 5.64 ± acres and located north of Bataan Memorial West and west of
11 Holman Road. The zone change request is associated with the Bumble
12 Bee Master Plan and seeks to increase development of commercial and
13 residential land uses. Submitted by Souder Miller and Associates,
14 representatives. Council District 5 (21ZO0500020)

15
16 Gordon: Now we need a motion on item 7.2 which is a zoning change. Remember
17 with conditions of the 35 foot height and ... what was the other one?

18
19 H-Rogers: Uses as outlined in attachment number three

20
21 Gordon: Right. Of the lift of attachment number three, right.

22
23 Vega: I make a motion to approve item 7.2 regarding the zone change.

24
25 Smith: I second.

26
27 Baum: Board Member Guerrero.

28
29 Guerrero: I vote yest, based on the same reasons earlier and staff recommendation
30 as well.

31
32 Baum: Board Member Vega.

33
34 Vega: I vote yes, based on the, but to include the conditions outlined by staff,
35 including the height and all of the different land uses that were pointed out
36 in attachment three.

37
38 Baum: Board Member Smith.

39
40 Smith: I vote yes, based on staff recommendation, and also the changes that
41 were included far as the height variants

42
43 Baum: Board Member Kaiser.

44
45 Kaiser: Yes, based on staff recommendation, though I encourage the applicant to
46 look seriously into non-automotive connectivity to the neighborhood.

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Baum: Chair Gordon.

Gordon: Also, again on my site visit, I also vote yes with conditions and it does go with Elevate Las Cruces. In that case, I do vote yes.

Baum: Thank you.

Gordon: So I believe that's five zero. Thank you

7.3 1413 E. Amador Avenue Variance Request: Variance requests to the following development standards to accommodate a proposed outdoor terrace with seating along Amador Avenue:

- a) A 10 auto parking stall variance to the 41 auto parking stalls required;
- b) A ± 15-foot front yard setback variance to the 15-foot setback required; and
- c) A ± 393 square foot landscape area variance to the 3,116 square foot landscape area required.

The property is generally located along the north side of Amador Avenue between Solano Drive and S. Nevarez Street, is ±0.60 acres in size and is zoned C-2 (Commercial – Medium Intensity). Submitted by New Republic Design Co., representatives. Council District 3 (21VO0500113)

Gordon: Okay, now we move on in the agenda to item 7.3, which is the Amador Avenue Variance Request. Mr. Banegas.

Banegas: Commissioner Gordon, Members of the Commission. Vincent Banegas for the record, interim planner. I will be presenting the variance request for 1413 East Amador Avenue. This is in essence the second time it's reached the agenda stage. First time we've gone through this that we'll go through it with great length and detail. But it involves property at 1413 East Amador Avenue. And as I will show you it will include three variance aspects to the request.

It's currently a restaurant use and it has been for some time now. It's roughly 0.6 acres in size. It's currently zoned C-2 which is our commercial medium density zoning district. And was created, at least that lot was created as part of the Las Cruces Park Addition 29 Subdivision. And the structure was constructed in 1976. Since then, obviously as it's become used as the restaurant, Delicias restaurant in place now, there have been some renovation and some expansion projects associated with that over the years. And this would certainly serve as one additional one should it be approved in the manner presented.

1
2 So the zoning map shown here identifies the property in red. It again C-2
3 zoning. East Amador is located here. South Nevada Street located to the
4 east, and then Solano drive at the western location. So you do have
5 existing uses adjacent to it. This small triangular piece right now is
6 vacant, raw land, and then this structure on this eastern property suffered
7 some roof damage and has since been demolished, so it is presently
8 vacant as well. But this is the property in question. You have adjoining
9 zoning further out, single-family residential uses or zoning to the east.
10 And then you got some multifamily low density zoning in the form of R-2
11 over on the west.
12

13 This is an aerial map that shows the property again. You can see that the
14 building that has since been removed sits here. This is a funeral home off
15 to the north. And an existing, I believe it's an auto repair shop directly to
16 the west. And a variety, a mixture of other both residential and
17 commercial uses along East Amador Avenue stretching downtown along
18 the way.
19

20 So the applicant has come forward and indicated that they're wishing to
21 install an outdoor terrace. It would be adjacent to Amador Avenue,
22 approximately 950 square feet in area. And as a result of that, that
23 triggers an expansion of the existing restaurant use so that nonconforming
24 aspects on the property have to be brought into compliance. So what
25 they're having to look at is parking, first of all. With the outdoor terrace
26 being proposed, they are going to be required to provide 41 auto parking
27 stalls on site. They are deficient 10 stalls, and so they can provide the 31.
28 They originally showed 33 but two had to be excluded due to clear sight
29 triangle provisions in the code. So the variance seeks to allow a 10 stall
30 deviation. The front setback along Amador Avenue, there's a 15 foot
31 setback required. Based on the site plan that I'll show you in a little bit it
32 appears as if it gets really close to the full depth, and so it's advertised as
33 the full 15 feet. It may be a little less than that, hence the plus or minus,
34 giving us a little latitude. And then the landscape area, they're deficient
35 based on the expansion they would have to provide an additional 393
36 square feet of landscape area based on calculations as it looks at both
37 what exists and what is proposed. All told you're looking at 3,116 square
38 feet of landscape area required and they're going to be shy by 393 square
39 feet. In talking with the applicant, they are able to meet the quantity
40 aspects in our design standards. There's calculations for landscaping,
41 both in terms of quantity of product installed in the landscape area. So
42 they can meet the quantity calculation requirement. It's just not the area
43 that they can meet at this point in time.
44

45 So the applicant has submitted their request, citing the following
46 justification bullets, if you will. Basically, the flexibility that the terrace
47

1 provides is a substantial benefit to the business because of pandemic
2 related issues. Obviously, there were limitations as to how many people
3 could be within the building and having opportunities outside the building
4 was considered a benefit to the applicant and to the patrons that go to the
5 restaurant. There is also the ability to enhance the patrons dining
6 experience there with the restaurant, by providing an outdoor seating
7 environment. And then also they cite that the area where they are
8 currently located basically have businesses that close up shop right about
9 6:00 p.m., so this gives an opportunity to allow a business that's opened
10 up longer period of time providing some activity to the area.

11
12 This is the existing site plan. This area here is predominantly the largest
13 portion of their landscape area, as they have it shown. You do have some
14 other spots elsewhere on site, but they are much smaller. Your primary
15 access is here, and you have other ingress/egress here at this location.
16 So, just to show you this is the area that the next slide will identify as the
17 area for the proposed terrace. And this is what they provided. You see
18 the terrace boundary here delimited by what will be a rock wall or a wall of
19 some fashion. And you have tables situated with these little squares
20 identified on the terrace area. They do show a ponding area here. As
21 part of the review process, a few things came to light. There is some
22 waterline that is currently encroached upon by the existing building, not to
23 mention what would be proposed. That is a building permit issue and will
24 have to be resolved at that time. I'm just pointing it out, because that was
25 brought up during the review process. There is concern that this ponding
26 area may further disrupt the line, so they're going to have to do something
27 with that, maybe relocate it, but again that too is a building permit issue.

28
29 But this is what they're showing. There's not going to be any physical
30 structure attached to the building. They're going to probably have
31 removable shade canopy that they can pull out and retract. But Fire made
32 it clear in their review that there was not to be anything physically attached
33 to the building, which the applicant is fine with. Here's a few pictures of
34 that area. This is the southern facade of Delicias as it is today. And so
35 you're talking this area in here where the terrace will be. A couple more
36 photos. This is the eastern façade for the most part showing that existing
37 ingress/ egress, and the eastern façade, again ingress/egress here.

38
39 Notice was sent to the surrounding properties. I did receive two phone
40 calls as of today. One was just a general inquiry; they were just simply
41 curious as to what was being requested and asked for clarification.
42 Another was from the property owner of the funeral home indicating that
43 they weren't opposed to what was being requested. They thought it was a
44 wonderful thing that the business was growing in the manner it was
45 growing. But that apparently they had a gentlemen's agreement for some
46 overflow parking, but they weren't, there was nothing formal, nothing

1 written, and they would not be allowing that to continue. So at least from
2 overflow parking from the perspective of the funeral home, that's not an
3 option, but perhaps from the other properties within the vicinity that can be
4 entertained.

5
6 So staff recommendation and findings, the recommendation staff provides
7 is conditional approval. First of all, the setback variance should be limited
8 to just the terrace only not any further encroachment by any part of the
9 building in the future, for instance through an addition. And also that the
10 business owner, make a concerted effort to investigate and if possible
11 enter into a formal shared parking agreement, pursuant to code, to lessen
12 the parking impact. And what the code allows is within 500 feet of the
13 subject property that I showed you, they can enter into said shared
14 parking agreement if feasible, if agreed to by other property owners. The
15 findings are as follows. Basically again we're talking 0.6 acres of land.
16 The business operated with a temporary outdoor seating area, much like
17 what is being proposed. And what I'm told is that there was limited
18 operational issues in terms of access, parking, that kind of thing. The
19 zoning code allows for those shared parking agreements within the 500
20 foot distance criteria. And the front yard setback variance should only be
21 pertaining to the terrace. And no auto parking stall loss results from the
22 placement of the terrace, it's the requirement that the terrace provides in
23 addition to existing uses where that extra parking kicks in. So they're not
24 deleting any parking, it's just it requires additional stalls.

25
26 Many policies also within Elevate Las Cruces Comprehensive Plan lend
27 support to the request. And again no public input was received opposing
28 the request. And also the landscape fauna, the soft scape, can be
29 accommodated within the landscape areas, but the landscape area issue
30 needs to be addressed, and that only represents 12.6% of the required
31 area. And finally, a couple more, the action would not be contrary to
32 Section 38-10 K. It does, in this instance, have the opportunity to provide
33 or spur economic development at both the neighborhood and the Citywide
34 level through the generation of gross receipts tax. And also the variances
35 would help bolster the business operation and allow them to continue to
36 operate on site and thereby provide some retention opportunities.

37
38 So your options this evening Commissioners is to vote "yes" and approve
39 the variances as stipulated, you can vote "no" and deny them. Please
40 keep in mind that denial will require your own findings of fact not
41 presented during staff review. You could vote with conditions, the
42 condition staff proposed was to limit the variance for the front setback to
43 the terrace only, and to also require the applicant to investigate and if
44 feasible enter into a shared parking agreement. And if you agree with
45 those, could you please add those to your motion, please. That concludes

1 staff's presentation. I believe the applicant's representative is in
2 attendance and can answer any further questions you may have.

3
4 Gordon: All right. Thank you. Is there anybody from the Commission who has any
5 questions for Mr. Banegas? Go ahead.

6
7 Guerrero: I do. It's not so much questions, but actual genuine concern. Parking, I
8 mean I've been to Delicias quite a few times, so I'm familiar with the
9 parking situation there. And I didn't know that they kind of gentlemen
10 agreement shared parking with the funeral home behind them, so that's
11 good. And I mean, that's between them. I don't think that's up to us to
12 decide. But you know I mean I think the pandemic really brought a lot of
13 issues as far as you know economics and business survival, blah, blah,
14 blah, but this would you know definitely, I mean hopefully attract more
15 customers for them. But I would just be really concerned about the
16 parking situation. So can we talk maybe just a little bit more about that? I
17 mean I know you said that requirement is 51, but we're lowering it to 41.
18 You know how, I guess how would that affect existing parking and existing
19 traffic in there?

20
21 Banegas: Yes. So the proposed use, in addition to the existing use, after you do the
22 calculation it comes to 41 auto parking stall requirement. On site, even as
23 their proposed layout shows we counted up 31 legal stalls. They showed
24 two more, but those were in clear sight triangles, we had to exclude those.
25 So that does raise a question. You know, there's going to be 10 stalls that
26 aren't available that potentially could be of value in terms of parking
27 considerations for patrons. I think in terms of the definition of the property
28 boundaries, you know how they're laid out, that kind of thing, there's no
29 opportunity to further increase parking on site, so that's why staff proposed
30 the shared parking agreement to help lessen the burden. They wouldn't, I
31 guess they could, but they wouldn't necessarily identify 10 stalls to be
32 used by adjacent you know, from an adjacent property. But maybe they
33 can consider staff parking only or something to limit any potential damage
34 or just you know trash or anything like that. Those were kind of some of
35 the things that the funeral home to the north cited as a concern, but they
36 felt that it wasn't just staff, it was you know patrons in general, that kind of
37 thing. So it really depends on how they word the shared parking
38 agreement between the two, which we become a party to in that we
39 receive that document, and it gets part of the, you know becomes part of
40 the permanent record. But that's really their only option I mean in terms of
41 lessening the impact, lessening the load.

42
43 Gordon: What happens if they don't get it?

44
45 Banegas: Then what you're approving is minus 10 stalls, so 31. Yes.

46

1 Gordon: Is there any way that we can wait to find out if they can get this
2 agreement?
3

4 Banegas: I've talked to the applicant and indicated that that's going to be an issue
5 for us to consider, for them to consider. At this point in time, I think you
6 could certainly approve two of the three, three of the three, one of the
7 three variances without you know the others in tow. But I would
8 recommend taking action either way on the variances as stated, as
9 presented. Keep in mind that the parking agreement is generally an issue
10 again that's left to the building permit process.
11

12 Gordon: So it's apparent that if they don't get this agreement and they go ahead
13 and put in the terrace, that they are going to be stuck with whatever
14 parking that will be left and they will have to bear the fact that potential
15 customers will be turned away because they don't have a place to park.
16

17 Banegas: That's correct, Mr. Chairman.
18

19 Gordon: That's their risk.
20

21 Banegas: That's correct.
22

23 Gordon: So that should not concern us.
24

25 Banegas: Well, it may be a concern, but that's one of the issues that you have to
26 weigh in the voting of that item.
27

28 Gordon: Isn't there a piece of property right next to it that's vacant?
29

30 Banegas: Yes. There's currently, if I could find it.
31

32 Gordon: Just bare ground.
33

34 Banegas: Yes. There's a couple of parcels right now. This one right now, it had a
35 lengthy building, existing building that was torn down, that was the one
36 demolished. So that's an opportunity to check into. And then over here,
37 they're going to have to get a little creative as to how they use that
38 triangular piece, but there is an opportunity to possibly share parking
39 there. We have to look at code allowances to see if parking lots would be
40 an allowed use and they'd have to pave etc., but the possibility is there.
41 And you also, Mr. Chairman, if I may, you also have other properties on
42 the other side, which yes you're talking about pedestrian crossings. That's
43 a concern. But there are other properties that could be considered other
44 than just the vacant ones.
45

1 Gordon: All right. Are there any other questions from Commission? Commissioner
2 Kaiser.

3

4 Kaiser: Thank you Chairman. Just something to consider as we're having this
5 conversation about parking. Cars don't eat at restaurants, people do.
6 There's a lot of parking along East Amador. You've got residents that are
7 fairly adjacent to this parcel. So you know I think one or two fewer parking
8 spots is not going to be a deal breaker here. My question going back to
9 their current operating status, just to clarify they did have outdoor seating
10 or do similar to what's being proposed since sometime in the pandemic.

11

12 Banegas: Mr. Chairman, Commissioner Kaiser. Yes, they had a temporary tent,
13 much like what was seen elsewhere in other restaurant venues, and
14 operated it in a very similar fashion, outdoor seating kind of thing.

15

16 Kaiser: And to our knowledge in the time that they've been operating that, have
17 there been any complaints or issues related to the lack of parking.

18

19 Banegas: Mr. Chairman, Commissioner Kaiser. I'm not aware of any significant
20 operational issues related to traffic or parking.

21

22 Kaiser: Thank you. My last question, going back to the landscaping piece, if you
23 go back to their proposal real quick. So that that proposed ponding area
24 that would be essentially a catchment basin for runoff off the parking lot.
25 Is that correct?

26

27 Banegas: Mr. Chairman, Commissioner Kaiser. That's what they're intending. They
28 were looking at putting a drop inlet somewhere in this vicinity to capture
29 water from the impervious surface here, allowing it to drain through the
30 pipe and into this ponding area. But Utilities concern was that there is a
31 waterline in this general vicinity and that that would not work. In talking
32 with the applicant today, they indicated that that's for illustrative purposes
33 only and that could be resized according to impervious area calculation.
34 So it may not be that big, and if it does change, and we can pull it away
35 from that waterline, it might work. Again a building permit issue. But if it
36 simply does not work, they're going to have to find another area for that
37 ponding.

38

39 Kaiser: Okay. So if I'm reading this correctly, that proposed ponding area as
40 proposed is not counted in the landscaped area. Is that correct?

41

42 Banegas: That is correct.

43

44 Kaiser: So if that ponding area were to become sort of a bioswale rather than just
45 a rock or dirt hole in the ground, could that count towards their landscaped
46 area and maybe put them over the requirement?

1
2 Banegas: Mr. Chairman, Commissioner Kaiser. What we generally allow is some
3 plantings on the upper portion of the pond. And then down in the lower
4 depth since collects all the silt and oils and everything else we don't allow
5 plantings in there.
6
7 Kaiser: Thank you.
8
9 Gordon: Is there anyone else from the Commission wish to speak? Is the applicant
10 here and wish, may add something to this? Please come forward. Would
11 you please state your name and let me swear you in please.
12
13 Ramos: Angel Ramos.
14
15 Gordon: Do you swear or affirm that the testimony you are about to give is the truth
16 and nothing but the truth under penalty of law?
17
18 Ramos: I do.
19
20 Gordon: Please try to speak louder and clearly into the microphone so we can hear
21 you.
22
23 Ramos: Thank you Commissioner. I'm Angel Ramos architect for New Republic
24 Architects. We've been solving small issues in this restaurant for many
25 years. We troubleshoot these technical problems every day of the week.
26 And to dissipate some of the concerns that this particular property has, the
27 owner just acquired the property to the right of it in order to be able to
28 accommodate additional parking. So we're in the process of looking into
29 that. The calculations hasn't been done. The proposed use of the
30 neighboring property has not been defined. But the intent of the owner to
31 satisfied requirements provided by Mr. Banegas are there. And thank you
32 for a nice presentation of our project.
33
34 The ponding area, if need be, can be relocated. The civil engineer has
35 given us options. We have impervious surfaces that will allow for some
36 drainage. We're not obstructing percolation in our new proposed
37 landscaping area. Of course, we're dealing with situation where we're
38 reacting, or the building and the owner are reacting to situations that
39 happened during the pandemic where more space was required to
40 accommodate the same number of people. So some room to expand was
41 required. In some instances there was a need for outdoor parking. And
42 this is much better than having a tent in the parking lot. So I hope that this
43 makes this project being viewed in a more favorable light. I know that
44 timings are not always perfect, but the intent to satisfy everything in the
45 code is there.
46

1 Gordon: Let me just, I just had to clarify something. Mr. Banegas please. A few
2 minutes ago I asked you about the vacant parcels next to this restaurant,
3 that bare ground that's there now. Are you telling me that the applicant
4 has purchased that land, he now owns it? Is that what you said?
5

6 Ramos: Yes sir. I found about that information before coming to this meeting.
7

8 Gordon: So that has not been presented to us, part of the backup. So really the
9 question of parking now is not even going to be an issue of that's what
10 he's going to use the property for. I would assume that he would.
11

12 Banegas: Mr. Chairman. If that is indeed the case, I wasn't aware of that either. But
13 if they're going to include that as part of the overall circulation, overall
14 operation of the restaurant, then that would satisfy parking.
15

16 Gordon: Is the owner of the of the restaurant here?
17

18 Ramos: Yes sir.
19

20 Gordon: Can he address and answer that question?
21

22 Ramos: He mentioned it to me a minute ago before presenting. That's the sole
23 purpose, well that's the purpose, the main purpose of purchasing that
24 property. Parking lots for those that have studied urban planning, it's not a
25 perfect solution. Some parking lots sit vacant and they create the heat
26 island effect and other things. So we're balancing the requirements of the
27 City not overdoing, being mindful of what parking lots are intended to do.
28 And so I think that we covered as best we could every angle in order to
29 make everybody happy for this project.
30

31 Gordon: I myself am not concerned about the fact that I would be willing to grant
32 the reduction in the number of parking spaces. But it also makes it a lot
33 easier for me to make a decision if I know that the piece of property on the
34 side of that existing property that they have is also going to be used for
35 parking. It makes it, we're here to try to help bolster business. It's good
36 for Las Cruces, it's good for the applicant. And I think that there is
37 everything that I would like to do to make sure that we can do that. So if
38 there is that intent of the order to put a parking lot there, then it makes the
39 decision a lot easier on my part.
40

41 Ramos: Yes, sir. On our firm, we deal with the technical sides every day of the
42 week. But the owner and his business, they're service providers for the
43 community. I just waited in that restaurant for a few hours while the time
44 to come to this meeting came. And I was pleasantly surprised because
45 there's people that work there, servers that offered me a glass of water,
46 chips and salsa at no charge. They didn't know who I was. They didn't

1 know that I was the architect. I declined everything and still they brought
2 me water and they are very pleasant. So that's the culture of that
3 company. They're very accommodating. They're looking to satisfy all the
4 requirements of the law, just the timing sometimes are not perfect. But I
5 can tell you for sure that these are people that are always doing the right
6 thing.
7

8 Gordon: Well, I think I can agree with what from what you're saying. But I can't
9 envision any reason to buy that other piece of property other than to put a
10 parking lot there. What are they going to do with it? Build another
11 restaurant? I don't think they would do that, then they would really have a
12 parking problem.
13

14 Ramos: Yes sir.
15

16 Gordon: All right. Is there anybody from the public who would like to speak on
17 this? All right, seeing none. Then Mr. Banegas from staff.
18

19 Banegas: Mr. Chairman. If that is indeed the case, if they've acquired the property
20 to accommodate some additional parking, they would easily be able to
21 accommodate the landscape area as well. So really it narrows it down to
22 the setback.
23

24 Gordon: All right. I have to ask you a question then. Can we make this approval
25 on the condition that the property that has been purchased and will be
26 used as a parking lot? Counsel?
27

28 Cabello: Chair, Commission. Can you please repeat the question?
29

30 Gordon: Can we make our vote based on a condition that if the applicant has
31 purchased that vacant property next to his current ownership of the land
32 that he has now, his parcel, that he will build a parking lot there?
33

34 Cabello: So you want, okay so the condition is that you want to require him that he
35 has to build a parking lot on the new parcel?
36

37 Gordon: Well, I've been told and the Commission has been told that he has
38 purchased that land and I can't see for any reason other than to build a
39 parking lot. I don't know what else he would put there. It would be
40 permission to do that.
41

42 Cabello: At this time I don't think that that parcel is in contention. And I don't think
43 you can make a condition just based off of some other parcel that's not in
44 front of this board.
45

46 Gordon: Well, it has been brought up by the applicant. Katherine.

1
2 H-Rogers: Mr. Chair, Members of the Commission. I would just caution you to tie
3 basically the future of one parcel to another. In this regard, it could create
4 some unintended consequences, especially if the intent was to develop
5 something entirely different, perhaps there may be parking available for
6 this or maybe not, but it's too amorphous at this point in time to tie two
7 individual parcels together in that regard.
8
9 Gordon: All right. Thank you. Then I can only hope that that's what he's going to
10 do. As far as I'm concerned there should be no further discussion. Mr.
11 Banegas, anything else?
12
13 Banegas: Mr. Chairman. I was just checking with Mr. Ramos and one option the
14 Commission can do is to either remove from consideration or simply deny
15 the landscape area, and the variance for the additional parking. That
16 removes the issue from the variance consideration. They're still on the
17 hook through the building permit process to accommodate that. And in
18 talking with Mr. Ramos, the way to solve that problem from the building
19 permit process is to carry it out on the adjacent parcel. So you get out of
20 the legality of dealing with that parcel as part of the condition, and it
21 becomes an issue that has to be resolved, and resolved at the building
22 permit level.
23
24 Gordon: Well personally I think that as it stands I think it would work. I think that
25 they would have to deal with the problem by reducing the number of
26 parking that they have. That if customers come and they have no place to
27 park, they'll leave. If he has bought this property on a site to put in a
28 parking lot, that certainly solves the problem. So as far as I'm concerned,
29 I'd like to just leave it the way it is. And if anybody has any questions or
30 comments from my Commission. All right then I think perhaps we could
31 have a vote. So I need a motion.
32
33 Kaiser: I'd like to make a motion to approve the variance for the parking, the
34 landscape, and the setback. However, I would like to eliminate the
35 condition that the applicant had to seek out a shared parking agreement. I
36 think it's pretty evident in the last, however long during the COVID
37 pandemic, they've gotten along just fine. I don't see any reason why we
38 need to add parking to this section of Amador.
39
40 Vega: I second.
41
42 Gordon: Is that acceptable then? Can we do that? Counsel?
43
44 Cabello: So what exactly is the Board trying to do?
45

1 Kaiser: I would like to make a motion to approve the variance for the parking, the
2 setback, and the landscaping. However, I would like to eliminate the
3 condition that the applicant had to seek out shared parking agreement.
4
5 Cabello: You want to eliminate that condition that he seeks out the, okay that fine.
6
7 Kaiser: That is correct.
8
9 Cabello: That can be done.
10
11 Kaiser: I do not want the applicant to need to go through that.
12
13 Cabello: Okay. That's fine. That is acceptable.
14
15 Gordon: All right in that case we do have a second and we need a vote.
16
17 Baum: Board Member Guerrero.
18
19 Guerrero: Yes, based on site visit. staff recommendation, and the new information
20 we just heard.
21
22 Baum: Board Member Vega.
23
24 Vega: I vote yes, based on staff recommendations, everything that's been
25 shared. Maybe you could add 10 bike racks to find some additional
26 means of getting there.
27
28 Baum: Board Member Smith.
29
30 Smith: I vote yes, based on staff recommendation and on site visit.
31
32 Baum: Board Member Kaiser.
33
34 Kaiser: I vote yes, based on staff recommendation and consistency with Elevate
35 Las Cruces.
36
37 Baum: Chair Gordon.
38
39 Gordon: I vote yes, based on staff findings and staff recommendations. I'm hoping
40 that this will booster their business. I think that everything that they want
41 to do is probably what I'm thinking they will do. And my site visit, and
42 according to Elevate Las Cruces. Again I vote yes. So I think we have a
43 five/zero.
44
45 Baum: Yes. Thank you. Five/zero.
46

1 Gordon: All right. Thank you.

2

3 **8. NEW BUSINESS**

4

5 **8.1 100 S. Church Street Variance Request:** A variance request of ± 109
6 feet to the minimum 300-foot buffer distance required between a cannabis
7 facility and a qualifying school (property line). The subject property is
8 zoned DDC-MS (Downtown Development Code – Main Street), ± 0.35
9 acres in size and is generally located along S. Main Street, between E.
10 Griggs Avenue and W. May Avenue. Submitted by Economic Equilibrium
11 of New Mexico, consultant. Council District 1 (21VO0500126)

12

13 Gordon: All right, now we move to new business, item 8.1, the 100 South Church
14 Street Variance Request. Mr. Banegas, you're going to do that also.

15

16 Banegas: Yes Mr. Chairman. I will be presenting this item. It is a variance request
17 for property located at 100 South Church Street, case number
18 21VO0500126. Current conditions are as follows, the property is currently
19 vacant, used to be a church use. Certainly evident from the Church Street
20 side if you're viewing the property from that location. Otherwise it can be a
21 little bit deceiving as to where it's located. I'll show you a map, an aerial in
22 a minute that kind of proves that point. The property is plus or minus 0.35
23 acres in size. It is zoned DDC-MS, which is our Downtown Development
24 Code, the Main Street zone. It is part of the Casa Linda Acres 460
25 Subdivision. And the structure was originally built, according to assessor
26 records, in 1965.

27

28 So this is the subject property. It is outlined in red here. You do have
29 your Main Street zoning along either side of Main Street. This piece right
30 here is part of the civic plaza so it is a civic zone. And then you have
31 Downtown Designated zoning along these parcels here, which are
32 adjacent to Church Street. And you also have them along here outside
33 the Main Street zoning boundary. So it's a little different from the typical
34 zoning that you see elsewhere in the City, but nonetheless, again Main
35 Street zoning. The difference between Main Street zoning and the
36 Downtown Designation is basically they're using, it still allows mixed use,
37 retail, an assortment of uses, but it utilizes the building layouts and the
38 size compatibility or criteria for buildings that are unique or typical of the
39 urban core. And that's kind of the difference between the two.

40

41 So this is the property shown in the aerial. You can see that the northern
42 half, almost the northern half the property kind of appears as if it's open
43 space if you will. That's kind of where it gets a little deceiving. This is the
44 building footprint that is in question. Further down is the New America
45 School, which is at issue with this variance request. So the variance is
46 necessary because our recent adoption of cannabis related regulations

1 requires facilities that will retail cannabis related products to be 300 feet
2 from where the sale of such product is in terms of the building footprint to
3 the property line of a qualifying school. And in this case qualifying school
4 is pre-K all the way up to 12, anything for adult education, trade schools,
5 that kind of thing is not part of the criteria that they would have to meet a
6 buffer distance for. The New America school as indicated, that is the one
7 that the measurement was taken from. The applicant is HealthNotics,
8 LLC. And it in talking with the applicant's representative and reading their
9 variance letter, it became evident through that communication that the
10 business is in the business of selling health care product. They do a lot of
11 CBD related compounding of products and sale of product. But they also
12 deal with a little bit, it sounded like a little bit, the applicant's representative
13 can certainly clarify that, but they deal with some product that has THC
14 and that is the ingredient that requires us to consider this variance
15 request.

16
17 This is their, not so much justification letter but their letter of intent in terms
18 of the variance. And what I glean from that is obviously they are a
19 business that's seeking to provide quality health care products in this
20 community. And they do reference some job training programs primarily
21 for areas or communities that are low income and otherwise absent of
22 such programs, job training programs, that kind of thing.

23
24 This was the site plan that I was given to show the relationship of the
25 building. Again, you can see the open kind of area here. This is the
26 building in question. And so taking the measurement from the building
27 footprint, they're showing it at the building but the actual demarcation is at
28 the property line. That was where they got the 191.5 feet, I rounded down
29 to afford them a little wiggle room should their measurement be a little bit
30 off. So that's the issue at hand.

31
32 A couple of photos showing the western façade of the property. Kind of
33 one showing from the New America School looking north. And from the
34 subject property looking south. Public notice and input notice was sent to
35 the surrounding properties. And staff received one e-mail of protest to
36 date. I distributed that e-mail, that letter that I received today to you all
37 before the meeting. They oppose the request. It is from the
38 superintendent of the New America School. Generally speaking, you've
39 read it or had a chance to read it, but generally speaking they find that this
40 use could potentially be a significant distraction for their students that
41 attend the school.

42
43 So staff recommendation and findings, staff is recommending approval of
44 the variance request. The findings are that again the acreage is 0.35 five
45 acres, presently vacant. Any allowance of the variance would help
46 facilitate efforts to occupy buildings and retain businesses in the

1 downtown area. The zoning code, although it doesn't allow manufacturing
2 a product, it does allow some limited compounding of product. And so
3 that zone is appropriate for what we discussed, we, being myself and the
4 applicant's representative. Any subsequent building modifications
5 pursuant to the development code or to their business practice will require
6 proper permits. And all such work will be made compliant at that time.
7 And there are many policies and actions within Elevate Las Cruces that
8 support the request. Again, one letter and only one letter of protest has
9 been received. And this this request is not contrary to Section 38-10 K,
10 which is the criteria for decisions, because it does have the potential for
11 spurring economic development at a neighborhood and Citywide level due
12 to gross receipts tax generated by the use.

13
14 So your options this evening, Mr. Chair, Commissioners is to vote "yes"
15 and approve the request as presented, you can vote "no" and deny. And
16 keep in mind that denial will require separate findings of fact not presented
17 by staff. And then if you have any conditions you wish to include, you
18 could certainly cite those as part of your motion for approval. And that
19 concludes staff's presentation. I believe the representative is here should
20 you have any further questions.

21
22 Gordon: All right, before we do that. Does anybody from the Commission have any
23 questions of Mr. Banegas?

24
25 Guerrero: I'm just curious, because as we were talking about New America School
26 being less than 300 feet, I believe, I don't know if they still have it right
27 next door to this proposed property or a couple doors next to it is Big
28 Brothers Big Sisters. I used to volunteer there. They don't usually have
29 kids there. But do they fall under the same I guess category than the
30 school does?

31
32 Banegas: Mr. Chairman, Commissioner Guerrero. If they're not actually carrying out
33 the activities of pre-K through 12, you know what you would typically see
34 in a school, then no. I think, I'm not quite sure what their operation does
35 or how it operates but from what I know and what I'm hearing, no.

36
37 Guerrero: I mean it's mainly offices, but I was just curious if there was like the same
38 issue. Thank you.

39
40 Gordon: Is there anyone else? Does the applicant wish to speak? Are you the
41 applicant? Do you wish to speak? Sure, come forward, please.

42
43 Buck: Good evening Members of the Commission.

44
45 Gordon: You'll have to state your name and let me swear you in please.

46

1 Buck: Daniel G. Buck.
2
3 Gordon: All right. Do you swear or affirm that the testimony you're about to give is
4 the truth and nothing but the truth under penalty of law?
5
6 Buck: I do.
7
8 Gordon: Okay. Go ahead.
9
10 Buick: As the sole representative of HealthNotics, Inc, and an economic
11 developer by trade, and someone who has worked extensively in the
12 oilfield economy in southeastern New Mexico, as well as the Northern
13 Territory of the state, in trying to amplify the retention of business in the
14 southwestern valley, including Doña Ana County headed to Sunland Park
15 and the El Paso border. The approval of this variance can do a lot for
16 retaining the roadmap and the future of the Downtown Las Cruces District,
17 which is on the correct trajectory with what the master plan has in
18 implementation in accord with the City's ordinance. We look forward to
19 bringing a healthy and diverse trio to the downtown area that includes
20 retail, potential jobs, as well as the need for the community in the
21 Mesquite Historic District to be able to get a pedestrian access with limited
22 car use to have prevailing opportunity, as well as opportunities for
23 postgraduates that are inhabiting that district.
24
25 Gordon: Very good. Thank you.
26
27 Buck: Thank you.
28
29 Gordon: Does anybody have any questions for the applicant? If not, is there
30 anybody from the public who wishes to speak? I see. Please raise your
31 hands again, four people. All right, well I will start over here on the left. I
32 will give you three minutes each. Please come forward, state your name,
33 and let me swear you in.
34
35 Kimble: My name is Susie Kimble.
36
37 Gordon: All right. Do you swear or affirm that the testimony you're about to give is
38 the truth and nothing but the truth under penalty of law?
39
40 Kimble: Yes I do.
41
42 Gordon: Go ahead. Thank you.
43
44 Kimble: I serve as the governing council president for New America School. We're
45 not opposed to this type of business. We're not oppose. We know it's
46 legal. We know it's an economic driver. We believe in this kind of

1 business. We just don't understand how you can easily make a variance
2 on the 300 feet from a school because that variance is designed to protect
3 our students, to protect our school. And what we're mostly afraid of traffic
4 in that parking lot, we'll share a parking lot on the back. You're showing
5 the front of the buildings now. Everybody in our school comes in on the
6 other side. So that parking lot is going to be full of people. It's full of our
7 students. We have day school and night school. So we're worried about
8 traffic, we're worried about safety. And we're worried about setting a
9 precedent, if they can get a variance can everybody else? So how many
10 more shops like this are going to be within this range of the school?
11 That's what we're concerned about. We're not anti this business, we're
12 really not. We know it's legal. We know it's going to happen. We have
13 students at our school from 14 to 21, 22 years old. We feel like this will be
14 a disruption to our school, to our community. We oppose the variance.
15 We don't oppose the business, but we oppose the variance, because
16 that's awfully close to our school.

17
18 And the other part I have to say about that is on the other side of our
19 building is Mesilla Valley pharmacy. They've told us they're going to seek
20 a variance as well; we share a wall with that place. So how easy is it
21 going to be to get a variance for other people as well. That's what we're
22 concerned about. Thank you.

23
24 Gordon: All right. Thank you. There's someone else on the left hand that wanted
25 to speak. Again, please state your name and let me swear you in.

26
27 Porter: My name is Margarita Porter.

28
29 Gordon: Do you swear or affirm the testimony you're about to give is the truth and
30 nothing but the truth under penalty of law?

31
32 Porter: I do.

33
34 Gordon: Go ahead. Thank you.

35
36 Porter: I'm Margarita Porter, and I'm the superintendent of New America School,
37 Las Cruces. Currently our building, the owner is FYI, Families Youth
38 Incorporated. And they received the notice. And they didn't give it to us.
39 We inferred with FYI about the notice. And they said they never received
40 it. So that's why we only received, Mr. Banegas only received one letter of
41 protest because we just found out about it just most recently. And so I
42 represent 200 students, their families, and their parents. And so we again
43 as Ms. Susie said, we're not opposed to this. We would just like for this to,
44 for you all to please require the 300 feet from a public school just because
45 it protects us. Once Municipal Court is open all of the parking spaces are
46 taken and we always have to make sure that that overflow parking isn't,

1 people aren't parking in our parking lot. We have security guards who
2 maintain that. And so we think that this type of company would also
3 create more traffic. We're also concerned about; we already have a lot of
4 vagrants in that area. And so we would like to again maintain the safety of
5 our students. There are other real estate available for this type of
6 company. And we would just like to maintain that 300 feet, because it's
7 important to our families to know that their children are 300 feet away from
8 on this type of company. And so I would just like for the Commissioners to
9 please consider that, to maintain the variance with a distance of 300 feet.
10 Thank you.

11
12 Gordon: All right. Thank you. I think the gentleman on the right side. Again, please
13 state your name and let me swear you in.

14
15 Vieth: Mark Vieth.

16
17 Gordon: All right. Do you swear or affirm that the testimony you're about to give is
18 nothing but the truth under penalty of law?

19
20 Vieth: I do. So just as they were saying this looks like a case of somebody made
21 a mistake and they want the City to fix it. There's a reason for that 300
22 foot variance. I see kids walk by that building in droves by the opposite
23 side there where the parking is at, just lots of kids walking by there. I just
24 don't think that that's a suitable place. They said 300 foot for a reason. I
25 don't think it should be broken. Thank you.

26
27 Gordon: All right. Thank you. Next gentlemen, please. Please state your name
28 and let me swear you in.

29
30 Wisner: My name is Jay Wisner.

31
32 Gordon: Do you swear or affirm that the testimony you're about to give is the truth
33 and nothing but the truth under penalty of law?

34
35 Wisner: I do affirm.

36
37 Gordon: Thank you. Go ahead.

38
39 Wisner: Yes. I'm a retired juvenile probation officer. And I'm also the pastor
40 located in the church right here, right next to the New America School.
41 You see that building with the three crosses on it right there. So I did get
42 a notice. I didn't see on it an e-mail, maybe I missed that, where I could
43 reply to. I got notice to the meeting and wanted to come and reply to the
44 notice.

45

1 I don't believe we should give any variance either due to the nature of the
2 business. And I have a few things to consider. One is, and being a youth
3 advocate and if anybody from the school, if I misrepresent anything,
4 please correct me.

5
6 Gordon: Just make sure you speak into the microphone so we can hear you.

7
8 Wisner: Okay. As a juvenile probation officer, I have placed youth in that school.
9 They are structured to the point where they can work with kids that are at
10 risk. I don't know if they have any at risk kids there now. They sure did
11 when I was working with them. I've been retired about six years now. And
12 I'm telling you they do a great job. And I'm here in support of what they're
13 saying, but also want you to consider a few other things. I have a study
14 from a scholarly journal about the placement of cannabis ads and store
15 locations and their negative impact on youth. I want to leave that with you
16 if you would like to consider this. I have a pile of studies to look at if you
17 would like. There are some very serious issues here. Once an at risk
18 youth becomes, what are they at risk for, being system involved. Once
19 their system involved, a lot of them end up tethered to our criminal justice
20 system for years to come. And I'm speaking again, as a retired juvenile
21 probation officer. I worked in this City as a juvenile probation officer for 23
22 years. So I'm telling you, if we have youth that are already at risk, and
23 they're in line of sight, right the back of this building is where the parking
24 lot is, as the lady from the school represented. That's where likely their
25 customers will park. They're not going to go around. There's nowhere to
26 park around front. There's a place for one or two cars up front. They can't
27 park back there and they're not going to walk all the way around. They're
28 going to use, as we do, the other side of that building, as the school does,
29 as the entryway to that building, I'm sure.

30
31 Now, what I'm saying is they're not only less than 300 feet, but they are in
32 line of sight of any youth in that parking lot from that school. I have seen.
33 Okay. I have seen students walk just past, right past the front of that
34 building going home. And so I would ask that you consider not voting for
35 that variance. I think it would be detrimental to our community.

36
37 Gordon: All right. Thank you.

38
39 Wisner: Can I leave these with you to look at? Thank you. That top one is the,
40 what was relevant one. They're all studies about negative impact of
41 marijuana use on youth particularly. I have, in my master's degree looked
42 up. I mean, when you get when you get peer reviewed,

43
44 Gordon: Could you please talk into the microphone because she's trying to record
45 this.

1 Wisner: My apologies. When you get peer reviewed studies, these aren't just
2 something that the marijuana industry pops out. These are things that our
3 best and brightest minds come up with. Okay, and this is just not my
4 opinion alone. These are true academics that put these together. Okay.

5
6 Gordon: All right. Thank you.

7
8 Wisner: Thank you.

9
10 Gordon: I think the representative from the applicant wanted to speak again.
11 You've already been sworn in, so go ahead.

12
13 Buck: Thank you. Thank you members of the Commission, as well as members
14 of the general public who rose concerns about our building and the type of
15 business that we're spearheading in the downtown arena. HealthNotics is
16 a very minimally THC based company. Our products are organic and
17 aimed at aiding high risk individuals that suffer from PTSD regrow their
18 inner being and their spirituality as well as their mental instability. We
19 currently work with veterans at Fort Bliss with our products. They're held
20 in medical professional offices within the community. We also work very
21 closely with people who are vagrant. We have job opportunities that come
22 about and we work with previously incarcerated individuals to offer job
23 training programs in reinvention into society. As we know, those are
24 heavily stricken populations and minorities that gather in our community
25 with homelessness on the rise. And I think that the school before us, is
26 not reconciling the plan that we offer a retention room. When people
27 come in on the south side of our building, we will have a check in area. It'll
28 be guarded, code locked and key secured. It will be monitored by an
29 employee who's trained. You'll have to turn in your credentials that state
30 your age, your licensure for buying, and then that's how you gain access
31 to the showroom. It is not as if a student or a miner could walk in and go
32 buy a product off of our shelf.

33
34 As well we can operate under hours that coincide more helpfully with the
35 school district. And I'd like to keep in mind that you know churches are a
36 wonderful asset our community. Schools are a wonderful asset to our
37 community. But an age group that struck me from the New America
38 School that was presented was 18 to 22. And by statement of the federal
39 law 18 is when you can start making decisions for yourself, you're
40 considered an adult. So I don't see how that can play into the ruling for
41 designation on Main Street. Nor can I see how bars that operate just an
42 additional 100 feet from our building till two in the morning, who have
43 previously had victims of crime in the evening, play as a unilateral blind
44 spot to the business that we're in trying to help downtown. One of our
45 facets to bring to that building is a multiuse district, not only will we have
46 retail, but a potential food desert offering for the Mesquite Historic District,

1 as well as the Alameda District. And I was appointed last Tuesday for Las
2 Esperanzas Inc as the liaison for the three districts, Main Street
3 commercial, the Alameda District, and the Mesquite Historic District. I'll be
4 leading the community watch, as well as helping intervene on crime. And
5 I would really like to work closely with our community downtown that's
6 including the school, the nonprofits, FYI, and the churches.

7
8 Gordon: Do you know what the hours of operation will be?

9
10 Buck: That can be determined by this meeting with a contingency.

11
12 Gordon: I just have a comment. It's just, it's sort of, I just can't, if this facility had
13 been more than 300 feet away, this meeting would not have been
14 necessary. And your complaints about, let's say it was 320 feet away.
15 You have a big church between the facility and the school. There is a
16 buffer. There is a religious buffer. I know from my friends who have
17 cannabis licenses from the state, go to these facilities. And I know that
18 when they go there, they have told me that when they go in they have to
19 give them their license, they have to give them their cannabis license, and
20 they're taken in individually, nobody can go in with them. They buy their
21 product, they come out, they can only pay with cash, you can't even use a
22 credit card. It's very well controlled. So I know what you're saying and I
23 hear what you're saying. I also hear what people from the school are
24 saying, and the church, I appreciate your comments. These are just my
25 comments. It's very difficult, considering the fact we're only talking about
26 110 feet here, whatever it is, it's not like we're talking about the building
27 right next door. So if anybody else from the Commission has any
28 comments or any questions? Commissioner Vega.

29
30 Vega: I think this is for staff. Is the 300 foot variance the same for an
31 establishment that sells alcohol?

32
33 Banegas: Mr. Chairman, Commissioner Vega. We believe it's 200 feet. I'd have to
34 look that up, but if memory serves, it's 200 feet.

35
36 H-Rogers: Just to clarify, it is actually 300 feet. There are some additional
37 requirements for alcohol licensing. It's 300 feet from a school, a church, a
38 daycare, and I believe parks and other public spaces, if I'm correct.

39
40 Vega: Okay, thank you.

41
42 Gordon: Commissioner Smith.

43
44 Smith: Yes. I'm very sensitive to the public, people who are opposing you know
45 this variance. But I have resided downtown for you know almost 22 years,
46 since I've moved to Las Cruces. I'm very familiar with the downtown area.

1 I've watched it you know revitalization over the past decade. And as the
2 applicant stated you know there are a number of bars surrounding this
3 area, very close to the New School. You know yes this building is less
4 than the 300 feet required, but you know them walking by this building, the
5 way this building is going to be established, I don't see how it will have
6 such a negative impact on the students, especially with the statement
7 about the age of the students 18 to 22. At night, bars are operating at
8 night, and they're eligible to walk into a bar. So if that's not an issue, I
9 have a difficult time understanding how this building could be an issue.

10
11 Gordon: Thank you. Anyone else? Commissioner Kaiser.

12
13 Kaiser: The ordinance for this type of establishment and 300 foot buffer, how
14 would that play out in the totality of the downtown area? In other words,
15 was the intent to exclude these establishments from downtown? Because
16 I assume that New America has been there prior to the establishment of
17 the ordinance. So just curious if there was, what the intent behind the
18 ordinance as it stands now.

19
20 H-Rogers: Chair, Members of the Commission, Commissioner Kaiser. There was no
21 intent to exclude these types of uses from downtown. There are some
22 other areas downtown that are far enough away from the New America
23 School. The intent behind that was to be consistent essentially with the
24 state regulations regarding the alcohol distancing. That's really what that
25 was about.

26
27 Kaiser: Thank you. But it is true that there are establishments that serve alcohol
28 within 300 feet of this New America School, correct.

29
30 H-Rogers: I can't speak to the exact location of those licenses. I do want to point out
31 that the 300 foot rule is a state rule specifically for alcohol. While we look
32 at that as part of our process, the zoning code actually doesn't speak to
33 300 feet specifically for alcohol. But because that was not outlined by the
34 cannabis process, it's something that we added to our codes just for
35 consistency.

36
37 Kaiser: Thank you.

38
39 Gordon: Anyone else? Well in that case, I guess any further comment?

40
41 Buck: Thank you members of the Commission.

42
43 Gordon: All right. Thank you. I guess then we're ready for a vote.

44
45 Wisner: I have one last comment to make.

46

1 Gordon: Yes sir. Come on. I will allow anyone to speak. Since you've already
2 been sworn in, just please speak right into the microphone.
3

4 Wisner: Yes. My name is Jay Wisner. The children that I saw walk past where it
5 was at 4:30 in the afternoon, and if you go any normal school day, I don't
6 believe they meet on Fridays, you go on to other school days and you'll
7 see children, not adults, walking past the facility. And the issue is, if the
8 people buying right there, whatever the product is, are going to be parking
9 where the children are walking by, there's potential for contact right there.
10 That's the issue that I see. And so what I'm just trying to cross some of
11 the T's and dotting the I's here.
12

13 Gordon: So your comment you think is directed the fact that some of these children
14 may get hit by an automobile? Is that what you're saying?
15

16 Wisner: No.
17

18 Gordon: I didn't, then I misunderstood you.
19

20 Wisner: The way children get a hold of drugs and alcohol is adults give it to them.
21 And so there's potential there. And there's potential since you have adults
22 that go to New American School with children, as well. And I'm just trying
23 to, you know I think in the conversations we're comparing apples and
24 oranges, and I'm just trying to line up the apples with the apples and
25 oranges with the ...
26

27 Gordon: Again, it just seems to me though that if this was beyond 300 feet, our
28 discussions here this evening would not be.
29

30 Wisner: Well, we wouldn't even have known that they were going to be there.
31 That's for sure. I wasn't aware. And they're well within 300 feet of our
32 church. I wasn't even aware that they're going to be there. We never got
33 a notice that the business was going to be there to begin with until we got
34 this variance notice. Never got anything like that. So that's the only
35 reason I'm here today is because I didn't know about that until the
36 variance notice.
37

38 Gordon: All right. Thank you.
39

40 Wisner: That's all I have to say. Thank you.
41

42 Gordon: Staff can you comment on that, if necessary.
43

44 Banegas: Yes, Mr. Chairman, Members of the Commission. In terms of the criteria
45 regarding the distance and variances. The ordinance that was approved
46 does qualify the allowance with the 300 foot buffer, this does not meet

1 that. So therefore it does allow variances to be considered. Variances by
2 their very definition should be justified, have some demonstrable hardship
3 associated with them. That's the typical criteria by which a variances is
4 considered. In terms of development cases such as the variance or zone
5 change or any of the others that we entertain, the code is very clear. We
6 notify property owners as identified by the Doña Ana County Assessor's
7 Office and so that's part of the dilemma that New America School faced,
8 the landlord, FYI, Inc. received their, I checked this morning, they are on
9 the mailing list. So they should have received one. If they did not, then
10 something's amiss. But we did send one out. And in terms of churches,
11 they're not part of the criteria for notification for distance consideration.
12

13 Gordon: All right. Thank you.

14
15 Smith: I have one more comment to make.

16
17 Gordon: Go ahead.

18
19 Smith: Once again, I stated that I live downtown. I'm very familiar with this area.
20 And just to the south of the New America School is a new pharmacy.
21 Within that new pharmacy they over the counter medications. And the
22 students at the New America School have a much easier access to these
23 over the counter medications than they will have accessing the health care
24 products that will be sold at this HealthNotics facility. And once again, I'm
25 very sensitive to your concerns, but I must state that the access that the
26 students will have, the danger that will be posed to them, it's actually much
27 less at this facility than it would be at the pharmacy. It is literally right
28 beside your building.
29

30 Gordon: Actually also I think it should be noted that you can buy products on the
31 open market that contain CBD, which do not have the amount of THC that
32 you will find in cannabis that is sold in a licensed establishments by the
33 state with a cannabis card. So, all right, then can I have a motion please?
34 Someone.
35

36 Vega: Make a motion to approve.

37
38 Guerrero: I'll second it.

39
40 Gordon: Becky.

41
42 Baum: Board Member Guerrero.

43
44 Guerrero: So I'm actually going to vote no. And the only reason I'm voting no, I
45 mean I completely agree with this kind of business. I agree with my
46 Commissioners as well. But I am concerned about what the school said

1 about the business next door or pharmacy next door saying they're going
2 to seek a variance as well. So I'm only voting no out of principle, because
3 I don't want this to be something that is just expanded to everyone and
4 just be like, oh we can just go and they'll let us do whatever we want. So
5 I'm voting no.

6
7 Baum: Board Member Vega.

8
9 Vega: I vote yes, based on information shared today, site visit, having some
10 economic growth within the community, and the fact that I do feel that
11 there's some stigma attached to marijuana products that we don't place on
12 alcohol. There's plenty of establishments that are in this downtown area
13 that will continue to come in that will probably seek the same type of
14 license. So I vote yes.

15
16 Baum: Board Member Smith.

17
18 Smith: I vote yes, based on site visit, staff recommendation, and also just having
19 an understanding of what this type of business could bring to the
20 downtown community. These types of facilities and businesses are being
21 established all over town. And I don't think that the impact that it's going
22 to have to the school is going to be of a dangerous level, I think it's going
23 to be minimal.

24
25 Baum: Board Member Kaiser.

26
27 Kaiser: I am concerned with the precedent that's being set here. I wish there was
28 some additional thought put into the buffer distance in the downtown to
29 begin with. That being said, these are the types of uses that are
30 consistent with downtown. And I think it's consistent with Elevate Las
31 Cruces. And I agree with staff's recommendation, so I'm on voting yes.

32
33 Baum: Chair Gordon.

34
35 Gordon: Considering the fact that variances are allowed and we're only talking
36 about 110 feet here, and if it was the 300 feet or more this would have
37 been a moot point, I think based on staff recommendations and our
38 discussion, and my knowledge of what I think is the business and it's
39 going to be the business of the future. It'll be a big business here in New
40 Mexico, Las Cruces, and in the country. If they can legalize a lot of this I
41 think a lot of the illegal stuff will go away. And I can tell you from my
42 friends how beneficial this is. It's unbelievable how people have been
43 helped through the use of legal cannabis. So also again it just brings
44 another business in the downtown area. And I think that there will be no
45 effect, I think that the school is, should not be worried about this. I don't
46 think it's going to be a problem. And for that reason I do vote yes.

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Baum: Approval four to one. Thank you.

8.2 The Arroyos As Settlers Pass Master Plan: A request for approval of a master plan known as The Arroyos at Settlers Pass. The master plan proposes the development of 205 Single-Family lots with one tract of land designated as a park and one tract dedicated to the City of Las Cruces for drainage and utilities. The subject properties encompass 45.98 ± acres, are zoned R-1b (Single Family High Density) and are located east of Rinconada Boulevard and west of Settlers Pass. Submitted by Zia Engineering and Environmental Consultants LLC, representatives. Council District 5 (21CS0500134)

Gordon: Okay, then we move to the last two items on the agenda item 8.2 and 8.3, which is the Settlers Pass Master Plan and the Preliminary Plat. Again, like earlier this evening, I want to be able to discuss these items together, but we will vote on them separately. So, can I have a vote to do this, please?

Guerrero: Yes, I'll make a motion that we discuss items number 8.2 and item number 8.3 together, but they're voted separately.

Smith: I second.

Baum: Board Member Guerrero.

Guerrero: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Chairman Gordon.

Gordon: Yes.

Baum: Thank you.

1 Gordon: Go ahead.
2
3 Castillo: Good evening, Mr. Chair, Members of the Commission. My name is John
4 Castillo. I'm a planner with the City of Las Cruces.
5
6 Gordon: John, you're going to have to talk better into that microphone.
7
8 Castillo: Sorry. My name is John. I'm with the City of Las Cruces and planning.
9 Today we're going to discuss the Arroyos at Settlers Pass Master Plan
10 and the Arroyos at Settlers Pass Phase 1 Preliminary Plat. Current
11 conditions of the property today, it's located west of Settlers Pass also
12 known as Longview Lane, it's east of the future extension of Rinconada
13 Boulevard, and north of the Rincon Hills subdivision. Right now it's
14 currently located in Council District No. 5. It's approximately 45.98 acres,
15 and it's currently zoned R-1b, which is our single-family high density
16 zoning district. As it sits, it's a vacant, undeveloped tract of land.
17
18 Here's an aerial map of the property. We can see the zoning map here.
19 The proposal for the master plan is to subdivide the four existing parcels
20 into two phases. It's going to bring 205 single-family lots, a tract for
21 drainage and utilities, and it's also going to provide a two acre park to the
22 City of Las Cruces. As it sits right now, it does meet the requirements of
23 the Subdivision Code, the Design Standards, and the 2001 Zoning Code.
24 It's also supported by Elevate Las Cruces, and it falls under the suburban
25 place type neighborhood.
26
27 The proposal for the preliminary plat or Phase 1 is to subdivide the three
28 existing parcels, the one near the future extension of Rinconada
29 Boulevard and the two south of the larger one, that we can see right here.
30 So these two and this one are part of Phase 1. They're going to bring 114
31 single-family lots and one tract for drainage and utilities.
32
33 This is the master plan as it sits. These are the surrounding zoning
34 designations and parcels. And this is Phase 1 of the Arroyo at Settlers
35 Pass. Public notice was sent out to all relevant agencies. They all have
36 supported this preliminary plat and master plan. Notice was also sent out
37 to surrounding properties. At the time the presentation was being created,
38 staff did not receive any phone calls or e-mails regarding questions on the
39 development. This was also sent to our Development Review Committee
40 on January 19, 2022. They review subdivisions from an infrastructure,
41 utilities, and improvements standpoint. There was discussion and the
42 DRC did recommend approval of the proposed master plan and Phase 1
43 of the preliminary plat.
44
45 Staff recommends approval for the master plan based upon review by
46 relevant City staff. The proposed master plan does comply with the
47

1 requirements and standards of the City of Las Cruces Subdivision Code.
2 The proposed residential lots comply with all requirements of the 2001
3 Zoning Code as amended. The subdivision also supports and meets the
4 intent of Elevate Las Cruces Comprehensive Plan. And as stated earlier,
5 it was approved by our Development Review Committee or DRC. Staff
6 also recommends approval of the preliminary plat based on similar
7 findings. Today's options are to vote "yes" to approve, vote "no" to deny,
8 vote "yes" with conditions, or vote to table. The representative is also
9 here to answer any questions if necessary.

10
11 Gordon: Thank you. Anybody from the Commission have any questions?
12 Commissioner Kaiser.

13
14 Kaiser: A couple of questions for you. In the department review comments I did
15 not see Active Transportation listed there.

16
17 Castillo: So at the time of this we don't have an actual specific workflow or review
18 process for Active Transportation coordinator in our permitting software. It
19 is something that we are working on, but they have reviewed it. He did
20 provide comments regarding the drainage tracts being used as multimodal
21 system access points, which I did talk to the developer in regards to that
22 and we have rectified that issue.

23
24 Kaiser: Okay, that actually leads right into my second question about that. So in
25 Phase 1, looking at, yes there you go, so I guess I can't really point, but it
26 would be the west/northwest corner of that cul-de-sac. No, other direction.
27 There you go. How would those residents access that future park that
28 they share a border with?

29
30 Castillo: Mr. Chair, Commissioner Kaiser. There is, and I know it's a little difficult to
31 see on this one, but there is a tract right here that is dedicated as a 10 foot
32 drainage access tract, also a multimodal tract as well.

33
34 Kaiser: Okay, thank you. Yes, I definitely did not see that. Continuing on that line
35 of thought, how would this relate not only to Phase 2, but also Phase 3? It
36 appears that there's additional development that's going to happen to the
37 west of that cul-de-sac. Why would there be no connectivity there?

38
39 Martinez: My name is Edward Martinez representing Zia Engineering and
40 Environmental. And I'm representing the applicant

41
42 Gordon: All right. Let me swear you in then please. Do you swear or affirm the
43 testimony you're about to give is the truth and nothing but the truth under
44 penalty of law?

45
46 Martinez: I do.

1
2 Gordon: Thank you. Go ahead.
3
4 Martinez: Yes, Commissioner Kaiser, Chairman Gordon. The Phase 3/4 area right
5 now is optioned and not actually under ownership of the developers.
6 That's the reason it's not part of this application at this time. However, we
7 have done a fairly substantial amount of work in master planning and
8 conceptual design of that area. And had quite a few meetings with City
9 staff, not only specific to Phase 1 and 2 that's before you now, but also
10 incorporating what we hope to happen within Phase 3/4. Within the Phase
11 2 area, just above that cul-de-sac that you pointed out is where the two
12 acre park is proposed to be that is part of this master plan at this time.
13 Within the Phase 3/4 area we're going to be adding an additional acre to
14 that park area. The reason why we don't have direct connectivity between
15 the that cul-de-sac and the Phase 3 area is actually because of the
16 differential in grades at that point in time. We're going to have actually
17 retaining walls along the west side of that cul-de-sac at that area.
18 However, at the area of the park we're actually along the ridgeline at that
19 point in time, so the grades are much closer in elevation, so we'll be able
20 to tie the acreage of the park together without retaining wall separating the
21 current area that we're under master plan versus the future area.
22
23 Kaiser: Thank you for that clarification. Yes, that definitely does not come through
24 in this plan so I appreciate it. Some other questions on access. So the
25 proposed I guess, temporary access off of Riconda Avenue.
26
27 Martinez: Rinconada Boulevard.
28
29 Kaiser: Yes. So if that's only temporary, at some point it's going to disappear, so
30 how would residents of this neighborhood, this development access the
31 future commercial development, that would be to the northwest of them?
32 It appears that if that temporary access were to leave they'd be forced to
33 go all the way around to the east and then back around.
34
35 Martinez: Thank you. Commissioner Kaiser, Chairman Gordon. The temporary
36 access that we have now, that we're proposing now, is simply based upon
37 the ownership that they have in place now. The land that they're
38 optioning and the area that we're master planning for future Phases 3 and
39 4 will actually have a permanent access point that will be approximately
40 300 feet north of where we have the temporary access coming out to
41 Rinconada Boulevard. So they will have direct access to Rinconada
42 Boulevard. The reason why this is a temporary access where we're
43 proposing it now is because of the current geometry of the parcels that
44 they own, the ponding area that's located there now, and the existing
45 Parkhill Drive, we can't directly line up that intersection that we're coming
46 out to Parkhill Drive. So because we can't directly line it up, under the

1 codes, the codes don't allow an offset intersection with arterials and
2 collectors. So that's the reason why we're going to be doing it as a
3 temporary access now. It will be a paved access, but it'll be temporary.
4 And then when they move on to Phase 3 which will be, we anticipate
5 probably within about a 36 month window, we'll close off that access point,
6 it'll turn into either a lot or ponding, and then we're going to move the
7 permanent access point about 300 feet to the north.

8
9 Kaiser: Thank you. Just a couple more questions, I promise.

10
11 Martinez: I've been here all night. So I'm here for as long as you want.

12
13 Kaiser: Yes, I'm sure my colleagues are anxious to go home too. So bike lanes,
14 I'm going to ask it. Are they proposed? Where are they proposed?
15 There's currently no bike infrastructure on the boulevard to the southwest.
16 And then on Settlers Pass it's inadequate bike lanes. This is obviously a
17 big development and is only growing. So I wonder if you can speak to that
18 a little bit more.

19
20 Martinez: Yes, Commissioner Kaiser, Chairman Gordon. I'm a bicyclist myself, so
21 I'm all for bicycling. At the same time, unfortunately there's, it's always a
22 challenge to try to get everything to fit in. And quite frankly the codes of
23 the City are not super friendly to try and get everything to work out at
24 times to get everything in that we would like. I actually had proposed to do
25 a multimodal pathway within this development, and because challenges
26 with trying to get it worked out, as well as quite frankly another part of it,
27 that the pressure that we're dealing with is the market that this
28 development is trying to hit is within like the \$200,000.00 to \$300,000.00
29 home market. And so because of that, between the pressures of trying to
30 keep costs low, as well as trying to meet City standards, we weren't able
31 to make that multimodal pathway workout within the development.
32 However, we are proposing to pave as part of this, actually as part of
33 Phase 1 we're going to be paving the eastern half of Rinconada Boulevard
34 from where it ends now up to our temporary access. I'm hoping that in the
35 detailed design of that, we'll be able to perhaps shrink up the median area
36 within our proposed section and have a multimodal pathway along the
37 eastern side of Rinconada Boulevard. And then as we extend Rinconada
38 Boulevard to the north through Phases 3 and 4, when that's developed,
39 we'll extend hopefully that multimodal pathway at least to the end of our
40 development.

41
42 Kaiser: Well if that is in fact true that getting a multimodal pathway built through
43 this development didn't happen because it was too difficult, that's deeply
44 disappointing.

45
46 Martinez: It is.

1
2 Kaiser: These things aren't hard to do if you prioritize it. And I guarantee you
3 building a bike lane is a heck of a lot cheaper than a four lane arterial road
4 when you look at the per mile cost. So that is disappointing to hear. But
5 I'm encouraged to see that you're finding other ways to incorporate that.
6 Just I hope that we can work with staff to really maximize that opportunity.
7 People who purchase houses for \$200,000.00 deserve bike lanes, no
8 more or less than anyone else in this City. It shouldn't be reserved for the
9 people who buy into million dollar developments, million dollar homes like,
10 this is a basic mode of transportation that should be available for all
11 income levels.

12
13 My last question, I promise, on the multimodal pathway access that sort of
14 cuts through the development. I also notice it's intended to serve as
15 stormwater drainage. But I also noticed on one of the maps that was
16 handed to us in our packet that they're proposed to be entirely paved with
17 concrete. I would hope that there's an opportunity here to look at
18 something other than concrete. It is not beneficial in any measure of the
19 term from a stormwater perspective. It only increases impervious surface.
20 So I'd like us to find ways if it's possible to incorporate some permeable
21 pavers in those sections. I've seen how some of these things are
22 developed throughout the City and quite frankly I don't know who would
23 want even to walk through there. It's just basically an oven in the middle
24 of summer when you're surrounded by concrete. But so I just would kind
25 of open that as, I don't know if that's a question for staff, if that can be
26 something that can be a condition here. But I think that's something that
27 we should seriously look into. There's policies in the comprehensive plan
28 that point to things like this in developments.

29
30 Martinez: Yes. If I make Commissioner Kaiser, Chairman Gordon. I generally fully
31 agree with your comments. Once again, one of the challenges however is
32 a lot of the pavers are not necessarily super friendly for ADA compliance.
33 And we also have to meet ADA compliance within those sections. So
34 that's one of the challenges in trying to get that to workout.

35
36 Kaiser: Yes, I just encourage you to look a little bit deeper into that, because it's
37 possible. I've seen it. It's not a groundbreaking way of developing for
38 stormwater. So something to think about.

39
40 Martinez: Agreed.

41
42 Gordon: Anyone else? I just have one comment. Apparently there is going to be
43 one other exit and entry point on Longview. Is that correct? Another way
44 in and out.

45

1 Martinez: Chairman Gordon. Yes. It's on Longview. It's actually designated I think
2 as Settlers Pass, but yes. And we're going to be paving the western half
3 of Settlers Pass through this development.
4
5 Gordon: Okay. Thank you.
6
7 Martinez: Thank you.
8
9 Gordon: If there are no other questions, anybody from the public wish to speak?
10 Sir. Please speak your name.
11
12 Brown: My name is Bruce Brown.
13
14 Gordon: And let me swear you in please. Do you swear or affirm that the testimony
15 you're about to give is the truth and nothing but the truth under penalty of
16 law?
17
18 Brown: I do.
19
20 Gordon: All right. Go ahead. I'll give you three minutes.
21
22 Brown: I own the northeast corner of the end of Settlers Pass where the solar
23 panels are. So as Settlers Pass goes up, and basically when the
24 pavement ends there, we have a concern, Rincon Hills, all ever 200 plus
25 homes, all exit onto Settlers Pass. From what you're telling me there's
26 going to be one exit at the bottom and one exit at the top, one on Settlers
27 Pass, one on Rinconada when it's finished. And that's a lot of traffic. So
28 that's one concern I have.
29
30 Gordon: Okay.
31
32 Brown: Okay. Another concern is the development that is north, I think is called
33 Carson Ranch or further up, the blacktop is going to have three posts,
34 because the four-wheelers love it out there. Is there going to be a similar
35 consideration at the end of the blacktop when you do Settlers Pass?
36 Okay. Okay, very good. The other thing is, is there, will the City, is it
37 going to consider patching or filling in the two blacktopped areas that will
38 now be in line? Because I can guarantee the private owners are not going
39 to pave that third of a mile, let alone with the utilities and all of that.
40
41 Gordon: Well, we can't answer that question. You'll have to direct that to the City.
42
43 Brown: So one of my questions too is, at the end of Settlers Pass, Longview
44 technically turns left and then again turns north depending on what plat
45 you're looking at. Are you all going to want to do the blacktop on Settlers

1 Pass? Are you going to continue the blacktop on a minor arterial on
2 Longview? I think that's all I have. Thank you sir.

3
4 Gordon: All Right. Thank you. If you'd like to reply to that.

5
6 Martinez: Thank you. And if I miss a question, please let me know. Regarding
7 where we'll be terminating the pavement, we'll be terminating the
8 pavement at our northern property boundary on Settlers Pass. We're
9 actually going to be, at this point in time the 42.5 of what will be the
10 western side of Settlers Pass is currently under ownership of this
11 developer. The developer will be dedicating that right-of-way as part of
12 this platting, and will be making the improvements along that section for
13 our quarter mile basically. Where our land terminates to the north of
14 there, it's currently owned by someone else. We don't have the
15 permission from that individual to extend payment through his property nor
16 quite frankly, other than transition would there be any requirement or
17 necessity to. So what unfortunately is going to happen, and it happens
18 oftentimes throughout the City, is we are going to end up with a little bit of
19 a hodgepodge of payment as you're going through Settlers Pass there.
20 You're going to have the fully paid section through Rincon Hills that
21 currently exists, you're going to have the half section on the west side
22 where our development exist, then it's going to transition back to gravel on
23 the east side, which is where the right-of-way currently exists for the next
24 approximate I think it's a quarter mile, and then you're going to get to
25 pavement again farther north where there's another platted subdivision up
26 there where right-of-way has been dedicated. So you are going to end up
27 with a little bit of a hodgepodge, which unfortunately we don't have control
28 over.

29
30 Gordon: That's one of the problems of development. All right. We understand. I
31 understand that your concern, hopefully sometime in the future it'll all be
32 done.

33
34 Martinez: So specific to your question, yes where our pavement ends there are
35 going to be what we call Chevron signage where the pavement ends on
36 the west side but we're going to be having a gravel transition back to the
37 east side to get back to where the road is currently.

38
39 Brown: May I ask one more question sir, real quick.

40
41 Gordon: Sure.

42
43 Brown: If someone could explain the Phase 1, Phase 2, Phase 3, which is which
44 and Phase 4 that I had not heard, according to the paper that was mailed
45 to my house.

46

1 Martinez: Yes, Chairman Gordon, if I may. Our Phase 1 area essentially consists of
2 this area that I'm outlining here, which is the southern 20 acres of this 40
3 acre parcel, and then a portion of this six acre parcel here to get back to
4 Rinconada Boulevard. Phase 2 is this northern 20 acres here of this 40
5 acre parcel. The land that they currently have option consists of this
6 acreage to the west in this area here. And within that area it's broken into
7 what we're identifying would be a Phase 3 area which would essentially to
8 a large extent consist of the northern portion of that parcel. And Phase 4
9 would then consist of this, what I would term this inner area of that parcel
10 area as well.
11
12 Gordon: Okay, thank you. Well, if there is nothing else, I think we are ready for a
13 vote. Remember, we are going to vote on each item each 8.2 and 8.3
14 separately. So can you please someone give me a motion for 8.2 for the
15 master plan.
16
17 Smith: I vote that we vote on 8.1 of this master plan.
18
19 Guerrero: I'll second it.
20
21 Baum: Board Member Guerrero.
22
23 Guerrero: Yes, based on drive by or site drive and recommendations from staff.
24
25 Baum: Board Member Vega.
26
27 Vega: I vote yes, based on staff recommendation.
28
29 Baum: Board Member Smith.
30
31 Smith: I vote yes, based on staff recommendation also.
32
33 Baum: Board Member Kaiser.
34
35 Kaiser: Voting yes, based on staff recommendation, consistency with Elevate Las
36 Cruces, though I do encourage the applicant and staff to work on some of
37 the issues that were raised here.
38
39 Baum: Chair Gordon.
40
41 Gordon: I vote yes, based on staff recommendations and consistent would Elevate
42 Las Cruces.
43
44 Baum: Approval five, zero. Thank you.
45

1 **8.3 The Arroyos At Settlers Pass Phase 1 Preliminary Plat:** A request for a
2 preliminary plat known as The Arroyos at Settlers Pass Phase 1. The
3 proposed subdivision encompasses 24.230 ± acres, is currently zoned R-
4 1b (Single Family High Density). The preliminary plat proposes 114
5 single-family residential lots and two (2) tracts dedicated for drainage and
6 utilities to be developed. Submitted by Zia Engineering and
7 Environmental Consultants LLC, Representatives. Council District 5
8 (21CS0500135)
9

10 Gordon: All right. Then now I need a motion on the item 8.3, which is the
11 preliminary plat
12

13 Guerrero: I'll move for approval of 8.3.
14

15 Vega: I second.
16

17 Baum: Board Member Guerrero.
18

19 Guerrero: Yes, based on the same reasons for the previous vote.
20

21 Baum: Board Member Vega.
22

23 Vega: I vote yes, based on staff recommendation.
24

25 Baum: Board Member Smith.
26

27 Smith: I vote yes, based on staff recommendation.
28

29 Baum: Board Member Kaiser.
30

31 Kaiser: Yes, based on staff recommendation. Once again encourage staff to work
32 with the applicant on the issues raised here.
33

34 Baum: Chair Gordon.
35

36 Gordon: I vote yes, based on staff recommendation.
37

38 Baum: Approval five, zero. Thank you.
39

40 **9. COMMISSION COMMENTARY**
41

42 Gordon: All right then that takes care of all the items on the agenda. We are now
43 looking at, does anybody on the Commission have any comments this
44 evening?
45

46 **10. STAFF ANNOUNCEMENTS**

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Gordon: If not, how about staff announcements?

Nichols: Thank you Mr. Chairman and Commission. Larry Nichols for the record. I just have one comment to make. It's really an upcoming notice for you. There's going to be a presentation to the City Council on the recent census that was taken, it'll be a census report. We'll make sure that you get the dates for that so that you can listen for that. Reason being is a lot of information in that census has a direct bearing on items that come before the Commission here in the Planning. And I think it's very interesting, some of the metrics that we found in there. That's all Mr. Chairman.

11. ADJOURNMENT (8:41)

Gordon: All right, then I'd like to get a motion to adjourn. It is now I guess quarter to nine.

Vega: Make a motion to adjourn.

Guerrero: I will second that.

Gordon: All right. We're adjourned. Thank you

Chairperson