City Council
of the
City of Las Cruces

Regular Meeting

November 2, 2015
1:00 P.M.
Council Chambers, City Hall

MEMBERS PRESENT:	**STAFF:**
Mayor Ken Miyagishima	Robert Garza, City Manager
Councillor Miguel Silva, District 1	Rusty Babington, City Attorney
Councillor Greg Smith, District 2	Linda Lewis, Interim City Clerk
Councillor Olga Pedroza, District 3	Christine Rivera, Office Assistant Sr.
Councillor Nathan Small, District 4	
Councillor Gill Sorg, District 5	
Councillor Ceil Levatino, District 6	

I. OPENING CEREMONIES

Mayor Pro-Tem Smith called the meeting to order. Mayor Pro-Tem Smith led the Pledge of Allegiance.

Mayor Pro-Tem Smith and a representative from the Animal Services Center of the Mesilla Valley presented the Pet of the Week.

Recognition of students and staff members from the "Centro Bachillerato Technologic Industrial y de Servicios No. 4" from Lerdo, Durango, Mexico.

Rod Gajewski and Greg Long presented a plaque to City Council on becoming a Purple Heart City.

II. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27(E)(2). *At the opening of each council meeting, the chairperson shall ask if any member of the city council, city manager, or any member of the city staff has any known conflict of interest with any item on the agenda.*

Mayor Pro-Tem Smith asked if anyone had any conflicts with anything on the agenda?

There is none.

III. PUBLIC PARTICIPATION

Emma Murillo, Member of the Public said there are no handicapped sidewalks on Mesquite to Genevieve's Church or crosswalks, and Las Cruces Street is very narrow. Bikes have more privileges than disabled.

Robert Garza, City Manager said the issue of Las Cruces Avenue is that it's too narrow so adding sidewalks would narrow the road even more. There is no violation of the ADA because we are treating everyone equally with no sidewalks.

Emma Murillo said the narrow street is right in front of my house. Years ago a traffic engineer did a feasibility study of this area and we could follow up with that.

Councillor Pedroza said streets in that particular area have the same problem as other cities because those streets were built first. You will be contacted for a meeting to address your concerns.

Bev Courtney, Member of the Public said I'm the President of the Las Cruces Tea Party. We recently requested to use the chambers for a candidate forum. We were told that we could not use the chambers because we're partisan. Mark Winson said he would reconsider but denied our request after a week. We're told there is a policy but we couldn't find it so I request that you make it an action item.

Mayor Pro-Tem Smith said I don't believe we have a policy in place but after this election we will be looking at it.

IV. ACCEPTANCE OF AGENDA: THOSE ITEMS ON THE AGENDA INDICATED BY AN ASTERISK (*) ARE ON THE CONSENT AGENDA AND WILL BE VOTED ON BY ONE MOTION.

Councillor Sorg Moved to Approve the Agenda as presented and Councillor Levatino Seconded the motion.

Mayor Pro-Tem Smith called for the roll on the Motion to Approve the Agenda as presented and it was Approved. 6-0. Councillor Silva, Councillor Pedroza, Councillor Small, Councillor Sorg,

Councillor Levatino, and Mayor Pro-Tem Smith voted aye. Mayor Miyagishima was absent.

V. CITY COUNCIL MINUTES

*(1) Special City Council Meeting of September 24, 2015
*(2) Regular City Council Meeting of October 5, 2015

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

*(3) Resolution No. 16-100: A Resolution Authorizing High Desert Brewing Company to Continue with the Permitting Process to Allow for the Sale and Consumption of Beer within a Restricted and Secured Area at the Frank O'Brien Papen Center, 304 West Bell Avenue, During the New Mexico State University Department of Entomology, Plant Pathology & Weed Science's Holiday Banquet on December 2, 2015.

*(4) Resolution No. 16-101: A Resolution Authorizing the City of Las Cruces, on Behalf of the Southwest Border High Intensity Drug Trafficking Areas (HIDTA) Program - New Mexico, to Accept Grant Award Decrease Modification Three for Grant Number G15SN0006A in the Amount of $45,000.00, from the Executive Office of the President, Office of National Drug Control Policy, to Ratify the Mayor's Signature on the Grant Agreement and to Adjust the FY 2016 Budget.

*(5) Resolution No. 16-102: A Resolution Requesting a Variance to Allow White Sands Construction, Inc. to Place Concrete and/or Perform Other Work as Part of the East Mesa Public Safety Complex Construction Project Outside of the Hours of 7:00 A.M. to 6:00 P.M., Beginning November 2015 Through July 2016; as Required by the City of Las Cruces Municipal Code, Section 19-131.

*(6) Resolution No. 16-103: A Resolution Authorizing the City of Las Cruces, on Behalf of the Police Department, to Accept a Grant Award in the Amount of $41,494.00 from the State of New Mexico Crime Victims Reparation Commission with a $10,374.00 Cash Match Requirement, to Ratify the City Manager's Signature on the Grant Contract, and to Adjust the FY 2016 Budget.

*(7) Resolution No. 15-16-095: A Resolution Requesting the Purchase of 175 Portable Radio Units and Accessories to Dailey-Wells of San Antonio, TX in the Amount of $329,000.00 Using NM SPD # 40-000-14-00055.

VII. *APPEAL PROCESS*

Council members shall not privately discuss with any interested person or persons the merits of a case which is, or may be pending before the City Council. If there have been any such discussion or discussions, they should be disclosed by the appropriate Councillor(s) or individuals at this time.

Appeals to be presented before the Las Cruces City Council shall follow the procedure outlined in LCMC 1997, Section 38-13.

(8) Resolution No. 16-104: A Resolution Appealing the Decision of Denial by the Planning and Zoning Commission on September 22, 2015 for a Special Use Permit Application to Construct a New Wireless Communication Facility on a Property Located at 4790 Stern Drive. The Subject Property Encompasses 1.552± Acres and is Zoned C-3 (Commercial High Intensity). Submitted by Verizon Wireless/Tectonic Engineering on Behalf of A & E Enterprises, Inc., Property Owner (Sup-15-01).

Mayor Pro-Tem Smith: Have any members of the Council been involved in discussions on that topic? I will say that I have communicated with some of my members, some of my constituency since this is in district 2 and basically shared with them that this being a quasi judicial matter I cannot make any comments on it other than to let them know that I can't make comments. So, Mr. Garza if you'd like to introduce Mr. Kyle, I believe we can get started. Excuse me. Sorry. Oh, we need a motion. Thank you very much. Is there a motion to bring this forward?

Councillor Pedroza: Move to bring it forward.

Councillor Small: And I'll second.

Mayor Pro-Tem Smith: Okay, moved by Councillor Pedroza and seconded by Councillor Small. Thank you very much. Now Mr. Garza if you'd like to introduce Mr. Kyle. Thank you.

Robert Garza: Thank you, Mr. Chairman. This particular presentation is a two part presentation. As I understand it, our Chief Building Official Robert Kyle will kick us off and lay the ground work and then we've got the applicants here as well who will be sharing a presentation to compliment Mr. Kyle's introduction so with that Mr. Kyle.

Mayor Pro-Tem Smith: Yes, Ms. Lewis? Hold on a minute, Mr. Kyle.

Linda Lewis: Since this is an appeal what we usually do is have a list of all of the members and swear them in prior to any testimony given.

Mayor Pro-Tem Smith: I'm sorry, Ms. Lewis. Can you explain that again?

Linda Lewis: Since this is an appeal process, we need to have all the members that had testified at the P&Z, they are to come forward and they need to be sworn in prior to any testimony or discussion given in this situation.

Mayor Pro-Tem Smith: Alright. Thank you, Ms. Lewis. Alright, members in the audience I believe some of you testified at the Planning and Zoning Commission meeting regarding this item so if you will come forward so that you can be sworn in. Your testimony will be taken again, operating much like a court of law and that is why we have to treat this as a quasi judicial matter and our Mayor is here so I will hand over the reigns of the meeting to Mayor Miyagishima. Thank you, Mr. Mayor.

Mayor Miyagishima: Thank you, Mayor Pro-Tem. I apologize for being late. So, we're at the appeal? Who is going to swear them in? Me or Linda? Okay, Linda?

Linda Lewis: Okay, if I can have everybody that is going to testify in today's hearing please come forward. And you are all only the individuals that testified at the P&Z meeting, correct?

Mayor Miyagishima: I'm going to need you to talk into the microphone, please.

Mark Williams: Good afternoon. My name is Mark Williams and I did not present at the P&Z hearing but I am presenting today.

Rusty Babington: And Mayor just for the record that's the client...the attorney representing Verizon so in effect he testified or his client testified at the P&Z meeting so it would be appropriate for Mr. Williams to testify today.

Adam Fink: My name is Adam Fink and I was not at the P&Z meeting either.

Mark Williams: Mr. Fink is with Verizon Wireless.

Linda Lewis: Okay. If I can have everybody raise your right hand please and after I swear you in I will need each individual to come up to the mike and speak their name into the mike after you're sworn in, okay? Do you swear and affirm the testimony you're about to give in this procedure is the truth and nothing but the truth under the penalty of law? Okay, if you could please speak your name into the mike, please?

Mark Williams
Les Gutierrez
Robert Kyle
Jerry Comeau
Mark Bleiweis
Philip Braker
William Smith
Adam Fink

Mayor Miyagishima: Okay, the way we'll probably have this done is we'll have staff first, then the applicant and/or their legal counsel, and then members of the public that were at that planning and zoning. So, Mr. Kyle.

Robert Kyle: Thank you, Mr. Mayor, Council members. Before I get started, staff did receive an email communication from a member of the neighborhood affected by this request. It's a letter of support for the cell phone tower and if it's not out of order I'd like to hand it to the Council.

Mr. Chairman, Councillors, the case before us today is an appeal seeking to overturn a decision by the Planning and Zoning Commission, which denied a special use permit for a wireless communication facility, otherwise known as a cell tower for property located at Stern Drive, which is the corner of Stern Drive and Agave Drive. The subject property is approximately 1.5 acres. It is zoned C-3, commercial high intensity. It has been developed as a commercial property, however, it is currently vacant.

Before you is a zoning map of the area. The subject property is hatched here located within a C-3 zone. It is adjacent....the yellow color represents a single family residentially owned property, R-1. There is C-3 conditional property adjacent to the property as well as C-1 further up the road.

This is an aerial picture of the subject property. Again as I indicated the property had previously been a gas station/convenience store and has been converted into mini storage units with the proposed expansion, but it is currently vacant. The adjacent property is a single family home and the other immediate adjacent properties are vacant. You have Stern Drive, Interstate 10, and University on the other side of Interstate 10.

These are some site photos just to put the actual site in perspective. Again the pictures here are part of the vacant structures. This is essentially the portion of the property that is being proposed for the use by the cell tower. This is looking a little bit further to the south. You see an adjacent arroyo to the property. This is the backside of that building and the proposed site would be located right there.

This is a proposed site plan and again you can see the parking lot layout, the building layout of the existing structures. This is a 30 x 35 foot lease pad, which is where the tower and associated equipment would be located, and again a close up of the site plan of the actual equipment cabinets and the proposed monopole and again just a scale graphic of the proposed site.

Under the City's zoning code, new communication facilities, cell towers, if they're located next to an R-1 zone, single family residential zone, are required to go through a special use permit process so that the impacts of the proposed structure can be analyzed and any impacts to the adjacent properties be taken into account. Furthermore as part of this process the applicant is required to offset the cost of the City, hiring an independent expert to view the technical data provided by the applicant to determine its applicability and its relativity to the site.

Based on the application and the information provided by the applicant and compliance with the zoning code, staff did review it. We did send the communications report off to our independent consultant, which is Greg Best Consulting, Inc and they did provide a review of that information and did concur with the applicant that the subject property is the best location out of the potential sites identified for this particular tower.

The case was heard by the Planning and Zoning Commission on July 28th. At the time, the original submittal by the applicant was for a 75 foot tall monopole cell tower and not stealth. It wasn't going to be camouflaged to look like anything other than a 75 foot tall tower. The applicants were seeking a 10 foot variance to the maximum tower height, which is 65 feet with the initial request and that was part of the Planning and Zoning Commission's considerations. There were noted opposition from the area, largely in regards to the aesthetic impacts. People typically don't want cell towers in their neighborhood or close by it and that was a major theme of the public input. At that particular time, the Planning and Zoning Commission postponed the case and directed the applicants to go look at alternate locations. Two noted locations were NMSU as well as the Pecan Orchard located a little bit south and most of the property.

The applicants then went forth and explored those other sites, revised and resubmitted their request. The information they provided staff was that NMSU was not interested in having an additional tower there. There are some other facilities there but they did not want another tower on the site and that the proposed orchard was too far away to comply with the needs of Verizon in this particular location. As I said, they did revise their submittal. They lowered the proposed tower height to 65 feet, which is the allowed by height within the C-3 zoning district as well as offer to make it a stealth tower, either disguising it as a pine tree or cypress. In addition again it meets all of the City's zoning code requirements for placement.

The case was heard at the September 22nd Planning and Zoning Commission meeting. Again there was discussion about the visual impacts and the aesthetic impacts to the neighborhood as well as the Planning and Zoning Commission suggested that other sites be looked at. The applicants, having gone through that previous exercise, requested that a decision be made by the Planning and Zoning Commission so they can move forward one way or another and the Planning and Zoning Commission did vote to deny the SUP by a vote of one to three with three commissioners absent.

Before you, these are some photos that were supplied by the applicant. They're basically photo representations and they were discussed at the September public hearing. Again, this is looking towards the site. This is basically a photo sim of what the stealth tower would look like if it was done as a pine tree. This is looking at it along Vista Cuesto. This is again looking at the site off of O'Hair and you can see in the background the 65 foot stealth tower.
This is at the intersection of Agave Place and Agave Drive at the subject property and again this is from Stern Park and Salopek looking towards the property and that would be the simulation tower.

Following the decision of the Planning and Zoning Commission, the applicants did file an appeal on October 5th. They noted numerous issues of appeal. I won't go through them. I'll leave that to the applicants to do that, but largely it wraps into the fact that it complies with all the City zoning requirements for placement of the tower as well as law and that they again are seeking to have the decision of the Planning and Zoning Commission overturned, which would facilitate construction of the tower.

The Council's options are to vote yes. That would overturn the Planning and Zoning Commission and allow the process to move forward through this submittal of plans. Vote no, this would uphold the Planning and Zoning Commission's decision and would deny the placement of the tower at this particular location. Council could amend the resolution and potentially provide conditions, which may address any concerns they have. Or table and direct staff accordingly. With that, I'd be happy to answer any questions. Otherwise I will allow the applicants their opportunity.

Mayor Miyagishima: Thank you, Robert. Mayor Pro-Tem?

Mayor Pro-Tem Smith: Thank you, Mr. Mayor and thank you, Mr. Kyle. I'll go ahead and ask these questions now and they may need to be answered later by the applicant but I have three questions. One, my understanding was Tortugas Park, which is not in the City limits but that there was some interest in locating it there and I looked at the note from the meetings and so I could not tell from the drawings that were provided if the site circles that were being shown, what degree of difficulty it would be to locate that over there and if there were any other reasons for why that site was not considered more thoroughly? So that's one question. And then my second question is regarding the viewshed. Since the people have lived in these houses in that area and have grown accustomed to looking out the back of their houses and see the view that they're accustomed to, how much are we allowed to consider that? Because I do remember before I was on the Council about 4 ½ or 5 years ago, there was a proposed tower on the East Mesa. It was going to be a palm tree out there in the middle and once again the question was what is the impact going to be on the view? And I believe that one ended up being denied but it was a...basically something that was going to be very much out of place but it was going to be sticking up there in the middle of the view. I will tell you that up off of Missouri near our fire station there is a pine tree very similar to the one you're showing us here and because there are other pine trees nearby, people don't know it's there and they tend not to notice it. This one looks like it would be pretty isolated so it might be that much more apparent. So then my final question of the three is if NMSU can say we don't want it on our property, why would we be in this condition where we're being told that we have to accept it on this property here? Anyway, those are my three questions Mr. Kyle and I'll be happy to hear your answers.

Robert Kyle: Mr. Chairman and Mayor Pro-Tem, I'll take a stab at a couple of them but I think some of them will need to be answered by the applicant. In terms of the Tortugas site, I don't have any specific information on that. Of the sites that were deemed potential by the applicant, this particular location with its zoning at central was the optimal site for the needs of Verizon and what they're trying to accomplish with this particular cell tower and that was identified in the technical report by

Verizon's engineer and confirmed by the independent engineering review that the City had done that of the different locations this one was the best location.

In terms of the viewshed protection, I'm not exactly sure how to address that. Nobody wants to lose their views and granted people have lived in these areas for a long time but we do have zoning and zoning on the property does provide for building heights. It's zoned C-3 right now. The applicant or an applicant can come in and pull a permit and put a 60 foot tall building on there with no public review. I mean that is the maximum height allowed in that particular zone and there are no conditions that further limit that. So when you have zoning, you have development standards that are associated with it. I think people that live in the area to some degree need to be aware of what could occur next to them and if they're not aware of that, the zoning in place on the property allows those particular development rights for the property owner.

In your last instance, maybe even defer to legal to address but they didn't apply at the university. They applied to place the tower in this particular location and that's why we are considering it. In going to the university and saying, you know, will you be interested in entertaining us putting another tower there, they had not made particular application, I don't know that the state university has the same limitations placed on it as municipalities and the counties may have in regards to the Federal Telecommunications Law but otherwise I would defer.

Mayor Pro-Tem Smith: Thank you, Mr. Kyle. Mr. Babington, if the Mayor is okay with that, could you elaborate? Thank you.

Rusty Babington: Mayor and Council, sort of two questions I'm going to ask here. One is what about the University and the basic question is who owns the property and who's consenting to allow the property to have a cell tower on it. In this particular case, I'm not sure who the property owner is but they have consented to lease the property to Verizon Wireless in that particular case. Certainly a property owner has the ability to do that. Verizon then has the ability to say we'd like it zoned this particular way or special use permit procedures. So that sort of answers if the university doesn't want to play, the university doesn't have to play with allowing a cell tower to be placed on that property.

With respect to the second issue of the East Mesa Tower, I think I had just started working for the City and I think the legal department's recommendation at that time, which is consistent with what we feel today is that if it's denied the City will have a difficult legal time in Federal District Court in prevailing on the merits. Certainly the applicant in that time, I believe it was Verizon. I'm not positive about why they chose not to exercise their option to appeal it to district court. After 30 days, we were more than happy that they did not but the City's in a difficult legal position and with respect to looking at these, particularly if they meet our zoning requirements.

Mayor Pro-Tem Smith: Thank you, Mr. Babington and thank you, Mr. Kyle. I guess in this instance then I feel as a Council member and certainly as I attempt to represent the feelings and best interests of my constituents I have to ask those questions but also look at it from the standpoint that it comes to us. This comes before us for a reason. It comes before the Planning and Zoning Commission for

a reason and sometimes it's not simply a question of us simply answering the legal question but also what's in the best interest of our community. Thank you. Thank you, Mr. Mayor.

Mayor Miyagishima: Thank you, Mayor Pro-Tem. Questions? Other questions? Okay then with that I'll ask the applicant and/or their legal counsel to make their presentation please.

Mark Williams: Mr. Mayor, Councillors, City Officials, good afternoon. My name is Mark Williams. I represent Verizon Wireless. With me today from Verizon Wireless are Adam Fink and John Tyke, my colleague Christian Hendrickson, and Les Gutierrez from Tectonic. And as Mr. Kyle indicated, today we're here urging you to overturn the decision of the Planning and Zoning Commission and in the course of my comments, I do want to address your questions, Mr. Smith, because I think they're very good questions that are certainly worthy of discussion. So let me do that but I urge you to overturn the decision of the Planning and Zoning Commission for a number of reasons. As Mr. Kyle indicated, your staff has recommended today that the site on Stern Drive is the best available site in this area of the City. The reasons why this application should be granted and the decision of the P&Z overturned are several fold. First as has been indicated in the Mayor's State of the City Address in February and in other publications of the City, the City of Las Cruces is very much of a City on the move. It has a number of industries which include aerospace. We have a lot of tourists here. We have the university. We have a growing population. You also have a new osteopathic school being built on the NMSU campus so the number of people that are coming here is growing and so the need for wireless communications is increasing. The demand for wireless communications, as I'm sure you know, is also increasing and I'll address that in a moment. With that comes capacity issues on the existing sites and in your record there are a couple of maps that indicate where the various locations of the sites are and I'm referring to the pages 158 and forward, which have the existing sites and they're not in the presentation here but there is a site over on the university called University. There is a site to the northwest, which is called Knox. There's a site south and then there is a site to the west called Tortugas and the issue with these are the sites at Knox and University sites and the Telbrook sites are becoming overloaded and I'll talk a little bit more about that in a moment but suffice it to say with the overexpanding amount of data, these sites are becoming at capacity clogged and there is a significant gap in capacity and coverage that will result and as such our task is to find the solution to that and what is the best location for that and the most workable location in the search area that Councillor Smith talked about in his questions and I will talk about that in a moment. And this location is the only workable solution. It is zoned C-3 and others will not work for a number of reasons because New Mexico State has other plans for it. There are zoning and setback issues, etc.
As you know, your staff recommends, and your staff has recommended this at the first P&Z hearing on July 28th, at the one on September 22, and now. Not only that but your staff also engaged an independent expert to opine on the application to make sure that this is the best available location. And in fact Mr. Best in his report, which is found on pages 168-170 of the record on the agenda also notes that this is the only location. I'll walk through that in a minute.

Then there are some citizen views and we respect those. We're neighbors here too and we respect the views of our neighbors. At some point, however, we have tried to....not tried. We in fact have

compromised on it to create the best solution for the area to provide wireless service, which we're required to do under Federal law and in addition we have the least intrusive means and this location accomplishes that. And so under the facts and the facts that we've presented and the law, this particular site should be approved as it is the best location. Now we talked about wireless services and in our presentation I have some facts and figures for you to review at your convenience but data use is increasing dramatically. We all have our iPads. We have our cell phones. We have all sorts of devices that we use that police and fire use, that businesses use, that other public safety and the university use, and the amount of data is increasing the use by 650% over a five year period. Seventy percent of 911 calls come from cell phones and as we know many of our households are starting to cut the cord and being wireless only.

As I indicated, Las Cruces is a City on the move and is dedicated to bringing other industries in and tourism. This location is not too far or right near the confluence of I-10 and I-25, across the way from the university. There are residential areas to the west and all of these folks are using more and more and more data. And in order to promote the growth and the business that Las Cruces wants, it is important to continue to have the wireless services that you can count on including for public safety. On the National Citizen's Survey for the City of Las Cruces and in the strategic plan, supporting advanced technologies to increase efficiency for police and fire including multiple applications are goals of the City. So that's something that you as a citizen and your citizens require.

Now with capacity, I talked about capacity a moment ago and some of you may have seen this commercial that Verizon Wireless has on tv but if you can imagine with the exponential growth of the use of data and there are a number of people wanting to get on the two sites that are going to offset the Knox and University one and others, more and more people are demanding service and more and more data. It's almost like you have thousands of people going through one single door such as that door right there, that exit door, and at some point it gets clogged and it can't go through and that's what's occurring with the two sites, the Knox site and the University site and as we noted in the record, again it's pages 155-161 in our letter dated May 4, 2015, we note the significant gap in coverage that is resulting from this demand for data. And so the purpose of this facility is to open that door and provide offload so there isn't a significant gap in coverage because if there is a significant gap in coverage, which is resulting, then there will be dropped calls, not good for calls, data, emergency, fire and other persons.

So as Mr. Kyle indicated, this is the site location...let me get my mouse here...in this area. The University site, which is up in this area and then there's the Knox service up here, all about a mile or more away. There's one down lower below here and then one over in this area. So it's in the middle and at the confluence of all of this population and in addition these highways, which are very, very busy highways. I don't need to tell you that. And what your independent expert did was take the Verizon Wireless report and really do more than just a gut check. He analyzed it and went through and determined whether...because the main purpose he said of this new site is to offload traffic from the Verizon Wireless sites that I've articulated, the University and the Knox site, and determined which is the best one. What he did is he also considered sites to the south down here, which is considered the south site. He also considered an east site over in this area and I'm being approximate. It's on his page 170 of the record. And the existing sites are up here and over here.

And what he also concluded ladies and gentlemen is that in fact the optimal site is here in residential and we can't site it in residential because we can't zone it there. So we can't put it there. And then he also indicated and found some other commercial sites up off of San Francisco, which are small commercial sites, which are....because a setback in zoning are also not feasible. Then you have the NMSU folks who have indicated, and I'll talk about that in a second, but in other words there are, from a technical standpoint, this is the best site and because we can't site it in other areas we have to narrow this down to get to where the best site is. Because this is zoned C-3 and as Mr. Kyle indicated someone could simply build a 60 foot building without any other review. We feel that this site with the pine tree, and we have some views of that, is the least intrusive to be able to fulfill the wireless requirements that we have here.

Now you had a question Councillor Smith about NMSU and in page 229 of the record there is an email from Scott Eschenbrenner from NMSU who indicates that this land is currently being considered as a 5 megawatt solar farm and land being considered for what is not within what they are doing. I appreciate you reaching out to us but at this time I have to pass on further negotiations for this ground lease. So we had to...we couldn't lease and we can't force somebody to lease this property and in fact so we're left with this particular location and we've talked about where it is.

Currently, it's vacant. It's a gas station and convenience store that's there and there is a buffer between there and the existing neighborhoods in this place. As I go on further, I want to address viewsheds as we move along here. These are some that you've already seen where the subject....and so I need to go through those. The procedural background has already gone through it. We talked about the original Verizon Wireless proposal and what we heard at the July 28th meeting, P&Z meeting, was let's try to address the height, let's try to address the look and that's what we wanted to do as we moved along. I've already mentioned these items so I don't want to repeat what I've done other than to say here's what the City's independent expert finding. So in summary the best site is the proposed Blackhawk site. The staff recommended each time....and this is the email, if you don't have it close handy, this is the email from NMSU where we, after that hearing we went back to them and they said no so we couldn't go back there.

You mentioned the Tortugas area and it was the pecan orchard and that is approximately 2200 feet away and because of that it won't serve as the expert noted in his report to offload the sites as we had required to close a significant gap. So, we submitted a revised proposal and we complied with all the code requirements and the City staff at the September 22 meeting again recommended that this be approved based upon their own findings and of the independent expert report. Notably the application in fact complies with all of your code requirements. We have met every single one and we continue to meet those, and by lowering the height to 65 feet we're no longer in that, so we're no longer seeking the variance up to 75 feet.

Now both at the July meeting and the September 22 meeting, the good citizens came out and made their voices known and we respect absolutely the right of these citizens to come and do this. We respectfully disagree with their comments and some were from our perspective vague and generalized aesthetic concerns and those under the law do not justify a denial of a valid telecom

application, which we have here and so from that perspective we don't think that they comply with the law and the facts show that this is the one and only location that is workable, that is zoned correctly, and then there are negligible if any view impacts. I would like to move in this and then come back to it just for a second.

This is a chart showing the view projection of existing residences and it's on an access so what it does is it takes pictures from various view plains from the neighborhood so that all could take a look at it and not all of the pictures are here in this presentation. There were some that were in Mr. Kyle's presentation. All of them can be found at pages 303-316 in the record here but let me if I can go back and indicate a little bit more of the geography as this notes on the picture that we have of the top right...the top left. Excuse me. Certainly the highway here, Stern Drive the site. There are a number of major power lines that go here, the transmission and the distribution lines that go through this neighborhood already that are in some view plains as you see on the lower right on some existing views.

There is, and I'm not sure why this didn't come up but the Via Cuesta site shows a view from Via Cuesta and it shows the monopine and this is a view from O'Hair and the Organ Mountains are to the right. There are some mature trees if you look in that neighborhood. When you go into the neighborhood from Stern Drive, you go down just a scooch, so it's a very mature neighborhood, very mature trees, very nice homes and so the view from most of those homes doesn't even catch from our perspective this particular tree. And while it is singular, Mr. Smith I can see that it does fit in with other types of vegetation in that area and doesn't....and is the least obtrusive. It's not as what certain persons at the previous hearing took to have large double array monopoles, which we're not proposing here. Right now we're proposing this tree as a solution. Again from Agave Drive and Agave Place there is other vegetation in the area so it doesn't stick out and then this one on the lower right hand corner, you have power poles and then you have the pine tree and at some point as Mr. Kyle indicated, the palm tree didn't work but this is something that's going to blend into the background we assert because you won't see it with the remainder of the power poles there but particularly with the vegetation, it will blend into the background for the most part and has not implicated views.

Mayor Pro-Tem Smith: If I may. I'm sorry Mr. Williams. On that last slide.

Mark Williams: Yes sir.

Mayor Pro-Tem Smith: I believe you're referring to Stern Drive and Salopek Boulevard. Is that correct? Is that just a typo there?

Mark Williams: Yes sir.

Mayor Pro-Tem Smith: Okay. Thank you.

Mark Williams: Yes sir. You're right. So at the P&Z meeting on September 22, the P&Z councillors or commissioners heard the citizens and us and chose to ignore staff's recommendations and the law and denied our application and the commission's decision should be reversed for the reasons I've articulated plus they had, with all due respect, no basis for it. They articulated no basis for it and there were no findings or discussions that were required under your own rules as I read them and therefore it has to be reversed.

As I indicated before, our job is...we have to provide wireless services. The demand for the wireless services for this community and for those traveling through is increasing, increasing, increasing and with this data we have a significant gap in coverage we have to ameliorate in order to provide service and without....if there's a significant gap, we have to put a facility some place and we have to find the least intrusive means to be able to do it so that there is not a denial of the provision of wireless services in this area, which would be contrary to Federal law and so what we've done is we've started with the search ring that we talked about before and we narrowed it and narrowed it based upon the expert's report and the sites that we were able to look at which were from a real estate standpoint denied to us in the NMSU standpoint and then other areas because of zoning and setback issues. So because this is next to two arterials, it is zoned C-3. It is vacant land. It is the most ideal situation for this site. It is the least intrusive means for this site. It actually isn't the optimal site. The optimal site is in a residential area but of all the solutions it comes down to this one, which is the optimal solution that we have at this point. So from...the views are going to be minimized as we indicated and the failure to grant this application is going to result in a significant gap in coverage, which then is a denial of the ability to provide personal wireless services as we are required to do under Federal law. We ask that you consider the facts that we have presented today and in the other hearings before the P&Z and conclude that this application should be granted and we ask that you approve our application.

I'd like to first, Mr. Mayor, if I may just to check with my client for just a second and then also reserve a couple of minutes if that's okay. Thank you.

Mr. Mayor, Councillors, and officials, thank you for the opportunity to present. I'd like to reserve a few minutes in rebuttal if that's permissible, if not that's okay, but I'd like to reserve that and if there are any questions I'm happy to answer them.

Mayor Miyagishima: Yes please. I believe there may be a few questions that needs to be asked of you.

Mark Williams: Sure. Absolutely.

Mayor Miyagishima: Mayor Pro-Tem?

Mayor Pro-Tem Smith: Thank you, Mr. Mayor and thank you, Mr. Williams. I do appreciate the fact that you have been willing to concede some things on the appearance and on the height. I think that is showing some concern for the neighborhood's feelings. I noted in the record that Mr. Bleiweis made a reference to a roadrunner and the question...he was basically saying even if it was shaped like

a roadrunner I wouldn't want it in my viewshed but the question that comes up and I believe I asked this same question even though I wasn't on the Council when the palm tree on the East Mesa was being discussed was what other opportunities are there? Perhaps instead of trying to pretend it's a tree or trying to pretend....like in Arizona there's some Saguaro Cacti that are being used and certainly in California I've seen the palm trees. Even in El Paso there's at least one. But what other opportunities might there be or have been taken by Verizon or other providers to do something that perhaps is sculptural instead of pretending to be something its not, to just say you know what? This is a cell tower but we're making it an attractive cell tower. It's a sculptural piece. Is any of that being done anywhere?

Mark Williams: Well, certainly there are and certainly exist. One of the other trees proposed was a cypress and there are a number of cypress trees in that area just driving around it that may not be 65 feet but they're 50 feet plus and so there is that opportunity as a cypress tree as well in that area. There have been other types of facilities that have been built at....you know a church steeple comes to mind. I'm not sure that that fits right within that particular place given what it is but there are other types of structures that have been manufactured for it but in terms of...I'm just going to be blunt, Mr. Smith, not sticking out as a sore thumb, what we chose to try to present was something that we felt more closely aligns with the area and that is the vegetation that is around there, the deciduous trees and the location and the view plain, we felt that that was the best solution and the trees really do look like trees now and it does sit there but it's not in the view plain of the Organ Mountains except for on the side of it. So I trust that that answers your questions.

Mayor Pro-Tem Smith: Thank you, Mr. Williams. It at least goes a long ways towards that. The second part of my question is regarding Tortugas. As you probably know, they are incorporated separately from the City of Las Cruces. So when you mention zoning challenges and that sort of thing with residential, my understanding is that the Tortugas Corporation was actually very interested in doing this but are you saying that it was too far...that the park area that they were talking about is not too far from the orchard that you were mentioning. Is that the difficulty with the distances? Is that what was making that not acceptable?

Mark Williams: Yes sir. If I can give me just a second here. Okay, you'll see on this particular slide at the top where the pin is, the yellow pin, that's the proposed site. The pecan orchards are down south/southwest towards that area, 2200 feet farther away and that makes it well...a mile and a half away from the other areas that have to and forgive me for turning my back on you folks but on page 170 of the record you have the two sites at the top, which are up in this area and they're about a mile away now and it just doesn't offload it. That's one of the things that your expert was eluding to in his report that the site to the south, the site to the east, is just simply not going to do the work and not going to do the offload, which is why really the optimal area is up here in the residential area but that....we just didn't even want to propose that because of this residential nature and so the best is the C-3 down in this area. So to answer your question from a technical standpoint, it's just not going to work to offload that at that point.

Mayor Pro-Tem Smith: Okay, Mr. Williams, you were showing that yellow pushpin as being more or less where you were just pointing with your pointer. Is that correct? So that was the ideal location even though that's not where you're actually trying to put it.

Mark Williams: No. Actually this is the site. That is the....

Mayor Pro-Tem Smith: Okay well that is not actually to be perfectly honest with you that's a little bit north and west of where you're talking about. Where you're talking about is, yeah, closer to where you're pointing with the arrow.

Mark Williams: Right. Right. Okay, I'm sorry.

Mayor Pro-Tem Smith: Okay. Well, just to be clear. And so if you can move sort of down I think that's Wall Street perhaps down to right above Piro Avenue and San Felipe. There you go. And a little bit more....that's the park area that the Tortugas Pueblo was talking about possibly being a site. And so what you're saying is that just's simply too far from the optimal location.

Mark Williams: It won't pick up what is required because of the massive amount of data. It won't pick it up and if you can alever this area, this access if you will that just goes down to the pecan orchards over here then you also are not going to have the distance because the length is not going to make it and it won't work in terms of an offload of that and essentially it just wouldn't work and so that's why it's not....while this is not the optimal site, the optimal site is up here, because this is zoned C-3, that is the most workable site as your expert eluded to in his report.

Mayor Pro-Tem Smith: Well, thank you, Mr. Williams. My final question is that simply you were pointing out the potential for a gap. It's not a gap that we currently have, is that correct?

Mark Williams: The gap is....the sites are at capacity at this point. On page 158 of the record in the report, there are gaps of coverage that are noted in our report and so have I driven it today to determine if a call dropped. No sir, I can't say that today. Right? I haven't but there are gaps in coverage that exist and the sites are in fact at capacity and will result in gaps of data because the data can't go through. Is that.....and Mr. Fink is a performance engineer from Verizon Wireless and perhaps I will let him talk about that if that's okay.

Mayor Pro-Tem Smith: Alright. Thank you, Mr. Williams.

Adam Fink: Thank you for having me. So just to kind of make it kind of simple, what happens when the capacity hits....

Mayor Miyagishima: Excuse me. Could you just state your name again?

Adam Fink: Oh, I'm sorry. Adam Fink. Thank you. As the sites get filled with capacity, what

ends up happening is the coverage of those sites start to shrink and so that's where these gaps start to play in and that's why when you have capacity issues it opens up these type of holes. And the more customers you have on it and the further away they are, it is harder to serve them because the power of the site is only designated to fill a certain area. The more users that are in there, that power has to be divided against all those users so that shrinks it in. So by placing a site further south, you don't hit the intended offload or the intended coverage that's needed and maintain the freeways and access and the ingress and egress of that complete area. So the report shows based on the other sites that are there, that is the optimal location and the further we move south, we're not gaining those people and then the people that are in and around that area that need to provide that offload are now at the edge distance of what that new....the site you're proposing us to go to would be. Does that make sense?

Mayor Pro-Tem Smith: Certainly and I'm not proposing that site. I'm simply referring to the fact that that was one of the things that was mentioned.

Adam Fink: And we've taken that into consideration and that's why this is the most optimal site for the network and for the City.

Mayor Pro-Tem Smith: And thank you Mr. Fink. I think the point of my question was simply that we're looking at an anticipated gap as opposed to a current existing gap.

Adam Fink: Our sites are already....they exist. They're already at capacity.

Mayor Pro-Tem Smith: Okay. I appreciate your sharing that with us Mr. Fink. Thank you, Mr. Williams. Thank you, Mr. Mayor.

Mayor Miyagishima: Thank you, Mayor Pro-Tem. Councillor Sorg?

Councillor Sorg: Thank you, Mr. Mayor. Yeah, I was quite interested in that last conversation testimony. On page 119 and 120 and 121, there are also maps that look similar. They are so poor I can't quite tell what they are saying. Could I have an explanation of what these different little squares in there mean?

Mark Williams: Yes and I'm looking at the ones I agree with you. The ones on page 120 are not the best and that's why I went to page 158. For whatever reason in that, it's just a little bit better copy but I'll let Mr. Fink testify about that and why there is....why we are at capacity and why there is a gap.

Adam Fink: So what you're looking at is the current coverage, right? So, the different colors indicate....

Councillor Sorg: Wait a minute, there's no color. You'll have to go shades.

Adam Fink: Yeah, well shades. Correct. So the lighter shades, the whiter shade where you see

along the freeway there, just below....do you see the Tortugas site?

Mark Williams: This is where....

Adam Fink: Right. And you see the black hawk where it's proposed there along the freeway. Okay, so those darker areas that are pinpointing in there, those are the lack of coverage by the gaps that get created.

Councillor Sorg: So, the darkest area are poor coverage.

Adam Fink: Yes.

Councillor Sorg: Whereas the white areas are best coverage.

Adam Fink: No. It's the more grayer area.

Councillor Sorg: Oh, the gray area is the best coverage.

Adam Fink: Yes. So what also happens is when you place these sites we have a signal to noise ratio and so each cell sites interfere with each other to a certain point where that doesn't allow for the high data speeds and for the proper speeds that you need. So, the placement of the sites have to work in conjunction to each other to minimize the interference from each other and by doing that you create a dominant area where signal quality is best. And so like I said earlier when you have the lack of signal quality and the sites are trying to overstretch themselves and you add capacity to it, it pulls itself back in and that's where it will allow those gaps to even be more noticeable.

Councillor Sorg: Okay. One more thing then. You have three different maps there, 19, 20 and 21 and they all have different amounts of coverage there. Can you explain the difference between the three maps?

Adam Fink: Yes. So, let's see. Page 158 is the optimal with the site there.

Councillor Sorg: 158? I'm talking about 119.

Mark Williams: Yeah. That would be 119.

Councillor Sorg: Oh okay. Sorry about that. There's two numbers on a lot of this stuff.

Adam Fink: Sorry about that sir. Yes, that would be the optimal with that site being there and you would see without it is...which number is it?

Mark Williams: That's 159.

Adam Fink: 159 would be without that site there. So, you see the black, it's greater.

Councillor Sorg: So, what's on 119, 120 and 121 then? What are those maps?

Mark Williams: They are the same maps, Councillor Sorg and I...page 120 I think is this map right here. I think and then page....that's page 158 and then page 159 is the one that has evermore black and then page 160, that's the third one.

Adam Fink: Correct. And I believe that the difference between the two is taking into consideration some future plans that are also up and around the university.

Mark Williams: So at some the sites are at capacity?

Adam Fink: Correct.

Mark Williams: And there are gaps that exist at this point?

Adam Fink: Absolutely.

Councillor Sorg: My page 158 doesn't look like that. Is it in this packet here? I don't think so.

Mark Williams: I saw it in....Councillor Sorg, I saw it online under the agenda and I clicked on the very first click on the top click and that's where I got page 158.

Councillor Sorg: Yeah, I've got page 158 on here too and they just don't look the same as what you're showing me there. It could be just that it's faded here.

Adam Fink: It's probably the image. Yeah.

Councillor Sorg: Yeah.

Mark Williams: I apologize sir.

Councillor Sorg: Okay. It's probably a minor point anyway so I'll turn it back to the Mayor and perhaps have a question later on. Thank you, Mr. Mayor.

Mayor Miyagishima: Thank you, Councillor. Any other comments? Councillor Pedroza?

Councillor Pedroza: Thank you, Mr. Mayor. Thank you very much for your presentation. One of the things that is kind of worrisome to me and it's certainly not your fault, is in the packet for this particular item was presented to us a lot was made of the fact that the P&Z was wrong and didn't follow staff recommendations. That's why they're there for. They are there to utilize their own

criteria, their own judgement and then make a decision. So, it's a little bit like, you know, when you go to court and you talk to the judge, you tell him the facts and you let him or her draw the conclusion and say ah, with those facts I conclude such and such, but we were given all the conclusions and we're not really given the facts. For instance on page what was it....oh I'm sorry. I don't have this page right here. At the bottom of page 11, and they had two different page numbers, the 1-0-something or other on top and then they had other little much smaller like page 11 on the bottom. It said "P&Z ignored staff's recommendation." Well, that's....they're allowed to do that. And then the conclusionary statement, Tortugas Park is just too far. Well for whom? Now I'm beginning to understand it a little bit better right now but certainly it wasn't clear from the packet. I'm going to skip around because I've got notes all over. Excuse me.

One of the statements made was this was the best site. Well, you know, again that's a conclusion. Best for whom? And 220 feet away. You have discussed this so I guess I'll review it but you said it was too far away from something, but I don't know from what. Now I understand because of the placement of the other towers and so forth. Okay and then there was one other really glaring conclusion. The law requires approval. Oh my goodness. You know? Simply I need to know the facts to be able to say yeah, I understand now and yes, you're right. The law requires approval but that's my statement and not yours. If you would just...a tiny little....yeah, the other....

Mayor Pro-Tem Smith: Mr. Mark Williams, you'll have to point the microphone at your mouth.

Councillor Pedroza: The other thing that I wondered is there's no member of the P&Z here, is there? No? Okay. So in that case I feel as if I'm not getting both sides of the picture and I also think that I agree with Mayor Pro-Tem Smith when he said if NMSU can say no, why can't we? And those are the questions that I would like answered. Thank you.

Robert Kyle: Mr. Chairman and Councillor Pedroza, in regards to Planning and Zoning Commission members not being here, they are not allowed to participate in the proceedings following their action. They took final action. You have the minutes, the verbatim minutes from both Planning and Zoning Commission hearing so you have in fact what Planning and Zoning Commission indicated.

Councillor Pedroza: Alright, I did see that but I would have enjoyed having the presence so that they could also explain their own decisions so that somebody else is not explaining their position for them. Thank you. But I can understand that's why they're not here.

Mayor Miyagishima: Yes please.

Mark Williams: Okay. Thank you. Thank you for those questions, Councillor Pedroza. We're talking about the P&Z's decision and from our perspective the P&Z as you have just articulated, you'd like to see their views. They didn't articulate views and the reasons why that they denied it. They just simply denied it and from our perspective they're required under the law to provide

those reasons and they did not and that's why we have an issue in the manner they made the decision and hence we come here again to provide you the facts and the law because the last point about...that you raised about the law is an excellent one and that's why at the conclusion of my comments I indicated that the facts are important and the facts here demonstrate that under the law the application should be answered and that is because under the law, and I don't seek to give you Councillors....you have an obviously very abled Council here, but just to start from the forest what the Federal law says is that we have to provide service and if there's a substantial gap in capacity or coverage, if we cannot or are not allowed to fill that, then there is a prevention, effective prohibition of the provision of wireless service but in order to get there we have to give you the facts about why.

Councillor Pedroza: May I interrupt you just a minute?

Mark Williams: Yes ma'am.

Councillor Pedroza: Is that law addressed only to Verizon or is it addressed to any provider of....do you see what I'm saying?

Mark Williams: Yes. The providers have to comply with that. Yes.

Councillor Pedroza: So that does not mean that if one provider is refused the right to do that, that that provider is violating the law?

Mark Williams: Well, if we are prevented from filling a substantial gap in coverage under the law then it's from our perspective, it is the jurisdiction that is violating a law by not allowing us to do that. And so I just wanted to be candid in my answer, ma'am. I'm not trying to be argumentative. But starting off with the Tortugas area as Councilman Smith noted, the subject site is a little lower kind of around the A and the 180 in that area and as Mr. Fink just testified, the areas that we seek to offload with these two sites are farther northeast and northwest over a mile away and having it down 2200 feet away will not allow that site to function and may require additional sites in the future, which we'd rather not have and just have one site to offload all that to reduce the number of sites and that's why when....and one of the things that your code does, which I find very interesting and I think is good, which not all jurisdictions do is you require an independent expert to not just take Verizon Wireless' word at it, but to get an independent expert to review it and Mr. Best prepared a report that demonstrated factually that from a technical standpoint this is the optimal location and others to the south, to the east, and to the west were simply not going to work and so as I indicated before with my funnel analogy of trying to get from all of the possible locations down to the ones that we can use, we tried to look at something that is closer to an area, which would accept...be most acceptable to the community and we find the subject site, which is zoned C-3. It's commercial. Someone could erect as Mr. Kyle said a 60 foot building without any permission. We suggest to you that putting up monopine is more attractive than other types of uses. There are other types of uses that could be on that property that are in your code, which may not be as attractive or less attractive than this and so from that

standpoint this is occupying something with that tree. And so when we come down to it, showing the facts that this is the only workable solution to be able to fill a gap in coverage, the conclusion under the law is if that which this site will alleviate the substantial gap in coverage, therefore, it should be granted because that's what the law says. So that's when we get down to that...I trust that that answers your questions, ma'am.

Councillor Pedroza: Thank you.

Mayor Miyagishima: Councillor Silva?

Councillor Silva: Thank you, Mayor. Could you provide me with your name again?

Mark Williams: My name is Mark Williams, sir.

Councillor Silva: Thank you, Mr. Williams.

Mark Williams: Thank you.

Councillor Silva: Mr. Williams, one thing I didn't hear is your present sites, upgrading them. Is that an option or is that....have you all gone through that thought process?

Mark Williams: If I could please ask Mr. Fink who is the compliance RF person to do it because he can give you the engineering.

Adam Fink: Yes so we have been adding capacity to each of these locations with various spectrum, you know, carrier adds is what we call them so that has taken place and we definitely need this site to provide the signal, the quality that I spoke about in that area to provide that offload. So simply always adding, you know, it may fit that initial need but we've already exhausted to that point where we have to get to complete offload, which means we're putting those people on a complete separate site instead of the same site. Does that make sense?

Councillor Silva: Yeah, it does make sense but I mean I'm just thinking, and I don't know your field well enough but one would think with technology, what's going on, that somehow you could utilize the sites that you presently have and continue to upgrade in some shape or form.

Adam Fink: Yes, we have. We continue to do that every day and we have added carriers like I said to those other sites.

Councillor Silva: Okay.

Mark Williams: So with...in other words at this point.

Mayor Miyagishima: At this point, you have to talk into that microphone.

Mark Williams: Yes. At this time the sites have been upgraded to their maximum capacity and the use is at maximum capacity, hence, creating the gap in coverage area.

Adam Fink: Correct.

Councillor Silva: So, just to build on my colleague's question earlier or maybe it isn't or it is, how do your competitors, T-Mobile, the other ones, how are they dealing with this same situation? Do they utilize your site or do they use their own sites to come in six months from now or a year from now and do another antenna for T-Mobile and all the other carriers?

Mark Williams: Mr. Silva, we can't speak for other....our competitors. They're our competitors. We don't know what they're doing. Our job is to serve the citizens and the businesses and the public service and safety folks in Las Cruces and that's what we're doing. They would have to come forth with the same type of application, go through the same funnel that I talked about to get down to the one location rather than doing a bunch of different locations that might be required and so they may be upgrading. We don't know. We continue to want to serve the citizens and the City of Las Cruces and....so anything to add, Mr. Fink, to that?

Adam Fink: No. I can't speak on what they're plans or what they're doing. Like I said I don't want to get confused. When I said carrier, I didn't mean other providers. I meant the frequencies that we're deploying. We've deployed these allocated spectrum at our other sites that we're trying to offload and we call those a carrier. So I didn't want to confuse you on that. Sorry.

Councillor Silva: As I'm looking at this and we're looking at the same map up here, the southern most site is in the pecan fields I'm assuming.

Mark Williams: They're in the expert's report he noted another site down...what he calls the southern site. This is on page 170. The south site. He notes that one and it's down in that approximate area, which is too far in addition to other sites.

Councillor Silva: So the one that we're looking at here and I think it's the one up on the screen on top of us, it says Blackhawk/Tortugas arrow pointing into some pecan trees. So this location is within a pecan tree orchard?

Adam Fink: No, I think the intent of this slide is to show as I believe Mr. Smith eluded to earlier is did we look at other locations and the other location that was looked at was down in that pecan grove and the park just to the west that he referred to. If we were to draw a radius around that area, it's simply too far south from the intended coverage gaps that we need to fill along the highway and the immediate capacity in and around the University and those residential areas.

Councillor Silva: Okay. Also in reading the expert's report, he makes the comment that the south side location, it's in the commercial zoning but it has not been significantly investigated since the data traffic capacity. I mean does more research need to be done on the south side?

Adam Fink: What that's eluding to is that the current capacity of the south side are not in constraint right now. So therefore it's not optimal to be in that location.

Mark Williams: And in addition, Mr. Silva, in the independent expert's report he notes on page 169 and I quote "The south side provides reasonable coverage but is located so far south that very little data or voice traffic from the Knox side can be offloaded and thus does not provide the capacity enhancement needed" and that's why he comes down "So in summary the best site is the proposed Blackhawk site."

Councillor Silva: I'm just reading the last part of that paragraph that says it has not been significantly investigated since the data traffic capacity enhancement was not as essential as the eastside. So....thank you, Mayor.

Mayor Miyagishima: Thank you, Councillor. Mayor Pro-Tem?

Mayor Pro-Tem Smith: Thank you, Mr. Mayor and thank you again, Mr. Williams. A couple of things. Mr. Ochoa is here on the Citizens Review Board for the University area, recently approved a cell facility on one of the hotels there and so the pearpit was raised a few extra feet and it is actually enclosed. You don't look at the building and see that it's done. So we know that there are innovative ways to accomplish this and understanding with what you have referenced and others have said about the possibility of a building going onto that commercial site and thus once again perhaps being even more of an impediment but I guess what I'm getting to is that that opportunity for innovation, that opportunity for doing something different does exist and it doesn't appear that that's been sufficiently explored. The other was that when you were talking...when Councillor Silva was asking you about the capacity and your competitors, the question that occurred to me was is there anywhere where there's a joint use agreement or something like that with the towers that exist. Does that happen anywhere?

Mark Williams: Collo....you're referring to collocation, sir. That's a....you may be familiar with the term of art in the industry and that's to collocate areas on them and those collocation possibilities do not exist in this particular instance. I do not, however, that this particular site is collocatable and handy should someone else want to come on at some point. That could be a possibility. Again this would have to go through the same review process but it could be collocatable.

Mayor Pro-Tem Smith: Alright. Well, thank you, Mr. Williams. Once again I'm going to refer back to that East Mesa palm tree, which unfortunately I believe we don't have but in that situation I think there were a whole lot of residents who were basically opposed to that and in this situation we had a much smaller number but I would hate for their feelings or their sense of their neighborhood be trodden on just simply because there weren't as many. That's just a comment. You don't need to respond, but thank you, Mr. Williams. Thank you, Mr. Mayor.

Mayor Miyagishima: Thank you, Mayor Pro-Tem. Councillor Small? Before I begin and let me just say I know and I appreciate many of you asking about different locations but let's just try to stay focused on this location here because this applicant is asking to see whether or not the zoning would be allowed. The university I don't think has asked for it. They just...I guess when they were asked about it they said no, we don't want it. So you see the difference? One is saying hey, I have some property. I guess they want to sell it and they want to see if they can put a cell phone tower there. I mean I understand but it seems like we're kind of going into some other areas there and if we could just stay focused on it I think would be the best route. Councillor Small?

Councillor Small: Thank you very much, Mr. Mayor. Thank you very much for the presentation. I know we have other members so I'll just be very brief or other folks interested to stand up to speak. Do you have any sense of the local growth in data usage and also is there any estimation for the number of folks whom this new tower would serve, this new facility would serve? Is there a way to quantify that perhaps or what is the best way to quantify the service that this would provide for residents and folks who use the service? Oh and I guess...right.

Mark Williams: ....specific. I don't have specific statistics for the City of Las Cruces other than the following. I note that the City of Las Cruces is aging less than other cities in New Mexico. In other words because of the population here, the ingrowth of businesses, the average age is seven years younger than the rest of New Mexico and so you're having a greater influx of younger people who use basically only mobile devices. So that we know. We also know that the amount of increase of the use of data as I indicated in my comments nationwide is growing at a rate of 650% through the National Trade Organization, that's nationally. We think it's higher than that but that's a data point, which you can get from a source and that's why I wanted to cite the source and more and more folks are cutting the cord. Right now approximately 39% of people cut the cord. That's increasing on a daily basis and so from that perspective logically with those facts you can conclude that the increase is getting greater. In Las Cruces, you all are trying to build more businesses and trying to attract more businesses. You have that new osteopathic hospital. Aerospace is big. Tourism is big. You have the confluence of these two highways, which is increasing. The traffic is significant along....those are facts as well in demonstrating that the amount of data usage and voice usage is getting greater and so that's only going to increase as time goes on, when people are viewing videos, you know, and I note that ESPN is thinking about going off of cable because so many of its viewers are reviewing games and other types of things on their ipads and other items that we have here. That all takes data going through that door and therefore the increase in usage is getting greater and greater and greater and that's why there is a substantial gap in coverage. That's why the facts demonstrate that this site is the optimal site and the least intrusive site and I do respect the views of others but when it comes down to it, this is the least intrusive site to fill that substantial gap.

Councillor Small: Thank you very much and thank you Mr. Mayor and I think it is a very important point for us to note and to consider that mobile infrastructure is increasingly not only important but vital to the functioning of so many different systems, whether it's expanding

economic opportunity. Obviously we have film coming up. A lot of other, to public safety, the critical needs there and I think it is....this Council talks a great deal about infrastructure and investing in infrastructure, expanding economic opportunity and I think it is important for us to acknowledge that mobile bandwidth is a key part of that and I think that should very well be part of....it's obviously a part of the discussion right now and can factor in as we move forward with this decision after hearing other viewpoints but I appreciate very much. Thank you, Mayor.

Mayor Miyagishima: Thank you, Councillor. Anyone else? Okay, I have a few questions myself.

Mark Williams: Yes sir.

Mayor Miyagishima: Okay, so, and I'm no cell phone tower expert but I understand they give out a certain amount of radio-frequency waves and the standards of cell phone towers. What is the megahertz capacity of this tower?

Mark Williams: I want to be precise here so.....

Mayor Miyagishima: Okay. Sure.

Adam Fink: So we currently have our 850 megahertz and we have 700, which is our national license and then we have 1900 AWS.

Mayor Miyagishima: Which one would...how many megahertz would this one be?

Adam Fink: We would do all 30.

Mayor Miyagishima: I'm sorry?

Adam Fink: 30 megahertz. In different chunks. So, we have a 10 megahertz, we have another 10 megahertz, and we have another 10 megahertz.

Mayor Miyagishima: Oh, okay.

Adam Fink: So as technology...you've heard of LTE? That's the high speed data. So as technology evolves, the use of those spectrum allows us to combine that spectrum and make it even more efficient, right? But that technology is not here yet. So that still has to evolve. But we will be deploying all of our frequencies on this tower location.

Mayor Miyagishima: So that is probably considered on the low end of megahertz then, which you would be using because you threw me for a curve here because usually it seems like they're a little bit higher than that, but....

Adam Fink: Are you talking about megabits or actual frequency megahertz?

Mayor Miyagishima: Yeah, the actual frequency, the radio-frequency megahertz.

Adam Fink: What were you....

Mayor Miyagishima: I was of the understanding that it's between 800 and 2200 and when you said 850 I thought....

Adam Fink: Okay, so 800...850 is what we would say when we delineate the actual band difference. So, you are correct, from 800 all the way to 2100 is the complete band.

Mayor Miyagishima: Okay, so you.....

Adam Fink: I was referring to the individual carriers that I was, you know, speaking about before when I said 850, 700, so that does span that entire band.

Mayor Miyagishima: Okay, so you'll be.....

Mark Williams: When we say carriers, not other....

Adam Fink: Not other carriers. What we would classify if we broke our spectrum up, how many frequencies we could deploy. We would plan to deploy all of them.

Mayor Miyagishima: About 850 is what I heard you.....

Adam Fink: Not 850. That's....from 800. You are correct. From 800...actually from 700 to 2100.

Mayor Miyagishima: Okay. Where would you fall between there?

Adam Fink: We have a spectrum between all of those.

Mayor Miyagishima: At this capacity? At this site here?

Adam Fink: Yes.

Mayor Miyagishima: Okay.

Mark Williams: There are....Mayor, there are....let me make sure....

Adam Fink: They're licenses that we operate under.

Mark Williams: Verizon Wireless obtains licenses from the FCC to operate it under sets of

spectrum. So a spectrum might be at 700 megahertz.

Adam Fink: 700 megahertz.

Mark Williams: 850.

Adam Fink: And then 800 range, 850, and then the 1900/2100 range.

Mark Williams: And there are different types of technologies that we....and all of those different bands or spectra will be operated at this location and they are in others as well.

Mayor Miyagishima: Okay. And does the FCC set any type of safety standards and if so has this passed or completed through there?

Mark Williams: Yes.

Mayor Miyagishima: Okay.

Mark Williams: Absolutely.

Mayor Miyagishima: The last one is the....

Mark Williams: And I might note that your zoning folks have a packet that they use on a local jurisdiction's guide to radio-frequency and they look at that there.

Mayor Miyagishima: And the other one is regarding the buffers. Now this...I have to say that's the first time I've seen the tree, the pine tree. Is that the first in Las Cruces or are there others that look like that? I've seen where they've actually done like a palm tree sort of but it's made out of the same material but this one here looks like it's actually green.

Mark Williams: From Verizon Wireless' standpoint, Mayor, I'm not aware of another tree.

Mayor Miyagishima: I guess Mayor Pro-Tem told me there was one Missouri. I think I do vaguely recall something like that being told about it but....

Adam Fink: I think you also referred to earlier as the aesthetics. They are also improving so they become more real like over the years than previous years.

Mayor Miyagishima: Okay. The last one. Is there any additional buffers that you could do for the residents, even if it's a smaller nature? Would you be open to that? And we haven't heard from the residents yet but I just wanted to know if you'd be.....

Mark Williams: Well, that's a good question because as, and if you could give me just a second,

Mayor because I think a picture's worth a thousand words. This is the area if you look at the right hand side of your screen where there will be boxes and things like that and those will be buffered. In other words, there will be a screening around that. It's a different type of screening than Councilman Smith talked about on top of the building but it's a screening that will be put as screen around that equipment that residents will not see it or we'll blend it in with the existing buildings, however staff wants us to do. So the answer to your question is yes.

Mayor Miyagishima: Great. Thank you. If there's nothing further than I'll let the residents who spoke at the P&Z meeting before come forward and make some comments.

Mark Williams: Thank you very much for the opportunity to address you. I appreciate it very much and if need be may I reserve some time if need be.

Mayor Miyagishima: Sure. So for those who wish to speak on behalf of the neighborhood I guess I'll just say....I'll just have you line up here on this first row and then just state your name. You can come forward so you won't have to.....yes, sir. If you just....yes, sir. And just state your name, please.

Jerry Comeau: My name is Jerry Comeau.

Mayor Miyagishima: We'll give you seven minutes each, okay?

Jerry Comeau: Alright. I was at the Planning and Zoning meeting. There were over 45 of my fellow neighbors including my wife and over a dozen of us spoke. Obviously we all can't be here today but they're here in spirit even though they had to go to work and take care of other business. I brought up two issues at that meeting, which I don't think were addressed today. One, what crossed my mind was the issue of terrorism and the bombings that we've had here in Las Cruces of the churches, whether they be by terrorists or malcreance. I think this tower, being so close to Highway 10 is an invitation to some kind of vandalism. Highway 10 runs through California. It intersects with Highway 20 in Texas and goes onto Georgia and this tower is so close to Highway 10 that if someone did put an explosive device there, in my mind it might disrupt traffic on Highway 10. And the other thing is it's also adjacent to a major arroyo and we're in the age of El Niño. We've had flooding all over the southwest and in my mind to put it so close to the arroyo, what's to stop the water from flooding and undermining the foundation of this tower and having it fall over into the arroyo. Now I'm not an engineer and I'm speaking in very plain simple terms but I can't see putting it there. I see it's in danger because it's close to Highway 10 and there's a danger because of the arroyo and as I said I brought it up in the P&Z meeting and I don't think it's been addressed. Thank you.

Mayor Miyagishima: Thank you, sir.

William Smith: Hi. Good afternoon. My name is Williams Smith and I want to thank everybody for the opportunity to speak. I'm a neighbor. This is our neighborhood. We're hardworking

men and women. We have families. We've worked our whole lives to build up a little bit of equity in our established neighborhood. This is a PUD. It's a Planned Urban Development so it's not liken to many other neighborhoods where there's numerous inlets and outlets into it. We're a captive audience. We have two inlets, which serve as the outlets, Agave Drive being one of those and this is going to be smack right in the center of it. I find Verizon's presentations slightly disingenuous at best and almost threatening as an undertone and I'm somewhat appalled with that. The Planning and Zoning Commission number one did not ignore and as Councilperson Pedroza pointed out but again the purpose of a Planning and Zoning Commission and the City Council is to transcend merely the boxes or setbacks or the 60 foot or whatever zoning requirements to go into the neighborhoods and the constituencies of the people that they represent. We might be a City, sir, but we're a community and I don't know that you would like that in your community as well when there are viable other alternatives. If I may, please.

Mayor Miyagishima: I just need you to give them to the clerk, please.

Williams Smith: I brought eight copies. This is a picture and I'm not the best photographer but this is a picture of the tree that is at the fire station on Missouri. I want to point out the fact that it is imbedded within other trees and please recognize that those are mature pine trees. You can see this is head and shoulders above that. I have a semi smart phone, which anecdotally I never have any dropped calls and I live in this area and have for many, many years. We raised our children and our family in that neighborhood. With respect to the telephone picture or the cell phone tower picture that I took, it was with this. It's not the best but I think you can certainly see that it's not disguised. We don't even have those pine trees that are in our low profile entrance to our neighborhood. So I assure you it's going to stick out and with respect to the fencing or barrier or buffer protection around the base of this tower as the gentleman just pointed out, there is an extremely barrier around this tower that's at the fire station and believe me aesthetics doesn't even come into play but again it's at the back of the lot. There's a commercial building there and the fire department so it's not like an established neighborhood.

With respect to another point that Verizon, and again I felt it was disingenuous with respect to exploring all available alternatives, there isn't just one site. The representatives from Tortugas, the city or I'm sorry, the pueblo, the Council government representatives that were at planning and zoning, and I don't know if any of them are here, stated that they have multiples of properties that they would love to work with Verizon to offer as viable alternatives. All you have to do is drive up and down Stern Road. It breaks my heart when I drive up and down Stern Road and I see that little baseball field and I see all of these kids that are out there. It's deplorable. It's nothing like some of the state of the art facilities that we have and take for granted at various other City locations or private locations or school locations. That's why they have to work with. The revenues that could be generated from royalties from Verizon or any other carriers that then add onto this mega tower would certainly enure to the community. I think that that would be an optimal win-win. The revenues as far as royalty payments would not just enure to a private individual. Notwithstanding directly across the street, please recognize that's not NMSU proper. I work at NMSU. That is Arrowhead Research Development Park as well. So the people at

Arrowhead, Cathy Hanson, Kevin Boberg, were not contacted by Verizon so I don't know about you but one phone call to one person or one email to one person that's a representative of NMSU in my humble opinion does not say exhausting all options or all alternatives.

With respect to the next statement that Verizon proposes several concessions, going from 75 feet, which they were wanting a variance request down to 65 and offering a strawman of well we could build a 60 foot building there, how would you like that? I find again disingenuous at best. And it's going to be disguised as a tree and notice that they had artist renditions and pictures that were so far back you had not flavor of the reality of what this proposes. My backyard, I'm sorry sir but I'm not just some, as you said here a handful of opposed neighbors and yes, I appreciate that we have a right. This is America to express our views but we just can't up and sell our properties and try to relocate. We're not a multinational or a multimillion or billion dollar corporation the way Verizon is. So, it's not easy for us to take more than just simply the investment or equity in our home but it's our home and these are our neighborhoods and to be dismissed...and I felt that this was highly insultive and dismissive at best. Once again, this backs up into a residential property. There's a house right there behind the Eagle Qwik Mart, which I guess was neglected or not highlighted within the photos there and once again I want to point out the fact that there was a petition that was given to the Planning and Zoning. I don't know whatever happened to that from the neighborhood that was not a handful but a substantive representation of that pocket of neighborhood that says we are totally opposed to this and so there are other alternatives.

Lastly I would like to point out Mr. Brooks, Larry Brooks, who testified eloquently. In fact, he was given more than his allotted time of that testimony is out of town and unfortunately cannot be here, not because he doesn't care but because he has no other.....I'm sorry because he's not physically in town. So lastly with respect to I believe in their own report where Mr. Best did not say that this was the best but it was the workable because yes, it's working with City Council or the City government, not with the Tortugas government and so I would certainly suggest that the location that is just not even 2/10th of a mile down the road is Tortugas property and only one of the many that Tortugas said hey, we would welcome you gladly into our community. So thank you so very much for your time that you've given me and consider please carefully these other considerations that transcend the C-3 setbacks and requirements. And I do respect City supporting that based upon that.

Mayor Miyagishima: Thank you, Mr. Williams.

Philip Braker: Good afternoon. My name is Philip Braker. I'm a resident of....live on the road where the abandoned gas station is. I'd like to make a few statements here. Verizon is required by law to provide wireless coverage. Some of these guys should probably be in jail right now if you've driven up by Carrizozo I don't have any cell phone coverage up there so you're apparently violating Federal law if you are federally required by law. I just find that offensive that they would say that not putting that here is violating Federal law.

Okay, looking at the maps, if you looked at the maps that they were showing before you'll notice that Verizon is saying over and over again as they go further south that it becomes less and less optimal for them and if you'll also look at those maps, you'll notice it's going farther from NMSU. This may be the closest location they can get to NMSU without being on NMSU because I would venture to guess we've asked for this at the Planning and Zoning meetings, we asked for okay, where's the data usage coming that's going to be required by this and they said well, the community and they've never given anything more than that. I strongly suggest it's from the NMSU, which is where the data usage is going to be and they've got to back this up as close as NMSU without going on to NMSU. It seems to be me if that's where the data usage is, they should be going back to NMSU and working something out. I have a hard time believing. And I did catch a statement saying they're working with NMSU on another project. So there seems to be an eclipsed view here of working with NMSU that just seems to be "not an option" because this is what we want to do right now. I don't know what the driving force is behind that but that seems to be the way this has gone since the very first planning and zoning commission meeting that we've had.

I'm like to talk about quality of service because I do work with IT a little bit and I'd like to talk about quality of service. How many of you have had to wait for a video while you're staying at home with Comcast or whoever you have for your data provider? You wait for a video and it streams and you can get....more and more people are watching video and Comcast would love to have, you know, fiber connections to everybody's house but they have to limit, I mean there's a limit of how much data can go through there without putting more and more infrastructure. This is the case that we have to allow....Federal law says we have to allow complete data coverage. We're going to have cell towers every quarter mile, every 100 feet pretty soon and obviously Comcast is going to have to come in and start digging through everybody's backyard to run fiber to everybody's house because we can't have slow coverage. Quality of service through ethernet packets through this kind of stuff is what's used to determine what packets are more important. Everybody uses it. It's used in voice over IP's. It's considered a high priority packet. So every ethernet packet that runs through is given a priority. Emergency services have a higher priority. To say that we're going to start dropping and emergency services are going to start failing because we don't build this tower is I believe a strong fallacy. Being brought to people that they think, you know, your ignorance is going to let them get by with it. It's not true. Quality of service keeps that....so the low stuff, the stuff that's not important, the data that...and I'm streaming with Youtube on my phone, that can be a lower priority and if I also don't get my Youtube right now, it's probably okay. This isn't going to effect people and services and the important things as much as Verizon is leading us to believe that fact and I think that's very disingenuous and I think this whole presentation, as Bill has done a great job pointing out, has been really disingenuous.

This is my first time before the City Council. I'm really disappointed. I've seen this in the meetings that we've had with Planning and Zoning and I saw today the relationship between the City engineers and the Verizon folks seem to be very amicable. And so the question I have is do the City engineers really go through this and say....I don't have $50,000 or $20,000. I'm sure

Verizon spent $2000 or $3000 here on the salaries of the people here today. We don't have that as a community to put into countering with what they're coming up with all these facts and I always laugh when a lawyer says facts. We don't have that to put into having a rebuttal for these arguments and that's where we really looked to the City engineer and those kind of people to look at us and give us a rebuttal, okay? If this is the case, what other alternatives are there? And I don't feel that the City engineer has done that and again these guys have been...last time we walked out of the planning committee and one of the City engineers goes "Call me" to the Verizon guy and I'm like that's odd. Call me? Oh, we're going to chat, let's do lunch. I just don't feel like the community has been represented quite as effectively by the engineers as I would have hoped they would have represented. Really we look to the City to provide that kind of representation and that kind of support when a decision this important is going to be made. The City engineers haven't talked about quality of service. They've allowed Verizon to come here and say oh, you guys are going to lose your emergency services, you're going to lose coverage. They've allowed these things to be said and not rebuttaled and I'm a little disappointed in that. I'm a lot disappointed with that. And with that I'm going to give it up. I think I've said enough, we've said enough, and I appreciate your time. I really do. Thanks.

Mayor Miyagishima: Thank you, Mr. Braker. Robert Kyle, was there a City engineer involved in this?

Robert Kyle: Mr. Mayor and Council, no. In fact, I'm not an engineer. I'm a city planner and building official. Staff reviews it in accordance with the zoning code requirements, not the development requirements. The only engineer that I'm aware of was involved was the independent consultant that the City hired to review the technical information provided by Verizon.

Mayor Miyagishima: Okay, yeah, I just wanted to double check. Alright. Thank you. Anyone else in the neighborhood wanted to speak? Okay. Any comments from Council that wish to ask any of the neighbors any questions? No? Okay, Mr. Williams, you wanted to make a couple of closing comments? I need you to talk into the microphone, sir.

Mark Williams: Just a few comments to address what the good citizens mentioned and we do appreciate their comments and their right to provide those. The first gentleman, Mr. Cavall, talked about terrorism. There are many types of sites that are along highways. We're not aware of any and I conferred with Mr. Fink and I'm not aware of any instance of that or any fear of that. Indeed having the site proximate to I-10 and I-25 and these other areas were to provide emergency service providers the ability to communicate both data and voice so that is an enhancement to that. In addition, the site is not in a flood plain.

Now Mr. Smith talked about a couple of things and one of them was the neighborhood and the mature pine trees. Going through the neighborhood I do respect that he is in his neighborhood and wants to speak for it. However, in terms of where this stands, if one goes down a little bit in the neighborhood and looks back, there are a number of areas that won't be able to see this tree.

When you come in to it, you'll be able to see it but it is a pine tree. The other thing that I note is with more and more households cutting the cord and if anybody's in real estate, one will know that when you go into a home these days one of the first things somebody does is they check their bars to see if they can get coverage there. That's one of the very first things that they do, it's one of the first things real estate agents point out that you can get that and that's going further and further. So when they do sell their homes, their homes will be saleable for that reason.

In terms of the Tortugas, we've mentioned it and I don't want to belabor it but the independent report by Greg Best talks about how far away these other sites are. It talks about the interference issues. It talks about the data issues and why these other sites will not work and why these other sites will not work and why this site from a technical standpoint is optimal. So from that standpoint, citizens do have their independent person talking on their behalf. That's why they indicated Las Cruces is unusual in a good way, if you will, by having something like that, that has somebody that verifies for the citizens that what Verizon Wireless is proposing is actually correct and indicated that the actual optimal site is north and west in a residential area but you know we can't do that and so when it comes down to the optimal location, this area zoned C-3 is the best.

Now in terms of the NMSU site and the person who that spoke at NMSU, I note the email that we have on the record is signed by Scott or it's from Scott Eschenbrenner, Special Assistant to the President, MSC-VP, so it sounds like he's a senior vice president and so we take that as authority from NMSU that they're not interested and will not negotiate with us and so we can't go there. We can't do it. As the Mayor pointed out, we have to focus on this particular property. In summary, we ask that you consider the facts and the facts demonstrate that there is a gap and that the only way to do this is by the least intrusive means of this particular site and we thank you for letting us present to you today. We appreciate it.

Mayor Miyagishima: I'm sorry. I may ask you some questions but you've exhausted your seven minutes. Robert, would you happen to have a picture of this map but in color? An aerial of....right. Just an aerial of this so I can.....something that's a little more....

Robert Kyle: Mr. Chairman, I don't have a picture of that site plan.

Mayor Miyagishima: Or something that's close. What I wanted to ask the neighbors if....that should work. I just wanted to ask the neighbors if they're familiar with who owns that property behind those homes there on Vista Cuesta. All you guys can come up. See that huge swath of land back there? Are you familiar with....

Phillip Braker: Directly south, southwest of the....

Mayor Miyagishima: I don't know if it's south. I guess it would be....

Phillip Braker: I'm thinking it's PMS Industries. I know the Johnson's own the.....

Mayor Miyagishima: Yeah, directly south.

Phillip Braker: ....adjoining gas station and....

Mayor Miyagishima: Right. Yes, sir. Are you familiar with who owns that?

Phillip Braker: I just know it's the Johnson family who owns PMS down the road. They rent that out.

Mayor Miyagishima: And I was asking Robert just to clarify that. That's owned by the New Mexico Department of Transportation and if you go a little bit further, and I seem to recall this about two years ago there was a huge discussion about La Cholla Road and how they're probably going to be building the interchange there and I guess what I'm trying to get at is....believe me, I sympathize with what you have to say and frankly, you know, when I was asking about the buffer, I mean what I'm trying to get at is just a little bit more south you're going to see it's on their radar to turn that Cholla into an interchange there so you're going to have an interchange right behind....you're probably going to have some type of....Can you talk....it's not picking you up.

Philip Braker: The other entrance into our neighborhood is where you're talking about where Cholla comes across but there's two entrances. There's going to be that one and there's this one.

Mayor Miyagishima: But I also believe they're going to do something with Arrowhead Road as well so I guess what I'm trying to get at is....

Phillip Braker: That's on the other side of Interstate 10.

Mayor Miyagishima: Yes, sir. I believe that's their future plans so what I'm trying to get at is...the reason why I was asking some of these questions, and I've been in this before. I mean nobody....these Council members are here to represent their residents and they have to balance the fairness of both the residents and the City as a whole and then of course the rules and regulations and at least when I turn something down or I have to turn something down, I have to do it based on what they call findings of the fact and the only thing I could fathom was maybe whether or not this was producing too much radiation, too many RF frequencies but it seems to be within the standard guideline of what cell phone towers.....

Philip Braker: If you were zoning a property today, would that be zoned C-3? If you're going out on the East Mesa and looking at residential all around, would that be zoned C-3? Let me ask that question because that's what I don't understand, how that piece of property got zoned C-3. It was done years ago and it probably was done wrong because it doesn't make sense that that would be zoned C-3 and surrounded by residential. But then you look straight north and you'll see that there's NMSU and there's, if you look to the northwest just a little bit, you'll see that there's all kinds of towers, there's the solar panels, there's....it would fit right in with that kind of

stuff. If you're looking at....okay, if we want our community to spend millions of dollars on beautification of a community and here you're talking okay, we're going to take residential with this big ugly tower and we're going to make it look like, you know, a Christmas Tree, you know a fake Christmas tree when right across the road you could put it in with a bunch of other things that would match what it looks like and quite honestly I probably can't see it from my backyard. That's not my objection. It just doesn't make sense to me that you would do this. I'm from a northwester state. I moved here seven years ago and I'm surprised at how things are developed around here. Things would never fly like that back where I come from. You put your commercial buildings in an area, you put your residential and you fit things to make it look right. You guys do things a little different around here. This is one of those things where it doesn't make any sense to me and it would not fly in other places, but it's being flown here it looks like so I'll leave it at that.

Mayor Miyagishima: And I can understand your frustration but let me just share with you a few things. If you recall when cell phones first came out, they used to be two different types of....one was the analog and of course what we have today. And they had to do that so for safety reasons, I'm sure you've heard more and more where you'll call and they'll know exactly where you're at. I mean it's just the technology that we're moving towards that area. You know maybe seven years ago it may be a little bit different but technology is moving so fast that unfortunately things have to be provided.

Philip Braker: I appreciate exactly what you're saying. Technology is moving fast. Back then 10 miles apart was what cell phones towers needed to be to give cell coverage. Now, they're talking a mile apart? In five years at the rate they're going they're either going to have to come up with better technology, start limiting using the quality of service, or else they're going to have to have a cell phone tower every 20 feet. I mean at what point do we say okay, guys you need to figure out how you're going to limit what's not important and limit what's important. Quality...it's already built into IP back, it's already built into all that stuff and the Youtube person flying down the road probably can go without Youtube for a couple of minutes is not going to affect anybody's quality of life. And if that's really what we're talking about is quality of life, then I think that's the important thing to say is okay, 2.6 miles close enough? Because that's how far the two towers apart are. You have 1.3 miles that way and 1.3 miles this way and the conversation from Verizon has been very site specific. This is the site. They haven't said well, there's other alternatives and technology that will take care of this, too. They've been very specific. This is the site we have to have and they've been trying to avoid all the other questions because the other questions takes them to waters where it's like we don't have to have this point. We don't have to have this tower here. We can survive without this tower here but we have to spend more money and technology and this is a cheaper way to do it.

Mayor Miyagishima: And Mr. Braker, you know, I hear what you're saying and I agree with what you're saying. I have to just be very candid with you. If this Council was to vote this down, all Verizon is going to do is appeal it to district court and district court is probably going to just put it through. You know what I'm trying to say is if I knew they would stop here and I can

understand what you're saying but there are certain....

Philip Braker: So as representatives of us you guys could vote it down and if it goes to Federal and it gets done, it's done but at least you guys have done your job of putting it saying we don't think it should go here either because there's probably better things to do because this is your community too and you pay your taxes.

Mayor Pro-Tem Smith: Mr. Mayor?

Mayor Miyagishima: Hold on a second. And I hear what you're saying but I guess what I'm trying to get at is what if this was....Verizon I understand is a corporation but we're actually dealing with this property owner who has a piece of property that is zoned C-3. How it got zoned I don't know how long ago it was zoned but typically property that is facing a frontage like this, a frontage road like this that is used for commercial purposes that was probably originally zoned that way to probably help the residents in that area probably landed itself C-3. You know this person wants to sell it. This cell phone tower, this is one of the uses that is allowed on that particular zoning. They're trying to appeal to the owner to try to put this here. They're coming to the City to allow this to be done. I guess what I'm trying to say is they've met the requirements that we had and....

Philip Braker: They've met requirements then why are we here today reviewing it? Why did the zoning committee turn it down twice if they've met the requirements? They haven't met all the requirements.

Mayor Miyagishima: Okay, which requirements did they not meet?

Philip Braker: Well, obviously we had to have a hearing on it and the hearing was to bring in neighborhood input and the neighbors have strongly said that they don't want it. They want it pursued so....

Mayor Miyagishima: I want to....

Phillip Braker: I'm a little concerned about....

Mayor Miyagishima: I just want to....I want to stop just right there and I want to have Robert share with me what requirements the City has not met. Tell me what the requirements are....

Robert Kyle: Mr. Chairman, Council, the request meets the requirements of the zoning code for placement of a tower. I believe that's one of the issues that questioned why did the Planning and Zoning Committee deny it and apparently they did not provide specific findings for denial other than general discussions of aesthetics and looking at other locations, etc. and so that's why it's being appealed largely is because of the denial, the lack of a clear foundation for that denial in accordance with our adoptable rules and regulations.

Mayor Miyagishima: Okay so aesthetics and other locations. Hold on. Let's go back to Mr. Braker for just a second. Okay, sir. So other than those two, what do you feel the City didn't or wasn't addressed?

Philip Braker: As far as what hasn't been done, the City has the responsibility to make a choice here.

Mayor Miyagishima: But sir, we have to follow our rules, our ordinance. We have to follow the basic law. We....I don't know if you remember this or not there was a situation that came up. It was a gentleman's club that was zoned in a particular area. Our hands were tied. That's where they've zoned. They met all the requirements. We had to do it. We had to approve that zoning because if they didn't it was just going to get approved anyways. So...excuse me one second, sir.

Phillip Braker: Sure.

Mayor Miyagishima: So, if we were to not do that, then it's called...we would just be doing this arbitrarily and out of capriciousness we just said no, we're not going to do that and as difficult as it is for...and I'm sure it's difficult for Mayor Pro-Tem Smith but it's very difficult when we have...this is...you know, I'm your representative too. Believe me. I represent every part of the City and I know what you're saying and I can understand your concerns. I just have to be able to...if I'm going to deny it, I have to do it based on findings of fact and I haven't been...I haven't been shown that yet other than the aesthetics and the other locations and now granted if the City, say the City, we were going to want to build it and then this was the site that we chose. Okay, let's just reverse it and say the City is doing it and this is one we chose and then we heard from the residents and then the residents say hey, why don't you try the university? Why don't you try Tortugas? Okay, we work for you guys. We need to look at that but it's this person who has the property is trying to...wants to I presume sell it to verizon and let them build a tower there. So that's the whole difference there and I hope I can try to make you understand what I'm trying to say but again....

Philip Braker: And I'm sorry. This is my first time in front of City Council so excuse me if I'm a little ignorant on how this works but Verizon's come through with a crack team of lawyers, spending money to bring their side, their facts, okay? I'm going to say their facts because I don't believe it represents all the facts. I'm a citizen who looks at this and says just common sense tells me (1) It wouldn't be acceptable in other cities that have planning. The Planning and Ordinance Department looked at this and said it doesn't make sense to put it there. There's places that it makes better sense at, okay? But I don't have a team of lawyers come up and create my facts that support my case and this is where I'm really looking at the City to either one look at this and say absent of somebody looking for the facts that show this is a terrible place to put it, we don't have that team to pay for that, where does that come from? So, I'm going to leave it at that. Thanks very much.

Mayor Pro-Tem Smith: And Mr. Mayor, if I can beg Mr. Smith's indulgence for just a moment.

I do want to point out that historical note, which I've mentioned previously and that is when Verizon wanted to put in a cell tower on the East Mesa that on this Council the only two people who were not here at that time, myself and Councillor Levatino, that at that point it was turned down and Verizon did not take us to court on that particular one so I do think that as a private entity, as a business, there's also the factor that they don't necessarily want to be in the position of overly offending potential clientele and certainly they've got a reputation for better coverage and all that sort of thing but I do think that in this particular instance we do have that option. Obviously it's come before us for the very reason that we do represent our community and have to look at it from that standpoint and I do recognize the need to acknowledge the law and work with that but I do think we have a little more leeway than perhaps was previously represented. Thank you, Mr. Mayor.

Mayor Miyagishima: Mayor Pro-Tem, are you talking about the one that was in your district now? I thought they moved that up to what I thought Verizon did was they said...and that was going right in a neighborhood and they said they thought that they could maybe move it up four blocks that hasn't been developed yet and put the tower there. I thought that's what they did but I may be mistaken.

Mayor Pro-Tem Smith: I believe if I may Mr. Mayor that that one was sitting out there actually quite a ways from anything that was developed. It was simply going to be a very large palm tree in the middle of the desert and that did not happen and I think in this instance we're also looking at a situation where, as has been mentioned, other things could be explored. Gosh. Sorry. Other things could be explored. I'll leave it at that. Thank you, Mr. Mayor.

Mayor Miyagishima: Thank you.

William Smith: I'll be very brief and this is not emotional and please with all due respect, we're emotional as I'm sure that you can appreciate with your neighborhood but factually just three facts. Fact number one, decisions never have to be made on the basis of perceived or threatened litigation. Fact number two, there is a tower that is 1.3 miles exactly north. There's a tower 1.3 miles exactly south that are right next to the freeway. So certainly with respect to what was pointed out earlier that we have to have coverage on the freeway corridor, I think that that is not a valid argument and lastly I would just like to point out that and I will go factually. The independent report that Mr. Best provided that this was the optimal but rather this was workable because that deals with the constituency of the City and the zoning requirements thereof and Verizon. They did not get into the merits or demerits of Tortugas and I believe you would find that "the optimal" site that said this would be perfect is a Tortugas property so I certainly think that this would be the opportunity for the community to have a win-win to help one of the worst under served demographics and have them get that royalty revenues that would enure to them built up their community and meet what Mr. Best said the independent was in fact the optimal site so I always love win-wins. Thank you so much for your time and I do appreciate it.

Mayor Miyagishima: Let me ask you. Is the owner of...what is that? Did that used to be the

Eagle Mart? Is the owner of that property here or a representative of the owner of that property?

Mark Williams: The owner of the subject property where we're going to put the site?

Mayor Miyagishima: Right.

Mark Williams: That gentleman is not here, no sir.

Mayor Miyagishima: So you all were looking to purchase it from.....

Mark Williams: No, we're going to lease it from them.

Mayor Miyagishima: Oh, lease it from them.

Mark Williams: Yes, sir.

Mayor Miyagishima: So, they're not looking to sell it.

Mark Williams: No sir. And I know that if we went to other areas, we'd have the same zoning issues that we have.

Mayor Miyagishima: Who approached who? Did you approach them or did they approach you?

Mark Williams: We approached them. Mr. Gutierrez can testify to that.

Les Gutierrez: Mr. Mayor, Councillors, we approached the owner for the property.

Councillor Sorg: May I ask your name, please?

Les Gutierrez: Yes, my name is Les Gutierrez and I'm with Tectonic Engineering. We're with the firm that works for Verizon Wireless. We testified in both zoning hearings.

Councillor Sorg: Thank you.

Mayor Miyagishima: Okay, so you approached that Eagle Mart owner to see if you could lease some property there. Okay, let me ask these residents here something real quick. Okay, so getting back to Mr. Smith and Mr. Braker. So, let's just say hypothetically, and I don't know what the Council could do but let's just say if we were to table it until a month or so, to reach out and ask the university whether or not they'll be interested in leasing whatever land that you all have that has to be workable with them of course.

Mark Williams: Correct.

Mayor Miyagishima: And let's just say it comes back to your satisfaction because you know it's been mentioned, Dr. Bulberg and a few other people and Mr. Savage. You...if they came back and said that they're still not interested as long as you see that we've exhausted.

William Smith: The only thing...and I very much respect that and that certainly is very well. The only other thing I would ask is...and certainly the representatives from the tribal council of Tortugas who already said that they would make it work. They were very interested in that. They too would be engaged in this conversation and I think that we would potentially have a win-win.

Mayor Miyagishima: But I thought I heard that that was pretty far away and that that....

William Smith: No sir. Actually they have multiple locations, not just the one that Verizon...

Mayor Miyagishima: Do you know where in vicinity this is?

William Smith: The one that was the optimal is one of the Tortugas properties. It's in Tortugas. We're talking about the Tortugas Council who indicated after the P&Z meeting, they said we have numerous properties located throughout and we would love the opportunity to have a rise and talk with us so that we could get the royalty revenues that would be a great benefit for our community economically.

Mayor Miyagishima: Okay, let me ask Mr. Williams. Would you...if the Council was to...and I don't know what other properties Tortugas had. I thought it was just that one particular triangle that they had. Maybe they do own some property. I don't...the City of Albuquerque has a few pieces of property they own in Las Cruces so it's very possible that they may have something in the vicinity. Would you be amenable to....if Council was to table for a month or so?

Councillor Sorg: Mr. Mayor, if he goes along one slide before this you'll see the properties they're talking about. It will help you understand.

Mayor Miyagishima: If he does what?

Councillor Sorg: One slide before this. There.

Mark Williams: Well, I'm going to let Mr. Gutierrez testify about that particular issue.

Les Gutierrez: Mr. Mayor and Council members, before we even approached the Tortugas tribe we met with Mr. Steve Meadows who is Mr. Ochoa's counterpart at Doña Ana County and we asked him if we were to try to get something zoned in this area, we still have to go through the same process. Even though it's Indian tribal territory, it requires that we go through the full SUP process just like we're doing here. Those tribal properties, we're not familiar with all of them. Those are all surrounded by homes also. We would be going through the same process as we're

doing with the City of Las Cruces. That's why we chose what the report said and that we chose the C-3 property. Otherwise we'd be doing exactly what we're doing here.

With regard to NMSU, we did have a good conversation. I had the personal conversation that I testified with Mr. Eschenbrenner. The site that we were looking at was right across the street. That's where it would work technically. NMSU has a lot of property but they might have property near the stadium. We already have a site there. It would not work for us and that's why it was denied. They're going to be building a five megawatt solar facility there. I don't know what it's going to look like but we've already vetted all those other sites for them to work. So we at this point don't feel that going back again, this is the optimal site. We're going to be back in another month and we're going to get the same answers. Thank you, sir.

Mayor Miyagishima: Mr. Gutierrez, I hear what you're saying but that would really I think help the Council to let the residents know that they've done whatever is possible to do. I mean if you would be amenable to that, that would be great. That would show obviously good faith on behalf of Verizon and it would also lend itself to residents that you know what? At least they tried. They gave it a shot and they can't get it done. Is that something that you all would strongly consider?

Les Gutierrez: May I concur with my folks here please, sir?

Mayor Miyagishima: Sure.

Councillor Silva: Mr. Mayor?

Mayor Miyagishima: Yes, Councillor.

Councillor Silva: During this time of discussion, I would also support tabling this project as well to, as you said, to exhaust all options as possible. I think that that is a good option especially when you read some of the minutes from the meeting, representatives from the Tortugas tribe said that they had made an offer and also if you look at the City's engineer report it says the ideal site is actually not located within the City and is zoned residential so it's outside the City limits. So, I don't know if it's the Tortugas site or not but definitely I think this option that you have just mentioned of tabling it I think is a viable option.

Mayor Miyagishima: Thank you, Councillor and....well, they're still conferring there. The reason why I brought that up and something you said Mr. Smith about even though Tortugas is their own community, they fall under the auspices of the County and it's very difficult for them to have some type of economic development in that area and if this can provide some income to that area, I think that would be good and I don't know who that would go to directly. I'm not too sure how that works. I don't know if it goes to the tribal council of Tortugas or if it goes to the County but either way I think if they would know that it's earmarked for that, that would be great. I would be interested in that among the many things that you said I did hear that part.

Councillor Pedroza: Mr. Mayor?

Robert Kyle: Mr. Chairman?

Mayor Miyagishima: Yes, Robert?

Robert Kyle: If I may just to provide some information. Tortugas does fall within the ETZ so it does have to go through the County's zoning requirements for towers, etc.

Councillor Pedroza: Mr. Mayor?

Mayor Miyagishima: Yes, Councillor?

Councillor Pedroza: Thank you. I would be in favor also. I don't know that that is a formal motion that I could second but I would also be in favor and I would simply apprise the applicant that at this point I would be voting against the applicant because there was an expression it would be against the law for Verizon to blah, blah, blah and I'm questioning...that's not the exact truth and when I would take clients to depositions I would tell them whatever you do, don't tell a lie. Don't exaggerate something because that hurts your credibility. I'm embarrassed to say that but you have hurt your credibility and so I would want to give you that opportunity to go ahead and show us that in fact you have looked at all of the possible locations and not just to show resolve that this is the one, yes sir this is still the one and it would be against the law for you guys to not do it. Please give us a little more respect than that and so I'll make a motion to table.

Mayor Miyagishima: Councillor, do you mind withdrawing that motion because we still want to have a little bit more discussion because once there's a second it's not going to be able to.....

Councillor Pedroza: Alright. That's fine.

Mayor Miyagishima: Thank you. I appreciate that. Yes, sir?

Mark Williams: Your honor, Mr. Mayor, we have gone to NMSU. They said no. As Mr. Gutierrez testified already about the Tortugas, why it won't work from a technical standpoint, the discussions we had with that, we would believe that if we come back it would be a no again so we wanted to note that. Certainly, you know, we have to respect what you want to do and we mean no disrespect to anybody.

Mayor Miyagishima: Mr. Williams, I can sympathize with what you say and the need for it and I think it would make it easier for me to move forward if I knew that these two other areas, even if it's yet another way to just reach out to them. I hate to just close a door on residents and say you know what? We're just going to move forward with it but because there's still planning involved and you know we're not talking about a whole lot and if it does have to go to the ETZ Planning and Zoning I mean they'll see that the consensus....well, I'm going to guess the consensus of

Council is to do this. We're just looking to try to serve the public in all fairness. You know a lot of times, you know, we try to pride ourselves here in this community. We get along great with our county commissioners, the City Council does all the five cities here in our County and we have a good relationship with them and we have a great relationship with our residents. We try to put ourselves in their situation and how would we like it if there was a tower and I don't want them to always think well, gosh if we had just tried it one more time, if we had just reached out to these people one more time, it could have been different. That's all we're trying to suggest.

Mark Williams: And we understand and we're respecting. I mean we do. We note that we've already done that. We have a email from NMSU that says no. With the Tortugas location, we'd have to start all over again and....

Mayor Miyagishima: This is what I would propose is that we give these two gentlemen or their representatives six weeks to let them do the legwork. If they can't bring it to you then.....that way there because I know you've gone to your people, let them go to them because they're the ones who feel that they have some sites and I don't know where the sites are.

Mark Williams: NMSU also, Mr. Mayor, is that it has to be...from a technical standpoint it has to work.

Mayor Miyagishima: Right.

Mark Williams: And what we fear is that the good folks will bring us something that they feel is....

Mayor Miyagishima: And you have to agree to it. You have to agree to it. I mean if it doesn't work you can show us where it doesn't help as far as linear coverage, okay, you know but I'm just saying that it gives them....it puts the onus on them to tell us that they believe that these work, okay, and then show it to us and then bring it back to us.

Mark Williams: Excuse us one second before you table it.

Mayor Miyagishima: Sure.

Councillor Sorg: Mr. Mayor?

Mayor Miyagishima: Yes, Councillor?

Councillor Sorg: I'd like to ask our staff a question.

Mayor Miyagishima: Sure.

Councillor Sorg: They may not know the answer and that's okay. On this map that you're seeing

right here, the right area is the Tortugas, correct?

Robert Kyle: That is correct.

Councillor Sorg: And do you know that most eastern triangle piece of land is zoned there? Would you happen to know that off the top of your head?

Robert Kyle: Mr. Chairman, Councillor Sorg, no. I don't know. We don't have the ETZ zoning layer turned on.

Councillor Sorg: Okay. One last word. I know I heard someone say from the applicant that....

Councillor Levatino: It's a cemetery.

Councillor Sorg: Ah, a cemetery. Okay. Thank you very much. That helps a lot but they told me if it was north and west of the subject property now, it would be a slightly better location. I think I heard those. Correct me if I'm wrong please. Thank you.

Mark Williams: There is a location that is in Mr. Best's report, which is north and west, which is in a residential area, which is an issue. So from that perspective I think that we would be going backwards rather than forwards with all due respect, but if that's the Council's prerogative and you would like us to go back and try NMSU and Tortugas again then we will do that because we want to try to work with you.

Mayor Miyagishima: Mr. Williams, what I was envisioning is that these gentlemen and/or their representatives of the neighborhood work with you to show you these sites and then that way there again they're the ones who have knowledge of them. I'm not aware of them, and then that way there they can let you know who they contacted and if you could follow up with it that'd be great.

Mark Williams: We would be happy to follow up with it and just...I keep hating to ring this bell but it has to work...

Mayor Miyagishima: Sure. I agree.

Mark Williams: And because there is a significant gap we need to do that and that's the issue. So, we do respect this good Council. We do respect this good City and we do respect these good people and we'll be happy to work with you to try to resolve it in a manner fair to all concerned and to be able to provide coverage for this good City.

Mayor Miyagishima: Thank you very much. And for those who choose to table it, if anyone does make a motion please table it indefinitely, not date specific because there could be some changes here so just thought I'd throw that out there, but we'll still move forward. We have what I refer

to as a gentleman's agreement, six weeks to get that done. Okay so final questions before anyone goes to the table for the motion. If not, then I'll leave....yes, Councillor Levatino?

Councillor Levatino: Thank you, Mr. Mayor. I just have a few comments. Someone mentioned earlier....you know I think maybe one of the gentlemen did or I don't remember who anymore. It's been so long. About what a realtor does when they're out looking at property and I can assure you that one of the first things we do and I am a realtor is check the cell phone coverage. We check how many bars our potential buyers will have and this has been a huge problem and one of my compatriots is sitting in the back and he can attest to this I'm sure, Mr. Topley, there's a huge problem behind a mountain because the service is horrible back there and frankly I wish there was a cell tower, a cell phone tower over in my district on the East Mesa because I live in a very nice neighborhood and I can't get more than 1-2 bars and I would appreciate having a cell phone tower over there so I could have full power. I appreciate as a realtor I appreciate what the gentlemen are saying from the standpoint the amenities, the way the area looks, the value of your property, a concern about that. I have not found that to be a problem in other areas where there are cell phone towers. Property values have not decreased because of that. In fact, they've gone up at least in the minds of the buyers because they like the security of knowing they're going to have good cell service. I appreciate the Mayor's comments but we've know for awhile that this has been on the agenda. I think homeowners had the opportunity to go to NMSU to get the facts and present them if they wanted to and they did not.

And my last comment is someone on the dais made the comment about serving the residents. Yes, we do serve the residents but one of the ways we serve the residents is by improving, improving the standard of living for everybody and those ways of raising that standard of living and frankly making the City a more business friendly City, which we have been accused on many instances of not being is by having services available to people, the very best services and I think this is one more way to do that. So, I'm absolutely opposed to tabling this. I think we have beaten this horse to death and we should be voting on it. Thank you, Mr. Mayor.

Mayor Miyagishima: Thank you, Councillor. Okay, Councillor Pedroza?

Councillor Pedroza: Please help me with this. I move to table....

Mayor Miyagishima: Indefinitely.

Councillor Pedroza: I'm sorry?

Mayor Miyagishima: Move to table it indefinitely and that will be fine.

Councillor Pedroza: Indefinitely? Okay, then that's my motion. Thank you.

Mayor Miyagishima: Okay, is there a second?

Councillor Small: Second.

Mayor Miyagishima: Motion made by Councillor Pedroza, second by Councillor Small to table indefinitely. And there's no discussion on a motion or second to table so Linda?

Councillor Silva: Mayor? You said discussion?

Mayor Miyagishima: No, there's no discussion.

Mayor Miyagishima called for the roll on the Motion to Table Resolution 16-104 indefinitely and it was Approved 6-1. Councillor Silva, Councillor Pedroza, Councillor Small, Councillor Sorg, Mayor Pro-Tem Smith, and Mayor Miyagishima voted aye. Councillor Levatino voted nay.

VIII. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

(9) Resolution No. 16-105: A Resolution Approving a Memorandum of Understanding Between the City of Las Cruces and Film Las Cruces Related to Local Joint Film Endeavors.

Councillor Small Moved to Approve Resolution No. 16-105 and Councillor Sorg Seconded the motion.

Cruz Ramos, Economic Development Specialist gave an overhead presentation.

Representative Jeff Steinborn, Head of Film Las Cruces said film is strong in the State of New Mexico. There was $288 million spent in the state. I want to thank staff for all their work and Film Las Cruces. Our next phase is organizing a film office and we are preferential to the WIA building. While we are in the process of hiring a film liaison, we ask to keep Cruz as the point of contact.

Irene Oliver-Lewis, Member of the Public said I've been working on this project for many years. I would reiterate the significance of having a facility and consider using the WIA building.

Councillor Levatino asked what is the WIA?

Robert Garza said the WIA building is a small historic building in the Alameda Historic District next to Pioneer Park.

Councillor Levatino asked what does WIA stand for?

Irene Oliver-Lewis said Women's Improvement Association.

Robert Garza said we were going to put that in this agreement but we have to have the appropriate zoning and a few other issues.

Irene Oliver-Lewis said I want to thank you for your support.

Dan Williams, Member of the Public said I'm a film maker, writing, lighting technician and instructor of the film technician training program at DACC. New Mexico brought in $288 million in film last year and Las Cruces only had two weeks of that. We need a dedicated film liaison with experience.

Bill McCamey, Member of the Public said I'm a film maker and producer with over 30 years experience. I was the City's film liaison for three years. We have people here who are ready to work but have to travel to Albuquerque. I'm one of the contributors to the CMI program at NMSU. This will bring jobs and money to the infrastructure of Las Cruces.

Troy Schouten, Member of the Public said I'm a local film maker and producer with PRC Productions. I would like to thank Jeff Steinborn for bringing in the money for this. Please move forward with this.

Councillor Sorg said I do favor this. New Mexico is bringing in an average of $800,000 a day in film. I want us to work hard to get the WIA for use as an office.

Councillor Levatino asked what is our involvement with production infrastructure and training and education?

Jeff Steinborn said the funding in this agreement is for a film office budget.

Robert Garza said we are here to support them with the sound stage and training and education. They will be giving quarterly reports and will be back to give updates.

Councillor Small asked could meetings and functions for Film Las Cruces take place at the WIA building?

Robert Garza said I believe so. If not, we have the library or other Downtown venues.

Mayor Pro-Tem Smith said Mr. Garza made a good point of not getting fixed on the facility. As far as the WIA, we need to make sure we respect the neighbors.

Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 16-105 and it was Unanimously Approved. 7-0.

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(10) Council Bill No. 16-007; Ordinance No. 2766: An Ordinance Authorizing the Issuance and Sale of up to $20,000,000 City of Las Cruces, New Mexico Joint Utility Improvement Revenue Bonds to Improve the City's Joint Utility System.

Councillor Sorg Moved to Approve Ordinance 2766 and Councillor Small Seconded the motion.

Mark Krawczyk, Treasurer gave an overhead presentation.

Councillor Levatino Moved to Amend Ordinance 2766 and Councillor Sorg Seconded the motion.

Mayor Miyagishima called the role on the Motion to Amend Ordinance 2766 and it was Unanimously Approved. 7-0.

Councillor Small asked are these intended to partner with the street rehabilitation?

Robert Garza said there are three specific areas: Gas, Water, and Wastewater.

Councillor Small asked will this stop or limit street projects that would have moved forward?

Robert Garza said staff calculated the average amount of utility work needed to build a road so we're putting in place provisions.

Councillor Small asked when will the rehabilitation schedule begin to take shape and could some of the funds go toward older streets that need to be rehabilitated?

Robert Garza said the calculation was done based on dollars we will need for road rehab.

Councillor Small said is there enough to support all the street rehab projects?

Robert Garza said yes, this will enable us to do more.

Mayor Miyagishima called the role on the Motion to Approve Ordinance 2766 as amended and it was Unanimously Approved. 7-0.

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(11) Council Bill No. 16-008; Ordinance No. 2767: An Ordinance Approving a Zone Change from R-3 (Multi-Dwelling Medium Density) to R-3/C-3C (Multi-Dwelling Medium Density/Commercial High Intensity-Conditional) for a 4.2± Acre Property Located at 801 E. Farney Lane, Parcel 02-11764. Submitted by Gary Krivokapich, Property Owner (Z2888).

Councillor Small Moved to Approve Ordinance 2767 and Mayor Pro-Tem Smith Seconded the motion.

Robert Kyle, Building Official gave an overhead presentation.

Councillor Sorg asked is the high school being zoned R-3 a proper use?

Robert Kyle said the high school is on R-1 and R-3 land and would allow for a school. They've aren't subject to our zoning.

Councillor Sorg does this zoning and conditions follow the blueprint?

Robert Kyle said it was supported by the blueprint and provides guidance of building.

Gary Krivokapich, Property Owner gave an overhead presentation.

Mayor Pro-Tem Smith asked when was the last time the property was used as a farm?

Gary Krivokapich said once the other subdivision went in, it was not economical to drive in to farm and the irrigation ditches were taken out.

Mayor Pro-Tem Smith said I would like the consideration of how we would still honor the agricultural history. Do you know how quickly another review would go through?

Robert Kyle said it comes down to when it gets submitted. We have deadlines. It would have to go through staff review and a special Planning and Zoning Commission meeting scheduled.

Mayor Pro-Tem Smith asked is the interested party for the 24 hour gym still interested in that property?

Gary Krivokapich said to the best of my knowledge there is some interest but we can't disclose who it is.

Mayor Pro-Tem Smith asked would they be using a major portion of the property?

Gary Krivokapich said I would say a major portion, about the size of a grocery store.

Robert Kyle asked did you want to add a condition of no mobile or manufactured home sales?

Gary Krivokapich said mobile home sales are prohibited in C-2.

Robert Kyle said we would need to amend it to add those particular uses.

Councillor Pedroza asked is this opposed to the regular way the P&Z operates?

Robert Kyle said it's more than what would be typical.

Councillor Pedroza asked who put that provision in originally?

Robert Kyle said the Planning and Zoning Commission.

Councillor Pedroza asked did they do it through their normal process?

Robert Kyle said Planning and Zoning can recommend conditions based on zone change.

Councillor Pedroza asked who has approved it?

Robert Kyle said you're at the end of the process.

Councillor Pedroza asked has staff agreed with Planning and Zoning?

Robert Kyle said staff reports what the Planning and Zoning Commission did. Staff has concerns about a site plan going back to the Planning and Zoning Commission for approval because it's arbitrary.

Councillor Pedroza asked have you approached them with that concern?

Robert Kyle said no, they've made their recommendation. It's up to the City Council to make a decision.

Scooter Haynes, Member of the Public said I'm a neighbor and am in favor of the zoning change. It will increase the usability of the property. He does not intend to develop the property himself. I would recommend that the conditions be left as is.

Mayor Miyagishima asked would you like to see those amendments put in?

Scooter Haynes said I am in favor of this moving forward with the conditions approved and added by the Planning and Zoning Commission and do not object to the amendments.

Mayor Pro-Tem Smith asked can you give us any guidance as to what things might be helpful for the comfort level of the neighborhood?

Scooter Haynes said as neighbors we are in support of development but without more information I don't know if we would have had the same outcome. There is no sensitivity to issues that impact the neighbors.

Mayor Miyagishima asked have we ever gone back to P&Z to take over?

Robert Kyle said there are certain processes built in but the approval of the final site plan has been laid out in the PUD, which was approved by Council.

Gary Krivokapich said we do have a restricted application for 35 feet. We're okay with the site plan review as long as it uses the criteria we have here.

Councillor Levatino said my concern is with going back to the P&Z. We have a staff that is qualified and capable of dealing with this. I wouldn't amend the time but I support adding the mobile homes and flea market. I would amend the ordinance to remove the stipulation that it go back to the P&Z.

Councillor Silva asked if it doesn't go back to the P&Z, will it come back to Council?

Mayor Miyagishima said it will be handled by staff.

Councillor Silva asked what are the residents' thoughts on that?

Scooter Haynes said it is not a duplicate of process. P&Z has a different role than staff would have. Staff isn't able to be sensitive to concerns of neighbors and citizens. I don't believe we have ample requests to satisfy the neighbors and citizens.

Councillor Levatino is it not the normal process for the P&Z to approve something with this condition?

Robert Kyle said that is correct. Does such an open ended condition border on contract zoning?

Rusty Babington, City Attorney said developmental code establishes procedure for property to be changed. P&Z has certain abilities to make a recommendation and then Council decides if those recommendations are consistent with the developmental code. My concern from a legal point of view is that we're getting away from the developmental code/ordinance says.

Councillor Small asked does this give sole decision making power to Planning and Zoning?

Rusty Babington said we're establishing new procedure without changing the ordinance. Staff is

to be arbitrary when the site meets code.

Councillor Small asked is there a recommendation on the best way to move forward?

Mayor Miyagishima said the City has hired a business liaison and their job is to help navigate the applicant through the process. Staff will not let residents get harmed.

Councillor Small asked is there additional guidance that will guide staff if this is done in an administrative fashion?

David Weir, Community Development Director said the applicant is asking for a request for C-3 R-3 zoning. If he wanted a site plan process, he could have requested a PUD and P&Z would have approved the site plan. This is an infill area where you want development to take place. Staff felt that it met those conditions and just wanted additional review to take place.

Councillor Small said I would be comfortable removing this condition from the ordinance.

Mayor Pro-Tem Smith asked could we get something from the neighbors to give direction to the staff?

Mayor Miyagishima said I don't think we can give them direction to do it but we can give them what they would like to see and take under consideration.

Mayor Pro-Tem Smith asked could we phrase something to staff in which we say what we hope they would look at in terms of expectations?

Robert Garza, City Manager said that's hard to answer as we don't have a clear answer to what the neighborhood wants. We have development standards as guidance.

(The Mayor left at 5:41 p.m. and joined by phone)

Scooter Haynes said I would ask that you remand this back to P&Z for clarification on the condition or additional conditions or to table until we can create a framework of options.

David Weir said the plans will be used to review what's proposed. We'll be making recommendations based on zoning.

Councillor Levatino said I don't think delaying this solves any problems.

Councillor Small Moved to allow the mayor to participate by phone and Councillor Sorg Seconded the motion.

Mayor Pro-Tem Smith called for the roll on the motion to allow the mayor to participate by phone and it was Unanimously Approved. 7-0.

Councillor Levatino Moved to Amend Ordinance 2767 to remove the condition to go back to P&Z and add the restriction of not allowing flea markets or the sale of mobile/manufactured homes and Councillor Sorg seconded the motion.

Councillor Pedroza said it might be a good idea to have a work session on the work of Planning and Zoning and staff.

Gary Krivokapich said we have reached out to the community.

Scooter Haynes said there are additional restrictions in the packet.

Mayor Pro-Tem Smith asked would you be willing to go to the neighborhood with a sale?

Gary Krivokapich said that would be fine.

Mayor Pro-Tem Smith called for the roll on the Motion to Amend Ordinance 2767 to remove the condition to go back to P&Z and add the restriction of not allowing flea markets or the sale of mobile/manufactured homes and it was Unanimously Approved. 7-0.

Mayor Pro-Tem Smith called for the roll on the Motion to Approve Ordinance 2767 as amended and it was Unanimously Approved. 7-0.

(The Mayor left via telephone.)

IX. BOARD APPOINTMENTS

There were no board appointments.

X. NOTICE OF PROPOSED ORDINANCE(S) ---- *1.) There will be no public discussion. 2.) A councillor may ask staff for clarification on the proposed ordinance(s).*

(12) Council Bill No. 16-009; Ordinance No. 2768: An Ordinance in Accordance with the Local Economic Development Plan Authorizing the City of Las Cruces to Act as Fiscal Agent for a Local Economic Development Act Project Known as the Ol' Gringo Chili Company Project.

Mayor and Council agreed to bring back.

XI. CITY COUNCIL MEMBER BOARD REPORTS

There were no City Council member board reports.

XII. GENERAL DISCUSSION

b.) City Council

Mayor Pro-Tem Smith said we have the Veteran's Parade on Saturday.

He said everyone who has not voted come out and vote tomorrow.

Councillor Silva said come out and vote.

Councillor Pedroza said the items I have can wait until next time.

Councillor Small said the same.

Councillor Sorg said I have three things to talk about but will postpone two until next time. I'm being asked about the Federal Real ID Act and how it affects New Mexico. Efforts to be compliant have failed because of Senate roadblocks. I'm asking for help from the Mayor and Council as this is supposed to take effect next year.

Councillor Levatino said I have nothing.

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c.) City Manager

Robert Garza said we have an election tomorrow. The library will open early. PIO will have live coverage.

Councillor Sorg Moved to Adjourn and Councillor Levatino Seconded the motion.

Mayor Pro-Tem Smith said all of those in favor signify by saying "Aye."

Council said "Aye."

Meeting Adjourned at 5:58 p.m.

Mayor

Interim City Clerk

(SEAL)