



**City Council
of the
City of Las Cruces**

Regular Meeting

**October 26, 2009
5:00 P.M.**

Council Chambers, City Hall

MEMBERS PRESENT:

STAFF:

- 14 Mayor Ken Miyagishima
- 15 Councillor Miguel Silva, District 1
- 16 Councillor Dolores Connor, District 2
- 17 Councillor Dolores C. Archuleta, District 3
- 18 Councillor Nathan Small, District 4
- 19 Councillor Gil Jones, District 5
- 20 Councillor Sharon Thomas, District 6

- Terrence Moore, City Manager
- Fermin Rubio, City Attorney
- Esther Martinez, City Clerk

I. OPENING CEREMONIES

25 Mayor Miyagishima called the meeting to order and asked for a moment of silence. Councillor Jones
26 led the Pledge of Allegiance.

28 Presentation of Certificates of Appreciation/Proclamations.

30 Mayor Miyagishima and Jordan Simons presented the Pet of the Week.

32 Councillor Jones presented a Proclamation to Pam Lillibridge, President/CEO of Tresco, Inc. and
33 declared October 2009 as National Disability Employment Awareness Month.

35 Terrence Moore and Udell Vigil gave an announcement on the CLC Emmy Award.

**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.***

1 Mayor Miyagishima asked if anyone had any conflicts with anything on the agenda?

2

3 Councillor Jones said regarding Item 3, it is regarding a piece of real estate which the broker and my
4 firm has an interest in managing it but it is not my account nor do I make any money off of it. I don't
5 see how that would sway my vote.

6

7 Councillor Thomas said regarding Items 8 and 11, I had a conversation with a person of interest
8 about it in August which was before it was appealed but I have not had any more conversations
9 concerning this issue.

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13 **III. PUBLIC PARTICIPATION**

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15 Commissioner Scott Krahling said I came to talk about the annexation up in the East Mesa; I would
16 like to hear how this process works out and the future of the piece of land that belongs to the County
17 in that area.

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

24

25 Mayor Miyagishima said Item 2 needs to be removed from the consent agenda for discussion and
26 it will be heard after Item 7, making it Item 7A and Item 8 will become 11A The items will be heard
27 in the following order: Items 5, 6, 7, 2, 10, 9, 11 and 8.

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31 Councillor Connor Moved to approve the Agenda as Amended and Councillor Thomas Seconded
32 the motion.

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36 Mayor Miyagishima called for the roll on the Motion to accept the Agenda as Amended and it was
37 Unanimously APPROVED. 7-0

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41 **V. CITY COUNCIL MINUTES**

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1 *(1) Regular Meeting of September 8, 2009

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5 **VI. RESOLUTIONS AND/OR ORDINANCES FOR CONSENT AGENDA**

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7 *(3) Council Bill No. 10-015; Ordinance No. 2544: An Ordinance Approving a Zone
8 Change From C-2 (Commercial Medium Intensity) to C-3 (Commercial High
9 Intensity) for 4.31 ± Acres Located at 1400 East Missouri Avenue. The Zone
10 Change Will Bring the Property Into Zoning Compliance, Based on the Overall Size
11 of the Property Exceeding the One Acre Maximum Lot Size for Properties Within
12 the C-2 (Commercial Medium Intensity) Zoning District. Submitted by City and
13 Regional Land Use Consultants for Gadco of El Paso, LLC (Z2793).

14
15 *(4) Council Bill No. 10-017; Ordinance No. 2546: An Ordinance Approving a Zone
16 Change From R-3 (Multi-Dwelling Medium Density) to O-1 (Office, Neighborhood-
17 Limited Retail Service) & R-3 (Multi-Dwelling Medium Density) For 0.31 +/- Acres
18 Located at 428 W. Griggs Avenue. The Zone Change Will Bring the Property into
19 Compliance With the 2001 Zoning Code, as Amended. Submitted by Kathryn
20 Bonansinga, Property Owner (Z2797).

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24 **VII. RESOLUTIONS AND/OR ORDINANCES FOR DISCUSSION**

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26 (5) Council Bill No. 10-010; Ordinance No. 2539: An Ordinance Approving an
27 Annexation Known as the Peachtree Hills Annexation Containing 162.734 ± Acres
28 Into the Corporate Limits of the City of Las Cruces Generally Located Within
29 Section 10, Township 22 South, Range 2 East of the U.S.G.L.O. Surveys, Doña Ana
30 County, New Mexico. The Subject Property is Generally Located North of Peachtree
31 Hills Road and West of Jornada Road. Submitted by Summit Engineering for Las
32 Cruces Public Schools (S-09-035).

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34 Councillor Archuleta Moved to Adopt Council Bill No. 10-010; Ordinance No. 2539 and Councillor
35 Jones Seconded the motion.

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39 Councillor Archuleta Moved to Suspend the Rules and discuss Items 5, 6 and 7 concurrently and
40 Councillor Thomas Seconded the motion.

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1 Mayor Miyagishima called for the roll on the Motion to Suspend the Rules and discuss Items 5, 6
2 and 7 concurrently and it was Unanimously APPROVED. 7-0

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6 Cheryl Rodriguez, Development Services Administrator gave a presentation and said the owner of
7 the majority of the property in the annexation request is the BLM; however, the Las Cruces Public
8 Schools is the acting agent on behalf of the BLM. There are private property owners within this area
9 and the property owners for the two middle parcels are petition property owners and the property
10 owner for the property which is located between Peachtree Hills and Jornada Road is not a petitioned
11 property owner. The purpose of the annexation request is to facilitate the construction of the new
12 elementary and middle schools. In terms of the overall zoning request, you will see approximately
13 80 acres as R1AC zoning, approximately 58 acres as a holding zone, approximately 18 acres as R3
14 zoning and approximately 1.5 acres as OSR (open space recreation). On August 25th the Planning
15 and Zoning Commission recommended approval of the annexation. Staff received two comments
16 from the County; the proposed annexation should include a portion of Jornada Road lying south of
17 Peachtree Road, extending approximately 830 feet adjacent to the boundary of lot 2 of Mesa plat 7,
18 a portion of the Sierra Norte Annexation; to include this right of way as part of the annexation
19 request. The other comment was to include the un-incorporate area south of Peachtree Hills Road
20 between Mesa Grande and McGuffy, encompassing approximately 325 acres; the area has irregular
21 municipal boundaries which can be confusing to residents and emergency service providers in
22 determining which are County and which are City residents. In terms of the right of way, they are
23 speaking about 830 feet of Jornada Road; when staff processed the Sierra Norte annexation and in
24 review of the final annexation plat, it was noted that the existing right of way for Jornada Road was
25 not included as part of the Sierra Norte annexation. So, to correct that error, staff is recommending
26 that Council modify the Peachtree Hills annexation boundary to include the 830 feet of right of way
27 of Jornada Road. The municipal boundary would then include all of Jornada Road which is
28 something that should of been done with the Sierra Norte annexation and it would make us in
29 compliance with State Statute.

30

31 Greg Meyers, LCPS Representative gave a presentation and said the proposed land use for the
32 annexation is for an elementary school and middle school. The City would provide the wastewater,
33 Moongate Water would be the water provider, El Paso Electric would provide the electric and Rio
34 Grande Natural Gas would be the gas provider for this proposal. The access point would be through
35 Peachtree Hills and Jornada Road. The elementary school is already under construction and we have
36 started the development of the middle school.

37

38 Councillor Silva asked what is the primary and secondary access to this project?

39

40 Greg Meyers said the primary access would be coming from Sonoma Ranch and the elementary
41 access would be from Peachtree to Sonoma Ranch. The middle school would be from Peachtree to
42 Jornada to Sonoma Ranch. The secondary route would be Jornada all the way down to the frontage
43 road. The middle school has an interior road way that accesses through the elementary school.

1 Councillor Silva asked who is going to pave Sonoma?

2

3 Mike Johnson, Public Works Director said we have been meeting with the MPO Advisory and the
4 Policy Committees on including Sonoma Ranch and Peachtree as part of our transportation
5 improvement program but we are still seeking funding to get those roads built.

6

7 Councillor Silva asked what happens if these roads don't get paved by the time this project is
8 completed?

9

10 Scott Krahling, Commissioner said we have had several conversations with the developer just north
11 of this annexation and have been given several commitments from them that this road will be built
12 but there is a funding issue.

13

14 Councillor Silva asked who will be paving north Jornada?

15

16 Scott Krahling said the roadway on Jornada from Peachtree to the north end of the property which
17 will be the middle school those roadway improvements and the extension of the utilities will all be
18 funded by the schools.

19

20 Mayor Miyagishima asked is there anyway we can fund this with another project?

21

22 Mike Johnson said the problem is finding the funds to cover this for the first two years.

23

24 Scott Krahling said I have constituents that live in this area and they are frustrated with this being
25 a County area within the City area. I'm not even sure they want it to become a City area. There are
26 concerns with the emergency services and with the flood control issues. A lot of the roads in this area
27 are privately owned dirt roads. I would like to know if there are any future plans for this area because
28 having this section of County land surrounded by City land doesn't make any sense.

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30 Mayor Miyagishima said you can meet with our staff to discuss the procedures for any future
31 annexations. We don't want to have any confusion, especially in the case of an emergency, on which
32 is County and which is City property.

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34 Councillor Jones said we do need to consider the financial liability with annexing this area.

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38 Councillor Connor Moved to Amend Council Bill No. 10-010; Ordinance No. 2539 to extend the
39 annexation boundary by 830 feet south of Peachtree Hills Road, along Jornada Road to include the
40 established right of way of Jornada Road adjacent to the eastern boundary of lot 2 plat 7 of the Sierra
41 Norte annexation and Councillor Archuleta Seconded the motion.

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2 Mayor Miyagishima called for the roll on the Motion to Amend Council Bill No. 10-010; Ordinance
3 No. 2539 to extend the annexation boundary by 830 feet south of Peachtree Hills Road, along
4 Jornada Road to include the established right of way of Jornada Road adjacent to the eastern
5 boundary of lot 2 plat 7 of the Sierra Norte annexation and it was Unanimously APPROVED. 7-0

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9 Mayor Miyagishima called for the roll on the Motion to Adopt Council Bill No. 10-010; Ordinance
10 No. 2539 as Amended and it was Unanimously APPROVED. 7-0

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14 (6) Resolution No. 10-120: A Resolution Approving a Master Plan for an Annexation
15 Known as the Peachtree Hills Annexation Containing 162.734 + Acres Into the
16 Corporate Limits of the City of Las Cruces Generally Located Within Section 10,
17 Township 22 South, Range 2 East of the U.S.G.L.O. Surveys, Dona Ana County,
18 New Mexico. The Subject Property is Generally Located North of Peachtree Hills
19 Road and West of Jornada Road. Submitted by Summit Engineering For Las Cruces
20 Public Schools (S-09-036).

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23 Councillor Archuleta Moved to Adopt Resolution No. 10-120 and Councillor Thomas Seconded the
24 motion.

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28 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-120 and it was
29 Unanimously APPROVED. 7-0

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33 (7) Council Bill No. 10-011; Ordinance No. 2540: An Ordinance Approving an Initial
34 Zoning Request for an Annexation Known as the Peachtree Hills Annexation
35 Containing 162.734 ± Acres Into the Corporate Limits of the City of Las Cruces
36 Generally Located Within Section 10, Township 22 South, Range 2 East of the
37 U.S.G.L.O. Surveys, Doña Ana County, New Mexico. The Subject Property is
38 Generally Located North of Peachtree Hills Road and West of Jornada Road.
39 Submitted by Summit Engineering for Las Cruces Public Schools (Z2798).

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41 Councillor Jones Moved to Adopt Council Bill No. 10-011; Ordinance No. 2540 and Councillor
42 Thomas Seconded the motion.

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3 Mayor Miyagishima called for the roll on the Motion to Adopt Council Bill No. 10-011; Ordinance
4 No. 2540 and it was Unanimously APPROVED. 7-0

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8 *(2)(7A) Resolution No. 10-119: A Resolution Approving a Memorandum of Understanding
9 by and Between the City of Las Cruces and the Board of Education of Las Cruces
10 Public Schools for Certain Contract Administration Services Related to the
11 Construction of a New Elementary and Middle School.

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13 Councillor Connor Moved to Adopt Resolution No. 10-119 and Councillor Thomas Seconded the
14 motion.

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18 Cheryl Rodriguez, Development Services Administrator gave a presentation and said it is going to
19 be stipulated as part of this MOU that the Las Cruces Public Schools will provide the financing for
20 the road and utility infrastructure as it pertains to Rio Grande Natural Gas as well as the City of Las
21 Cruces wastewater services. It will include their pro-rata share of improvements to Peachtree Hills
22 and north Jornada Road. The City of Las Cruces will oversee the procurement of the project as well
23 as provide the construction management and inspection services for the overall project. Jornada
24 Road from Highway 70 and Bataan Memorial north to the Peachtree Hills intersection, there are no
25 bike lanes or sidewalks existing on that entire segment of Jornada Road. City staff can work with
26 the Las Cruces Public School staff to make sure that those amenities are incorporated into the
27 construction drawings.

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29 Herb Torres, LCPS said we have worked with City staff on this MOU because we aren't experts
30 when it comes to building roads. This will ensure that we get the appropriate bike paths, roadways
31 and guttering that is necessary to access these two schools. The school district has made that
32 commitment that these funds will be provided by the school district and the management of these
33 projects would be best handled by the City of Las Cruces.

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37 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-119 and it was
38 Unanimously APPROVED. 7-0

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42 (10) Council Bill No. 10-016; Ordinance No. 2545: An Ordinance Approving a Zone
43 Change Request for 7.126 ± Acres of Property Located West of Stern Drive and

1 South of Ringneck Drive. The Zone Change Request is From M-T (Industrial Light)
2 to R-1AC (Single-Family Medium Density-Conditional) for 5.451 ± Acres, From O-
3 2C (Office, Professional-Limited Retail Service-Conditional) to R-1A (Single-Family
4 Medium Density) for 1.107 ± Acres, and From M-T (Industrial Light) to R-1A
5 (Single-Family Medium Density) for 0.568 ± Acres. The Purpose of the Zone
6 Change Request is to Facilitate Development of a Private School and Expansion of
7 a Single -Family Residential Subdivision. The Subject Property is Located Within
8 the Heather Hills Master Planned Area. Submitted by Scanlon White, Inc. For DTG
9 Development Company, LLC (Z2794).

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11 Councillor Connor Moved to Adopt Council Bill No. 10-016; Ordinance No. 2545 and Councillor
12 Thomas Seconded the motion.

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16 Cheryl Rodriguez, Development Services Administrator gave an overhead presentation and said
17 these parcels are now part of the Heather Hills Master Plan which is primarily a single family
18 residential subdivision. This zoning change identifies the zoning for those parcels to correct the land
19 use items within. In July of this year, the P&Z did amend the Heather Hills plan to increase the
20 acreage from about 50.5 acres to 57.6 acres and the purpose of this was to facilitate the development
21 of a private school and to expand the single family residential subdivision.

22
23 Councillor Connor said when we annexed this property in 2007, the sewer system was installed and
24 is operational. We are continuing to try to find funding to remove septic tanks and hook up the older
25 neighborhoods to our sewer system.

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29 Mayor Miyagishima called for the roll on the Motion to Adopt Council Bill No. 10-016; Ordinance
30 No. 2545 and it was Unanimously APPROVED. 7-0

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34 (9) Council Bill No. 10-014; Ordinance No. 2543: An Ordinance Approving a Request
35 for Multiple Zone Changes for Approximately 13.59 ± Acres Within the Sonoma
36 Ranch East II Master-Planned Area. The Subject Area is Generally Located East of
37 Sonoma Ranch Boulevard and West of the Future Extension of Mesa Grande Drive.
38 Submitted by Gunaji-Klement & Associates for Sonoma Ranch Subdivision LTD.
39 Co. (Z2792).

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41 Councillor Connor Moved to Adopt Council Bill No. 10-014; Ordinance No. 2543 and Councillor
42 Thomas Seconded the motion.

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3 Cheryl Rodriguez, Development Services Administrator gave an overhead presentation and said this
4 zone change request went to the P&Z as part of the Master Plan second amendment and it is to
5 correct some modifications, surveying issues and to realign the appropriate land uses for the
6 approximate 13 acres that are affected in this area. The realign of Mesa Grande impacted planning
7 parcels and affected zoning boundaries. This request for the rezoning is only for 13.7 acres out of
8 the entire 320 acres of the Master Plan. Staff has received some inquires regarding the zone change
9 request but when we explained that there were corrections to planning parcels due to survey errors
10 from the realignment of Mesa Grande, the public seemed to be satisfied with it.

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14 Mayor Miyagishima called for the roll on the Motion to Adopt Council Bill No. 10-014; Ordinance
15 No. 2543 and it was Unanimously APPROVED. 7-0

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19 Councillor Archuleta Moved for a five minute recess and Councillor Thomas Seconded the motion.

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23 Mayor Miyagishima called for the roll on the Motion for a five minute recess and it was
24 Unanimously APPROVED. 7-0

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28 Councillor Jones Moved to reconvene the meeting and Councillor Small Seconded the motion.

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32 Mayor Miyagishima called for the roll on the Motion to reconvene the meeting and it was
33 Unanimously APPROVED. 7-0

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37 The meeting reconvened at 6:34 p.m.

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41 **APPEAL PROCESS**

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43 Council members shall not privately discuss with any interested person or persons the merits of a

1 case which is, or may be pending before the City Council. If there have been any such discussion
2 or discussions, they should be disclosed by the appropriate Councillor(s) or individuals at this time.

3

4 Appeals to be presented before the Las Cruces City Council may follow the appellate
5 procedures mandated by the State ex rel. Battershell v. Albuquerque. These procedures are
6 intended to protect the due process rights of all parties to the appeal. However, the
7 *Battershell* procedure will only be followed when any party in the appeal wishes to use this
8 procedure.

9

10 Persons wishing to give testimony on any item shall wait to be recognized, then go to the lectern,
11 give their name and address, be sworn in (if using the *Battershell* procedure), and limit their
12 comments to three minutes. If there is a properly identified neighborhood spokesperson, attorney
13 or real estate agent for one of the parties, the time limit shall be ten (10) minutes. You may speak
14 more than once provided you avoid being repetitious. Proponents shall speak first, followed by
15 opponents.

16

17 **BATTERSHELL PROCEDURES FOR APPEALS**
18 **PRESENTED TO THE CITY COUNCIL**

19

20 **1. PRE-APPEAL HEARING REQUIREMENTS:**

21 a. Any party to be represented by an attorney, at the appeal hearing, shall present to the
22 City Attorney's Office, at least 5 business days before the hearing, a memorandum
23 with citations of authority substantiating the party's position. This memorandum is
24 different from the appeal summary submitted 15 days after the public hearing by the
25 Board of Adjustment or the Planning and Zoning Commission.

26 b. All parties in the appeal that desire to have a specific City staff person present at the
27 appeal, need to present to the City Planning Department, at least 5 business days
28 before the appeal hearing, a letter requesting that the specific staff person be present
29 at the appeal hearing. This allows ample opportunity to notify the staff person to
30 assure attendance.

31

32 **2. AT THE BEGINNING OF THE *BATTERSHELL* APPEAL HEARING, THE**
33 **COUNCIL WILL:**

34 a. Identify all parties to the appeal, including all witnesses that wish to give testimony.
35 b. All persons who give testimony, including City staff, will be sworn-in by the clerk
36 or person authorized to administer oaths.

37 c. All persons giving testimony will be subject to cross-examination by other parties
38 within the appeal, including City staff.

39 d. All items presented in the appeal, whether in *Battershell* or not, will be limited to the
40 relevant matter being appealed and the City Council may place a reasonable limit on
41 the number of persons to be heard and their amount of testimony.

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43 **PROCEDURES FOR PRESENTATION OF ALL APPEALS**

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2 The following procedures will be used whether an appellant chooses to utilize the *Battershell*
3 procedure or not.

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5 **1. ORDER OF ALL PRESENTATIONS:**

- 6 a. City Staff Presentation
- 7 b. Appellant Presentation
- 8 c. Other parties' presentation

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10 **2. APPLICABLE STEPS FOR ALL PRESENTATIONS:**

- 11 a. Opening statements about the case by the party.
- 12 b. City Council may question the presenter/party.
- 13 c. Cross-examination by other parties, which must be done in the form of questions to
14 be answered by the presenter(s).
- 15 d. City Council may question the presenter/witness.
- 16 e. Continue to other witnesses for the party until complete.
- 17 f. Once all parties are through with giving testimony, closing statements can be made
18 by each party, in same order as above (A).

19

20 **3. CITY COUNCIL ACTION:**

- 21 a. A City Council member makes a motion, followed by a second.
- 22 b. There may be discussion of the motion.
- 23 c. The Council is prepared to vote. In the vote, the City Council may reverse, modify,
24 affirm, or change any decision or determination of the Official, Board, or
25 Commission from which the case was appealed.
- 26 d. The City Clerk takes roll call of the City Council; the decision is announced.

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28 **IX. APPEAL(S)**

29

30 (11) Resolution No. 10-121: A Resolution to Appeal the Planning and Zoning
31 Commission's Decision of Approval for a Major Amendment to the Sonoma Ranch
32 North Master Plan. The Sonoma Ranch North Master Plan Encompasses 275 ±
33 Acres. The Amendment Affected 17 Planning Parcels. The Amendment Created a
34 Commercial Development Node at the Intersection of Northrise Drive and Sonoma
35 Ranch Boulevard, Created an Area of Multi-family Land Uses Between the New
36 Commercial Node and the Established Single-family Land Uses to the South. The
37 Master Plan Area Is Generally Located South of U.S. Highway 70 North, South of
38 Northrise Drive, and East/west of Sonoma Ranch Boulevard. The Master Plan
39 Amendment Was Submitted by Gunaji-Klement & Associates for Sonoma Ranch
40 North, LLC. The Appellant Is Alameda Land Investment Corporation (S-09-011A)

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42 Councillor Archuleta Moved to Adopt Resolution No. 10-121 and Councillor Thomas Seconded the
43 motion.

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Councillor Archuleta Moved to Suspend the Rules and discuss Items 11 and 8 concurrently and
Councillor Jones Seconded the motion.

Mayor Miyagishima called for the roll on the Motion to Suspend the Rules and discuss Items 11 and
8 concurrently and it was Unanimously APPROVED. 7-0

Fermin Rubio, City Attorney said this appeal was submitted and Battershell procedures were
requested. I need to get the appellant on record stating that fact.

Jack Pickel, President of Alameda Land said we are dropping the Battershell procedure.

Fermin Rubio said I just want to remind the Council that they are acting like judges in this case and
sometimes it is difficult to switch from your legislation function to a judicial function so I would ask
you to keep that in mind. There is some latitude in the judicial function to explore alternatives but
you are here to act like judges and decide one way or the other.

Cheryl Rodriguez, Development Services Administrator gave a presentation and said staff received
two letters of support for the zone change request and Master Plan amendment. I received these this
afternoon and I would like to hand them out to Council and the appellant. There has been an appeal
filed for the approval of the Sonoma Ranch North Master Plan, a decision made by the Planning and
Zoning Commission to approve a major amendment to the Sonoma Ranch North Master Plan and
as part of the Sonoma Ranch North Master Plan amendment; the applicant to the Sonoma Ranch
North LLC has also submitted a zone change request; so, we are going to hear the appeal of the
Master Plan amendment as well as the zone change request. Staff's presentation is going to be on
the Sonoma Ranch North Master Plan in regards to the major amendment and how it impacts and
shifts land uses within this 275 acre area as well as how the zone change request is being facilitated
to go along with those shifts in land uses. The Sonoma Ranch North Master Plan is located just south
of US Highway 70 and east and west of Sonoma Ranch Boulevard; you have Northrise Drive that
also traverses the Master Plan area. The Sonoma Ranch North Master Plan comprises 275 acres of
property and consists of multiple land uses and zonings ranging from commercial to multi family
to single family to open space types of development, mixed use types of development. Case specifics
on the Sonoma Ranch North Master Plan, I just wanted to give you some specifics, some background
history, on the Sonoma Ranch North Master Plan; it was approved by City Council by Resolution
97-237 in January 1997. The Master Plan at that time was approved in accordance to the 1985
comprehensive plan. The Master Plan was considered a new document for Sonoma Ranch North,
it was not identified as an amendment to the Las Alamedas Master Plan. There was a major

1 amendment, the first major amendment was approved in April 1998, the second major amendment
2 was approved by the Planning and Zoning Commission in April 2005 but the zone change request
3 as part of that major amendment was denied by the City Council in June. So, we had conflict with
4 the established zoning and the established land uses as part of that Master Plan amendment. There
5 was a minor amendment approved in March 2006. In terms of the case specifics of the Sonoma
6 Ranch Master Plan amendment that went to the Planning and Zoning Commission in July of this
7 year, it was identified, in accordance with our subdivision code as a major amendment to the master
8 plan. You had modifications to planning parcels along the Sonoma Ranch Northrise area that
9 establishes a commercial node at the intersection of a collector Northrise Drive and principal arterial
10 Sonoma Ranch Boulevard. Then from that intersection, you then had modifications to adjacent
11 planning parcels where you have established a true multi family buffer, meaning the established land
12 uses in that master plan called for a multi family development at a high density development that
13 would create that buffer at that intersection between the commercial and then you have single family
14 that is not near that transportation corridor. As part of that major amendment, you also have planning
15 parcel 10 which was created for a dual use park pond facility and when we get to the map of the
16 master plan I will identify how the shift of land uses occurred; so, planning parcel 10 was created
17 and that is located in the southern region of the master plan area for a dual use park pond facility and
18 then a planning parcel 11 which is more at the northern end of the master plan area for a park. As
19 part of that master plan amendment, you also see the zone change request for approximately 54 acres
20 to bring those shifts in land uses and apply a corresponding zoning districts with that. Overall, the
21 master plan amendment identifies 20% commercial which includes the provision of multi family so
22 in some of the planning parcels you have true commercial development but you also have the
23 flexibility of C3 zoning district in our 2001 zoning code to develop multi family in your C3 so this
24 master plan amendment took that into account so you have high density commercial development
25 with a provision for multi family to try to engage in some kind of a mixed use concept; 6.75% multi
26 family, 2% open space and the remaining is single family type of development with some
27 allowances for multi family developments in those land use tables. When staff reviewed the
28 development application that was submitted to use as a major amendment for the master plan as well
29 as a zone change request, it went through the review process as do all applications and our long range
30 planning staff review the development applications to see if it is supported by our 1999
31 comprehensive plan. The comprehensive plan is the supporting document for all our development
32 applications. We look to see if the policy, goals and objectives embedded in that document and the
33 applications that are being proposed are in concert with one in other. Some bullets are highlighted
34 as policies that support this master plan amendment. You will find the full list of comp. plan findings
35 attached to exhibit B in your two Council Action packets but specifically policy 3.4, high density
36 uses shall be urged to concentrate in and around transportation corridors to support a mix of
37 distribution uses; policy 3.10, high density uses should locate near or on existing future plan transit
38 routes and policy 5.3, be high density commercial uses shall be located at the intersection of minor
39 arterials or any major arterials. This is the proposed master plan that was approved by the Planning
40 and Zoning Commission and I believe all of you received a large scale map of this master plan
41 amendment. This was requested at the first read, within the Sonoma Ranch master plan; let me
42 orientate you real quick; you have Highway 70 located here at the northern boundary of the master
43 plan, this is the extension of the Sonoma Ranch Boulevard heading south and then you have

1 Northrise Drive as the collector heading east west. You have established commercial uses located
2 here at Highway 70 in Sonoma Ranch; you have the existing Pic Quik and then also in this planning
3 parcel you have the Fitness One facility as well. Located on the east side of Sonoma Ranch
4 Boulevard is the future site of a bank and the planning parcels further east you have existing single
5 family residential development; basically, low density development, there are large lots that are a
6 half acre in size. You also have in this area the Sonoma Elementary School. As part of this
7 amendment, since you have established commercial uses here in this planning parcel, the planning
8 parcel located just west of that; prior to the amendment done by P & Z in July, the land uses at that
9 time were single family and multi family, this master plan amendment proposed for that planning
10 parcel would go to commercial uses. Here at the intersection of Sonoma Ranch and Northrise, these
11 two planning parcels, you have the provision of commercial as well as the zoning change master plan
12 amendment identify these planning parcels as commercial with the provision of some multi family
13 in there. As you radiate out from that intersection, then we start engaging in those buffers; we have
14 the multi family development located in this general area and then as you radiate out further we get
15 into the single family development located here and this planning parcel allows for the provision of
16 both single family and multi family development; this larger planning parcel is predominately single
17 family. The applicant did make the provision to go to a PUD at a future time where land uses could
18 possibility change at a future date if a PUD was chosen. Right now with this master plan amendment
19 you do have single family land uses established. This was the planning parcel that was created for
20 a park facility that I believe is approximately .7 acres in size and the next park area here also has a
21 dual use, will be in this general area just located east of where Rinconada terminates into Sonoma
22 Ranch; you have the arroyo located here at the southern boundary of the Sonoma Ranch master plan.
23 This area was identified as a dual use for park and ponding region. The Facilities Department did
24 review this and they believed that the proposed 5 acres for park amenities was in concert with the
25 established policies that Council has adopted in terms for the park and recreation master plan and
26 it is understood that part of this master plan is entirely conceptional so when we get into the latter
27 phases of development of this area for single family residential development then if the Facilities
28 Department sees that more park opportunities are needed based off of the population projections then
29 at that time the applicant understands that this is a minimum threshold and they may need to dedicate
30 more park space or work out an agreement where they pay the park impact fees which is allowed
31 within the established City codes. That is an overview of the proposed master plan amendment. As
32 part of your Council Action packet I broke down the planning parcels where it shows the land use
33 changes as well as the zone changes. This is the zone change map that corresponds with that master
34 plan amendment. Here is an aerial view of the subject property; the Sonoma Ranch master plan is
35 located between the Las Alamedas area and then just to the east of the Sonoma Ranch north area you
36 have a planned unit development known as the Pueblos at Las Alamedas Ranch where as part of the
37 planned unit development you have specific land uses called out in that PUD, single family type and
38 multi family type development, there is also provisions for limited commercial as well as office
39 located in this area as well as their own development standards established with this planned unit
40 development. MPO through a fare map, I have already discussed the transportation network in that
41 area. As part of the conditions of the master plan amendment, in July of this year, the master plan
42 was conditionally approved with four items; basically, having to do with the development of the dual
43 use park and pond as well as future drainage issues. So, these four conditions outline the concerns

1 that staff had as part of the drainage problems in that area and we incorporated those into conditions
2 on the master plan amendment and the Planning and Zoning Commission approved the master plan
3 with these four conditions. In terms for tonight's case, there are two elements, you do have the
4 appeal of the master plan amendment submitted by P.G., they are here this evening to provide a
5 presentation to Council regarding the appeal. The applicant for the Sonoma Ranch master plan
6 amendment and the zone change, Sonoma Ranch North, LLC the property owners are also present
7 and would like to speak before Council as well. When we get to the voting of the two items, I will
8 come back at that time and outline the options for both the appeal and the zone change request. This
9 completes my presentation and I would be more than happy to answer any questions. The appellant
10 P.G. is next to offer presentations.

11

12 Mayor Miyagishima asked can you go back to the previous screen; would you mind interpreting
13 number four?

14

15 Cheryl Rodriguez said the City will not accept ponding areas for operation maintenance that are for
16 the purpose of maintaining post development run off from commercial sites nor will the City accept
17 ponding areas that contain a combination of post development run off of commercial sites and post
18 development run off of residential sites. The City will not maintain any run off from commercial
19 development, it all has to be contained on the commercial site and privately maintained by those
20 commercial entities. Residential subdivisions, depending upon how the preliminary plotting comes
21 out and whatever agreement is agreed with by Public Works and the developer, the City can maintain
22 residential ponding facilities if they meet the City's design standards, meaning that they are greater
23 than an acre in size. I believe that's the intent of option four.

24

25 Mayor Miyagishima said I just wanted to clarify that and I will bring it up when we get to that part.
26 Now, we will listen to the appellant.

27

28 Councillor Silva said Mr. Mayor, can I just ask one question? Cheryl, these four items here, are these
29 four items that are problems with the current master plan in place, that they are trying to correct?

30

31 Cheryl Rodriguez said no, these conditions are actually conditions that staff has been placing on
32 master plans regarding the drainage. When we review a master plan, it's purely conceptual at that
33 time so the subdivision regulations in terms of master plans say that the developer has to identify
34 conceptually how the water will run off and how the drainage will be handled. When staff is looking
35 at a master plan, we are basically putting the developers on notice that conceptually their idea will
36 work; however, the City will not do x, y and z in the future, when we get to future preliminary
37 platting stages. So, when we officially get to a preliminary plat, staff goes back to these conditions
38 and say we've already evaluated this; so, these conditions, some of them are unique to this master
39 plan area but overall these are conditions that staff is putting on numerous master plans, especially
40 master plans that are identifying dual use facilities for recreational and drainage purposes because
41 the City doesn't want to agree to a dual use facility and it functions more like a drainage pond instead
42 of recreation. We want to make sure that we balance those opportunities.

43

1 Councillor Silva said so I take it that these were not in place with the initial master plan.

2

3 Cheryl Rodriguez said in 1996, probably not, no sir.

4

5 Mayor Miyagishima said we will now hear from the appellant, Mr. Jack Pickel.

6

7 Jack Pickel said we have prepared this first slide because there is constant confusion between our
8 two companies. Alameda Land Investment Corporation is the owner of the land; it started off as the
9 option for 2,833 acres known as Las Alamedas which was originally master planned and annexed
10 in the late 1980's. The Alameda Property Group is a company owned by Donny Brainard, it is not
11 part of Alameda Land Investment Corporation; it is a contractor to Alameda Land Investment
12 Corporation for marketing and for field services.

13

14 Mayor Miyagishima said they do have a better logo than yours.

15

16 Jack Pickel said ya, Alameda means tree line path and we have a very simplistic. I would like to
17 introduce the other owners of Alameda Land Investment Corporation and we have been together
18 since 1984 1983 when I first started this project. Bob Custard, Phil Custard, our attorney Tom Dawe
19 and Donny Brainard of APG. Our purpose here tonight is to appeal a master plan amendment which
20 is a necessary precursor to a zone change which we are opposed too so the sequence is we have to
21 appeal the master plan amendment before we can get to the zone change and argue against it. I am
22 going to try to keep it simple and straight forward. This really is a case about rules and I have put
23 together a rather intense appellant brief that outlined everything including our history and I don't see
24 any reason point in going through that unless you have questions about it. Essentially, the reasons
25 to deny an amendment and a zone change request is that they are attempting to change an area from
26 a residential area to a high intensity commercial zone. That is the whole reason for the master plan
27 amendment and the whole reason for the zone change. They are moving things around to try to
28 comply with certain parts of the comprehensive plan that were brought up by the staff but the staff
29 has not given sufficient weight to the fact that there is an increase of more than 35 acres or 34 acres
30 of high intensity commercial zoning in this request and I made a comment that the application didn't
31 justify this as required in your ordinances or in the State law and the staff's review did not require
32 those either. I don't want to get into criticism of either of them but I brought, just so you would have
33 it, the development statement apparently submitted by the applicant. It is a single page hand written
34 fill in the blanks and then in addition they have the maps and I think you have hard copies of the full
35 size, that were shown up here on the screen before showing the master plan amendment, major
36 master plan amendment and the zone change request; basically, three pages and I agree that there is
37 a fare amount of information on these when you can read it. When we did our original master plan
38 and design guidelines in 1987, we published this book that, I'll get into a couple pages of it, and then
39 later when we amended it in 1999, this is our amendment book, just the weight should tell you
40 something about this application. Now, in the staff's comments, they have gone through your
41 comprehensive plan, this is taken from the advance planning comments of Carol McCall, the
42 following policies from the 1999 comprehensive plan are relevant to the current proposal and then
43 she lists three pages of relevant proposals and the end somehow without any evidence in the file and

1 I have been through the case files twice, once right after the P & Z meeting and once again last
2 Thursday, they've gone from this complies to this amendment complies with and yet there is no
3 reasoning in the file. If they had meetings to discuss it, they made no notes in the file, there is no
4 evidence of these meetings. The DRC meeting did not discuss the zoning issue, they discussed the
5 engineering issues and so they didn't meet the basic requirements and in particular there are two
6 comprehensive policies and I think you have all of this in your staff's findings, The land use element
7 which is referred to in your zoning ordinances being the primary reason for the comprehensive plan
8 is the land use that is the police state issue or the police power issues to deal with, requires that for
9 a high intensity commercial zone, it serves a minimal population of 18,000 to 85,000 people; of their
10 275 acre master planned area they have 2,500 dwelling units using a standard of about 3.5
11 individuals per dwelling unit you can barely get to 10,000 population for this area to serve and yet
12 your own comprehensive plan requires 18,000 to 85,000 or 15,000 to 85,000 people so it doesn't
13 meet this basic criteria where as your staff concluded that it did and I just can't find any evidence
14 in the file to suggest that the analysis was done or that it met it. The second issue is your
15 comprehensive plan requires a study, it states shall do this study, it's in the growth and management
16 element and the study area is a one mile radius from the edge of the subject property where they are
17 increasing the zoning. The study does not exist in the files. It was not prepared by the applicant or
18 by the City staff and yet your comprehensive plan states it shall be performed. The other issue which
19 to us is more important, this is a zone change request it's not an initial zoning and it's not only
20 subject to your comprehensive plan but it is subject to New Mexico's statutes and case law. The
21 basic case law that has governed New Mexico's zoning since 1976 is Miller vs the City of
22 Albuquerque and our attorney Tom Dawe can point out all of the various requirements of that case
23 but I will tell you that number one there is a presumption that the original zoning was correct. Now
24 that is a reputable presumption in the law and that is if you were to approve this and we had to go
25 to court and basically sue you for approving it. We would have to argue that you did not meet the
26 standards of a reputable presumption, that there was no evidence in the file that said there was either
27 a mistake in the original zoning or a significant enough change in the development of the
28 neighborhood or circumstances that would merit the new zoning. This is simply not argued either
29 in the applicant's brief or in the staff's brief and these are State law requirements. We brought this
30 up in 2005 when a very similar case was brought by the same applicant and you all turned them
31 down, I presume on those reasons, that they don't meet the minimum requirements of State law. That
32 is basically where they did not comply with either the ordinances or State law and for those reasons
33 alone we think you should deny their request and grant our appeal. Other reasons almost collateral
34 damage if you were to approve their request, it takes away the credibility and integrity of master
35 planning; we started master planning prior to you having a City requirement for it, under the State
36 statute in 1985 and produced this book as a result of it and a master plan. We've relied on this for
37 24 years, we have supported it to two court cases and went through the judges and it was upheld, the
38 master plan was upheld. It was used to defend us in another case where we settled and we have been
39 induced and worked with the City for the last decade to build the infrastructure in accordance with
40 the master plan, particularly Northrise and Sonoma Ranch Boulevard where you issued almost \$15
41 million in bonds to pay for these infrastructure improvements and we have to pay them back after
42 the land sells. That was done in reliance on the zoning and the area being what it was, what was
43 originally established. I don't need to get into, I think Tom may or may not, the fact that when we

1 sold Sonoma Ranch north land to the applicant in 1996-1997, there is a contractual obligation on
2 their part to notify us when they do a change in the master planning or zoning which they did not do
3 in this instance, and we have to agree to it and since we weren't notified we couldn't agree to it and
4 we wouldn't of agreed to it had we been notified but that is something that we have to enforce
5 legally, that's not for you to enforce but I think it is relevant the fact that, that exists. Finally then,
6 if it's approved, you're basically awarding the applicant, rewarding the applicant with a win fall of
7 35 additional commercially zoned acres which are two, three or four times more valuable than
8 residentially zoned, when they haven't complied with the rules and penalize us as a result when we
9 have complied with the rules. Very quickly, I will show you some slides, this area is the original
10 area of Las Alamedas, 2,833.91 acres that we optioned in 1984 for the City of Albuquerque and
11 immediately began studying a master plan. I know you can't see these but when we started, this is
12 the map that Albuquerque gave us, this one and this one were actually on mini graph sheets, the old
13 ditto sheets, they had no idea what is was or where it was, we figured that all out and determined that
14 at the time it was annexed it was equivalent to 20% of the entire City of Las Cruces and you can see
15 from here, well Highway 70 goes through it somewhere in this area, Lohman doesn't show on here
16 but it is somewhere down here, the City dam is through here so we are limited too basically a north
17 and south corridor which we named Las Alamedas Boulevard. This is our original master plan, this
18 is the original alignment for Las Alamedas Boulevard in that master plan. A couple of points I want
19 to note because this would get to what I took to be the applicant's argument for a change in the
20 circumstance not that I could find any written evidence in their file but their attorney and their agent
21 at the Planning and Zoning Commission made some claims that I suppose were directed toward
22 change in circumstance argument. One was that until they establish Sonoma Ranch Boulevard no
23 such road existed out there; in fact, not only did we master plan it, we donated and dedicated 130
24 foot right of way for the entire amount. We also donated and dedicated approximately 600 acres of
25 open space throughout the 2,800 acres. Of 2,833 acres, we basically netted 2,200 acres of
26 developable land so 633 acres went into right of ways and open space at no cost to the City of Las
27 Cruces. Subsequent to this plan which was adopted by the City Council, we had some sales and we
28 had to do this because we never intended to be the developer of all this, we intended to be a master
29 developer that would sell is to others and I was approached by Realtors, by Elected Officials at that
30 time saying "you've got to protect us with a master plan, you can't; particularly the Realtors and
31 other agencies, telling them what we are doing and asking them for input, they said please protect
32 us so if somebody buys in your area and they want to put a home in they know what is going up next
33 to them because there have been instances back then of mobile home parks going in next to a single
34 family neighborhoods and people don't like that. So, the whole point in master planning was to set
35 out the perimeter of what was there and where the various uses were going. We originally said that
36 because of the difficulty of accessing, we will have two main major commercial areas, one at the
37 extension of Lohman and the other along this area along Highway 70. We deliberately had two
38 separate intersections over a mile apart and this was the commercial designated area, there was a
39 little of front door commercial but the rest was basically residential; one family, single family
40 residential and we stuck with that pretty much. Now, when we started selling in the 90's we
41 originally sold several tracks to the applicant up in this area that were smaller, 18 to 20 acres, in
42 accordance to our master plan and then they basically built out of there and we sold them this area
43 which is Sonoma Ranch, the main part where the golf course is now and the area known as Sonoma

1 East and Sonoma North. That was in 1996-1997 and this master plan was done in 1987, when it was
2 actually published. So, in 1999, we felt because now you had adopted your 1999 comprehensive plan
3 or were in the process of it, that we should revise our master plan to cover the land that we hadn't
4 sold, that we still had left and that included these areas of what is now John Mascato's Alameda
5 Ranch, Pueblos at Alameda Ranch development which has followed our design guidelines. It
6 surrounded the Sonoma North which is in here, this is Pueblo de Las Alamedas which is the
7 commercial area that has been set aside since 1986 and then we have the Alameda preserve, we call
8 it, which was around the Branch College. Part of the reason for doing this, we had originally named
9 it as I said Las Alamedas Boulevard after our master plan, we sold approximately a gross of 1,100
10 acres to Sonoma Ranch partners and they asked, they were our biggest buyers at that time, would we
11 agree to renaming the road to Sonoma Ranch Boulevard for marketing purposes and we said yes we
12 would; would we agree to realigning it because under the original alignment following our master
13 planning guidelines and it fit the terrain pretty much, it had great views of it, you couldn't see the
14 road from houses and such things but since they were building it and developing it we felt okay if
15 they want to change it then we will consider that; what they did is they straightened it out and put
16 the right of ways along parcels that were held for schools in some case or along a section line next
17 to federal and other cases for a couple of reasons; one, it made it shorter because it took some curves
18 out of the road and two, it took some of the responsibility for building it out of their hands, having
19 to pay for the construction of it; third, they got a windfall of a few extra acres that were reclaimed
20 by the straightening of it because it didn't take as many acres of right of way. So, that was a windfall
21 and we just said, they said to pay for it and we negotiated and said no; but I want to point out on this
22 map this is where Las Alamedas Boulevard began, this is where Sonoma Ranch Boulevard is and
23 on this map it shows it going all the way to Dripping Springs. Mr. Holt and his comments to the
24 Planning and Zoning Commission said "who could have envisioned back then," when he was
25 actually in Albuquerque teaching at the law schools so he wasn't here to talk about vision, "who
26 could have envisioned back then that Sonoma Ranch Boulevard would have been built down here."
27 Well, we did, it was in our master plan so in other words there has been no change in circumstance.
28 The other argument Mr. Ganogy(?) made and Mr. Holt made was that Northrise didn't exist; well,
29 back in those days Telshor didn't go north of the Discount Tire Store and there was no plan to take
30 it north of there as a frontage road and nobody knew it was going to wrap around and come into Del
31 Rey and eventually into Roadrunner but as it did we had what is now Rinconada came through here,
32 we realigned it again, straightened it out some, lined it up with Northrise, paid for portions of
33 Northrise that the City had an obligation to pay for but couldn't, in that original bondage. So, the
34 Northrise alignment is here and it is basically a evolution from the Rinconada alignment. Now, this
35 is the map that would be required in the study that your comprehensive plan requires, that shows
36 basically a one mile radius from the way it reads it would be from the corners of a parcel but this was
37 done from basically from the intersection of Sonoma Ranch and Northrise; so, it is a one mile radius
38 in this circle, contains about 2,000 acres, this is your study area required by your comprehensive plan
39 and that the appellant didn't provide and in that there are perimeters that roughly 20% maximum
40 should be commercial, 40% residential, I suppose that's what Ms. Rodriguez was referring to but
41 her calculations only refer to Sonoma north which is 275 acres, it did not refer to the 1 acre radius
42 area which is required in the comprehensive plan. Now, we've done some rough take offs that tell
43 us this is right at the 20% already without any additional commercial zoning and they want to add

1 35 more acres of commercial zoning. It's not justified, there's no change in anything that would
2 justify that increase in commercial zoning. Now, the other thing that we need to ... (interrupted by
3 Mayor Miyagishima)
4
5 Mayor Miyagishima asked where did you get the map from?
6
7 Jack Pickel said I think Donny had it prepared by your mapping department.
8
9 Mayor Miyagishima said okay, but you're saying that this in your opinion would satisfy one of the
10 requirements for having something like this.
11
12 Jack Pickel said if they had provided it. It's not our job to make their maps or their studies.
13
14 Mayor Miyagishima said I understand.
15
16 Jack Pickel said I think they should've; we did it because we thought it was pretty close to the 20%.
17 The other thing it points out, see all this green space in here, where it goes through our property, this
18 is known as the Alameda Arroyo, this is the big mother of arroyos in Las Cruces, we donated all of
19 that to the City of Las Cruces as part of our original master plan.
20
21 Mayor Miyagishima said I guess what I'm trying to get at Jack is what would have prevented them
22 from just getting from the City of Las Cruces this map and that's what I was trying to get at. I figured
23 it came from the City because it says City.
24
25 Jack Pickel said nothing would've prevented it to just say that..(interrupted by Mayor Miyagishima)
26
27 Mayor Miyagishima said your just saying that they didn't submit it.
28
29 Jack Pickel said they didn't submit it as a requirement of your ordinance. We just prepared it so we
30 could show you what it would look like, this is not a submittal. Here is an aerial of the subject area,
31 so this is the intersection that they pointed out that they do have commercial development in here,
32 the Pic Quik, the Health Club and I think there is a bank plan for over here. They have all this
33 commercial area in here, it's undeveloped, they've got all this commercial in here, this is
34 undeveloped commercial area. There is no need for additional commercial area in here, all this in
35 red is zoned commercial area, this is the site that Walmart purchased just a couple of years ago and
36 we hope they'll break ground in the next year or so but that's set up to be centered in a planned high
37 intensity commercial node. They have demonstrated no need for a second high intensity commercial
38 node at the next intersection and in fact there is no need. The other thing that I have to point out is
39 this did not come out of just made up by guess and by gullies stuff, this came originally from an
40 economic study and this is just the pros part of it, this does not include the appendix which was twice
41 as thick and talked about all the economic development of Las Cruces from 1964 till 1984 prepared
42 by Alfred Cobar Associates; this set out what the absorption would be, he's a nationally known land
43 economist and is still in business. Another thing Mr. Holt pointed out in the Planning and Zoning

1 Commission is while there has been more houses built since this study was done, well ya, this study
2 was done 25 years ago, when I started there were 7 houses east of the dam, now there are thousands.
3 Ya, they've been built in accordance to the master plan. In 2007.. (interrupted by Mayor
4 Miyagishima)

5

6 Mayor Miyagishima said Jack, can I do this, let me just ask you a couple of questions; this is really
7 good information but you know let me just kind of share with you what I want to zero in on; can you
8 go back to the, you had a list of some things that you said they didn't do, where did you get this
9 from?

10

11 Jack Pickel said well, A and B are right off of the staff's recommendation, finding.

12

13 Mayor Miyagishima said okay, that from the City.

14

15 Jack Pickel said from the comprehensive plan, it's section 1.53 and section 2.1.1.

16

17 Mayor Miyagishima said I'm sorry, what date was that passed?

18

19 Jack Pickel said it's the 1999 comprehensive plan.

20

21 Mayor Miyagishima said you said something about State law; you were talking about C.

22

23 Jack Pickel said correct.

24

25 Mayor Miyagishima said okay; what I want to ask you is this; you kind of talked about this and kinda
26 went over it a little bit but that was one of my questions, concerns was a so you sold this to the
27 applicant.

28

29 Jack Pickel said correct.

30

31 Mayor Miyagishima said when you sold it them, did you put in, I'll just use my term, like a no
32 compete clause, did you put something in there that said they couldn't develop maybe what you are
33 going to develop.

34

35 Jack Pickel said we put in there that they would conform with the master plan that was already
36 accepted and we allowed them to have their own master plan but it had to be in conformance with
37 the Las Alamedas plan.

38

39 Mayor Miyagishima said well, in order for them to change it you had to have, they had to have your
40 approval.

41

42 Jack Pickel said correct.

43

1 Mayor Miyagishima asked do you have that with you today so we could see that?

2

3 Jack Pickel said I believe it was actually attached to the 2005, I mean I could basically reiterate what
4 I did in 2005.

5

6 Mayor Miyagishima said that to me is a big key; is wanting to know exactly and then from there I
7 think it is going to, I think then we need to see, according to what was put forth in that and then of
8 course what the City has and just see how and ask them?

9

10 Jack Pickel said I agree but that is a legal issue between them and us; that's not, the City, basically,
11 you're sitting as a court on your police powers to enforce the law. The law requires various forms
12 of evidence that they didn't provide. They have not met the threshold of requirements to get the zone
13 change in the master plan.

14

15 Mayor Miyagishima said I'm going to ask Fermin, is this more of a guide or is this specifically we
16 have to follow that, I mean they would have to follow that, or is that just a?

17

18 Fermin Rubio said Mayor, I think the way to answer that is question is probably to have staff,
19 probably Ms Rodriguez respond to the specific points and/or the original applicant and possibly Mr.
20 Abrams will address the issue about the case. I think that is the way to proceed.

21

22 Mayor Miyagishima said I would like that.

23

24 Fermin Rubio said if we could just do that, unless the, before we get there, I don't know if the
25 Sonoma folks wish to respond to any of this when Mr. Pickel is done.

26

27 Jack Pickel said I have one more point then I'm done with my basic argument. In 2007, when we
28 brought Mr. Gobar's company back basically for the fourth or fifth time, to redo the economic study,
29 this is what he did in 2007, it's broken into retail mix use analysis, general and medical office
30 analysis, residential analysis. I just need to read basically from it the summary and conclusions. The
31 supply of land designated for retail development within the massive annexation and the master plan
32 development programs to the east of Sonoma Ranch Boulevard, substantially exceed the supply of
33 land needed to serve future homes, households. There is no need for additional commercial zoning,
34 there is about 80 years worth of commercial zoning already out on Highway 70 based on absorption
35 rates from 1985 till 2007; about 15 acres a year used for commercial zoning in the whole City of Las
36 Cruces and there is at least 1,250 acres already zoned for commercial east of Sonoma Ranch
37 Boulevard. Absolutely, no need for this zoning, it dilutes what we've got, makes it more difficult for
38 us to sale and we've got to pay \$15 million of bonds off out of our sells. We have no choice but to
39 appeal.

40

41 Mayor Miyagishima said I understand. Let me have Cheryl address some of the comments.

42

43 Cheryl Rodriguez said Mr. Chairman, before I address the comments from Mr. Pickel's presentation,

1 I would like to see if the property owner of Sonoma Ranch North, LLC can discuss their
2 development application as it pertains to the master plan amendment and the zone change and after
3 they do their presentation then staff can come back and answer any questions.

4

5 Mayor Miyagishima said okay, that's not a problem.

6

7 Joe Cervantes said I am a resident of Dona Ana County and with me tonight are the business
8 associates who comprised Sonoma Ranch and Sonoma Ranch North in this case which is a New
9 Mexico limited liability company. I think you know most of the participates but former Mayor
10 Steinborn is here with us, of course you know Mr. George Rawson, you know Dale Sculler is here
11 and with these gentlemen I'm here to represent them in connection with any legal questions that the
12 City Council may have and apparently there are some questions that were raised in that regard;
13 before I do that, I'll try to address maybe some of the points that Mr. Pickel made specifically in the
14 legal context. I think it would be useful for Brian to perhaps present the project with a little more
15 technical information to the Council then I'll try to address your questions directly and maybe try
16 to clear up some of the confusion I think about the last presentation in terms of the what the State
17 law really holds and what your comprehensive really requires and we'll address those and perhaps
18 your staff will support that but ultimately our request for today is that you affirm the decisions of
19 your staff which approved the amendment to the zoning master plan and also the recommendation
20 that you approve the zoning. At the end of the presentation we'll ask that you affirm your staff on
21 those points.

22

23 Brian Soleman said I'm an engineer for Sonoma Ranch and we come here before you tonight for a
24 master plan amendment #2; I'd much rather focus on the issues that you had raised earlier after
25 Cheryl's presentation. She did a very good job in presenting why we've come here tonight. Basically,
26 what we are doing here is, we've moved things around, particularly the drainage was one of the
27 issues that I believe you Councillor Gil brought up. The majority of the changes through here, we've
28 provided a part dual use ponding area; I don't know if I can bring up what Cheryl had presented but
29 it seemed like there was some confusion as to the drainage and who would be responsible for
30 maintaining these ponding areas. Traditionally, we would, all the commercial zones
31 would...(interrupted by Mayor Miyagishima)

32

33 Mayor Miyagishima said I brought that up and really what I was wrestling with was that fact, are we
34 going to use an area that is for ponding also for a recreational area? If you could assure me that it is
35 going to look like Gomez Park I'd say okay but the ones that I've seen in the past don't look like
36 that. So, that was my big concern that, that are there, some of these, I'll be very candid with you, I
37 recognize that a few, I mean it looks overall decent. I did have a couple of comments that a of course
38 I'll you finish and then of course that other acreage, I think Cheryl said point seven, that's nothing,
39 I mean really, I mean that's not even more than a half of acre and I think that's probably too small.
40 I think that would be nice to have that thing enlarged instead of that small amount as open space but
41 that's just my comment.

42

43 Brian Soleman said originally, when we worked on this master plan, we worked with Mr. Denmark

1 with facilities and we agreed upon the southern most part dual use area. This particular area we've
2 agreed to come up with some language in the master plan that pretty much assures that the City and
3 us, how we will develop this upon staging construction submittal, possibly a preliminary plat stage.
4 We have agreed that we have language in the master plan that denotes what we would be willing to
5 and how we would be willing to develop this park, such as in the note is the conceptual drainage plan
6 notice here and the language that we had in there that had to do with facilities. Essentially, what we
7 have agreed to do upon final design of this park would be to grass the park and put in a sprinkler and
8 provide parking so as you had mentioned with Gomez Park, that's the intent of this project. We've
9 worked with the Engineer Services and Public Works to make sure that we follow this current City
10 design standards... (Mayor Miyagishima interrupted)

11

12 Mayor Miyagishima said Brian, can I have you deviate from your presentation and go right to show
13 us where you were currently zoned for open space recreational area and where it is and how it is
14 changing and where it is; I mean I know the two that you're pointing down here at the bottom and
15 of course the little .7 but can you show us where it was or where it is currently and how it is
16 deviating verses, I guess what I'm trying to say is what are the residents what would they lose or
17 gain?

18

19 Brian Soleman said in the current master plan there's really not an area in here that is designated as
20 open space. We have agreed to a master plan, we would have some linear parks and they kinda fell
21 along in this area here, they're very narrow in the middle; in this area here we had a circular park and
22 it just became apparent to us working with the facilities director that a more beneficial park could
23 be something that we could put together that was a little larger as a more common use type of
24 facility.

25

26 Mayor Miyagishima asked how about the total acreage that you had set aside?

27

28 Brian Soleman said I believe the original acreage that we had for open space was around 8 acres. In
29 the original master plan, there was verbiage in the plan on how it would be developed, we are willing
30 to develop the park, the acreage now is about 7 acres so I think that in this plan we are willing to do
31 intensely more to the property and to the parks other than what was previously master planned.

32

33 Mayor Miyagishima said so you are saying that the acreage is pretty much the same?

34

35 Brian Soleman said more or less, about an acre or less in size, we're still meeting all the City
36 requirements, in fact, we're giving up more than what's required by the City. As far as the pocket
37 park that we have in this location here, it was an agreement that we had with Facilities to kinda put
38 in a small neighborhood park to kinda offset the difference between the true multi family that we
39 were requesting here and here so it was kind of an agreement that we had with Facilities.

40

41 Mayor Miyagishima said since you had your cursor there, can you go right back where you were at;
42 a little bit higher, right there to your left, right there; see that little clip right there; you're butting
43 right into multi family and I have to admit I'm concerned cause I; parcel #3 you want high intensity,

1 see back at that little clip; is there any way to have that made just as office use only so that it
2 provides some what of a buffer so that you know so it is basically a just office use so it really
3 wouldn't be a, the residents wouldn't have to be concerned that most places would be open pass five
4 o'clock, something of this nature. That's something there that I strongly would like to see if we go
5 in that direction but a and then the other reason is right across street you have all kinds of housing
6 there which is directly right across from there and then to the right of that is a school, you know I'm
7 concerned that having too much high intensity zoning next to that school, not the best way to go and
8 so I thought maybe a good option to take a look at but again since you had that cursor there I thought
9 you know I don't have a laser here with me so since you happen to be closer I just wanted to point
10 that out again I'll let you finish your presentation.

11

12 Brian Soleman said I feel a little more comfortable referring that to one of the owners of Sonoma
13 Ranch, he will be up here shortly to speak on any other questions other than what you have for me
14 that are a little more in the technical. Basically, our intent in here as far as the drainage concerns is
15 to provide something that would, that functions, the original park area that we had located roughly
16 in the middle, it really didn't serve with the new drainage standards that have been revised over the
17 years which we've worked with the Public Works trying to make sure that we provide adequate flood
18 control for the area so that was one of the purposes in this area here but we are still providing a very
19 large park areas compared to the original..(interrupted by Mayor Miyagishima)

20

21 Mayor Miyagishima said I will probably have to ask one of the owners about perhaps maybe
22 enlarging that or that little triangle there, the .7, maybe allowing, having more frontage for the
23 commercial and then allowing more toward the back as a buffer between commercial and residential
24 so I know I'm asking you a lot on these things but I figured since you're there and you have the
25 cursor, when the owners see it they'll know kinda what I'm talking about.

26

27 Brian Soleman said I would like to go ahead and bring up one of the owners of Sonoma Ranch and
28 he can address your concerns. Mr. Steinborn.

29

30 Mayor Miyagishima said I was afraid you were going to bring him up.

31

32 David Steinborn said I have been before you before. I think really what we're talking about today
33 is the vision that Alameda had and the vision that the Sonoma Partners had and I think that in going
34 back Mr. Pickel did a good job from his point of view in going back over some of the narrative of
35 history and I'm not going to bore you by going back over that again but I will tell you this, for a long
36 time our relationship has been very cliché, our goals have been very similar. We're interested in a
37 quality development that has a sustainable, lasting and enduring future for the City. George Rawson
38 and Dale Sculler and I and our families have been partners since the late 70's. We've developed a
39 number of fine subdivisions in Las Cruces that have stood the test of time. Our definition of the test
40 time is going back into the neighborhoods and seeing people who have lived there for 20 and 30
41 years, very few houses for sale, almost no foreclosures; we can say that about Sonoma, we've built
42 6 miles of multi use pathways; not required to do that by the City of Las Cruces. We've built parks,
43 not required to that by the City. Mr. Mayor, your comment about you've seen some open space areas

1 that look less than the best, that is not our interest because our interest is in everything we do being
2 as good as it can be because it helps our marketing, it helps the community we're building and it
3 helps the community we live in. Now, the question you asked was this pocket park in the acreage
4 down in the south and how does it equate and we originally, I think I can maybe, ya, there's the
5 cursor, we originally had a linear park that came in here and it was very narrow and very long and
6 the idea was initially when we did this, it was a long time ago that we had this concept and by the
7 way the Alameda Group and the Sonoma Group both use the same land planner, the Planning Center
8 out in California so our visions, if they start to look a like in some ways it's because we had the same
9 group of consultants who we wade heavily on. The idea of this linear park was actually an exercise
10 park, a park where you could go through and there would be one deal where you would chin ups and
11 another one where you; you know what I'm talking about. In replaying that and looking at what the
12 utilization is in the parks that we've already built which is Maricopa(?) Park and the park area and
13 swimming pool in the Del Prado and the areas in the two Boulders subdivisions and the Sand Graft
14 Park, it's obvious that the linear park was an idea that we didn't feel was going to work and then
15 right in here we had a, if you can see this cursor, we had a circular park and it was really a novel idea
16 but when you looked at it in terms of circulation and roadways and maintenance with a curvular all
17 around, it didn't work right. So, we decided that instead we would angulate the sizes of those two
18 and do a multi use Tony Gomez type of park and certainly what our goal is and if you'll recall when
19 the Gomez Park first started the idea was that there wasn't going to be any parking on site, parking
20 was all going to be off site; for those of you that remember the history of this community and that
21 park, that was not our intention. Our intention is to start it with some parking here and the other
22 benefit is that if the City or maybe when the City has a park, a open space improvement program for
23 arroyos, that this would be a launching place for people to actually park right here and get into the
24 arroyo and walk or enjoy nature. So, that was the reason why we did that. Now, Mr. Pickel also
25 eluded to that we bought and we knew what the master plan was and I have one comment to make
26 about that because sometimes there's more lost in definition than there is gained so I want you to
27 kinda picture being the buyer, being Sonoma, buying 275 acres, intending in putting a golf course
28 in that community, accepting the fact that Highway 70 would never be improved, paying an extra
29 \$50,000 to the City to actually signalize Sonoma Ranch Boulevard and Highway 70; your records
30 will show that we paid the \$50,000, there actually was a signal light there although was no street
31 there yet and we paid that in good faith and then all of a sudden the federal government came up with
32 \$83 million to improve Highway 70 and we changed our plan and decided to do the golf course in
33 the south instead of the north which was interestingly enough the concept that Alameda had
34 originally wanted to do, to put a golf course in the south. While we were doing that, see we've closed
35 down the land to the north, the piece we are here for, we've closed, we bought it, the clock is ticking
36 on that; Highway 70 is going to be improved, we've paid the \$50,000 for the signal light; the
37 Highway 70 and the 275 acres they go down to the arroyo but Highway 70 is relatively flat, it isn't
38 super elevated like it is now in relationship to the dirt. The land to the east of us and I can tell you
39 where it was, it was right in here, all of this was zoned EE which was Equestrian Estates, one acre
40 minimum, sixty lots, pretty simple. That piece of land got rezoned while we were down south doing
41 the golf course to our one and mixed use which would have allowed for a maximum of eight units
42 per acre and twenty some units per acre in our land and all of a sudden what happened was; by the
43 way we never protested, we've never protested any adjoining property owners interested in doing

1 anything, maybe that's silly for us but we are kinda people doing their own thing kinda deal and
2 that's what we did; so, what happened is, this land's intensity and density and usage changed
3 substantially from when we bought; and the last thing is down here in Sonoma Ranch North there
4 is a street called Calle Jitas and the piece of the land that we bought there which ends on Calle Jitas
5 which is where the Del Prado subdivision is, backed up to a big piece of land along the way which
6 was also zoned equestrian and it's all been re-zoned commercial so what's happened is that our
7 friends at Alameda could say "well what we've done is we've moved things around but the
8 percentages haven't changed," it really kinda depends on whose ox is getting doored. I stand for any
9 questions.

10

11 Mayor Miyagishima said thank you for that; would you comment on the stipulation that Mr. Pickel
12 said that in order to do a zone change that there had to be some approval or contact or something to
13 that nature?

14

15 David Steinborn said I don't know; you know we've been doing this since before there was the
16 requirement for comprehensive plans; we're guided by your staff, I mean we go to the DRC
17 meetings, we do what the DRC says; we don't have a full time attorney, we have two full time
18 engineers, we bring in an attorney when we feel we need too. I'm not an attorney, Mr. Pickel is; all
19 I'm saying to you is that I don't know what the law requires or doesn't requires; when I sat in your
20 seat I relied on the City Attorney.

21

22 Mayor Miyagishima said I take that as your rebuttal so that's fine.

23

24 David Steinborn said it's not a rebuttal, it's just an honest statement. I don't know today, I mean I
25 heard what Mr. Pickel said, I don't know what the facts are and your staff will respond to it or your
26 attorney will, I don't know.

27

28 Mayor Miyagishima said let see, what else was I going to ask you; oh, getting back to, since you're
29 there, let me pull up my map.

30

31 David Steinborn said more land for open space.

32

33 Mayor Miyagishima said well, a little bit more.

34

35 David Steinborn said a little bit more.

36

37 Mayor Miyagishima said another thing is, next to I guess it would parcel, of course it's not labeled
38 that way, I have here parcel 1C, now it's currently zoned high intensity but you know right next to
39 it are a bunch of houses and I find it hard to believe and I think a bank is going to go in there and
40 now my opinion it's not really high intensity.

41

42 David Steinborn asked are you talking right here where the bank is going to go?

43

1 Mayor Miyagishima said right there to your right, there are a bunch of homes right there.

2

3 David Steinborn said what we did here is increase the, when we knew what we were doing on that
4 corner, Mayor, we increased the density in here so if you look in here what you'll find is the density
5 here is substantially higher than the density will be here and substantially higher than the density is
6 in here.

7

8 Mayor Miyagishima said I wasn't even concerned about that, if you go back to the left of that now,
9 right there to the left, it's currently zoned, I know that's not part of this here but what you're asking
10 for is all the way to the far left.

11

12 David Steinborn said we're not asking for any changes there.

13

14 Mayor Miyagishima said no, the other way, you're asking for a zone change right there.

15

16 David Steinborn said that is correct.

17

18 Mayor Miyagishima said what I'm trying to get at is I can tell you right now that if you go back to
19 that other area where you said it was currently zoned, the one I just pointed to you where the houses
20 are next to it, depending on what you put there, those residents I know right now are not thinking
21 about it, they don't see it, it probably hasn't even come to their thought but once you start building
22 high intensity commercial right there Councillor Thomas will start hearing those phone calls so my
23 question is would you be willing to, I don't even know if we could do that but change that to, you
24 know still allow the bank there but that type of zoning, whatever the bank zoning is, it'd probably
25 medium intensity and not high intensity, just to prevent that or provide some kind of a buffer there
26 because I'm telling ya, I mean all that separates that is a little rock wall that's probably three or four
27 feet tall and that's it and once someone buys that there, they're going to start complaining so that's
28 one thing I wanted to point out and then also getting back to when Brian was up here I think I
29 showed, you know that little part there, I was hoping you were paying attention, that little boot hill
30 I guess.

31

32 David Steinborn said right there.

33

34 Mayor Miyagishima said no, a little higher, right there, you also have that zoned multi family but
35 next to that is high intensity commercial and what I was going to suggest is that little clip right there,
36 make that office so that it's not high intensity commercial also; but just that little clip there, probably
37 in total about an acre.

38

39 David Steinborn asked are you talking about where this curve is?

40

41 Mayor Miyagishima said ya, right there.

42

43 David Steinborn said the reason why this width is this width and this depth is this depth is because

1 we did a lot of research to determine what types of users would be inclined to buy a site like this and
2 this is the approximate size that those users need so if you make this narrower, you change the
3 demographics of the prospected buyer. We have no buyers for these properties but we know who the
4 target buyers would be and that changes that so the trade off that the staff had us do and there's
5 something funny about your mouse because it keeps crawling away; is that this piece right here and
6 this piece right here, we see them as one user but what we agreed to do is to say that from here down
7 and from here over this piece could only be used for multi family while this piece could be used for
8 multi family or lower intensity residential use so this is a true multi, I mean your staff said this is a
9 true multi family and that is correct.

10

11 Mayor Miyagishima said right but what I'm trying to prevent in the future is the buffer question.

12

13 David Steinborn said sorry that your predecessor didn't see that because if you come over to this side
14 of our development, everything to the left of this, everything to the west of it that is owned by
15 Alameda is all zoned potentially commercial and it backs up to single family residential so you have
16 high commercial against low residential, we don't do that.

17

18 Mayor Miyagishima said and the last thing is typically on the; Cheryl what is the maximum height
19 that we allow for construction, is it 45 feet or 60 feet in the parcel here, this large parcel here, the
20 parcel that you are trying to re-zone to my bottom right, it looks like the largest, it's parcel 6 on the
21 map.

22

23 Cheryl Rodriguez said Mr. Chairman, the height restriction on the C3 zoning district is 60 feet.

24

25 Mayor Miyagishima said one of the things that we've done, when I was a District 6 Councillor is I
26 use to always on that side always put that as a condition of 45 feet to prevent the views because
27 obviously at that particular vantage point it's very good, very spectacular and if they don't pick it up
28 then they somehow.

29

30 David Steinborn said what side are you talking about?

31

32 Mayor Miyagishima said to my right, there you go, that site, that particular parcel there.

33

34 David Steinborn said that fine, you can make that 35 feet, that's fine.

35

36 Mayor Miyagishima said I did have 35 here.

37

38 David Steinborn said 35 is fine.

39

40 Fermin Rubio said I want to try to redirect the inquiry because this is an appeal of a decision that has
41 already been made and I think you're getting away from that by going into these changes that were
42 proposed, your thoughts; I think we need to just try to get the prospective or get the view of Sonoma
43 and then move to the staff's response to the issues raised by the appellant.

1 Mayor Miyagishima said sure, I appreciate that.

2

3 Councillor Thomas said could I...(interrupted by Mayor Miyagishima)

4

5 Mayor Miyagishima said I was trying to get some stuff out of the way; yes, Councillor Thomas.

6

7 Councillor Thomas said thank you, Mr. Mayor. My understanding is that and this was from
8 something that Jared Abrams said that I found in the Planning and Zoning minutes; that the
9 circumstances under which a comprehensive plan or a master plan can be changed are changes in
10 circumstances or a mistake and I think that Jared added in that in 2008 the New Mexico Supreme
11 Court also said if there was a public need and that need is best served by changing the particular
12 property so what I'm understanding here is that the contention is that these circumstances were not
13 met to be able to...(interrupted by Fermin Rubio)

14

15 Fermin Rubio said I understand that but staff is prepared to answer all those issues but we need to
16 get there in order to do it.

17

18 Councillor Thomas said okay, I was just trying to get back to what the three main issues are that we
19 are trying to talk about.

20

21 Fermin Rubio said I think we will but we need to get through Mr. Steinborn.

22

23 Mayor Miyagishima said I agree with that but you know since he was up there, that's why I did that;
24 so, lets go ahead and Cheryl did you want to go, oh, sure of course.

25

26 David Steinborn said if I could just a few more minutes of your time. Councillor, you raised the
27 question I think on an appeal.

28

29 Joe Cervantes said I think your City Attorney properly redirected the discussion as well here on
30 appeal and I think it is important to back up just a little bit; I didn't bring this paper and probably
31 don't have nearly as much as they do but that's not the issue. The issue is as Councillor Thomas
32 pointed out, has there been a change in circumstances and I will caution you because if you look back
33 at the slide they put up earlier, they misdirect you. They said there was a requirement for a
34 substantial change in circumstances and that's not the law. The law is has there been a change in
35 circumstances; there is a difference. I think it would be hard for any of us and I think it would be
36 presumptuous of me to suggest to you, those of you that hear these cases week after week and have
37 done so for years like many of you, to suggest that there has been no change in circumstances in the
38 area of Sonoma Ranch and Highway 70. It would be presumptuous of me to suggest that you haven't
39 heard hours and years of presentations of annexations, debates, re-zonings; the federal project Mr.
40 Steinborn alluded to, tens of millions of dollars of changes that have been done in this area and many
41 of those changes brought by Alameda itself, many of those changes have been zoning changes
42 brought before you before which Mr. Steinborn pointed out that they never opposed because they
43 recognize that there is a change in circumstances. A couple of weeks ago I was going to Alamogordo

1 and I was going on Highway 70 at the wrong time of the day; you all got the phone calls that I got,
2 there were cars backed up for hours bumper to bumper on Highway 70.

3

4 Mayor Miyagishima said we are behind that issue now.

5

6 Joe Cervantes said well, I was fortunate because I was going the right way but to suggest that what
7 we didn't see and what you didn't hear about as a Council wasn't a change in circumstance ignores
8 what has happened over the last twenty years in that part of Las Cruces and what it ignores is what
9 these partners are trying to do which is to really be on the cutting edge of development with a design
10 with a great commercial area where you don't have the need for commuting, where you don't have
11 a need for the traffic as far as to produce a commercial center, a village if you will and I talked with
12 them and that's what they described as their vision as a village off of Sonoma Ranch and Highway
13 70 where people can bank or where people can exercise, enjoy, recreate, where people can work
14 ideally and still be close to home and not have to commute, that's the cutting edge of design and
15 development right now, that's what they are trying to accomplish and I think you know very well that
16 a lot has changed on Highway 70 since this master plan was initiated, certainly a standard that
17 Council Thomas alluded to certainly a change in circumstances that warrants a revisit of the master
18 plan. I do think it's important as an attorney to address Mr. Pickel's comments on behalf of Alameda
19 for a few things, one is the suggestion that your staff has somehow been deficient; I think the appeal
20 calls this a rubber stamp, I think is the term that's used to describe the staff's action. Your file is well
21 papered I think is the a, Mayor, you pointed out some of the drawings that are relied upon on your
22 staff's own maps and drawings. I would note also that you have in your packet an important study,
23 Mr. Pickel, on behalf of Alameda suggested that you don't have data, you do have in your packet a
24 report prepared by a market perspective and a John Schemer which is dated just this month October
25 2009 which is a very comprehensive look at commercial trends, residential trends and this area does
26 exactly as Alameda suggested does take a one mile radius, a three mile radius and a five mile radius
27 to establish the trends and the need for a commercial development and commercial property. Okay,
28 I'm sorry, I was told that your staff hasn't distributed to you so you don't have it in your packet but
29 it will be part of your materials and it is precisely what Mr. Pickel suggested that is important and
30 what it shows is precisely what you already know, what is going on in the area of this development.
31 So, you do have the documentation and the study...(interrupted by Councillor Thomas)

32

33 Councillor Thomas said could I ask a question about that study? Does that study show there is a need
34 for more commercial?

35

36 Joe Cervantes said it does and you'll have the detail in front of you and I can refer you to those
37 portions but it is a very comprehensive analysis, it looks at, I should be clear Councillor and Mayor,
38 we're not just talking about commercial and I think that is the point that Mr. Steinborn was trying
39 to make, what they are trying to do, as I said, is a cutting edge design which provides buffers
40 between commercial property and residential property and that's why you have the higher density
41 residential as some of those buffer zones to try to create that transition and so this study address not
42 only the need for commercial property but also greater density in terms of residential and higher
43 density residential development. I don't want to get to a point where I start going through the study

1 in much detail, some of the Sonoma partners may wish to address that as well but I will perhaps
2 address your questions specifically by referring you to one part of the report; if you look on page 3
3 at the bottom of this study, there is a reference to Claritas Inc., Claritas is a demographic data firm
4 which has been the source for some of the study report and most interesting to me when we were
5 doing this analysis was if you look at the second bullet point from the bottom, they project and they
6 studied the population, how the population growth from the 2000 census to the 2009 census and
7 you'll see the number there, 17,812 persons, that's the growth in the City of Las Cruces; the City of
8 Las Cruces growth between 2000 and 2009 total persons. Then if you look at the table below that,
9 you'll see a table that shows how much of that growth is occurring within a three mile radius of this
10 property, 7,523 of the 17,000 is taking place within three miles of this property which I think
11 addresses the question about whether the reports show a need for commercial property and higher
12 intensity residential development. The growth that's taking place here is happening next to this
13 property. If you look at the table below that, you look at the five mile radius, you'll see a growth
14 change of 15,518, that's the third column, within five miles of this property the population change
15 is 15,518 persons of the total population of the City's growth over that same period, the bullet point
16 above 17,812, that gives you an idea of where the need exists in this study and I'm sure you'll take
17 the time to review that as I'm finishing up. The suggestion that there is a deficiency in the staff's
18 plans not only ignores the drawings, the plans but as you heard the work that goes on with the
19 partners and your staff regarding parks, Mayor, you raised the question I think and others about the
20 size of the parks and the need for maintenance and the ponding and so forth, all of that work has
21 taken place. I want to correct and I'm repeating here but I want to correct this in the order that it was
22 made to you, many suggestions that there is case law in the State, there is a statute that's not being
23 adhered to here, it's just not accurate. The Miller case cited does not require a substantial changes
24 in circumstances, it requires a change in circumstances and I don't hear Alameda suggesting that
25 there is no change in circumstances and if there are, it would be inconsistent with their own
26 applications to you for zone changes over the years and as what was pointed out earlier, never
27 opposed by Sonoma Ranch partners because they recognize the change that is taking place. There
28 is a suggestion here that this would some how undermine your master plan and the argument there
29 ignores once again the fact that there have been repeated changes to this master plan by Alameda
30 itself and requested by Alameda itself. It also ignores the fact that much of the data that they were
31 referring upon you were refined to studies and reports going back, you saw a map going back and
32 it was presented on the screen for some time, going back to 1985 and there were maps and plans
33 shown to you from 1999; so, all of that ignores the fact that the master plan is a living document, a
34 change document as well, you're constantly called upon to re-evaluate, reconsider your master plan
35 for the long term growth of this city. The last couple of items, there was some question about the
36 contractual relationship between Alameda and Sonoma Ranch, LLC; the relationship between those
37 parties contractual matters I think was pointed out by staff, it should be as such but none the less, I
38 would point out an important point, you heard it from Mr. Pickel, that language actually as he
39 suggested, would required that they be notified if there is a request to change the zoning or the
40 master plan which in it of itself acknowledges by them at that time of the sale, a realization that there
41 could and would be changes. The request that there be notice for that exception adopts a standard
42 that does not suggest that this is carved in stone, that there will be no change but simply requires
43 certain things contractually, Council does not need to be concerned with the contractual

1 requirements, you can be assured that the parties will address those issues but the very least you
2 should recognize that when there is some suggestion that this would undermine their master plan,
3 it would not because at the time of the sale itself they recognized that there might be changes to the
4 master plan. Thank you Mr. Mayor.

5

6 Mayor Miyagishima said before you leave Joseph, Councillor Thomas, I have to chuckle when Mr.
7 Cervantes said when you brought up the change in circumstances, you were just merely bringing it
8 up or were you advocated that there was a change in circumstances?

9

10 Councillor Thomas said I was just referring to what Mr. Abrams had said at the Planning and Zoning
11 Commission, the three circumstances that were laid out to prove..(interrupted by Mayor
12 Miyagishima)

13

14 Mayor Miyagishima said I just had to chuckle, Mr. Cervantes took it as you had advocated it, so, he's
15 good though, you didn't say that but he made it seem like that, that's why I had to chuckle.

16

17 Joe Cervantes said I hope I didn't mistake your position Councillor. Mayor and Council, we'll take
18 any additional questions, I'm a little bit out of sorts with the process here because once again, this
19 isn't our appeal so we're merely rebutting the appeal that has been made, I assume the appellant here
20 has concluded their case for their appeal so we are simply taking the opportunity you've given us to
21 rebut their appeal. I presume that would conclude the appeal.

22

23 Mayor Miyagishima said actually, we're probably going to bring them back up so we can or their a,
24 is this gentleman their attorney?

25

26 Fermin Rubio said yes, Mayor, I believe so but staff should be next.

27

28 Mayor Miyagishima said oh, okay, Jack, before you take the podium, Cheryl, do you want to a do
29 you have anything that you want to clarify on what you've heard here before the a information set
30 before us, or Dave, okay.

31

32 Fermin Rubio said I think they need to address the issues that were raised by the appellant to include
33 the one question about the case law.

34

35 Mayor Miyagishima said okay, if you would David, if you would address some of the questions that
36 were brought up by the a ya, and also I think a could you clarify the case law information?

37

38 Fermin Rubio said we can have Mr. Abrams come up and address that if we need to.

39

40 David Weir said Mayor, City Council, I would like to just provide some context of our development
41 system and Cheryl can answer those specific questions that you had. In general terms, as you're
42 probably well aware, your comp plan is just a guiding document, it's not a statute that has
43 requirements in it, that is your subdivision code, that's your requirements and that's where the master

1 plan provisions are provided. Just a point of information, prior to 1991, there were no master
2 planning requirements in the City; so, master plans were adopted by the City in 1991 to this date
3 forward. There were some questions about the park development, as you are also aware, there is a
4 park fee ordinance that has been adopted by the City, the Facility Department also allows land
5 dedications and park improvements where they permit a combination of that to meet the open space
6 and park requirements so just keep that in mind as you think about his particular case and then just
7 one last point I want to make, the comp. plan is the City of Las Cruces policies so as you sit in your
8 role as redoing this opinion, it's basically your determination of whether or not the proposal meets
9 the comp. plan or not, it's your decision on policies to make for the City, so, I can answer in
10 questions on those general statements and Cheryl can get into specifics.

11

12 Mayor Miyagishima said David, thank you for that clarification because I was under the impression,
13 just as you had stated, when it was being related that it was law, I was kinda looking at Fermin like,
14 I didn't realize that, you know, I appreciate your clarification on that cause I too believed that it was
15 a guide, that was the purpose and we should try to adhere to it as much as we can unless of course
16 things do change and it can be justified, verified.

17

18 Cheryl Rodriguez said Mr., Chairman, Councillors, to highlight the answers to some of the questions
19 that were highlighted by Mr. Pickel during his presentation; I identified four key items, one of them
20 was regarding the development statement in terms of the City's development application, the land
21 use element of the City's comprehensive plan, the growth management section within the land use
22 elements and then the New Mexico statutes. I'm going to basically address the first three items and
23 then the fourth item regarding the applicability of the New Mexico statutes, I'd like Jared Abrams
24 to answer that. The development statement that Mr. Pickel referred to, it is a one page addendum to
25 the development application but it is a addendum that all developers large or small, all property
26 owners seeking any type of development within the City limits must fill out. So, that application is
27 utilized across the board by anyone seeking any type of new proposal or any type of development
28 within the City limits. In terms for the relevance to the proposal, when we get that application, not
29 only do we get an application but there is an expectation that you have to submit larger documents
30 than that application, those documents are routed out to various City departments, Public Works,
31 Facilities, Utilities and also the MPO gets a copy of it, Community Development, both current
32 planning staff and long range planning staff and then they are all reviewed in context for all the
33 adopted City codes and policies, zoning codes, parks and recreation master plan, the City design
34 standards, the subdivision code, we look at all of those elements and how they apply to the
35 applicant's proposal and then we comment accordingly. Sometimes those comments on the review
36 application can go through one, two, three rounds and in this case I believe there were two specific
37 reviews of the master plan amendment prior to going to any type of a public hearing; public hearing
38 being the Public Review Committee. In terms of the land use element of the comprehensive plan,
39 the land use elements, the comprehensive plan sets up your City's objectives and policies on how
40 the City wants to grow; the land use element identifies how the policies and objectives and how the
41 City wants to achieve urban form and so when we looked at the policies in that section I highlighted
42 some and then you've got the growth management element which is basically the growth
43 management section as a decision making tool so when we look at the land use element, Mr. Pickel

1 stated that he identified that it serves a specific population and in the terms on the context of how
2 it was applied for high intensity commercial, it does target a population but when you look at high
3 intensity commercial and you look at the City's zoning code for how it defines the C3 zoning district,
4 the C3 zoning district is a zoning district that facilitates and encourages development of uses which
5 provide retail services and wholesale activities within the City and regional market; generally serving
6 a population over 15,000 so it doesn't mean that we look at areas specific in the master plan area of
7 just the population, we look more broadly at a regional level for a C3 zoning district on what market
8 is trying to achieve. In terms of the growth management study, the study is a decision making tool;
9 basically, it identifies the existing land use distribution and integration with adjacent areas in
10 providing a mix use sustainable and reasonable distribution of land uses. When you read that study
11 area in the growth management of the comp. plan, you have to read it in context with one another,
12 meaning from beginning to end in its entirety. Essentially, it says for an establishment with a
13 minimum ratio, not a maximum, a minimum ratio and in this case the minimum standards set forth
14 are 40% single family, 10% multi family, 20% non-residential which could be office, commercial,
15 industrial and then 30% miscellaneous which could include residential, non-residential and quasi
16 public. So, the minimum ratio could be for this case 50% non-residential or commercial..(interrupted
17 by Mayor Miyagishima)

18

19 Mayor Miyagishima said Councillor Small did you have a comment?

20

21 Councillor Small said did you mean to say maximum?

22

23 Cheryl Rodriguez said minimum ratio, that study, that tool sets forth the minimum ratio, it does not
24 set forth the maximum ratio requirement. In terms of the study, staff did not apply that study for the
25 one area, what we looked at was we had existing land uses established in there, we looked at the
26 change of those land uses and the integration of the mix use concept because what we did was we
27 looked at the proposal, we looked at our transportation corridors, Northrise, Sonoma and we looked
28 at the proposal of the existing land uses, single family that was concentrated in that corridor and the
29 proposal was to go from your commercial to your higher density residential and then going into your
30 lower density residential. There were other elements in the comp. plan that supported that, hence,
31 you see the comp. plan findings that were provided from long range planning which we then utilized
32 for the staff report to identify the findings section of our staff report to the Planning and Zoning
33 Commission which the Planning and Zoning Commission made their decision on the master plan
34 amendment based off of the testimony at that night's meeting in addition to the findings that were
35 provided in the staff's report. So, with that note, I'd like to turn it over to Mr. Abrams and he can
36 talk about the New Mexico State statutes.

37

38 Mayor Miyagishima said thank you, Cheryl.

39

40 Jared Abrams, Assistant City Attorney said the Community Development Department gives you
41 recommendations that you should approve something, deny something; at the Legal Department, it's
42 not our job to do that but rather to give you the standards that you need to make those decisions. Like
43 Mr. Rubio told you, you are acting as judges here tonight in order to judge us accurately, you got to

1 be aware of what the proper standards are or you can make the wrong the decision. There have been
2 a couple of opinions by the attorneys here on what the criteria is for changing zoning, I wanted to
3 talk about that. The appellant Mr. Pickel has mentioned the Miller's case, he is essentially relying
4 on that for claiming that the zoning cannot be changed. Miller is a case from 1976 in the City of
5 Albuquerque; Miller established the Miller rule which is that there are only two circumstances in
6 which pre-existing zoning can be changed, as Mr. Pickel told you, one of those change in
7 circumstances and the other is a mistake. The other problem is although Miller isn't so much a bad
8 case, it's been amended more recently and it's been amended by Albuquerque Cumins Partnership
9 via the City of Albuquerque, that's the case that Councillor Thomas was talking about, in 2008. That
10 was a significant case because it drastically altered Miller in a way that it made it very easy for
11 municipalities, comparatively speaking, to change the existing zoning. Since you've heard from two
12 attorneys and they are giving you two different sets of criteria here, rather than rely on me I'm just
13 going to read from this, this is what the Supreme Court has to say, enhanced procedures that
14 required a company to propose zoning changes, directed a small number of properties constitute the
15 primary protection for the land owner; the application of the Miller rule to those proposed changes
16 is therefore unnecessary in appealing the Planning and Zoning's authority to make zoning decisions
17 that are ultimately beneficial to the community at large. When they're talking about the Miller rule,
18 they mean that the only way you can re-zone something is a change in circumstances and mistake;
19 here, they are saying that municipalities can do so more easily. The court sets out a new criteria, in
20 this case, in which you can change zoning saying "we recognize that a municipality may be able to
21 justify an amendment that down zones a particular piece of property by demonstrating the changes
22 more advantageous to the community as articulated in the comprehensive plan or other City master
23 plan. So, by saying that, they are giving municipalities a great deal of power in changes pre-existing
24 zoning if it is more advantageous to the community, it's a pretty low bar to hurdle. More specifically,
25 the courts set out two elements that you have to meet to change zoning under this new test; one is
26 there is a public need for a change in the kind you question and Ms Rodriguez will have to tell you
27 whether such a thing exists and second, that the need would best be served by changing the
28 classification of the particular piece of property in question as compared with other available
29 properties. Now, I don't pretend to know the answer to that one but common sense would tell you
30 that the reason we are here tonight on this particular piece of property is because this property owner
31 has come and said "I want to change the zone on my property." If another property owner had come
32 and said that we'd be here for a different piece of property, that's probably why we are here tonight.
33 In any rate, that's kinda a lot of complex information in a very short period of time; does anyone
34 have any questions?

35

36 Mayor Miyagishima said thank you, Jared. Councillor Small.

37

38 Councillor Small said thank you, Mr. Mayor and thank you, Jared for the quick summary and reading
39 straight from the document. I guess two questions; one, was I mistaken or did you allude to, is there
40 a size implied to kind of the scope of this decision? You say a small amount of property or no or is
41 there a graphical size that is set forth in that decision?

42

43 Jared Abrams said no, there is no graphical size, Councillor Small. Rather, typically, these problems

1 arise when there is a master plan and somebody wants to change the zoning within the master plan
2 regarding a small portion of it. It doesn't mean it couldn't be a large portion; it usually comes up in
3 a case like tonight.

4

5 Councillor Small said so, the decision doesn't say a small, it doesn't set forth any, I thought I heard
6 you reading from the, that a small change.

7

8 Jared Abrams said well, it's not that it only applies to small parcels of land rather it is a situation
9 where it tends to arise when one person owns land within a large area owned by many people, say
10 to a master plan, wants to change his land or a municipality wants to change the zoning of that land
11 for its own purpose but it's not any way dependent on the size of the land, rather it's dependant upon,
12 it doesn't meet one of those three criteria change, mistake or for the public.

13

14 Councillor Small said right, okay, and so, just to finish that then, my imagination kinda started that
15 said "well, if there is these small parcels, folks don't want too ridged of a criteria applied to it" but
16 when you're dealing with much more larger parcels, hundreds of acres perhaps, then maybe the court
17 was thinking that those were more sizable; I mean, you're saying that would be an erroneous
18 interpretation.

19

20 Jared Abrams said right, I suppose the best way to look at it Councillor, would be, there is a tension
21 here between people like the appellant who say "I made my business decisions based upon this old
22 zoning decision, I rely on that" and to an extent a person does, I mean, there should be some degree
23 of reliance on what the government does in terms of zoning but there is no vested right as to rely on
24 it, in other words, it could be out weighted, like in this case for public good, by change or by mistake,
25 so really it's not related to the size of the property.

26

27 Councillor Small said okay, I guess that is a great segway into the second question; obviously you
28 referenced one of the other main criteria and I think it's clear that there has been change obviously
29 in that area but you referenced the public need and you seem to imply that because there is a request
30 for a zone change that in of itself references a public need. That's much more of a private need by
31 the land owners and their need is to change the zoning. Again, my question Mayor, in terms of the
32 public, what criteria there to measure it; in this case, one criteria might be if you're adding more of
33 a certain type of property, in this case, commercial property, that there was a lack of commercial
34 property available; therefore, the public wasn't being served properly with enough commercial
35 property so there needed to be more. Is that a wrong way of looking at it?

36

37 Jared Abrams said ya, I have to say Councillor, I think you're misinterpreting what I said; to put this
38 in legal ease in the law there are these things called elements; I guess criteria is a more normal way
39 to put it but under this new case there are two criteria that one has to meet to re-zone for the public
40 good and one of them has nothing to do with public need whatsoever; again, there's a public need
41 for the kind of change in question, that's pretty vague; you're not going to find something black and
42 white that says exactly what criteria is going to meet that.

43

1 Councillor Small said so, that's the one that I want to zero in on. I mean, it would be helpful to
2 understand if there is any kind of standard for meeting that because it's saying you want to fulfill the
3 public need. Was there any standard that accompanied that language or if not, are you prepared, Mr.
4 Rubio are you prepared to offer any standard to help guide their interpretation of that?

5

6 Jared Abrams said well, Councillor, I think you're taking something that's intentionally vague and
7 trying to put ridge criteria on this; I mean, this isn't like community development or engineering
8 where we could do that; it was vague precisely because there are going to be a lot of different
9 situations, no one would be like another, it would really shackle municipalities if we had to come
10 up with a ridged table of elements that we had to meet to do this.

11

12 Councillor Small said I understand; so, the public need is much more expansive and really relates
13 back to the communities and the folks that are in those communities to determine their own public
14 need and maybe it's expansive for that reason; is that you'll have all kinds of diverse public needs
15 in diverse communities in New Mexico.

16

17 Jared Abrams said I suppose one way to look at it would be how high is the bar over which one must
18 hurdle; now, I know the appellant in his packet mentioned a compelling government need or a
19 compelling government interest. I would say that's erroneous because that's too high; the bar here
20 is quite low, a public need is lower than a compelling need, it's not a matter of numbers or the size
21 of land, it's just a matter of how difficult should it be for municipalities to change zoning and a
22 public need is a fairly low bar as compared to a compelling need. The other thing you mentioned is
23 private need, you may be thinking of the second element which is totally different; in other words,
24 a few things have to be met here, the other one is the need will best be served by changing the
25 classification of a particular piece of property in question as compared to other available properties.
26 My only point when I said "it is because this particular property owner has come here" is Community
27 Development will have to justify why a public need is served by changing the zoning for this
28 particular piece of land. I could be wrong, my guess is because this is the person before us; if it had
29 been somebody else, we would be hearing about somebody else's land, that's all.

30

31 Mayor Miyagishima said Councillor Thomas.

32

33 Councillor Thomas said thank you, Mr. Mayor. So, what you have just been talking about is in terms
34 of the Miller case and the new criteria all applies to zoning, not to amending a master plan.

35

36 Jared Abrams said it applies to changing zoning within the master plan; for example, changing the
37 zoning for one parcel in a master plan, if you want to call that amending a master plan or not, is what
38 it applies too. You have a master plan with many properties, either property owner or a municipality
39 say I want to change the zoning of this one little bit of property within this big master plan, these
40 would be the three criteria for you to use to make a decision.

41

42 Councillor Thomas said so, changing the zoning and changing the master plan are intertwined so you
43 can't really pull those apart; is that what you are saying?

1 Jared Abrams said well, I suppose, keep in mind I'm not a planner, Councillor, but when you have
2 a master plan and my understanding, my idea is this establishes zoning over a wide area is to be
3 either permanently set or semi-permanent. This case and these elements may apply when someone
4 in the master plan wants to change zoning in a very discrete area than the master plan.

5

6 Councillor Thomas said I think Mr. Weir is going to try this.

7

8 David Weir said Mayor and City Council, what Jared said was right. Basically, the master plan and
9 the zone change are connected to one another. If you go to a situation that you had earlier this
10 evening when you annexed property, you are also required to do a master plan for it that provides
11 further justification for your initial zoning; so, what you have here is an area that was master planned
12 because of the development requirements that the subdivision code talks about the conditions on
13 which you are required to do a master plan and then that provides a basic concept of how this area
14 will develop; I mean, that's an opportunity for you to evaluate it and see if that meets the goals in
15 urban form that is trying to be fostered through the company to plan and then that can be used as
16 your justification for your re-zoning. The applicants and the appellants, both of these cases are before
17 you and being heard at the same time cause you can't really tie, take one without the other. So, the
18 first step is to hear the master plan which sets the general perimeter for development then the zoning
19 is the actual ordinance that specifics the conditions of which the development will take place.

20

21 Councillor Thomas said thank you. Going back to Jared, I'm trying to see if what you're talking
22 about applies. I understand I think about the master plan and zoning but you said that change in
23 circumstances and mistake, at one point you said that's unnecessary now or that doesn't apply
24 anymore and then you talked about new criteria, the public need and the need best served so change
25 in circumstances and mistake don't apply anymore.

26

27 Fermin Rubio said they all apply; there are three now instead of two.

28

29 Councillor Thomas said all right, that was my original understanding; I just got confused here at the
30 end. They all apply, change in circumstances, mistake and this more advantageous which has those
31 two parts, a public need or best served.

32

33 Jared Abrams said that is correct.

34

35 Councillor Thomas said okay, I got it.

36

37 Mayor Miyagishima said thank you Councillor; Councillor Jones.

38

39 Councillor Jones said thank you, Mr. Chairman. Actually, Councillor Thomas answered one of my
40 questions for me about the three criteria but I want to drift to another legal issue that we haven't
41 touched upon. It will weigh upon us but I don't know if it will really, what extent it should influence
42 our decision and that's getting back to the arrangements with the City, our lenders as it relates to the
43 bond debt that was used to pay for Northrise and our arrangement or contractual agreement with the

1 Alameda Group, if that's suitable, where I'm headed is this; do we risk violating some agreement
2 with Alameda or with the lenders, the bond entities, by making this change; is the debt associated
3 with Northrise and those projects; is there something in the covenants that will prohibit us or
4 discourage us from making this change?

5

6 Jared Abrams said Councillor, I would say no. The best way to think of this is like I said before, any
7 property owner, businessman or whatever has some right to expect consistency from the government
8 but not an absolute right. In this case there is no vested interest in the land owners, no guarantee that
9 the zoning will never be changed, there just has to be a good reason.

10

11 Councillor Jones said okay. I know there is a issue with collateral and while someone could make
12 the argument that collateral shouldn't drive the zoning and zoning shouldn't arrive from collateral
13 and I understand that but I don't have the answer to that but you're saying that there is no risk or you
14 don't perceive a risk at this point; that we are going to have a claim made that the nature of the
15 collateral has changed and therefore we've violated a covenant or that Alameda is going to claim that
16 we can't service this liability because you've basically changed the value of our property. Are those
17 issues that we need to worry about at some point?

18

19 Jared Abrams said well Councillor, I can't say that Alameda is not going to complain; I mean, it's
20 quite possible that they will but the issue is what's the legal basis; this isn't like a constitutional
21 issue; you're not (inaudible) for example, there's no property interest and the constitutional sense
22 and zoning, there is a right to rely to a certain extent. I would say no, there is no risk from a legal
23 standpoint but it doesn't mean for example that we won't get sued.

24

25 Councillor Jones said something like the old saying that in America anyone can sue anyone else and
26 the question is, is do they have a basis for a lawsuit? I mean, there is a lot to that.

27

28 Jared Abrams said ya, that's pretty accurate.

29

30 Councillor Jones said you say it with sort of a grin but it's true; how well we know. Okay, thank you
31 very much.

32

33 Mayor Miyagishima said thank you, Councillor Jones. With that, I think I will just allow the
34 appellant five minutes and the applicant five minutes and then we are going to go to a vote after that.

35

36 Jack Pickel said I want to bring you back to the original point, that this is an appeal of a Planning
37 and Zoning Commission decision that was based on certain information and that information isn't
38 in the file. I'm totally shocked that the applicant comes in here this afternoon with a study dated
39 Friday of last week and is trying to introduce it as evidence in favor of their case. No one has seen
40 this before, no one has read this before; what kind of nonsense is this, we have a right to rely on you
41 all to enforce the laws that you've passed, you pass ordinances, those are your laws. The
42 comprehensive plan, the zoning code, the subdivision code, they are all ordinances. We follow them,
43 they have not; it's fine for your staff to say that they've done all this analysis, there are no findings

1 to back that up in the applicant's file. It's pulled out of thin air, they may have had two dozen
2 conversations within the staff in a secret meeting but we as an appellant have a right to know what
3 went on. There are no minutes, there is no information in the file to justify any of this. State case law,
4 I mentioned Miller and our attorney will mention Hart, it is very clear that there is a high standard,
5 what rises to the standard is a change of circumstance; nothing they have presented as evidence is
6 findings in their application or in the staff's, has met that basic challenge. So, if for instance, you do
7 pass this tonight and pass their zoning then our next step is to file an appeal with District Court and
8 we all take our records into District Court. We're not going to let this in and we're not going to let
9 in our little study of a one mile radius which is required by your rules; not State Statute but your
10 rules. We implore you to follow your rules. I want Mr. (inaudible) to address some of these cases
11 because I think he has a different take than the attorney that you just heard from; although, that's why
12 there are attorneys on both sides and judges make those decisions and these case laws are judge's
13 decisions and there is one as recent as 1999 that we'll talk about as well. Finally, you asked about
14 our contract; I will put it into evidence or into the record since you want it and it clearly states that
15 all construction and improvements on the property by the purchaser which was Sonoma North, must
16 comply with the Las Alamedas master plan and design guidelines as they may be amended at the
17 request of the purchaser with the seller's expressed written consent. They haven't met this, there is
18 another lawsuit that we got to go to, we haven't yet but we have the right to. We'll make this part
19 of the record and then we'll let Mr. (inaudible).

20

21 Tom Dawe said I'm Alameda's lawyer and I'm brought in when needed, I don't work for them. A
22 couple of points I want to reiterate that I disagree with Mr. Cervantes on the one case that we both
23 agree on which is the Miller case and I'm quoting for page 506 of that decision at 89 New Mexico
24 and it says that "a property owner has the right to rely on the requirement of anyone seeking to re-
25 zone his property to a more restricted zoning must show that either there was a mistake in the
26 original zoning or that a substantial change has occurred in the character of the neighborhood since
27 the original zoning to such an extent that the reclassification or change ought to be made," that's the
28 Miller decision. A case that Mr. Pickel just discussed, a case called Hart verses the City of
29 Albuquerque which indicated that there has to be substantial evidence supporting a re-zoning.
30 Another matter that I would like to bring to Council and the Mayor's attention is a case involving
31 KOBE when a helicopter a few years ago went down near the Albuquerque Country Club, they had
32 been using a helicopter for some time and the neighbors decided they wanted to fight about that so
33 they went to court and there were some experts in there and one of the findings in that case was
34 called KOBE-TV, LLC verses the City of Albuquerque found that 205 NMMC-049 and I'm quoting,
35 "we recognize that an expert, even an administrative hearing, must explain the steps followed to
36 reach a conclusion but we would suggest to the Mayor and the Council is that these findings that we
37 are talking about are not a part of the record; again, I'm surprised that the report that Mr. Cervantes
38 read from was only done two days ago but we weren't even provided with it at the beginning of the
39 hearing so we'd have a chance, it was five minutes ago. In trial that's called trial by ambush and we
40 think that's not appropriate. I would also like to reiterate that I disagree with Mr. Abrams on his
41 finding about or his statement to you that there are no vested rights. There is a case called Gallop
42 Westside Development, LLC verses the City of Gallop found in 135 New Mexico 30, in that case
43 the court said, the Court of Appeals said vested rights in a particular use of property protect a

1 developer from retroactive application of newly adopted regulations. There is a two prong test
2 determining whether a developer has vested rights in a particular use of property. First, there must
3 be the approval by a regulatory body, second, there must be a substantial change in position and
4 reliance thereon. There are vested rights, contrary to what Mr. Abrams argued. The one thing that
5 you have not been provided, I wanted to alert you to as well, I'm sure Mr. Rubio is familiar with this;
6 is New Mexico Statute 3-21-5 which says that a comprehensive plan is required to, and it lists eight
7 or nine factors, I will be happy to go through those but that statute, I don't think I need to go through
8 the verbiage of the statute but it would be my understanding that were I in the position of someone
9 trying to put together a defense of the applicant's position, I would've gone through that statute and
10 met every one of those criteria and had a finding supporting that criteria? There are no such findings,
11 if you look at that statute, one through eight, there are no findings in the work here supporting any
12 one of those requirements for a comprehensive plan. It doesn't say an amendment to it, to the
13 comprehensive plan but it would be my assumption that if you are amending a comprehensive plan
14 what you are amending must meet the requirements of a comprehensive plan as set out in New
15 Mexico State statutes. I believe that there is no finding before you tonight that this amendment would
16 be beneficial to the community at large and I think that's a significant point, if that's the issue that
17 the appellant is a, excuse me, the applicant is relying on then there should've been a finding in
18 evidence presented. I don't see that there was. That's it.

19

20 Mayor Miyagishima said the Council can ask questions of you later and it won't count against your
21 five minutes.

22

23 Tom Dawe said that's fine.

24

25 Mayor Miyagishima said Councillor Jones.

26

27 Councillor Jones said excuse me, Mr. Chairman, it wasn't my intention to interrupt, I simply wanted
28 the Mayor to realize that at the appropriate time, I had a question. I made notes to myself with
29 respects to what I've read and there are several points at which; I believe you represented Alameda
30 and I'm using that generically at the P & Z.

31

32 Tom Dawe said that is correct.

33

34 Councillor Jones said there were several mentions of spot zoning at that meeting; would you
35 elaborate on your comments that were made, I believe they were your comments, on spot zoning?

36

37 Tom Dawe said I can't recall my comments on spot zoning. I believe that what we are looking at,
38 Councillor, though, we are dealing with a small, relatively small area and that would in effect be spot
39 zoning. If you allow this then any other applicant can say "oh, well my proposed amendment also
40 would be beneficial to the community" and I think the Mayor has outlined some of the problems with
41 the proximity between the high intensity areas and the park but basically, if you open the door then
42 every single one of these things, there is no standard to be followed, every single door, everyone will
43 be here knocking on your door to amend the master plan because of my project. That's the purpose

1 of a master plan. Any other questions I can answer?

2

3 Councillor Jones said thank you.

4

5 Mayor Miyagishima said okay, thank you. Any other comments for Mr. Dawe or Mr. Pickel? If not,
6 okay, five minutes for the applicant.

7

8 Joe Cervantes said first of all there has been reference to the case at issue here and I think the
9 standard was pointed out earlier has expanded now from the Miller case. So, I really do think it is
10 (inaudible) for the 1976 case on behalf of the appellant in this case and the standard is as pointed out,
11 not just the mistake and change in circumstances but really the needs of the community. I would like
12 to add a couple more cases to the record; one is the West Bluff Neighborhood Association verses the
13 City of Albuquerque, it's a 2002 case and I think that it addresses some of the questions that I've
14 heard here tonight. This case dealt with what a master plan is really about and as you recall, you are
15 being asked to amend the master plan here tonight. In here the courts said this, it says "in the process
16 of considering a site plan, a municipality must apply its expertise in weighing and balancing many
17 factors and policy concerns, a practice which necessitates the exercise of discretion and according
18 to the same case states the following "the needs of a municipality do not remain stagnant" and I
19 really want to repeat that because the needs of a municipality do not remain stagnant, planning goals
20 and policies must be flexible in order to adapt to fluctuating community needs and growth patterns.
21 I think that's the Sallien (?) case on the issue of what master planning and comprehensive planning
22 is really about. The last argument I think that was made was that this would constitute spot zoning;
23 I know that always raises the hackles of folks, it's a common argument to be made; I'll tell you the
24 lead case on that involved the City of Las Cruces. The case in the Court of Appeals, Bennett verses
25 the City Council for the City of Las Cruces; I was counsel to the Cribble-Cabbage(?) family who
26 would join with the City in that case on appeal on spot zoning and here is what the definition of spot
27 zoning is from that case, spot zoning is an attempt to ranch a single lot from its environment and give
28 it a new rating which disturbs the tenor of the neighborhood and which affects only the use of a
29 particular piece of property or a small group of adjoining properties and is not related to the general
30 plan for the community as a whole, it is primarily for the private interest of the owner of the property
31 so zoned. The court also said the following, "the term spot zoning refers to the re-zoning of a small
32 parcel of land to permit a use that fails to comply with the comprehensive plan or is inconsistent with
33 the surrounding area and grants a discriminatory benefit to the parcel owner or harms the
34 neighborhood properties or community welfare." Now, you've heard nothing tonight to support that
35 argument. The counsel for the appellant also raised the Gallup case that talked about vested rights,
36 that case really has nothing to do with what we are dealing with here. The Gallup case dealt with
37 when property rights vest in a developer, when they've reached a certain standard or status where
38 there is a property interest involved in the taking and we're not dealing with that here. There's no
39 argument that someone has a vested right, except perhaps the appellant in this case arguing that they
40 have a vested right in maintaining the current zoning. I don't hear Council making that argument,
41 there is no case to support that type of an argument. We've done the legal arguments well but if there
42 is questions, I'll answer them. I'll just end with the last vision here of the applicants which is we're
43 trying to provide the City with the award winning types of projects that this group has put together

1 in the past, creating community and village neighborhoods. Thank you.
2
3 Mayor Miyagishima said thank you. Any questions or comments of either Mr. Cervantes or the
4 applicants?
5
6 Councillor Silva said I guess this would be good, this would probably go, I don't know if staff can
7 answer this or the applicant; one of my questions is, let me count here 1, 2, 3, 4, 5, 6, 7 of the parcels
8 had open space and they've all been eliminated; what was the total amount of open space that was
9 initially planned in the master plan and is that an equal amount to what is being planned within the
10 two new open spaces?
11
12 Mayor Miyagishima said Councillor, you probably stepped out when we discussed that, it's pretty
13 close I think, originally it was like eight acres give or take and now it's seven-ish and the area that
14 was..(interrupted by Councillor Silva)
15
16 Councillor Silva said okay, I guess I must have missed it. I know what's going to be on parcel 11 and
17 10 but I just wanted to know if it was equal?
18
19 Mayor Miyagishima said it's close and they were discussing conceptually where it was going to be,
20 they didn't have it directly; they talked about a center, a circular type park in the middle of parcel
21 12 I think it was; oh six, I'm sorry; and they had like a little strip along that little piece, like a
22 triangle, a pocket park and remember the one with the chin ups, pull ups, something like that.
23
24 Councillor Silva said I saw the exercise thing; so, okay. The other thing too is Cheryl, you showed
25 that one graph where the; I'm going to ask this question again because I think it's crucial, you said
26 the original plan didn't have those items and to me, am I misinterpreting it by saying that it
27 constitutes that the original plan didn't have those; I mean, you said four items, the drainage items
28 and so forth, you listed items.
29
30 Mayor Miyagishima said you're talking about those four items.
31
32 Councillor Silva said she had like four items.
33
34 Mayor Miyagishima said I don't think she said it didn't have it; these are just what the City, as far
35 as for us to maintain it, if it has these items we wouldn't maintain it; I mean, that's what it was
36 referring too.
37
38 Cheryl Rodriguez said Mayor, Councillor Silva, those were four conditions placed on the master plan
39 by the Facilities Department and the Public Works Department on how it pertained to the conceptual
40 drainage for the area as well as the conceptual proposal for the dual use park and pond facility as the
41 1996, the master plan was reviewed and approved under a different set of codes at that time and
42 through the years they've been amended, particularly the City's drainage standard as well as the park
43 and recreational master plan has been amended to where we allow the flexibility of these dual

1 facilities but City staff wants to ensure that to the development community, if you're going to be
2 proposing things, the City will be expecting certain (interrupted by Councillor Silva)

3

4 Councillor Silva said so, it could almost be like we have these certain commercial pieces that come
5 before us and we're just bringing them into compliance; it could be comparable to something like
6 that because this was in 1996 but now it is, now we have these new standards in place.

7

8 Mayor Miyagishima said repeat your question, Miguel, Councillor Silva.

9

10 Councillor Silva said well, it's just that..(interrupted by Cheryl Rodriguez)

11

12 Cheryl Rodriguez said Mr. Mayor, Councillor Silva, I think that City staff is just setting forth the
13 expectations for the development since the master plan is a concept for how the area will be built
14 out; so, when we get to the preliminary platting stage and everything, we've set forth in the master
15 plan our expectations in terms of the conceptual drainage report that this going to, you know, if the
16 development is going to proceed in a certain fashion, City staff has already told the developer at this
17 time "expect to meet the following requirements" and in terms of the park, 5.68 acres, it's been set
18 that, that's conceptually allowable under today's standards for park and open space requirements.

19

20 Councillor Silva said well, okay, all right, I think I got that one. My question is pretty much
21 answered.

22

23 Mayor Miyagishima said okay, thank you. Anything further from the Council? Councillor Jones then
24 Councillor Thomas.

25

26 Councillor Jones said thank you. Ms Rodriguez, perhaps you can help me. It's a tremendous amount
27 of information for the couple hours that we've been here and I've been trying to make notes for
28 myself and I hope that I can ask questions quickly. There's been a lot of talk about change in
29 circumstances and then there have discussions about substantial change in circumstances. Obviously,
30 that's a measure that staff has to measure. I understand that there is a substantial change in
31 circumstances over and beyond what the Alameda Group has outlined.

32

33 David Weir said I think a lot of that is your perception of the area, what could have changed over the
34 time the master plan was originally developed to today. So, you've heard a lot of things about change
35 just to the conditions of Highway 70, you've heard items about changes to not only this master plan
36 but master plans adjacent to it. I think those are all items that you need to factor into your decision;
37 whether there has been a change of circumstances for the community.

38

39 Councillor Jones said thank you, that's a fair answer. There's been some discussion about an
40 inadequacy in the files of, to the extent that they don't justify recommendations; what I heard is there
41 are at least two DRC meetings and at least two reviews prior to going to the DRC; am I correct that
42 there were approximately four meetings prior to going to the P & Z and substantial staff review of
43 this project?

1
2 David Weir said I can give you the general, typically, all master plans and zone changes go through
3 a similar process, they are submitted, staff, we call it processing out to the different City departments
4 for review. The City's Community Development department has what we call ZRC Zoning Review
5 Committee, that reviews those requests; since this is dealing with the subdivision code, it also goes
6 to the Development Review Committee which is a broader vast of City developments; there are
7 minutes kept from those meetings and all that information is kept in a file for review of the various
8 departments and then the minutes from the DRC, actually makes the recommendation to the
9 Planning and Zoning Commission as to what their recommendation is to them and then ultimately,
10 they make, in regards to a master plan for the subdivision the Planning and Zoning Commission
11 makes the determination of whether to approve that or not and then they make a recommendation
12 to City Council on the zone change. In the packet that you received, you've got a copy of the DRC
13 minutes, you received a copy of the Planning and Zoning Commission minutes, you also received
14 a copy of the staff report which summarized staff's analysis of that and also the summarization of
15 the DRC's recommendation; so, that's an overview of the process that we do. I don't know if Cheryl
16 has specifics that she may add.

17

18 Councillor Jones said would it suffice it to say that there were no shortcuts made, that this was the
19 same thoroughness that we would apply to similar type projects?

20

21 David Weir said it was the same process that we do for all master plans and zone changes. Cheryl
22 has a point of clarification.

23

24 Cheryl Rodriguez said to clarify for the record, the zoning review team is a staff function, it's not
25 a public meeting, it doesn't go through the Public Meetings Act where we advertise agendas; it's a
26 meeting that is held internally by staff where we stack all of our zoning cases with staff with the
27 Community Development department.

28

29 Councillor Jones said thank you. I have two more questions; there have been some mention of a
30 mandatory study.. (interrupted by Mayor Miyagishima)

31

32 Mayor Miyagishima said excuse me for just a minute. I'm sorry Mr. Pickel, unless some ask on you
33 to be called, your time is up. Specifically, you're welcome to talk with Cheryl and tell her something,
34 if she feels it's appropriate to bring it up. Councillor Jones.

35

36 Councillor Jones said Mr. Chairman. I'll ask two more questions and if Mr. Pickel wishes to respond
37 accordingly, of course, I have no problem with that if that's appropriate that's great.

38

39 Mayor Miyagishima said only if you are specifically asking him that.

40

41 Councillor Jones said thank you. Ms. Rodriguez, there's been mention about a required study or a
42 mandatory study that is required for this process and that study is absent. Can you comment on
43 whether that test is accurately described, whether there really is a requirement or is that subjective?

1 Cheryl Rodriguez said Mr. Chairman, Councillor Jones; in the comp. plan it says that a study shall
2 be done, it doesn't say that it is mandated or required and staff did not do the study of the 1 mile
3 area; what we looked at was the shift of land uses within the master plan area accordingly. Typically,
4 we do the 1 mile study areas when we have large development proposals like annexations when we
5 look for the compatibility of the initial zoning within that area to establish the mix land use ratio.

6

7 Councillor Jones said so it's your feeling that we follow those regulations or rules as appropriate?

8

9 David Weir said Mr. Chairman, Councillor Jones, just for clarification, that requirement is in your
10 comprehensive plan which is adopted by resolution so again, it's a guiding document; in a perfect
11 world is how to review these cases.

12

13 Councillor Jones said so it's not law, it's a guiding document; okay. I mean, that's your
14 interpretation. One last question; there's been discussion about a population test and I can't
15 remember the details but is there a requirement or do we fail in some requirement to measure
16 population shifts or tests and I wish I could remember, written my notes more clearly to myself but
17 perhaps you know what I'm talking about?

18

19 David Weir said Mr. Chairman, Councillor Jones; I believe that is in regards to, again, a policy that
20 is in the comprehensive plan that states that a high intensity commercial area will serve a portion of
21 the community from 15,000 to 85,000 individuals in population and again, the way that City staff
22 looks at that; that is the community as a whole, that, that drawing area, that commercial node is the
23 entire community. We have definitions of what's regional, what's community, what's neighborhood,
24 commercial and so, it doesn't have boundaries and again, it's policy so it's a guiding document for
25 you to consider when you hear the zoning changes and master plan amendments.

26

27 Councillor Jones said thank you very much. Mr. Chairman, that's my question. I think apparently
28 that Mr. Pickel has a desire to respond, if it's appropriate, I would love to hear it.

29

30 Mayor Miyagishima said you're asking him to..

31

32 Councillor Jones said yes, please.

33

34 Mayor Miyagishima said okay, sure.

35

36 Mr. Pickel said thank you, Councillor Jones. I just want to make a point of clarification; the case law
37 that Mr. Dawe quoted, the Hart case which was 1999 and basically, upholds the Miller case of 1977,
38 require that there be something in the file as an assertion by the application that there has been a
39 change in circumstance. Mr. Weir suggested that a change in circumstances is what you all determine
40 it to be; it has to be claimed by them and it is not in the file. It's not up to you to assert that there is
41 a change in circumstance, it's up to them. They've failed to do that and again, your comprehensive
42 plan may be a resolution but your zoning code and your subdivision code or ordinances that rely on
43 the comprehensive plan and we rely on all of those ordinances and resolutions and if they say a study

1 shall be done; I always learned in law school that shall meant mandatory and to say that shall doesn't
2 mean mandatory, I don't get where that comes from, whether it's a resolution or an ordinance. That's
3 my clarification.

4

5 Councillor Jones said thank you.

6

7 Mayor Miyagishima said thank you. We have Councillors Thomas, Connor and Small. In that order,
8 so, Councillor Thomas.

9

10 Councillor Thomas said thank you, Mr. Mayor. There are other things in the comprehensive plan that
11 I seldom see show up here and I was interested that it didn't show up at all in this discussion, that
12 is the infuses on commercial nodes or center development and strip commercial patterns and there
13 is a lot of infuses here on this that this is what is being proposed here is neighborhood commercial
14 uses so I guess I'm a little concerned that, that wasn't brought forth as some sort of evidence for why
15 the change would take place. I guess I continue to see conflict there because what I see there so far
16 in terms of commercial, it doesn't look to me like, you know, your village neighborhood kind of
17 concept, you know. There are a couple of businesses and they are very dependent on automobile
18 driving and surrounding by parking so I don't see the (inaudible) center developing there. I am also
19 nervous about why it has to be high intensity and again, if you're going neighborhood retail or why
20 we are looking at satisfying 15,000 to 85,000 in the whole area, I'm starting to see a commercial area
21 here that is dependent on people getting on 70 and getting off of 70 to do their shopping there; so,
22 the vision is not, it doesn't quite fit with the zoning request I guess is what I want to say. So, my
23 question is; is it possible to do what Sonoma Ranch is talking about doing without adding four or
24 more parcels of land. I mean, there are already two big commercial high intensity parcels; is it totally
25 necessary to add four more to do a neighborhood village retail kind of concept that we're being told
26 is what the plan is for?

27

28 Mayor Miyagishima said Councillor, those are good points and a kinda like me, even though we
29 suspended the rules to discuss them both, I think the first thing we need to do is know whether or
30 not we'll either uphold the Planning and Zoning or deny it. If we uphold it then the next part will be
31 the zoning and I think that what you're asking would be very appropriate at that time and that's
32 where I'll bring my suggestion about the height and things of that nature.

33

34 Councillor Thomas said that could go there, that's fine.

35

36 Councillor Connor said thank you, Mr. Mayor. In going to the appellants case, if I'm reading my
37 Item 11, page 11, is the appeal to deny the applicant's request based on the plus or minus 38 acres
38 of the Northrise Drive in Sonoma Ranch, is that the largest, is that the piece of contention between,
39 based on this, Mr. Pickel? You have to go to the microphone.

40

41 Mr. Pickel said yes, we don't believe that they have proven a need for an additional 35 acres.

42

43 Councillor Connor said those 38 acres; thank you. Because, I am then going to go back to a

1 document, I believe that all of us received on October 8th, an East Mesa study, subdivision study, that
2 Mr. Brainer forwarded to all of us and in that, I've sat here for 6 years talking about how
3 undeveloped in commercial area we have in the East Mesa and to that side of the community
4 whether it's on the south or on the north side of Highway 70 and just east of the dam site and from
5 this I'm looking at those subdivisions, are listed six subdivisions and with that a total estimated that
6 units of 61,038 units that could be developed in this time frame which is probably I imagine in about
7 a 20 year look out would be there and as I looked on the page under the column, most of them are
8 single family, multi family and these are all different subdivisions that are in the East Mesa, both
9 sides of Highway 70 and when you review this, there is in this listing there isn't any commercial
10 nodes that I can see, except, and I'll ask you to clarify Donny, that this was probably for a, it's called
11 "comprehensive survey of East Mesa residential development" and I can't find the other one with
12 the commercial one but in looking at that and how much we have looked for commercial nodes
13 within the east side of the Interstate, we have talked about that over and over here and Donny, I don't
14 find the other document that has what kind of commercial survey there was, if you would respond?
15

16 Donny Brainer said I'm the President of the Alameda Property Group. That was a specific study to
17 spell out to potential retailers and builders, what was going on in the East Mesa, the planning, the
18 number of lots to help attract the Wal-Marts, the Targets, Cosco, God Willing Whole Foods, no; and
19 try to paint to the picture of what is going to happen over a 20 year plan. I do have a commercial
20 study, I haven't updated it in several years but it is just as detailed and I'm more than happy, the City
21 and County have that as well, you can easily pull that information up with them as well.
22

23 Councillor Connor said in that commercial study, can you tell me in this particular area, just on the
24 south side of 70, what your recommendation would be that is not already there? That's already zoned
25 commercial and yet we're contemplating appealing 38 acres and 38 acres, how big is a Wal-Mart
26 site?
27

28 Donny Brainer said 24 acres on average.
29

30 Councillor Connor said right and so, you know, I don't see how this could be an overwhelming
31 amount of high intense commercial in an area of 38 acres and yet..(interrupted by Donny Brainer)
32

33 Donny Brainer said it's my belief; let me back up a little, I've been working with a lot of people at
34 the City, a lot of residents and developers and the whole master planning process, how do we make
35 sure Las Cruces grows the way we want it too, who knows what's going to happen and I believe that
36 in this situation within this master plan, its been very spelled out and what people haven't talked
37 about are the trail systems, they all tie into the commercial nodes, everyone can walk to them,
38 Councillor Thomas mentioned that. If you're taking demographics from one side of the City for this
39 node then that's not really fair because you don't want those people to drive there. In this situation,
40 this master plan has been spelled out, it's been balanced and I think pulling that traffic away from
41 that commercial node that we identified years and years ago, it's going completely against what the
42 whole planning process was and for me it's frustrating because we're talking about overlays of
43 Sonoma Ranch and Lohman and all this other stuff, it really does undermine us because if we put

1 all the energy into it and plan it but then we say "oh well, forget it," what does that do for all the
2 future planning and so, I believe in this situation it was spelled out from day one, basically, what was
3 going to happen and that's really the issue. I do think there's other areas where there should be
4 commercial; you go further out east, I completely agree, those people don't have to drive into town;
5 right here it's covered and that's my opinion.

6

7 Councillor Connor said you feel that what is already commercial zoning in this particular corridor
8 is sufficient to accommodate even a third, say 20,000 units.

9

10 Donny Brainer said there is a lot of commercial in this area as is; I mean, we're specifically focusing
11 on this one mile radius. I mean, I could drive you up and down that area where there is just a ton of
12 commercial up and down that whole corridor but the point here is that this was master planned to
13 pull people into these nodes, you walk, you bike, worse case you drive a short period; what's going
14 to happen now is that it gets disbursed and spread out and it's not a focused plan anymore, focused
15 community and that goes against everything we've been pushing for, not just me but the City for a
16 long time.

17

18 Councillor Connor asked does that go against the comprehensive plan as it is written today?

19

20 Donny Brainer said I can't answer that.

21

22 Councillor Connor said I mean, you're saying that your concept and your map..(interrupted by Donny
23 Brainer)

24

25 Donny Brainer said I'm coming from the point of Alameda and our master plan and if you look at
26 our developments, we've relied so heavily on this plan that we've done all of our financial planning
27 on it. If you drive down any of our roads, intense landscaping, really nice lighting, trail systems,
28 everything is spelled out; that cost a fortune to do and we did it in advance; we did it a long time ago
29 because we knew what was going to happen. Now, by saying that this master plan, we're going to
30 pull it out, put some more commercial here, spread it out, that turns everything upside down; it
31 throws off our plan as far as us trying to build a nice community. It throws off everything financially
32 and the bond, I mean, it scares the heck out of me because we planned specifically, this is how much
33 within our master plan, it's commercial, so we can say "okay, ten years from now we hope to sell
34 this much, yes, we can do these bonds", if anybody is zoned outside our master plan, we wouldn't
35 say a word, we have nothing to do with that but this is within a plan that has been in place for years
36 and we've worked very hard on it and put a lot of planning in it.

37

38 Councillor Connor said thank you.

39

40 Mayor Miyagishima said thank you Councillor, thank you Donny. Councillor Small.

41

42 Councillor Small said thank you Mr. Mayor. Just a couple of quick questions; first of all, I guess,
43 just a point of clarification, the study we were given, the market perspective, that wasn't considered

1 at all before this meeting; correct?

2

3 Cheryl Rodriguez said Mr. Mayor, Councillor Small; no, that was delivered to my office late this
4 afternoon and I asked the applicant to please introduce that into the record and provide Council a
5 copy as well as the appellant.

6

7 Councillor Small said understood. Okay, thank you. So, one of the things, the ideas, the potential of
8 an appeal has been brought up; so, that wouldn't be part of an appeal as I understand and so we can
9 move forward with that. The community needs; again, I appreciate Jared's clarification, you offering
10 some clarification on that as being fairly expansive standard and I guess, you know, it allows for a
11 lot to be taken into account in the absence of more tighter definitions offered as part of the record
12 perhaps prior to this. So, I think it does allow for consideration such as the repayment of the bonds
13 that you could factor in to our community needs based on what we have here today. You can also
14 factor in a continue need for commercial to that as well but to ridgely define that as you kinda said,
15 I guess is a mistake but it also, I think, in terms of lessons from this, maybe it says that there needs
16 to be more of an attempt by staff on the zoning changes cases to dove into that, knowing this, it'll
17 be really hard and fast but also knowing that work at the front end of these cases will help if we ever,
18 if and when we get to this stage on other parts. I do understand and I see and I appreciate, Cheryl,
19 the clarification regarding the supposed 20% commercial threshold and the fact that isn't the
20 maximum; so, I appreciate that clarification. The one mile radius study, I guess, suddenly, the word
21 "shall" also denotes to me that it will be done. I understand that's adopted by resolution but I think,
22 especially as we begin to contemplate other changes that when those, that wording appears, it's very
23 important that, to try to do that as much as possible because when you're saying "shall" that's
24 something that folks are going to logically rely upon. So, those are, I guess, just a few of the quick
25 thoughts and I would at least leave mine there for the time being.

26

27 Mayor Miyagishima said thank you, Councillor. Earlier, there was a comment about whether or not,
28 like in the court, producing this type of evidence was legal and I'm going to ask Fermin to kinda
29 comment on that.

30

31 Fermin Rubio said thank you, Mr. Mayor. Councillor Small raised that issue and in a proceeding
32 such as this, you don't have the, it's not a trial where you have rules of evidence that apply. Were
33 it a trial, I certainly think Mr. Pickel would be right and it's a little late in the game to produce that
34 but we're not in a trial and even if this case were, if we were under the battershell rules then maybe
35 that might have a little more force; what it really compels you to do is to consider whether in the
36 interest of fairness and justice, is it fair for you to consider that report at this late point with what you
37 know, you know that it didn't go to P & Z and you know that it wasn't distributed prior to this
38 proceeding; that decision is yours and you can decide to consider or not consider as you reach your
39 decision. If the case is appealed then surely it will become part of the record and it will go to the
40 District Court and I don't know and I can't predict what, whether that will become an issue of any
41 substantial magnitude in deciding the matter; I just don't know.

42

43 Councillor Small said I appreciate that and I appreciate the clarification that kinda pertains to our

1 evening here.

2

3 Mayor Miyagishima said with that; I'm just going to ask Mr. Pickel one quick question and then I'm
4 going to have Cheryl give us the break down, you know, if we vote yes, vote no and sometimes in
5 an appeal. Mr. Pickel, regarding the intersection of Rinconada and Northrise, I think I heard you kind
6 of, that's where you all planning on doing your commercial. Can I ask why you didn't start it or why
7 you hadn't, didn't start it a year ago or two years ago; you just didn't feel the timing was right?

8

9 Mr. Pickel said Mayor, we have been spending a fortune in that area for ten years. That's the reason
10 we agreed to the Northrise bond ten years ago, that's the reason we agreed to the Rinconada bond
11 two years ago.

12

13 Mayor Miyagishima said I guess I'm looking at the intersection, I mean.

14

15 Mr. Pickel said well, there is a Bank of the Rio Grande at the intersection that was completed this
16 year but they bought that property 4 years ago; we're not the builders of this, we master planned this
17 as a high intensity commercial node 2 years ago and yes, it's adjacent to single family residential in
18 this area; one thing that's not pointed out that's a part of your comprehensive plan is topography is
19 an issue or should be. I'm sorry, I'm not use to these things. Topography is an issue and one of the
20 things our planners did when they laid this out, right along this line, this property boundary is ridged
21 and so it's basically the same on Lohman where there is a ridge that comes up on the south side of
22 Lohman that we put in as a buffer and that's open space between that and the residential
23 neighborhood further to the south and so those people who live in South Ridge Village, even though
24 they've got a high intensity commercial node half a mile away from them, they won't see it or be
25 subjected to the noise pollution or light pollution or whatever from it because there's a topographical
26 boundary there, a hill, that protects them and the same is the case over here and we have maintained
27 that and planned around that so the topography left aside and the whole road network in here of
28 Rinconada which is coming down through here and goes by the school is to tie into Sonoma Ranch
29 Boulevard to avoid congestion through this intersection of Highway 70. I need to point out because
30 I know one Council, they spread out all of the minutes of the Planning and Zoning Commission
31 meeting. Attorney Holt was arguing that this should be like Lohman and 25 and Telshor. I doubt if
32 I need to remind you how many millions of dollars your spending and have spent over the past few
33 years making circulation and utilities work at that intersection because it wasn't planned to be that
34 high density commercial and now you've been playing catch up with citizen's money, taxpayer's
35 money, that should've been paid for by the developers years ago; that's what we're doing, that's
36 what we've done in reliance of this zoning, being the high density commercial node to serve what
37 was the whole master plan area of Las Alamedas and I gotta point out, the City Council at that time,
38 the Mayor at that time or City Commission, insisted that we only provide enough commercial zoning
39 within our 2,800 acres to serve within our 2,800 acres. They were very resentful of the fact that the
40 City of Albuquerque owns this land adjacent to the City limits of Las Cruces and there were a half
41 a dozen major land owners around the community that have their land, they've owned it for perhaps
42 decades, they had plans, they knew what was going forward and suddenly, I come in with the City
43 of Albuquerque behind me with a 2,800 acre annexation; they were freaking out, are you going to

1 put 40% commercial out there and take away all of our commercial for our future use and our long
2 planned areas and I said no, that was never the intention and yet this approach tonight, a second high
3 intensity node, I've gone to shown you, it does not meet that simple criteria serving within the area
4 that is planned. They have to reach out to far more neighborhoods to justify high intensity node at
5 that location.

6

7 Mayor Miyagishima said I'm sorry Joseph, I can't, unless someone ask you to respond. I'm going
8 to have to ask you to hurry it up, Mr. Pickel. One last question here, I need to ask Mr. Garza
9 something, I think even Mike can answer this, the MPO designates, obviously, the roadways; do you
10 recall when they probably designated Sonoma Ranch Boulevard or did they even, we had grids back
11 then didn't we; we had projected growth, I mean, I know that I've seen, Roadrunner Parkway for
12 example, I mean, did we have, we went passed that I'm sure at one time, didn't we?

13

14 Robert Garza said the MPO thoroughfare plan was first adopted back in the 80's and that's pretty
15 much when they said yes, we're going to have corridors going north, south, east, west but the
16 specificity of those plans, relatively vague, it just kinda showed a grid but the (inaudible) alignment
17 of roads is when you do master plans like the master plan that was originally shown up here that Mr.
18 Pickel did years ago.

19

20 Mayor Miyagishima said your best guess, what do you think Sonoma Ranch Boulevard or something
21 to that nature popped up?

22

23 Robert Garza said my best guess would be in the mid 80's.

24

25 Mayor Miyagishima said that showed this large road connecting or going underneath or a Highway
26 70 continuing to the other side. You think the mid 80's.

27

28 Robert Garza said yes.

29

30 Fermin Rubio said Mr. Mayor, I wanted to, I think in the totality of the discuss, we may have missed
31 one inquiry that I would recommend that we go into and that is I believe we should have Cheryl
32 Rodriguez come up and address how, what has taken place that meets those criteria of the change
33 in circumstance, you know, the three criteria in case law so you can hear from her directly what it
34 is that staff believes or why they believed these changes were recommended or why they
35 recommended these changes. I don't think we've had her get up and tell us what changes took place,
36 what circumstances for this change, that sort of thing and I think it would be good for the Council
37 to hear that from her perspective because that has been challenged.

38

39 Mayor Miyagishima said that's where Dave, you know, probably so her testimony won't be used
40 against her, I don't know.

41

42 David Weir said Mr. Chairman, Council members, I think all of that goes back to the staff report that
43 was that was provided to the P & Z; that is why we did the analysis. Again, if you want to talk about

1 changes that have taken place, my understanding, again, from the report, is that in 1996 the initial
2 staff report was prepared, we adopted a new comp plan in 1999 so there is one change that has taken
3 place. There has been considerable development out there and I think through the report and analysis,
4 testimony, the Planning and Zoning Commission felt that there was efficient change taken place that
5 warranted approval of the master plan and the rezoning of the property. You now have an appeal that
6 says "I don't believe there has been sufficient change and so you need to take the staff report that you
7 have, testimony that you've heard tonight and you have to decide if there has been sufficient change,
8 is the comp plan being met, is it appropriate to approve this master plan and subsequently the zone
9 change.

10

11 Mayor Miyagishima said thanks, Dave.

12

13 Cheryl Rodriguez said Mr. Chairman, I'm going to go and add on, in the file you also have, in the
14 master plan amendment you have the commentary provided by the advanced planning staff which
15 is the long range planning staff in the Community Development department and they are the ones
16 who reviewed it in context of the comp plan and I would just like to read their narrative into the
17 record, it says as part of the conclusions "this master plan amendment is necessary to change the
18 zoning for a number of tracks in the Sonoma Ranch North development. This action redistributes
19 the locations of single family, multi family, commercial and open space land uses. The result is
20 repositioning of high intensity commercial land uses closer to trail roadways as support by policy
21 1.5.3 B & F above it adds a buffer multi family residential between commercial and single family
22 residential as support by policy 1.5.3 D & G above; therefore, this amendment complies with the
23 comprehensive plan and advance planning staff recommends approval." So, going in context with
24 what Mr. Weir said, you now have the 1999 comp plan in terms of this master plan amendment and
25 that the original master plan was adopted under a previous comp plan but that change of
26 circumstances and advanced planning staff, that's how we evaluated this master plan and subsequent
27 zone change request.

28

29 Mayor Miyagishima said Cheryl, don't sit down, okay, so now we're going to go ahead and go to
30 the vote and if you wouldn't mind please, I think if you vote yes, then that is actually the opposite,
31 vote yes reverses the Planning and Zoning and voting no upholds the Planning and Zoning.

32

33 Councillor Silva asked don't we have to address number 8 first?

34

35 Mayor Miyagishima said we suspended the rules so we were talking about both; that's why
36 sometimes we would talk about different changes. I think we have to vote on number 11 and then
37 if that passes then we go to number 8 but before we do that, we're going to discuss various concerns
38 that were raised by others that were here.

39

40 Councillor Connor said for clarification, we're voting on Resolution 10-121.

41

42 Mayor Miyagishima said yes.

43

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1 Councillor Connor said okay, thank you.

2

3 Mayor Miyagishima said Cheryl.

4

5 Cheryl Rodriguez said Mr. Chairman, Councillors. In regards to the appeal for tonight's master plan,
6 if the Council chooses to vote yes to approve the resolution, this action would reverse the Planning
7 and Zoning action, the property owner Sonoma Ranch North, LLC would be required to submit an
8 alternative development proposal for the Sonoma Ranch North Master Plan so, therefore, P & Z's
9 actions in July be reversed. If you vote no to deny the resolution, your action affirms P & Z's
10 decision of approval, this action will allow the property owner to continue with their development
11 plan for the Sonoma Ranch North Master Plan. Council may choose to modify the resolution, vote
12 yes or table and postpone and direct staff accordingly.

13

14 Mayor Miyagishima said thank you, Cheryl. Okay, with that, Esther.

15

16

17

18 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-121 and it
19 FAILED. 2-5 Councillor Small and Councillor Thomas voted Aye. Councillor Silva, Councillor
20 Connor, Councillor Jones, Councillor Archuleta and Mayor Miyagishima voted Nay.

21

22

23

24 (8)(11A) Council Bill No. 10-013; Ordinance No. 2542: An Ordinance Approving a Zone
25 Change Request to Various Zoning Districts for 54.53 ± Acres Within the Sonoma
26 Ranch North Master Planned Area. The Subject Properties are Generally Located
27 South of U.S. Highway 70 North, and South of Northrise Drive, and East and West
28 of Sonoma Ranch Boulevard. Submitted by Gunaji-Klement & Associates for
29 Sonoma Ranch North LLC. (Z2785)

30

31 Councillor Connor Moved to Adopt Council Bill No. 10-013; Ordinance No. 2542 and Councillor
32 Small Seconded the motion.

33

34

35

36 David Steinborn gave an overhead presentation and said the planning parcels on both sides of
37 Sonoma Ranch Boulevard, starting with Highway 70, they are completely sold all the way to
38 Northrise.

39

40 Cheryl Rodriguez gave an overhead presentation and said planning parcel 6 is currently zoned R1A-
41 R3 and the proposed zoning is R1A. Planning parcel 3 is currently zoned R1A-R3 and the proposed
42 zoning is C3. Planning parcel 4 is currently zoned R1A-R3 and the proposed zoning is R3 multi
43 family medium density. Planning parcel 12 is currently zoned R1A-R3 and the proposed zoning is

1 R3 with the established land use of single family residential.

2

3 Mayor Miyagishima said I would like to see more open space.

4

5 John Hummer, Land Owner said there is a group of four of us that own Enchantment Ventures, LLC
6 and we do support this change in zoning.

7

8 Councillor Thomas said I've been contacted by two groups of residents that have concerns regarding
9 the type of commercial that is going in behind them. They wouldn't mind the kind of commercial
10 that has gathering space and the type that you'd want to walk to.

11

12 Mayor Miyagishima said when you have property this close off the highway, it's going to be
13 expensive.

14

15 Jack Pickel said we're opposed to the zone changes from multi or single family residential to
16 commercial because the applicant didn't apply for it properly.

17

18 Cheryl Rodriguez said City staff processed this application as we do all applications. We receive the
19 application, process the fee, route it out to all departments for review, look at City codes and policies
20 for compliance, send out notices, advertise in the paper.

21

22 Mayor Miyagishima said so, in your opinion, all the rules were followed according to City
23 requirements.

24

25 Cheryl Rodriguez said that is correct.

26

27 -----

28

29 Mayor Miyagishima called for the roll on the Motion to Adopt Council Bill No. 10-013; Ordinance
30 No. 2542 and it was Unanimously APPROVED. 7-0

31

32 -----

33

34 **X. BOARD APPOINTMENTS**

35

36 None given.

37

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40 **XI. REVIEW OF PROPOSED ORDINANCE(S)**

41

42 None given.

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XII. STATUS/UPDATES ON CURRENT PROJECT LIST

- 1. **State Legislative Fall Back**
- 2. **Strategic Plan** - *(Implementation documents being prepared, finalizing plan for council review and consideration.)*
- 3. **Las Cruces Convention Center** - *(Status report provided monthly on second, Regular City Council Meeting)*
- 4. **Downtown** - *(The project design is ongoing with Bohannon-Huston, Inc. A Public Input meeting was held for the northern portion of the project on Tuesday, October 6, 2009 at 6:00 pm in City Council Chambers. The anticipated completion of the design for the north end portion is October 30, 2009.)*
- 5. **Impact Fees** – *(The project is on-going. Staff is currently reviewing the latest draft of the Impact Fee Capital Improvements Plan (IFCIP) with the Consultant. Before the new draft IFCIP is finalized, City staff has requested that the Consultant prepare a summary of the options discussed by the City Council during the Work Sessions held in March, April, and May of this year. The summary will be a separate document and will include a table listing the actions that will have to be taken in order to move forward with each option (e.g., Do the land use assumption have to be revised?, etc.). It is important that the CIAC and City Council choose one option on which the IFCIP document and impact fees will be based upon and calculated. The purpose of this summary is to provide information in a concise format for the CIAC and City Council to use in making their decision.)*
- 6. **Aquatics Center** - *(Status report provided monthly on first, Regular City Council Meeting)*
- 7. **Vision 2040** - *(Staff has received the latest drafts from the consultant and is reviewing them. Public review of the draft documents began on Monday, September 21st. The current drafts are posted on the Vision 2040 website and will also be available on CD and in print upon request. A week of public input meetings is scheduled for the week of October 19th. The consultant will also lead discussions with joint meetings of the City Council and County Commission as well as the region’s Planning Commissions. The meeting schedule will also be posted on the website.)*
- 8. **Grants/ARRA Status** - *(Matrix.)*

XIII. GENERAL DISCUSSION

- 1. Mayor

1 Mayor Miyagishima said I just want to remind you that we are having a special work session on
2 Wednesday from 7 to 9.

3

4 I'm going to ask Fermin to work on a resolution for the formation of the ETA Advisory Board as
5 well as changing the terms from 4 years to 2 years.

6

7 2. City Council

8

9 Councillor Archuleta passed.

10

11 Councillor Thomas said I want to thank Mike Johnson and staff for working on the intersection of
12 Roadrunner Circle and Majestic Ridge.

13

14 Regarding the ARRA funding for the Convention Center, I want to thank everyone who worked on
15 the grant.

16

17 Councillor Jones passed.

18

19 Councillor Small passed.

20

21 Councillor Connor passed.

22

23 Councillor Silva passed.

24

25

26 3. City Manager

27 A. Other Items - Information Only

28

29 None given.

30

31

32

33 **Meeting Adjourned at 10:02 p.m.**