

Regular Meeting
November 23, 2009



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

Regular Meeting

November 23, 2009

1:00 P.M.

Council Chambers, City Hall

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MEMBERS PRESENT:

STAFF:

Mayor Ken Miyagishima
Councillor Miguel Silva, District 1
Councillor Dolores Connor, District 2
Councillor Olga Pedroza, District 3
Councillor Nathan Small, District 4
Councillor Gill Sorg, District 5
Councillor Sharon Thomas, District 6

Terrence Moore, City Manager
Harry (Pete) Connelly, Deputy City Attorney
Esther Martinez, City Clerk

I. OPENING CEREMONIES

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

Presentation of Certificates of Appreciation/Proclamations.

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

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

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

None given.

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2 **III. PUBLIC PARTICIPATION**

3

4 Karim Martinez, Member of the Public said I am the Program Director for Dona Ana County
5 Cooperative Extension Service and one of our services is our 4H Youth Development Program; I
6 would like to invite the Council to attend our 4H Awards Night.

7

8 Councillor Small said I would like to have Karim come back and give Council a presentation on their
9 programs.

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

16

17 Councillor Connor Moved to approve the Agenda and Councillor Small Seconded the motion.

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21 Mayor Miyagishima called for the roll on the Motion to accept the Agenda and it was Unanimously
22 APPROVED. 7-0

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26 **V. RESOLUTIONS AND/OR ORDINANCES FOR DISCUSSION**

27

28 (1) Resolution No. 09-10-431: A Resolution Authorizing the Renewal of the General
29 Engineering Services Agreements for a One-Year Period with Molzen-Corbin and
30 Associates of Las Cruces, NM; Bohannon Huston, Inc. of Las Cruces, NM; Aecom
31 USA, Inc. of Albuquerque, NM; Camp, Dresser, Mckee, Inc. of Albuquerque, NM;
32 and Gannett Fleming West, Inc. of Albuquerque, NM to Provide General Engineering
33 Services to the City of Las Cruces on an as Needed Basis.

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35 Councillor Connor Moved to Adopt Resolution No. 09-10-431 and Councillor Thomas Seconded
36 the motion.

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40 Loretta Reyes, Engineering Services Administrator gave a presentation and said this is a renewal for
41 our general engineering services pricing agreement.

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Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 09-10-431 and it was Unanimously APPROVED. 7-0

APPEAL PROCESS

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

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

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

BATTERSHELL PROCEDURES FOR APPEALS PRESENTED TO THE CITY COUNCIL

1. PRE-APPEAL HEARING REQUIREMENTS:

- a. Any party to be represented by an attorney, at the appeal hearing, shall present to the City Attorney's Office, at least 5 business days before the hearing, a memorandum with citations of authority substantiating the party's position. This memorandum is different from the appeal summary submitted 15 days after the public hearing by the Board of Adjustment or the Planning and Zoning Commission.
- b. All parties in the appeal that desire to have a specific City staff person present at the appeal, need to present to the City Planning Department, at least 5 business days before the appeal hearing, a letter requesting that the specific staff person be present at the appeal hearing. This allows ample opportunity to notify the staff person to assure attendance.

- 1 **2. AT THE BEGINNING OF THE *BATTERSHELL* APPEAL HEARING, THE**
 2 **COUNCIL WILL:**
 3 a. Identify all parties to the appeal, including all witnesses that wish to give testimony.
 4 b. All persons who give testimony, including City staff, will be sworn-in by the clerk
 5 or person authorized to administer oaths.
 6 c. All persons giving testimony will be subject to cross-examination by other parties
 7 within the appeal, including City staff.
 8 d. All items presented in the appeal, whether in *Battershell* or not, will be limited to the
 9 relevant matter being appealed and the City Council may place a reasonable limit on
 10 the number of persons to be heard and their amount of testimony.

11
 12 **PROCEDURES FOR PRESENTATION OF ALL APPEALS**
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14 The following procedures will be used whether an appellant chooses to utilize the *Battershell*
 15 procedure or not.

16
 17 **1. ORDER OF ALL PRESENTATIONS:**

- 18 a. City Staff Presentation
 19 b. Appellant Presentation
 20 c. Other parties' presentation
 21

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

- 23 a. Opening statements about the case by the party.
 24 b. City Council may question the presenter/party.
 25 c. Cross-examination by other parties, which must be done in the form of questions to
 26 be answered by the presenter(s).
 27 d. City Council may question the presenter/witness.
 28 e. Continue to other witnesses for the party until complete.
 29 f. Once all parties are through with giving testimony, closing statements can be made
 30 by each party, in same order as above (A).
 31

32 **3. CITY COUNCIL ACTION:**

- 33 a. A City Council member makes a motion, followed by a second.
 34 b. There may be discussion of the motion.
 35 c. The Council is prepared to vote. In the vote, the City Council may reverse, modify,
 36 affirm, or change any decision or determination of the Official, Board, or
 37 Commission from which the case was appealed.
 38 d. The City Clerk takes roll call of the City Council; the decision is announced.
 39

40 **VII. APPEAL(S)**
 41

- 42 (2) Resolution No. 10-144: A Resolution to Appeal the Denial Decision of the Planning
 43 and Zoning Commission on a Request for a Thirteen (13) Foot Variance From the

1 Maximum Allowed Height of Seven (7) Feet and a Request for a Sixty-Four (64)
2 Square Foot Variance From the Maximum Allowed Size of Forty (40) Square Feet
3 of a Freestanding Sign for Property Located at 115 Roadrunner Parkway. Submitted
4 by Carrie Swartz, Swartz Investment Group LLC, on Behalf of Gary Anderson,
5 Property Owner (A1701).
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7

8 Councillor Connor Moved to Adopt Resolution No.10-144 and Councillor Small Seconded the
9 motion.
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13 Cheryl Rodriguez, Development Services Administrator gave a presentation and said this is an
14 appeal to a variance case that was heard by the Planning and Zoning Commission in September of
15 this year for height and sign area for property located at 115 Roadrunner Parkway. The subject
16 property is located just south of Foothills Road and north of Lohman Avenue and it fronts
17 Roadrunner Parkway. Roadrunner Parkway and Lohman Avenue are both identified as principal
18 arterials on the MPO thoroughfare and the subject property is part of a subdivision known as the
19 Sombra del Collaris Commercial Subdivision and it is zoned C3C which is commercial high
20 intensity conditional. The condition on the property is that on the zoning, development on the
21 property must follow the Lohman Avenue Overlay District guidelines that are set forth in Section
22 38-47 of the 2001 Zoning Code. Presently on the subject property is a shopping center that has
23 multiple businesses. The Lohman Avenue Overlay Districts are the urban architecture guidelines that
24 are in the 2001 Zoning Code and the purpose of this section was to improve the entrance into Las
25 Cruces as a gateway, as well as promote an attractive image of the City as a whole. The Overlay
26 District follows the Lohman Avenue city limits to the east to Walnut Street to the western boundary
27 and it includes the properties that are located within a 350 foot edge of the Lohman Avenue right-of-
28 way to determine the northern and southern boundaries of the property; so, you'll see here on this
29 map, in green, is the Lohman Avenue Overlay District area; the subject property that's under
30 consideration today for the variance request is right where my cursor is at, right outside Lohman
31 Avenue but the zoning condition on there is requiring that it comply with the urban design
32 guidelines.
33

34 The signage requirements set forth in the Lohman Avenue District states that freestanding signage
35 is limited to monument ground signs for properties located east of Nacho Road. The monument
36 ground signs will have the maximum height of 7 feet and a maximum sign face area of 40 square
37 feet. Monument ground signs are required to incorporate a landscape base into its design and they
38 shall be placed no closer than 5 feet from the property line and not violate any clear sight triangle
39 provisions. The number of freestanding signs is determined in accordance with Chapter 36, the Sign
40 Code and then for any properties that are located west of Nacho Road, are in the Lohman Avenue,
41 they must comply with the Sign Code provisions outlined in Chapter 36 of the Municipal Code. The
42 variance request that was submitted was submitted by a business owner within the shopping center
43 but did have the permission of the property owner and the applicant is requesting a variance to the

1 installation of an illuminated elevated pole sign. The variance request is to seek that the freestanding
2 pole sign be a maximum of 20 feet in height and have a sign area of 104 square feet; so, therefore,
3 their variance is to deviate 13 feet from the sign height and 64 square feet of the sign area and the
4 applicants sight visibility is the basis for the variance request.

5

6 As presented at the Planning and Zoning Commission, these are the samples of the proposed signs
7 that the applicant is seeking to install. The first phase of the sign will include the sign area for the
8 applicant's business and they will include additional area of sign face for the other businesses located
9 in the shopping center. This is a site plan of the subject property, down here at the bottom of the
10 screen is Roadrunner Parkway, this is Foothills Road, the access to the subject property is off of
11 Foothills Road. Roadrunner Parkway, right here where the purple or pink sign, in that general area
12 is where the applicant is seeking to place the elevated sign. Site photos of the subject property,
13 photos looking at the property south, along Roadrunner Parkway, looking at the property on the west
14 side of Roadrunner, this is standing on the Lohman Avenue and Roadrunner Parkway intersection,
15 looking north into the subject property and looking at the northern boundary of the subject property,
16 looking down to the shopping center.

17

18 Planning and Zoning Commission meeting was held on September 22nd, P & Z considered the case
19 and denied the variance request by a vote of 2-3 with one commissioner absent, we had one vacancy
20 on the commission; the basis of the denial is the absence of a physical hardship on the subject
21 property. P & Z used the evaluation criteria located in Article 2, Section 38-10 of the 2001 Zoning
22 Code. There are three stated hardship criteria requirements; variances can be granted if there is a
23 physical hardship relevant to the property, potential for spurring economic development or monetary
24 considerations. City Council options this afternoon are to vote yes to approve the resolution; this
25 action would reverse the P & Z decision and grant the applicant the variance to the sign height as
26 well as the sign face area. If Council chooses to vote no, this action would uphold the decision made
27 by the P & Z and the applicant would be required to adhere to the maximum level of height of 7 feet
28 and the sign area of 40 square feet. Council may choose to modify the resolution, vote yes or table
29 or postpone and direct staff accordingly. The appellant is present and has a presentation for the
30 Council. That concludes my presentation and I'll be happy to answer any questions that the Council
31 may have.

32

33 Mayor Miyagishima said thank you, Cheryl. Mayor Pro-tem Thomas, this is in your district; you
34 want to share your thoughts on this?

35

36 Councillor Thomas said thank you, Mr. Mayor. I did have one question, are there not five businesses
37 there?

38

39 Cheryl Rodriguez said Mr. Chairman, Councillor Thomas, that is correct. It is a shopping center so
40 there are multiple businesses there.

41

42 Councillor Thomas said I see on the sign, only room for Fox Pizza and two or three others. Is there
43 a reason for that?

1

2 Cheryl Rodriguez said Mr. Chairman, Councillor Thomas, I would like to defer that question to the
3 appellant.

4

5 Carrie Swartz, Owner of Fox's Pizza Den said with me today is Gary Anderson who is the owner
6 of the shopping center. There are actually six businesses in the shopping center which include the
7 separate building Discount Pools and five locations within the building that Fox's Pizza is located
8 in.

9

10 Councillor Thomas said that was my question; if there are five businesses in the building that you
11 are located in, but there wasn't room on the sign for five businesses.

12

13 Carrie Swartz said there is room for five businesses on the sign. What you see right now is the first
14 stage of the sign. I have some more pictures that I can show you. What it does is it gives us enough
15 room that as each person can afford to put up their section or get together and do it; there is enough
16 room for everyone who wants to join it.

17

18 Councillor Thomas said you're stepping forward to take on the expense of the initial sign.

19

20 Carrie Swartz said yes, I am.

21

22 Councillor Thomas asked did you want to do your presentation or do you want us to go ahead and
23 discuss it?

24

25 Carrie Swartz said I would like to go ahead and do my presentation. It should be just a reiteration
26 of some of the stuff that she already has done. One of things that I wanted to point out; I can't read
27 it to well here but often more than not, the Transportation Research Board found that people made
28 sign codes based on esthetics but not on research. As previously stated, we are right on the edge of
29 the corridor, the Lohman Avenue Overlay District, and it was specifically the purpose of the Overlay
30 District to specify architectural and urban design provisions to improve this important entrance into
31 our community and promote an attractive image of this City. It is my contention though, that there
32 was some research lacking based on the fact that there is this limit of 40 square feet, no matter if it
33 is a business or twenty businesses. We've already gone over the free sign standing, here again are
34 more pictures of the location, right here is Discount Pools, you cannot see the secondary building
35 at all from the Lohman and Roadrunner intersection and in this particular photo you can see the
36 dramatic angle that the northbound traffic travels in and the significant bend that is right in front of
37 the property which, again, is one of the barriers. The angle is almost a 90 degree angle there, back
38 over here, I wanted to take note of a sign just down the road, it is 6 1/2 feet tall by 13 feet wide, the
39 base of unit is 7 feet so it goes up to I think a total of 20 feet over here and its 85 square feet for two
40 businesses. There is the sign again, you can see that it still, I mean, if you really get out in traffic and
41 you look at signs, you can tell whose got effective signs where people can actually recognize. Again,
42 here's the intersection with the cars there, you can't see anything.

43

1 One of the physical barriers that we talked about, along with the curvature of the road, is the grade
2 of this property. Here's Discount Pools, here's the other five businesses, three have gone out of
3 business, one has re-rented but the other two have been gone for over a year now. This property
4 drops approximately 30 feet, it goes 30 feet if you go all the way to Foothills; so, you can see the
5 dramatic grade here. There is also a dramatic grade drop just from this curve down to the parking
6 lot, there's twenty feet right here, this is a huge retaining wall, there's another retaining wall here,
7 another big drop of 12 feet just from this to my business. Also, if you notice in this, the angle of the
8 road here to the angle of the buildings, right here are most of the signs, they face more of the
9 northbound traffic but the northbound traffic is faced away; so, the only visible buildings here are
10 Discount Pools and Anytime Fitness, the other businesses are not and that is also one of the reasons
11 why it would be more for the hidden businesses than the ones that are on the edges that can be seen.
12 Again, you can see the dramatic grade, you can see the dramatic grade from the curb down to the
13 parking lot and the curvature of the road and the angle of the building. Again, you see Anytime
14 Fitness and Discount Pools, more pictures of the angles, and what we are purposing is a sign
15 approximately right here and my van is 19 feet long, it's really not that large of a sign, perspectives
16 are important, the raw sign is 12 feet wide, each one of these little compartments is 2 1/2 feet which
17 gives it a total of 180 square feet for that shopping center and not all of the businesses are
18 represented on this sign. Again, the visibility, here's another sign on the Lohman Overlay but this
19 is west of Nacho Road, this is a 9 foot by 12 foot, this is only including the sign area, not the esthetic
20 part, 108 square feet for four businesses, it is 15 feet high and it's esthetically appealing. Again, 11,
21 almost 12 feet by 14 feet, 166 feet, I put these in to try to give you an idea of perspectives,
22 differences between 40 feet and something that is reasonable for multiple businesses.

23

24 Here is a pole sign that was allowed to be erected in the Lohman Overlay District without being any
25 type of monument style. I apologize for the crudeness of my sign pictures, I do the best I can with
26 running a business and everything else. This is roughly the ideas that we have, there is plenty of
27 room to put another business here and at least three down here to where they are recognizable. This
28 is a rough idea of how it would look, it blends in with the surrounding areas, it's not going to stick
29 out any more than Old Navy or the old Sportsman Warehouse. Again, this is a little further distance,
30 this is a little bigger than what it should be; there again, Sportsman Warehouse, pivotal spot for
31 people to see the entrance to our City. Here is a typical idea of what a smaller sign condemning
32 somebody, you have five places, well, actually six places for 40 square feet, you're limiting them to
33 approximately 6 square feet, these upper ones right here are approximately 8 square feet, this is
34 close distance and if you go through in driving speed, angles and grade, you don't read this, you
35 don't read this when you're driving. Here's another example, this is a limit of 40 square feet, again,
36 this is right on Lohman, close to Roadrunner, it's where Lorenzo's is, everybody knows Lorenzo's
37 because it's on the end cap and it has a large sign along with the Covenant Clinic. Nobody knows
38 about the other businesses back here because they cannot read the sign, when you go by it, you can't
39 read the sign; the amount of time it takes to read these little bitty things and react, you can't spot it.
40 Again, that was just another idea of the way it would look and pardon my colors, they didn't come
41 out the way they were suppose to; so, this allows at least four other businesses easily to come in and
42 initially, this is what I'm paying for, the top half and the bottom half will be for other people to come
43 in and put their sign up. One of the issues at the first Planning and Zoning Council meeting was that

1 it was requested that I come back with a finished design and that I bring the owner; I did. One of the
2 other things that one of the Council members keep saying at the first Planning and Zoning meeting
3 was "well if you would make it like Ross's sign" and because I didn't make it like Ross's sign, that
4 was one of the reasons why; he said I came back with the same stuff again and did not approve it.
5 That was another alternative design; so, this is essentially the initial one and depending upon the site
6 triangles which we still have to go through, this pillard would be, to me, better, if it was a little bit
7 wider but the total sign space here is 6 ½ x 8. Mayor, Councilmen, do you have any questions for
8 me?

9

10 Mayor Miyagishima said very good, Carrie. I want to commend you as a small business owner being
11 very courageous to decide to move next to two pizza titans like Lorenzo's and Dion's so I thought
12 you must have pretty good pizza; I think my wife tried your pizza a few months ago and actually,
13 it's pretty good; so, you must be doing something right over there. Your right, after the meeting is
14 over there, why don't you let my assistant know who the commissioner was that said that you needed
15 to make a sign like Ross's and that, that's why they didn't support that; I mean, I would think Ross
16 makes a few dollars more a year than you do because that's a big company.

17

18 Carrie Swartz said yes.

19

20 Mayor Miyagishima said as a small business owner, you play many roles, Finance Director, HR
21 Director, Public Relations; you do so many things, customer service and even a bookkeeper
22 probably; so, you do so many things; so, based on economics; I think that's a nice sign. So, I just
23 want to commend you for that but let me ask some of the rest of the Council if they have any
24 questions, Mayor Pro-tem.

25

26 Councillor Thomas said thank you, Mr. Mayor, Carrie. I was really impressed by the research that
27 you did and my family is the original owners of Red Mountain Café and I remember going through
28 all of the signs and all of a sudden you notice all of the signs all over town so you get to be very sign
29 conscious. I would also say that I didn't notice that you were there until one day I stopped to go to
30 the fitness place and said "oh, there's a pizza place next door" and I went out and looked at it and
31 walked around and I definitely see your problem and I think that you've picked a nice model, it
32 seems like it's closest to the one that you proposing and I think the Old Navy sign looks just fine.
33 You definitely need more visibility there and so, I would say that you do have a physical hardship
34 and you would certainly be able to increase some economic development if people could see what's
35 there because it is very well hidden below the grade of the road. So, those are my comments and
36 thank you for doing such an excellent job and I learned quite a bit about signage and angles and how
37 far away you have to be and I didn't do any kind of research when I was looking for signs. Thank
38 you.

39

40 Mayor Miyagishima said thank you, Mayor Pro-tem. Councillor Connor then Councillor Silva.

41

1 Councillor Connor said thank you, Mr. Mayor. I was looking for where that comment is and it is in
2 our packet in the P & Z minutes but I won't waste time looking for it; they're not Councillors,
3 they're Commissioners but that's okay. Before you answer, if I could ask Cheryl a quick question?
4 Cheryl, if this sign was to the sign requirements, would the other three businesses also be able to put
5 monument signs next to this one?

6

7 Cheryl Rodriguez said Mr. Chairman, Councillor Connor; could you restate your question?

8

9 Councillor Connor asked if this were not allowed and she put up a Fox's Pizza sign up to the code,
10 would the other businesses that are not being displayed that she is trying to incorporate here, would
11 they also be able to build a monument sign?

12

13 Cheryl Rodriguez said Mr. Chairman, Councillor Connor; no, it's one sign per property so if the sign
14 face area is maxed out on the property and a business is not represented on that sign and they wanted
15 to be represented, they would have to expand that sign area or seek a variance to place another type
16 of sign.

17

18 Councillor Connor said they could seek a variance which would cause another problem that would
19 be in front of us. So, with that, let me ask the owner another question. The signage; or maybe it's
20 more of a comment than a question but the signage that you're looking at would incorporate the
21 businesses on this same property within time and within their budgets and however you frame that
22 with them and I think; of course my favorite place is across the street where you can get the custard
23 but pizza is good to; the thing about it is that you're very correct about that particular corner and your
24 property is low and the bank is way up high and there is so much retaining wall that it is very
25 distracting from signage and who can get into a building or what driveway to use and I could see
26 where a multiple sign that would have the other businesses within the center would be more pleasing
27 than trying to come back with a variance for someone who later thinks about "well I should have
28 gone in and gotten a sign too" kinda a thing and so, I can see where this is not going to be distracting
29 to traffic or even to the area. I use to own a business about a half a block west from there in that
30 plaza and it was a terrible place for me to advertise with, from where I moved on Lohman where I
31 had a frontage store to behind on Foothills; I had a terrible time marketing that business which is not
32 there anymore. I can see where on Roadrunner there is, maybe not exactly but similar signs, like
33 those that would be complimentary to something you are already looking at here. I appreciate all the
34 research that you've done and the information that you've brought here today. Thank you very much
35 for that, I know as a small business, how difficult it is to stay in business. So, the most that we can
36 help you are what I hope we can do here today.

37

38 Carrie Swartz said thank you, Councillor Connor.

39

40 Mayor Miyagishima said thank you, Councillor Connor for those comments. Councillor Silva.

41

42 Councillor Silva said what I was looking at; could you go back to your, where about do you plan on
43 placing this sign on your lot; if you could go to the overview.

1 Carrie Swartz said you see this sign right here, it is right at the entrance on Roadrunner or
2 approximately.

3

4 Councillor Silva said so, are we looking at the northeast side of that lot or where?

5

6 Carrie Swartz said about midway, this one right here, this is the entrance, over here is Foothills, this
7 is Roadrunner; the sign would go approximately in this location right here because we have the
8 overhead power lines, underground utilities.

9

10 Councillor Silva said okay, if you put it right there, cause I was driving there yesterday and I thought
11 going north, driving north on Roadrunner, I had no problems seeing the signage and so forth but
12 coming from north to south, I understood what you were talking about with your situation. So, if you
13 put it right there, don't you feel that it would block the pool, the Discount Pools.

14

15 Carrie Swartz said no sir, no it won't; it will not block it at all because again, here's Discount Pool's
16 sign right there. Only the brief second that somebody turns this corner, would it briefly, this 1 foot
17 or 18 inch pillard block the view of the building but the sign, no where blocks it because we made
18 sure that when that happened for Brandon of Discount Pools, that was one of his concerns. Brandon
19 Anderson was concerned that if we put a sign there that it might block this but because of the angle
20 of the road and the setback of this building, the sign will not block, at all.

21

22 Councillor Silva said okay, thank you.

23

24 Carrie Swartz said it may block my front sign but my front sign is useless because no one can see
25 it anyway.

26

27 Councillor Silva said your sign being.

28

29 Carrie Swartz said my sign being Fox's Pizza on the front of the building. It might briefly block it
30 but that won't be a concern if the sign is at the road.

31

32 Councillor Silva said there's your sign and then there's the empty building right next to it that
33 eventually you're going to fill.

34

35 Carrie Swartz said I hope so.

36

37 Councillor Silva said thank you.

38

39 Mayor Miyagishima said thank you, Councillor, good comments. I'm sure you are aware that pizza
40 is more of an impulse than the pools and the spas; so, usually, when they're looking for it, there's
41 not that many pool places but I appreciate your concern on that. Councillor Pedroza.

42

1 Councillor Pedroza said thank you very much for your presentation; it was very informative and very
2 persuasive. I wonder, this will show you how recently I've come on the Council; did the zoning code
3 that would prohibit your particular size of sign, did that predate you buying the parcel and planning
4 to put your business there?

5

6 Carrie Swartz said I did not buy the parcel but I do believe that the code predated the construction
7 of this building. When you go to make a building, particularly one in such a difficult terrain, hine
8 site is 20/20 to all of the other additional rules that you may not have truly considered at the time.
9 There were so many issues with the clear sight triangles and everything else, the architect assumed
10 that the only place that they could put a sign would have been right here and that would have been
11 a ground monument sign but if you look at; so, that would have been right behind my van and you
12 would not have been able to see it. So, at that juncture, it's like to spend the amount of money to put
13 a ground monument sign there does not seem reasonable because it can't be seen.

14

15 Councillor Pedroza said there is a possibility that you could put a monument sign in a different spot
16 rather than there where it would not be visible.

17

18 Carrie Swartz said if you put a monument sign here, you have the problem with the grade of the
19 road; it's going to interfere with the clear sight triangles because of the grade of the road you're
20 looking down and that sign is 7 feet tall, you're not going to be able to see with the angle of the road
21 and the grade; so, there's a lot of other issues and then you have the issue too with all the traffic; 7
22 feet is the height of most trucks and vans and cars are a little shorter than that, you're not going to
23 see what is on the signs there either.

24

25 Councillor Pedroza said okay, I'm just saying that because there is a concept about coming to a
26 nuisance or a nuisance coming to you and I would think that if the depression was already there and
27 the bend in the road was already there; I understand you can't anticipate everything when you're first
28 putting up something but at the same time there would seem to be some merit to saying "okay, the
29 City wanted, for esthetic purposes and whatever, to limit"; possibly some kind of a compromise
30 would be best, do you think that the Sportsman's sign, large as it was, did not attract any business
31 or if it did, they still found it necessary to close; so, it wasn't so much contingent on the size of the
32 sign, whether or not the business succeeds or fails. Would you agree?

33

34 Carrie Swartz said I would agree that a sign has to be effective and visible at a reasonable amount
35 of distance or else it is not reasonable to put it up. The Sportsman's sign; yes, it was very large but
36 it could be seen for quite a way on the freeway and it did not help it but there again, we're going on
37 the basis of the economy we've had drastically changed over the past couple of years which also
38 affected that business going out but there's not too many people that you ask that won't know where
39 that business is.

40

41 Councillor Pedroza said okay, I see. I agree that you've touch a very important point about the
42 economy and that possibility, I don't know but one of the businesses in that particular locale where
43 slide A or B, I don't remember which one, has gone out of business and has not been re-rented, that

1 could also be a factor, part of, caused by the economy rather than the prohibition on the size of the
2 sign.

3

4 Carrie Swartz said yes, ma'am, that could be; we've had many, many, many come look at both
5 locations, the location to my right and to the left of my business are both empty at this time and there
6 has been many people that have come and looked at the places but then they also realize that it's a
7 great location but it's very bad for visibility.

8

9 Councillor Pedroza said you know how well that other little custard shop is doing.

10

11 Carrie Swartz said custard shop?

12

13 Councillor Pedroza said I believe it use to be Chalitos, no, no, Caliche's.

14

15 Carrie Swartz said as far as I know, they're starting to pick up with everything.

16

17 Councillor Pedroza said thank you. I don't have any other questions.

18

19 Mayor Miyagishima said thank you, Councillor. Councillor Sorg.

20

21 Councillor Sorg said thank you, Ms. Swartz for your presentation. Could you go back to the picture
22 that you had drawn for the sign that you had proposed to put there? Is that to scale?

23

24 Carrie Swartz said it is a little larger than to scale. Like I said, my van here is 19 feet long; so, about
25 half of the van and approximately right here, is a turning sign that was about 9 feet tall; so, I tried
26 to use certain land marks to get it in there. Again, it's going to stick out because it's a drawing not
27 a picture so the shading and everything is going to be very much off.

28

29 Councillor Sorg said so, it's going to be a little smaller than what you're showing there.

30

31 Carrie Swartz said it should be much smaller. That is one of the reasons why I also tried to show you
32 pictures of other signs that you've probably passed many times, to give you an idea that this is
33 significantly smaller than those signs and until you do go out there, you start going "oh my gosh, I
34 didn't realize things were that big"; it's kind of deceptive on how big things really are.

35

36 Councillor Sorg said okay, thank you.

37

38 Mayor Miyagishima said thank you, Councillor Sorg and thank you, Carrie for your honesty because
39 you could have put a smaller sign and make it look kinda small even though we're asking for the
40 variance and so, that's good. You're an honest business woman as well. Thank you.

41

42 Carrie Swartz said thank you, Mayor.

43

1 Mayor Miyagishima said as I mentioned to you before; I want to thank you for having a business
 2 here in Las Cruces after all and I think from a lot of the comments from what I've heard, I think
 3 you're here with a Council that is very supportive of businesses and what you do to provide the serve
 4 to our community but also the importance that you play in our monies here at the City of Las Cruces
 5 because about 70% of our entire budget is generated off of gross receipts tax so we want you to sell
 6 a lot of pizzas and that helps us as well. Are there any further questions or comments from the
 7 Council? I'm going to ask if any member of the public wishes to speak. If not; Esther. Just a
 8 clarification; a yes vote would overturn the Planning and Zoning's denial. Is that correct, Cheryl?
 9

10 Cheryl Rodriguez said Mr. Chairman, that is correct. If you choose to vote yes, this action will
 11 reverse the P & Z decision of denial and grant a 13 foot variance to the maximum allowed height and
 12 a 64 square foot variance to the maximum allowed sign face area.

13
 14 Mayor Miyagishima said okay, thank you. Esther.

15

16

17

18 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-144 and it was
 19 APPROVED. 6-1 Councillor Silva, Councillor Connor, Councillor Small, Councillor Sorg,
 20 Councillor Thomas and Mayor Miyagishima voted Aye. Councillor Pedroza voted Nay.

21

22

23

24 **VIII. BOARD APPOINTMENTS**

25

26 None given.

27

28

29

30 **IX. REVIEW OF PROPOSED ORDINANCE(S)**

31

32 None given.

33

34

35

36 **X. STATUS/UPDATES ON CURRENT PROJECT LIST**

37

- 38 1. **State Legislative Fall Back**
 39 2. **Strategic Plan** - *(Implementation documents being prepared, finalizing plan for*
 40 *council review and consideration.)*
 41 3. **Las Cruces Convention Center** - *(Site work is underway which includes*
 42 *excavation and construction of footings, stem walls and pads, preliminary*

- 1 *grading of the detention pond and parking lot, utility locates and, preparation for*
2 *plumbing rough-in work to commence in the near future.)*
- 3 4. **Downtown** - *(The project design is ongoing with Bohannan-Huston, Inc. The city*
4 *has completed the final details for the proposed cul de sac on Lucero*
5 *Ave. Bohannan-Huston has submitted the 95% complete plan set for the final*
6 *review and has received all of the comments to finalize the design. The*
7 *anticipated completion of the design for the north end portion is October 30,*
8 *2009. Bohannan-Huston will begin the design of the southern portion of the*
9 *project)*
- 10 5. **Impact Fees** – *(The project is on-going. Staff is currently reviewing the latest*
11 *draft of the Impact Fee Capital Improvements Plan (IFCIP) with the*
12 *Consultant. Before the new draft IFCIP is finalized, the Consultant has prepared*
13 *a summary of the options discussed by the City Council during the Work Sessions*
14 *held in March, April, and May of this year. The summary is a separate document*
15 *and includes a table listing the actions that will have to be taken in order to move*
16 *forward with each option (e.g., Do the land use assumption have to be revised?,*
17 *etc.). The purpose of this summary is to provide information in a concise*
18 *format for the CIAC and City Council to use in making their decision on which*
19 *option to use in the IFCIP document to calculate the impact fees. It is*
20 *important that the CIAC and City Council choose one option; therefore, staff will*
21 *begin the process by presenting the summary document to the CIAC for*
22 *discussion and action at their next meeting.)*
- 23 6. **Vision 2040** – *(The current drafts are posted on the Vision 2040 website*
24 *(<http://vision2040.edu>) and are available on CD and in print upon request. Staff*
25 *is compiling the comments from the public input meetings held during the week of*
26 *October 19th and the written comments received. The formal public comment*
27 *period concluded on November 7, 2009. However, staff will continue to accept*
28 *further written comments. These comments will be used to evaluate and revise the*
29 *current drafts.)*
- 30 7. **Citywide Swimming Pool Enhancement Program** – *(Completion of the exterior*
31 *block walls near complete for the aquatic center with roof trusses and material*
32 *installation well underway. Structural steel installation for the entrance area of*
33 *the facility as well as the second floor of the building for future recreation space*
34 *is in process as well as plumbing rough-in and ventilation. Pool excavation to*
35 *begin soon with all permit related matters with the New Mexico Environment*
36 *Department nearly resolved.)*
37 *(The design contract for the future planned Natatorium has been signed and the*
38 *design consultants with staff have begun initial meetings to define scope of work*
39 *as well as begin the soliciting process for public input.)*
- 40 8. **Development and Construction of New City Hall** – *(Interior finishes in Area*
41 *A/North wing is near complete while Areas B and C, lobby area, Council*
42 *Chambers and South wing respectively continue to proceed. Commissioning of*
43 *the building is underway which includes heating, cooling, ventilation among other*

1 *testing. Site work continues with grading, concrete sidewalk, curbing and*
2 *drainage infrastructure in process. Evaluation and selection of furnishings is*
3 *underway.)*

4 9. **Development and Construction of the Intermodal Facility** – *(Staff is currently*
5 *developing an independent cost estimate for the facility to determine what scope*
6 *of work can consist of given funding limitations. An RFP is being finalized for*
7 *architectural and engineering services to design said facility with anticipated*
8 *advertizing during the month of November.)*

9 10. **Grants/ARRA Status** - (Matrix.)

10

11 Councillor Thomas said I would like to know if we could add some regular updates on the Bicycle
12 Facilities.

13

14 Terrence Moore said there will be a brief update on the December 14th Work Session.

15

16 Councillor Silva asked is there an update on the Amador Hotel?

17

18 Brian Denmark said there is a resolution that will be going before the Council in December to accept
19 the plan that was recommended by the consultant.

20

21 Councillor Silva asked what would it take to get it up and running.

22

23 Brian Denmark said first, we have to have a Memorandum of Understanding and we have to address
24 some safety issues.

25

26

27

28 **XI. GENERAL DISCUSSION**

29

30 1. Mayor

31

32 Mayor Miyagishima said the stripping on Lohman has worked out very well but they are getting thin
33 and hard to see.

34

35 Mike Johnson said we'll take a look at those.

36

37 Mayor Miyagishima said I guess there are some ghost chasers that would like to get inside the
38 Amador Hotel.

39

40 We have received suggestions that we need to beautify the south end of the Downtown Mall area and
41 we came up with the idea to contact some of the business owners and if they were willing to pay for
42 the paint and the brushes, we would get some volunteers together to paint that area.

43

1 Brain Denmark said we could work on coordinating that project.

2

3

4

5 2. City Council

6

7 Councillor Thomas said I would like to revise the preservation issue and set up an Ad-Hoc
8 Committee to address some of the issues.

9

10 Councillor Sorg passed.

11

12 Councillor Small said there is a lot of excitement with the building groups about reusable energy and
13 we need to think about what kind of incentives can we offer to encourage people to go forward with
14 reusable energy.

15

16 We have a good group of folks in the Circle Drive area and I wanted to confirm that we are looking
17 into some of the traffic issues in that area.

18

19 Terrence Moore said yes, we are looking into it.

20

21 Councillor Small said in the northern park, by Mayfield High School, there have been some reports
22 of negative uses of the park areas during school hours and I just wanted to mention that we are
23 looking into those issues.

24

25 Terrence Moore said yes, we are looking into it.

26

27 I also want to mention that there will be some discussion regarding reusable energy at the December
28 14th meeting.

29

30 Councillor Pedroza said I think that it is very important that we address the reusable energy issue and
31 I think retrofitting houses would be a step in the right direction.

32

33 There are a lot of traffic issues on Nevada Street at dismissal time at Lynn Middle School which I
34 believe makes it very dangerous for the students. There are some vacant lots in that area that we
35 might be able to use for parking areas during that time.

36

37 Mike Johnson said we will work with the schools on that issue.

38

39 Councillor Connor said there have been some inquiries through the media regarding paving Union
40 Avenue from the railroad track to the elementary school but that's not a City roadway; correct?

41

42 Mike Johnson said that's under the New Mexico Department of Transportation.

43

1 Councillor Connor said the Capital Improvements Advisory Committee produces a report on the first
2 quarter of the fiscal year and I don't seem to remember seeing it for the year 2009.

3

4 Terrence Moore said there will be a CIAC Update on the December 7th meeting, under the City
5 Manager's Discussion Items.

6

7 Councillor Silva said I have had some complaints regarding people having problems downloading
8 the agenda from our website and I would appreciate it if we could look into it.

9

10 I would like to know if it is possible to get an update on the utility rate increase?

11

12 Terrence Moore said there is going to be an upcoming presentation by the Ratepayers Advisory
13 Committee sometime around May, June or July 2010.

14

15 Councillor Silva asked do you feel our Sign Code needs to be upgraded?

16

17 David Weir said our Sign Code is based on policy, vision and esthetics.

18

19 Councillor Silva said I want to inform everyone that the Winterfest is on December 4th in the
20 Downtown area.

21

22 Mayor Miyagishima asked when are we going to have a work session regarding Vision 2040?

23

24 Terrence Moore said there is going to be a joint work session with the County on January 14th, I
25 believe from 9:00 a.m. to 3:00 p.m.

26

27

28 3. City Manager

29 A. Other Items - Information Only

30

31 None given.

32

33

34

35 **Meeting Adjourned at 2:41 p.m.**