

# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 12 Resolution #11- 104 Council District: 5

For Meeting of November 1, 2010  
(Adoption Date)

**A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A TRANSFER OF OWNERSHIP AND LOCATION OF LIQUOR LICENSE NO. 0254 TO CVS PHARMACY, INC. D/B/A CVS PHARMACY #75987, TO BE LOCATED AT 3041 NORTH MAIN STREET, LAS CRUCES, NEW MEXICO. SUCH APPROVAL WILL ALLOW CVS PHARMACY TO PROCEED WITH THE APPLICATION PROCESS.**

**PURPOSE(S) OF ACTION:** To approve or disapprove the issuance of a waiver of the church/school distance restriction prior to a public hearing on the transfer of ownership and location of Liquor License No. 0254 to CVS Pharmacy, Inc. d/b/a CVS Pharmacy #75987.

<b>Drafter and Staff Contact:</b> Monica Campbell <i>mc</i>		<b>Department:</b> Legal		<b>Phone:</b> 541-2128	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Department Director			Budget	<i>Richard M. Johnson</i>	541-2107
Other			Assistant City Manager	<i>Antony...</i>	541-2271
Legal	<i>A. J. ...</i>	541-2128	City Manager	<i>...</i>	541-2076

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

Pursuant to state law, no license for the sale of alcoholic beverages shall be issued to a premises that is within 300 feet of a church or school unless the governing body of the local option district grants a waiver of the distance restriction.

A waiver is required prior to transfer of the ownership and location of Liquor License No. 0254 because the property line where CVS Pharmacy #75987 will be located is approximately 85 feet from the property line of Grace Covenant Church and approximately 235 feet from the property line of Trinity Lutheran Church.

The property owners within 300 feet of 3041 North Main Street were notified via U. S. Mail of the City Council meeting to approve or disapprove the waiver and the transfer of the license. A copy of the mailing list is attached as Attachment "4".

The approval or disapproval of the transfer of ownership and location of Liquor License No. 0254 is presented in a separate agenda item and its approval is contingent upon approval of a waiver of the distance restriction. Granting a waiver to CVS Pharmacy, Inc. d/b/a CVS

Pharmacy #75987 will allow CVS Pharmacy to proceed to the next step of the application process.

**SUPPORT INFORMATION:**

1. Resolution with Alcohol and Gaming's letter and the application attached as Exhibit "A".
2. Notices of Intent to Adopt, Attachments "1" and "2".
3. Map showing distances between the property at 3041 North Main Street (proposed location of CVS Pharmacy) and Grace Covenant Church and Trinity Lutheran Church, Attachment "3".
4. List of property owners within 300 feet of 3041 North Main Street, Attachment "4".

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>  N/A			
	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.		
<b>Does this action create any revenue?</b>			
	Yes	<input type="checkbox"/>	Funds will be deposited into this fund:
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A					

(Continue on additional sheets as required)

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes". This will approve of and consent to the waiver of the church/school distance restriction. Approval will allow CVS Pharmacy, Inc. d/b/a CVS Pharmacy #75987 to proceed with the application process.
2. Vote "No". If Council does not approve the waiver of the church/school distance restriction, Alcohol and Gaming will be notified of the reason(s) the resolution was not approved and the Director of Alcohol and Gaming shall not approve the transfer. Further, a "No" vote means the City Council may not approve the following resolution requesting approval of the transfer of the liquor license to CVS Pharmacy.
3. Vote to "Amend". Any amendments must comply with state statute and/or the requirements of Alcohol and Gaming.
4. Vote to "Table". If the Council fails to either approve or disapprove the waiver, the matter will be submitted to Alcohol and Gaming for its further consideration.

**REFERENCE INFORMATION**

None.

**RESOLUTION NO. 11- 104**

**A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A TRANSFER OF OWNERSHIP AND LOCATION OF LIQUOR LICENSE NO. 0254 TO CVS PHARMACY, INC. D/B/A CVS PHARMACY #75987, TO BE LOCATED AT 3041 NORTH MAIN STREET, LAS CRUCES, NEW MEXICO. SUCH APPROVAL WILL ALLOW CVS PHARMACY TO PROCEED WITH THE APPLICATION PROCESS.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, according to NMSA 1978, Section 60-6B-10, no license shall be issued for the sale of alcoholic beverages at a licensed premises that is within 300 feet of a church or school; however, in 1997, Section 60-6B-10 was amended to allow for the granting of a waiver of the distance restriction by the local option district governing body for the proposed licensed premises; and

**WHEREAS**, the approximate distance from the property line of 3041 North Main Street to the property line of Grace Covenant Church is 85 feet; and

**WHEREAS**, the approximate distance from the property line of 3041 North Main Street to the property line of Trinity Lutheran Church is 235 feet; and

**WHEREAS**, a waiver of the distance restriction is required prior to the approval of the transfer of the liquor license;

**WHEREAS**, approving this Resolution will allow the applicant to proceed to the next step of the application process.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:**

**(I)**

**THAT** the issuance of a waiver to CVS Pharmacy, Inc. d/b/a CVS Pharmacy #75987 to be located at 3041 North Main Street, Las Cruces, New Mexico, is hereby approved.

**(II)**

**THAT** a copy of this Resolution shall be conveyed to the Director of the Alcohol and Gaming Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504-5101.

(III)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this 1 day of November 2010.

\_\_\_\_\_  
Mayor

APPROVED:

(SEAL)

ATTEST:

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

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

VOTE:

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

Councillor Connor: \_\_\_\_\_

Councillor Pedroza: \_\_\_\_\_

Councillor Small: \_\_\_\_\_

Councillor Sorg: \_\_\_\_\_

Councillor Thomas: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**New Mexico Regulation and Licensing Department**  
**ALCOHOL AND GAMING DIVISION**

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87505  
 (505) 476-4875 ▪ Fax (505) 476-4595 ▪ www.rld.state.nm.us/agd



**Bill Richardson**  
GOVERNOR

**Kelly O'Donnell, Ph.D.**  
SUPERINTENDENT

**Pamelya Herndon**  
DEPUTY  
SUPERINTENDENT

**Julie Ann Meade**  
CHIEF LEGAL COUNSEL

**Gary J. Tomada**  
DIRECTOR

September 21, 2010

Certified Mail No. 7003 2260 0006 7453 3880

City of Las Cruces  
 Attn: Ester Martinez, Clerk  
 PO Box 20000  
 Las Cruces, NM 88004

**Re: License / App. No. Liquor License # 0254 / Application # 641019**  
**Applicant Name: CVS Pharmacy, Inc.**  
**Doing Business As: CVS Pharmacy #75987**  
**Proposed Location: 3041 N. Main St., Las Cruces**

ATTENTION: Department or person responsible for conducting or preparing the public hearing for liquor license transfers or issuance of new liquor licenses. \*(Please review the revised instructions for approval or disapproval below.)

Greetings:

The referenced application and is being forwarded to you in accordance with Section 60-6B-4 NMSA of the Liquor Control Act.

Within forty-five days after receipt of a notice from the Alcohol and Gaming Division, the governing body **shall** hold a public hearing in the question of whether the department should approve the proposed issuance or transfer. Notice of the public hearing required by the Liquor Control Act **shall** be given by the governing body by publishing a notice of the date, time and place of the hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the territorial limits of the governing body, **which requires that two full weeks of publication must be satisfied before a hearing can be conducted. For example, the hearing cannot be conducted until a full week has elapsed after the second publication.** The notice shall include: (A) Name and address of the Applicant/Licensee; (B) The action proposed to be taken by the Alcohol and Gaming Division; (C) The location of the licensed premises. The governing body is required to send notice by certified mail to the applicant of the date, time and place of the public hearing. The governing body may designate a hearing officer to conduct the hearing. A record **shall** be made of the hearing.

**The applicant is requesting a Transfer of Ownership and Location. A Suveyor's Certificate indicates a strip of land between the proposed premise and Grace Covenant Church. The property is not used for church purposes, therefore, the Alcohol & Gaming Division asks for the City of Las Cruces' determination on a Waiver of 300' distance (see copies of documentation attached).**

The governing body may disapprove the issuance or transfer of the license if:

- 1) The proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico. (The governing body may disapprove if the proposed location is within 300 feet of a church or school unless the license has been located at this location prior to 1981 or unless the applicant/licensee has obtained a waiver from the local option district governing body for the proposed licensed premises.
- 2) The issuance or transfer would be in violation of a zoning or other ordinance of the governing body. The governing body may disapprove if the proposed location is

Alcohol and Gaming Division  
(505) 476-4875

Boards and Commissions Division  
(505) 476-4600

Construction Industries Division  
(505) 476-4700

Financial Institutions Division  
(505) 476-4885

Manufactured Housing Division  
(505) 476-4770

Securities Division  
(505) 476-4580

Administrative Services Division  
(505) 476-4800

the governing body, this is not a basis for disapproval. Attached is a copy of a zoning statement from the local governing body.

3) The issuance would be detrimental to the public health, safety or morals of the residents of the local option district. Disapproval by the governing body on public health, safety or morals must be based on and supported by substantial evidence pertaining to the specific prospective transferee or location and a copy of the record must be submitted to the Alcohol and Gaming Division.

\*Within thirty (30) days after the public hearing, the governing body shall notify the Alcohol and Gaming Division *in writing* as to whether the local governing body has approved or disapproved the issuance of transfer of the license *and* by signing the enclosed original Page 1 of the application. **The letter of approval/disapproval and the Page 1 must be returned together with the notice of publication(s).** If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the public hearing, the director may give final approval to the issuance or transfer of the license.

If the governing body disapproves the issuance or transfer of the license, it shall notify the Alcohol and Gaming Division within thirty (30) days setting forth the reasons for the disapproval. A copy of the minutes of the public hearing shall be submitted to the Alcohol and Gaming Division with the notice of disapproval (page 1 of the application page noting disapproval).

Sincerely,

  
Jackie Gallegos  
Hearing Officer

State Liquor License # 0254  
Application Number 641019  
Local Option (AGD use) \_\_\_\_\_

STATE OF NEW MEXICO  
REGULATION AND LICENSING  
DEPARTMENT  
ALCOHOL AND GAMING DIVISION  
P.O. BOX 25101 Santa Fe,  
New Mexico 87504-5101  
505-476-4570

Record Owner of License A & E Enterprises, Inc.  
Current D/B/A Name Eagle Quick Mart # 5  
Current Premise Address 4790 Stem Drive  
Las Cruces, New Mexico



G 62910  
galicia



Liquor License Application  
Non Refundable Application Fee- \$200.00

Application is for: (check one) Change of Stock \_\_\_\_\_  
Transfer of Ownership and Location  \_\_\_\_\_  
Change of Officers/Directors \_\_\_\_\_  
Transfer Location \_\_\_\_\_  
Other \_\_\_\_\_

Transfer of Ownership of Existing License \_\_\_\_\_  
Issue New License \_\_\_\_\_

Applicant is: Individual \_\_\_\_\_ Corporation  Partnership (General or Limited) \_\_\_\_\_ Limited Liability Company \_\_\_\_\_

Name of APPLICANT (company or individual): \_\_\_\_\_ ADDRESS (INCLUDING CITY, STATE, ZIP) \_\_\_\_\_ TELEPHONE NUMBER \_\_\_\_\_

CVS Pharmacy, Inc. One CVS Drive, Woonsocket, RI 02895 401-770-3556  
Notice also to: Linda L. Aikin, Esq., 530B Harkle Road, Santa Fe, NM 87505 PH: 505-982-6224 FAX: 505-982-0352

DBA Name to be used: CVS Pharmacy # 75987 Phone Number for licensed premises: TBD

Physical Address Where License is to be used: 3041 N. Main Street Las Cruces, New Mexico 88005  
(Street No./Highway No./State Road/City/County)

Mailing Address: One CVS Drive, Woonsocket, RI 02895  
(Street No./P.O. Box/City/State/Zip)

Are alcoholic beverages currently being dispensed at the proposed location? No \_\_\_\_\_ If yes, give license number \_\_\_\_\_

I, Linda M. Cimbron, as (title) Assistant Secretary being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents thereof and that all statements therein contained are true. Applicant(s) agree that if any statements or representations herein are found to be false, the Director may refuse to issue said license or may cause such license to be revoked at any time.

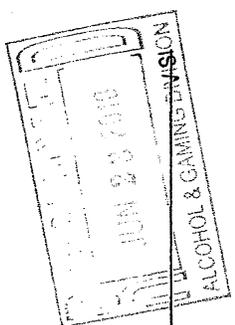
Signature of Applicant(s) Linda M. Cimbron Date 5/25/2010  
Notary Public Use Only

SUBSCRIBED AND SWORN TO before me this 25<sup>th</sup> day of May, 2010 by Linda M. Cimbron (Name of Person Signing Above)  
NOTARY PUBLIC: Kimberly M. Mitchell My Commission Expires: 10-22-2011 State of Rhode Island  
My Commission Expires 10/22/2011

Local Governing Body of: \_\_\_\_\_ (CITY OR COUNTY) Hearing Held on: \_\_\_\_\_  
PLEASE CHECK ONE:  APPROVED  DISAPPROVED/CITY/COUNTY OFFICIAL (Signature and Title): \_\_\_\_\_

APPROVED \_\_\_\_\_ DISAPPROVED \_\_\_\_\_ APPROVAL \_\_\_\_\_ DATE \_\_\_\_\_  
AGD Use Only DIRECTOR

**PREMISES, LOCATION, OWNERSHIP & DESCRIPTION OF PREMISES**



1. The land and building which is proposed to be the licensed premise is (check one):

Owned by Applicant  Leased by Applicant  Other (please provide details) \_\_\_\_\_

2. If the land and building are not owned by Applicant, please indicate the following:

A. Owner(s) \_\_\_\_\_

B. Date and Term of Lease \_\_\_\_\_

Attach a hand drawn map, zoning map, or other map, showing the location of the proposed premises, and the main adjacent streets, roads or highways, in relation to the nearest church and school properties. This map should be drawn on a sheet of paper no larger than 8 1/2 x 11 inches.

3. Premise location is zoned (example C-1) \_\_\_\_\_

If the premise is zoned, attach zoning statement from local government giving location address, type of zone and stating whether alcoholic beverages are allowed at proposed location. If there is no zoning, attach confirmation from local government indicating there is no zoning.

4. Distance from nearest church \*(Property line of church to licensed premises-shortest distance).

Miles, Feet 1765 feet Name of Church Trinity Lutheran Church Address-Location of Church 2900 Elks Dive, Las Cruces, New Mexico

5. Distance from nearest school \*(Property line of school to licensed premises-shortest distance).

Miles, Feet 5972 feet Name of School Jornada Elementary School Address-Location of School 3400 Elks Dive, Las Cruces, New Mexico

6. Distance from military installation (Property line of military installation to licensed premises-shortest distance).

Miles 20 Miles Name of Military Installation White Sands Missile Range

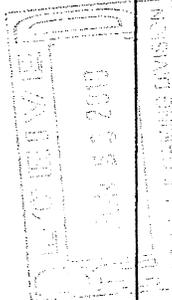
7. Attach, on a separate sheet, the detailed floor plan for each level (floor) where alcoholic beverages will be sold or consumed. Show exterior walls, doors, and interior walls. This will be the licensed premise. The floor plan should be no larger than 8 1/2 x 11 inches, and must include the total square footage of premises.

\*If the distance is beyond 300 feet, but less than 400 feet, a registered engineer or licensed surveyor must complete a Survey Certificate showing the exact distance.

8. Type of Operation:

Lounge \_\_\_\_\_ Restaurant \_\_\_\_\_ Package Grocery \_\_\_\_\_ Racetrack \_\_\_\_\_ Hotel \_\_\_\_\_ Other (Please specify) Retail Pharmacy

CORPORATION



Name of Corporation: CVS Pharmacy, Inc.

(New Mexico corporations must attach certified copy of its Certificate of Incorporation and Articles of Incorporation. Foreign corporations must also include a certified copy of its New Mexico certificate of authority.)

Date of Incorporation: November 7, 1969 In what State? Rhode Island

Mailing Address of Corporate Office: One CVS Drive City Woonsocket State RI Zip 02895 Phone # 401-765-1500

Complete names and addresses of all officers and directors of the Corporation, also the names and addresses of all stockholders of 10% or more of the stock in the Corporation. If a stockholder of 10% or more of the stock is Partnership or Corporation, complete Corporation Information sheet (page 4) for the stock holding corporation and/or the partnership information sheet (page 3).

Name & Title of Officers, Directors	Complete Address	% Stock Held & Stockholders of 10% or more
<u>Larry J. Merlo President</u>	<u>One CVS Drive, Woonsocket, RI 02895</u>	
<u>Carol A. DeNale Vice President &amp; Treasurer</u>	<u>One CVS Drive, Woonsocket, RI 02895</u>	
<u>Zenon P. Lankowsky Vice President &amp; Secretary</u>	<u>One CVS Drive, Woonsocket, RI 02895</u>	
<u>Thomas S. Moffatt Vice President</u>	<u>One CVS Drive, Woonsocket, RI 02895</u>	
<u>Linda M. Cimbron Assistant Secretary</u>	<u>One CVS Drive, Woonsocket, RI 02895</u>	
<u>CVS Caremark Corporation</u>	<u>One CVS Drive, Woonsocket, RI 02895</u>	<u>100%</u>

(USE ADDITIONAL SHEETS IF NECESSARY)

Has this Corporation ever had a liquor license in which it held any interest in any State suspended or revoked, or has it been denied the issuance of a liquor license? Yes  No   
If yes, provide details \_\_\_\_\_

List every liquor license in which the Corporation holds any interest, direct or indirect New Mexico License Nos. 0225, 0236, 0430, 0495, 1304, 2012,  
and 4055

Has this Corporation ever been convicted of a felony? Yes  No   
If yes, provide details \_\_\_\_\_

\*\* Note: For each individual applicant, partner, officer, director, and stockholder of 10% or more of stock in corporation, complete the Personal Data Information sheet (page 6) and attach two completed sets of fingerprint cards on cards furnished by the Alcohol and Gaming Division. Fingerprints must be taken by City Police, State Police, or Sheriff (any state).



**AD FORM**  
**LAS CRUCES SUN NEWS**  
**LEGAL CLASSIFIED**

City contact: Monica Campbell; 541-2014 / 541-2128

Account No. 26484 (Bill to City Clerk, PO Box 20000, Las Cruces, NM 88004)

Dates to Publish: October 17 and 24, 2010

Copy to publish:

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Waiver of the Church/School Distance Restriction for a Transfer of Ownership and Location of Liquor License No. 0254 to CVS Pharmacy, Inc. d/b/a CVS Pharmacy #75987, to be located at 3041 North Main Street, Las Cruces, New Mexico. Such approval will allow CVS Pharmacy to proceed with the application process.

The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council to be held on Monday, November 1, 2010, at 1:00 p.m. in the City Council Chambers, 700 North Main Street, City Hall. If passed, the State of New Mexico Regulation & Licensing Department may approve the transfer.

Witness my hand and seal of the City of Las Cruces on this the 7<sup>th</sup> day of October 2010.

  
\_\_\_\_\_  
Esther Martinez, CMC, City Clerk



**AD FORM**  
**LAS CRUCES BULLETIN**  
**LEGAL CLASSIFIED**

City contact: Monica Campbell; 541-2014 / 541-2128

Proof of publication/bill to: City Clerk, PO Box 20000, Las Cruces, NM 88004

Dates to Publish: October 15 and 22, 2010

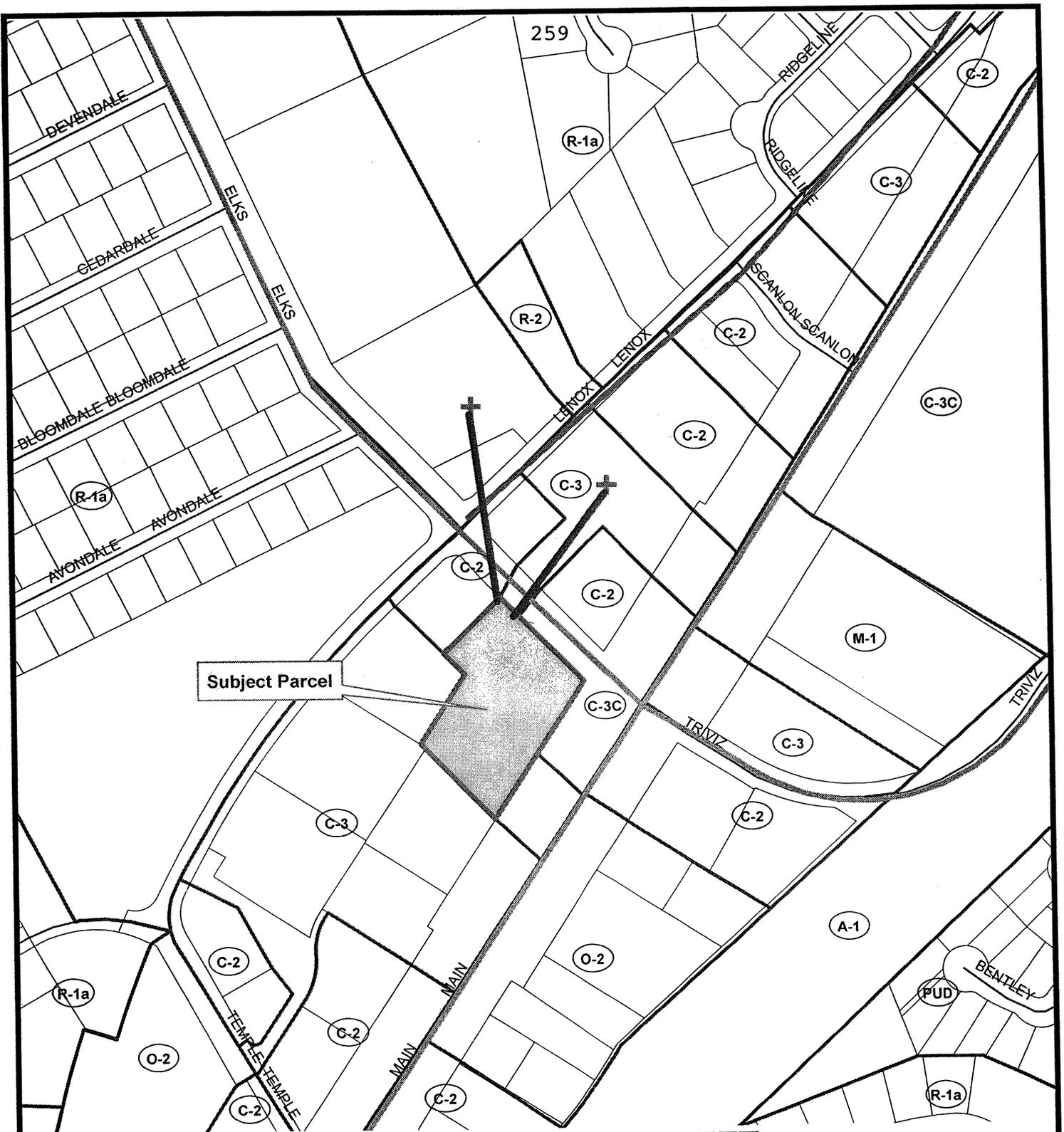
Copy to publish:

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Witness my hand and seal of the City of Las Cruces on this the 17<sup>th</sup> day of October 2010.

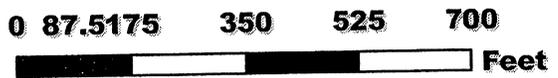
  
\_\_\_\_\_  
Esther Martinez, CMC, City Clerk



**CVS 3041 N. MAIN STREET**

**DISTANCE TO 2900 ELKS DRIVE**  
**P/L TO P/L: 235 +/- FEET**  
**BLDG. TO BLDG.: 648 +/- FEET**

**DISTANCE TO 3111 N. MAIN STREET**  
**P/L TO P/L: 85 +/- FEET**  
**BLDG. TO BLDG.: 425 +/- FEET**



*This map was created by Community Development to assist in the administration of local zoning regulations. Neither the City of Las Cruces or the Community Development Department assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the Community Development Department at (505) 528-3043.*

**Community Development Department**  
**575 S Alameda Blvd.**  
**Las Cruces, NM 88001**  
**(505) 528-3222**



AMIGOS NORTH MAIN LLC  
1155 S TELSHOR SUITE B  
LAS CRUCES, NM. 88011

260  
BREWER OIL COMPANY  
1301 W MAIN  
ARTESIA, NM. 88210-1748

CATON FARM INC  
PO BOX 901  
DEERFIELD, IL. 60015-5121

DADDY-O'S DRIVE THRU INC  
709 ROSINANTE  
EL PASO, TX. 79922

DIAMOND SHAMROCK STATIONS INC  
PO BOX 690110  
SAN ANTONIO, TX. 78269-0110

GRACE COVENANT CHURCH OF LAS  
CRUCES  
3111 N MAIN  
LAS CRUCES, NM. 88005

JACKSON BRUCE & CAROLYN P  
PO BOX 1617  
LAS CRUCES, NM. 88004

MASSENGILL JAMES  
3 RAYOS DE LUZ  
PLACITAS, NM. 87043-9460

MERRITT BOBBY J & BETTY L &  
750 N 17TH ST  
LAS CRUCES, NM. 88005-4153

PLAINS ELECTRIC GENERATION AND  
PO BOX 33449  
DENVER, CO. 80233-0449

POEL-MILAVEC PARTNERSHIP &  
2980 N MAIN ST  
LAS CRUCES, NM. 88001-1152

S & I ENTERPRISES LLC  
3041 N MAIN  
LAS CRUCES, NM. 88001

STULL JAMIE A ET UX  
1905 SAN ACACIO  
LAS CRUCES, NM. 88001-1595

SUN VALLEY PLAZA CONDO  
ASSOCIATION  
2990 N MAIN  
LAS CRUCES, NM. 88001-1195

TRINITY LUTHERAN CHURCH OF LC  
2900 ELKS DR  
LAS CRUCES, NM. 88005-1125

Attachment 4