

162
City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 11 Ordinance/Resolution# 12-016

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of July 18, 2011
 (Adoption Date)

TITLE: A RESOLUTION APPROVING THE TRANSFER OF LOCATION OF STATE LIQUOR LICENSE #4065 TO DIAMOND SHAMROCK STATIONS, INC. D/B/A CORNER STORE #1289, LOCATED AT 1401 EAST LOHMAN AVENUE, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION:

To approve, disapprove, or not approve the transfer of location of a liquor license.

COUNCIL DISTRICT: 3		
<u>Drafter/Staff Contact:</u> Monica Campbell	<u>Department/Section:</u> Legal	<u>Phone:</u> 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for the transfer of location of a liquor license must be accompanied by a resolution of the City Council approving of and consenting to the transfer after a public hearing.

Diamond Shamrock Stations, Inc. d/b/a Corner Store #1289 applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol and Gaming") for the transfer of location of State Liquor License #4065 to 1401 East Lohman Avenue, Las Cruces, New Mexico. Alcohol and Gaming granted preliminary approval on June 13, 2011.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval from Alcohol and Gaming. A public hearing to review this issue is scheduled during the regular City Council meeting to be held on Monday, July 18, 2011, beginning at 1:00 p.m., in the City Council Chambers, City Hall, 700 North Main Street, Las Cruces, New Mexico. Notice of this public hearing was published in the *Las Cruces Bulletin* on July 1 and 8, 2011, and in the *Las Cruces Sun-News* on July 3 and 10, 2011.

Council may approve or disapprove the transfer. However, Council's disapproval must be based on substantial evidence that the transfer of the location of the license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.

(Continue on additional sheets as required)

Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of Alcohol and Gaming may give final approval of the license.

SUPPORT INFORMATION:

1. Resolution.
2. Alcohol and Gaming's letter of preliminary approval with the application, Exhibit "A".
3. Notice of Intent to Adopt – *Las Cruces Bulletin*, Attachment "1".
4. Notice of Intent to Adopt – *Las Cruces Sun-News*, Attachment "2".
5. Traffic Impact Report from the Traffic Engineering Section, Attachment "3".
6. Liquor License Impact Report (zoning) from the Community Development Department, Attachment "4".
7. Economic Development Report (registration and permits), Attachment "5".
8. Criminal Activity Report from the Las Cruces Police Department, Attachment "6".
9. Fire and Safety Compliance Report from the Las Cruces Fire Department, Attachment "7".

SOURCE OF FUNDING:

Is this action already budgeted? 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.	
Does this action create any revenue?		
	Yes	<input checked="" type="checkbox"/> Funds will be deposited into this fund: <u>1015-10180020-520002, Permits-Liquor Licenses</u> in the amount of <u>\$600.00</u> for FY12.
	No	<input type="checkbox"/> There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

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	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve of and consent to the transfer of location of State Liquor License #4065 and Alcohol and Gaming will continue with the application process.
2. Vote "No"; this must be based on substantial evidence that the transfer of the location of the license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 12- 016

A RESOLUTION APPROVING THE TRANSFER OF LOCATION OF STATE LIQUOR LICENSE #4065 TO DIAMOND SHAMROCK STATIONS, INC. D/B/A CORNER STORE #1289, LOCATED AT 1401 EAST LOHMAN AVENUE, LAS CRUCES, NEW MEXICO.

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

WHEREAS, Diamond Shamrock Stations, Inc. d/b/a Corner Store #1289, located at 1401 East Lohman Avenue, Las Cruces, New Mexico, applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol and Gaming") for the transfer of location of State Liquor License #4065; and

WHEREAS, on June 13, 2011, Alcohol and Gaming granted preliminary approval for the transfer of the location of the license, as evidenced by their letter and the application; and

WHEREAS, pursuant to law, the application for transfer of a liquor license must be accompanied by a resolution of the City Council approving of and consenting to the transfer after a public hearing upon reasonable public notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable public notice setting forth the appropriate information concerning the public hearing. The City Council has considered the transfer of the liquor license and it has determined that the approval of said license is not detrimental to the public health, safety or welfare of the City of Las Cruces.

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

(I)

THAT the transfer of State Liquor License #4065 to Diamond Shamrock Stations, Inc. d/b/a Corner Store #1289, located at 1401 East Lohman Avenue, 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 hereby authorized to do all deeds as necessary in the accomplishment of the hereinabove.

DONE AND APPROVED on this 18 day of July 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

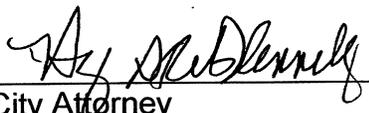
(SEAL)

Moved by: _____

Seconded by: _____

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



June 13, 2011

Suzanna Martinez
GOVERNOR

J. Dee Dennis, Jr.
SUPERINTENDENT

Gary J. Tomada
DIRECTOR

Certified Mail No: 7009 2820 0001 0028 5741

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

Re: License / App. No. 4065/773670
Applicant Name: Diamond Shamrock Stations, Inc.
Doing Business As: Corner Store #1289
Proposed Location: 1401 E. Lohman Ave., Las Cruces, NM 88001

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 Director of the Alcohol and Gaming Division has granted Preliminary Approval for 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 of preliminary approval 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 weeks of publication must be satisfied before a hearing can be conducted. 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 Location:

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

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

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

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.)

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 not properly zoned. Because this office is in receipt of a zoning statement from the governing body, this is not a basis for disapproval.

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,



Annette R. Brumley
Hearing Officer

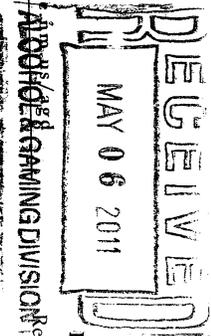
ENCLOSURES: Original Page 1 of Liquor License Application
Copy of page 2 Premises, Location, Ownership & Description of Premises



New Mexico Regulation and Licensing Department • Alcohol and Gaming Division
 P.O. Box 25101 • Santa Fe, New Mexico 87504-5101 • (505) 476-4875 • Fax (505) 476-4595 • www.rld.state.nm.us
 Application Fee - \$200.00 Fees are non-refundable.

9-5-9-11
 Cantor

LIQUOR LICENSE APPLICATION



State Liquor License # 4065 Record Owner of Existing License Diamond Shamrock Stations, Inc.

Application Number 7731070 Current D/B/A Name Corner Store #1736

Local option (AGD use) At 10000 Current Premises Address 1140 S. Main St., Roswell, NM, 88203

Application is for: Change of Stock Change of Officers/Directors Transfer Ownership of Existing License Transfer Ownership and Location Other

Issue New License Type of License being applied for Partnership (General or Limited) Limited Liability Company

Applicant is: Individual Corporation

NAME OF APPLICANT (company or individual) Diamond Shamrock Stations, Inc. ADDRESS (including city, state, zip) One Valero Way, San Antonio, TX 78249 TELEPHONE NUMBER 210-345-4243

D/B/A name to be used: Corner Store #1289 Phone number for licensed premises: 575-525-9847

Physical location where license is to be used: 1401 E. Lohman Ave., Las Cruces, NM 88001

Mailing address: Valero Licenses & Permits, PO Box 690007, San Antonio, TX 78269-0007

Are alcoholic beverages currently being dispensed at the proposed location? Yes No If yes, give license number and type _____

I, (print name) Douglas M. Miller, as (title) Vice President, 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 therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form in the presence of a notary public.

Signature of Applicant Douglas M. Miller Date 05-03-11
 JULIE GORDON
 Notary Public
 STATE OF TEXAS
 My Comm. Exp. 04-21-2012

SUBSCRIBED AND SWORN TO before me this 3rd day of May Notary Public Use Only 20 11 by Douglas M. Miller

Notary Public Julie Gordon My Commission Expires 04-21-12

Local Governing Body of: _____ (City or County). Hearing held on _____ 20 _____

Check one: Approved Disapproved City/County Official _____ (Signature & Title)

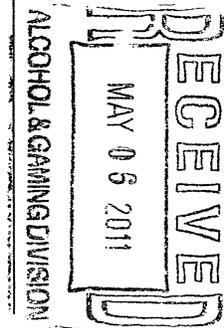
For Alcohol and Gaming Division Use Only

Approved Disapproved Director Approval _____ Date _____



PREMISES LOCATION, OWNERSHIP, AND DESCRIPTION

SS-60-6B-10



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

Owned by Applicant Leased by Applicant (attach copy of deed or lease) _____ Other (provide details) _____

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

A. Owner(s) _____

B. Date and term of lease _____

3. Premises location is zoned (example C-1) C-2 (Commercial Medium Intensity) Retail packaged liquor sales is a permitted use in C-2 districts. (Zng Stunt enc.)
If the premises is zoned, attach zoning statement from local government giving location address and type of zone, 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).

2 Miles/feet 2800 feet Name of church St. Patrick's Anglican Church Address/location of church 151 S. Solano Dr. #C, Las Cruces, NM 88001

7 Distance from nearest school *(Property line of school to licensed premises—shortest distance).

Miles/feet 1875 feet Name of school Hermosa Heights Elementary Address/location of school 1665 East Amador Ave., Las Cruces, NM 88001

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

Miles 64.1 Name of Military Installation, circle one: Kirtland Air Force Base (Albuquerque), White Sands Missile Range (Las Cruces), Holloman Air Force Base (Alamogordo), Cannon Air Force Base (Clovis).

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 premises. 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 (specify) _____



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: July 1 and 8, 2011

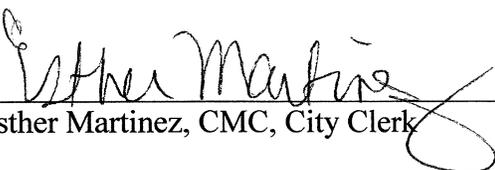
Copy to publish:

NOTICE OF INTENT TO ADOPT

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of the Transfer of Location of State Liquor License #4065 to Diamond Shamrock Stations, Inc. d/b/a Corner Store #1289, located at 1401 East Lohman Avenue, Las Cruces, New Mexico.

The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council to be held on Monday, July 18, 2011, 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 issuance.

Witness my hand and seal of the City of Las Cruces on this the 21st day of June 2011.



Esther Martinez, CMC, City Clerk



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: July 3 and 10, 2011

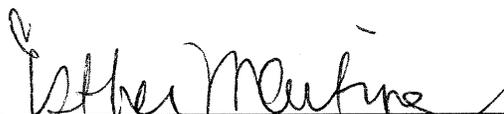
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Esther Martinez, CMC, City Clerk



City of Las Cruces
PEOPLE HELPING PEOPLE

**INTER-DEPARTMENTAL
MEMORANDUM**

=====

TO: Harry "Pete" Connelly, City Attorney

FROM: Dan Soriano, Traffic Engineer, Public Works 

SUBJECT: Traffic Investigation Report

DATE: June 27, 2011

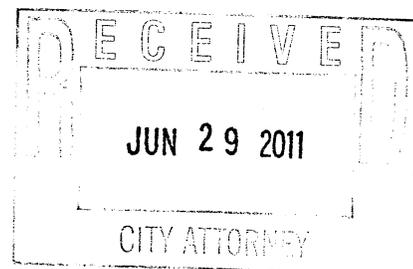
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As requested, Traffic Engineering has completed a traffic investigation for Diamond Shamrock Stations, Inc. Corner Stores #1289 located at 1401 E. Lohman, Las Cruces, New Mexico. The following information is submitted for review:

- East Lohman at this location carries approximately 13726 vehicles per day.
- East Lohman is operated as a four lane roadway and primarily serves commercial use.
- Access to the property in question is off of East Lohman. No potential sight distance or operational problems exist.
- The speed limit on East Lohman is set at 35 mph.

The approval of a Liquor License Transfer at this location does not appear it will adversely impact traffic operations along this segment of roadway.

Should any additional information be needed, please contact me.



City of Las Cruces
Community Development Department

LIQUOR LICENSE IMPACT REPORT
Transfer of Location for Liquor License No. 4065

1401 E. Lohman Avenue
Corner Store #1289

June 24, 2011

**LIQUOR LICENSE IMPACT REPORT
Transfer of Ownership and Location**

**Corner Store #1289
1401 E, Lohman Avenue**

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location: 1401 E, Lohman Avenue
 Applicant: Diamond Shamrock Stations, Inc.
 Business Name: Corner Store #1289

LAND USE AND ZONING INFORMATION:

Subject Property Zoning: C-2 (Commercial Medium Intensity)
 (See attached Statement of Zoning and Vicinity Map)

Subject Property Current Land Use:

<u>Adjacent Land Uses</u>	<u>Zoning</u>	<u>Land Use</u>
North	C-2	Commercial
South	C-2	Commercial
East	C-2	Commercial
West	C-2	Commercial

DISTANCE REQUIREMENTS:

Greater than 300 feet to a school: YES
 Greater than 300 feet to a church: YES
 Greater than 300 feet to a military installation: YES

TRAFFIC COUNT AND ACCESS INFORMATION:

Roadway: Lohman Avenue, Amador Avenue, Espanola Street & Nevarez Street
 Classification: Principal Arterial Roadways (Lohman & Amador), Local Roadways (Espanola & Nevarez)
 Number of Lanes: 4 on Lohman, 3 on Amador and 2 on Espanola & Nevarez
 Site Access: 4
 Nearest Intersections: Lohman & Espanola, Lohman & Nevarez, Amador & Espanola and Amador & Nevarez

PARKING REQUIREMENTS:

The 2001 Las Cruces Zoning Code, as amended, requires one (1) automobile space for every 200-300 sq. ft. of Gross Floor Area (GFA) and one (1) bicycle parking space for every 2,000 sq. ft. of GFA for a gas station with a convenience store in the C-2 zoning district. Parking requirements will be verified upon the submittal of a building permit.

IMPACT ANALYSIS:

The site of the Corner Store #1289 is located along two principal arterial roadways. Lohman Avenue and Amador Avenue are designed to accommodate moderate to heavy traffic and land uses such as gas stations with convenience stores. The subject property is located in the C-2 zoning district where a gas station with a convenience store is a permitted use. The applicant is requesting a transfer of location of a liquor license. In terms of a transportation and land use perspective, this seems an appropriate location and request.

**STATEMENT OF ZONING**

The property located at 1401 E. Lohman Avenue, and having Parcel ID Numbers of 02-10300 & 02-10339, in Las Cruces, New Mexico, is zoned as follows:

C-2 (Commercial Medium Intensity)

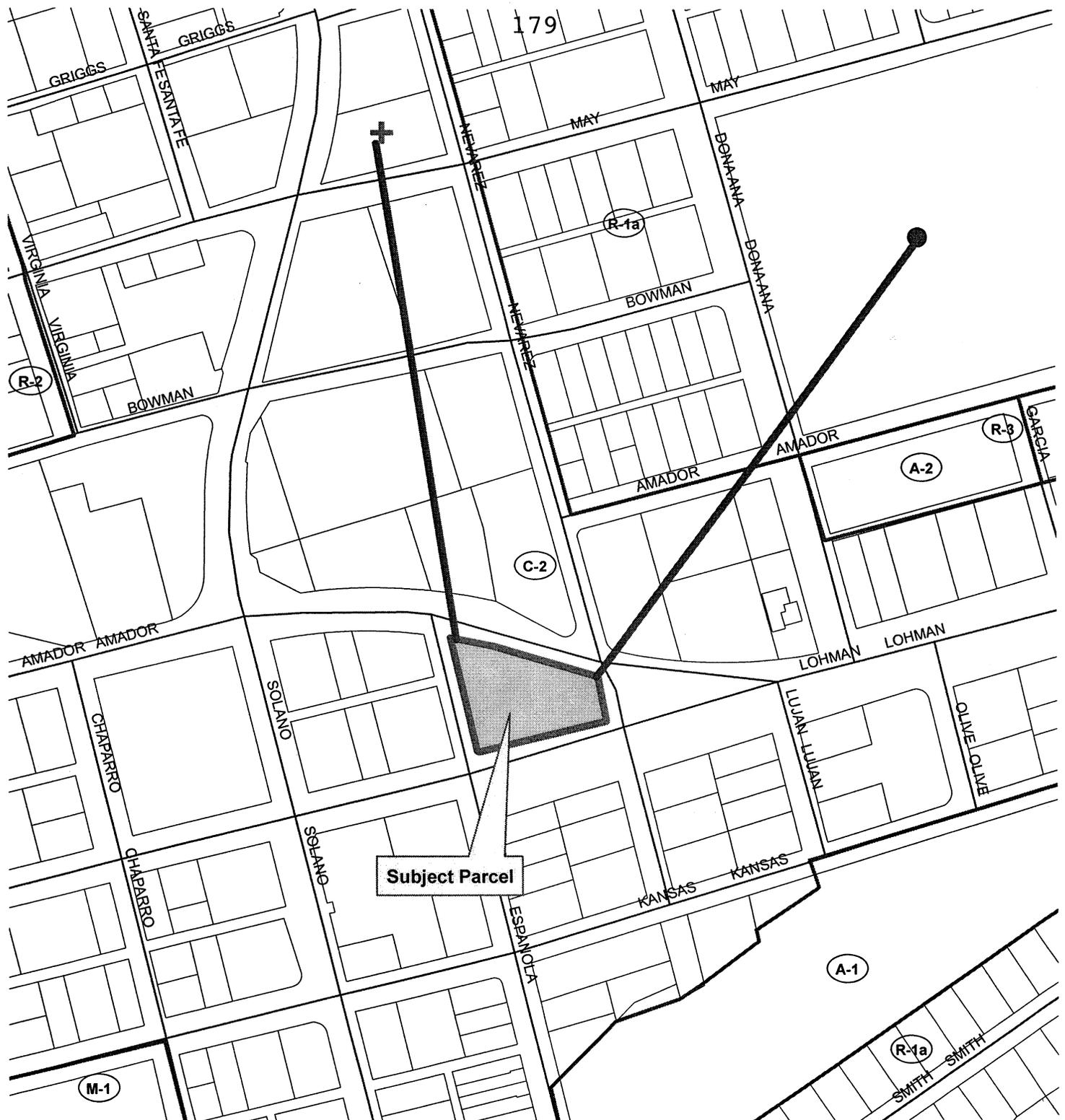
The above described property located in the City of Las Cruces, New Mexico, has been reviewed and found to be zoned as indicated above in accordance with the Las Cruces Zoning Atlas. Accordingly, I do hereby approve and issue this Statement of Zoning.

June 27, 2011
Date


Adam Ochoa
Planner

Comments: The C-2 district facilitates and encourages development of those uses which provide retail and service activities as a convenience to adjacent neighborhoods and whose use generally serves a population of 5,000 to 30,000. Retail packaged liquor sales is a permitted use in C-2 districts, provided all requirements as prescribed for liquor establishments by the State of New Mexico are met.

Please be advised that the information presented on this document is taken from the City of Las Cruces Zoning Atlas. Nothing shall prevent the City of Las Cruces from amending this information if review of the Zoning Ordinance shows the Atlas to be in error.

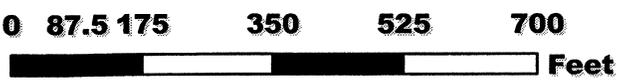


Subject Parcel

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 City (575) 528-3043.

1401 E. Lohman Avenue
PARCELS: 02-10300 & 02-10339
ZONING: C-2
DISTANCE TO NEAREST SCHOOL: 615 +/- FT.
DISTANCE TO NEAREST CHURCH: 890 +/- FT.

-  **ZONING**
-  **SCHOOL**
-  **CHURCH**



Community Development Department
700 N Main St
Las Cruces, NM 88001
(575) 528-3222

ECONOMIC DEVELOPMENT REPORT

From: Vicki Montez

This email is to inform you that this business has a current business license.

From: Monica Campbell
Sent: Monday, June 20, 2011 3:22 PM
To: Vicki Montez
Cc: Cheryl Rodriguez; Christine Logan
Subject: Report request - liquor license applications

The City has received a liquor license preliminary approval letter from Alcohol & Gaming for Diamond Shamrock Stations, Inc. d/b/a Corner Store #1289, 1401 East Lohman Avenue.

Please review the attached application and report on the status of each applicant's applicable licenses and permits.

In order to meet the time limits and deadlines imposed by law, please submit the reports no later than **June 30, 2011**.

Monica Campbell
Legal Dept. Operations Analyst
City of Las Cruces
575-541-2014 / 575-541-2128
Fax 575-541-2017



LAS CRUCES POLICE DEPARTMENT
PO BOX 20000
217 E. Picacho
Las Cruces, New Mexico 88004

DATE: *June 20, 2011*

TO: *Pete Connelly, City Attorney*

From: **Richard Williams, Chief of Police**

Subject: *Diamond Shamrock Stations Inc.*

I have reviewed all available statistical information obtained from the Las Cruces Police Department in reference to the attached liquor license application for Diamond Shamrock Stations Inc. located at 1401 E Lohman Ave Las Cruces, NM 88001.

No anomalies were found that would warrant denial of this license; therefore, I recommend the liquor license application for Diamond Shamrock Stations be approved.

A handwritten signature in cursive script that reads "Richard Williams".

Richard Williams
Chief of Police

FIRE SAFETY AND COMPLIANCE REPORT

From: Billy Chaires

Subject: Report request - liquor license application

Approved, contingent on new building meeting Fire Code.