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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 6 Ordinance/Resolution# 12-088

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of December 5, 2011
 (Adoption Date)

TITLE: A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR THE ISSUANCE OF A SMALL BREWER OFF-SITE LIQUOR LICENSE FOR ON PREMISE CONSUMPTION AND PACKAGE SALES TO CENTRAL TAVERN, LLC D/B/A MIMBRES VALLEY BREWING CO., AT 915 UNIVERSITY AVENUE, BUILDING 985, SUITE 1B, LAS CRUCES, NEW MEXICO. SUCH APPROVAL WILL ALLOW THE APPLICANT 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 for a liquor license applicant.

COUNCIL DISTRICT: 2		
<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 the New Mexico statutes, 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 the issuance of a Small Brewer off-site liquor license to Central Tavern, LLC d/b/a Mimbres Valley Brewing Co. because the approximate distance from the property line at 915 East University Avenue, Building 985, Suite 1B to the New Mexico State University property line is 85 feet.

The property owners within 300 feet of 915 University Avenue, Building 985, Suite 1B were notified by U. S. Mail of the City Council meeting to approve or disapprove the waiver and issuance of the license.

The approval or disapproval of the issuance of the Small Brewer off-site liquor license is presented in a separate agenda item and its approval is contingent upon approval of a waiver of

(Continue on additional sheets as required)

the distance restriction. Granting a waiver to Central Tavern, LLC d/b/a Mimbres Valley Brewing Co. will allow the applicant to proceed to the next step of the application process.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A". Alcohol and Gaming's letter with the application.
3. Attachment "1". Notice of Intent to Adopt published in the *Las Cruces Bulletin*.
4. Attachment "2". Notice of Intent to Adopt published in the *Las Cruces Sun-News*.
5. Attachment "3". Map showing distances between Central Tavern, LLC d/b/a Mimbres Valley Brewing and NMSU.
6. Attachment "4". List of property owners within 300 feet of 915 East University Avenue, Building 985, Suite 1B, Las Cruces, New Mexico.

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? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$_____ for FY_____.
	No	<input checked="" 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

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution and consent to the waiver of the church/school distance restriction. Approval will allow Central Tavern, LLC d/b/a Mimbres Valley Brewing Co. to proceed with the application process.
2. Vote "No"; this means that the New Mexico Regulation and Licensing Department, Alcohol and Gaming Division (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 issuance of the liquor license.
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

RESOLUTION NO. 12- 088

A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR THE ISSUANCE OF A SMALL BREWER OFF-SITE LIQUOR LICENSE FOR ON PREMISE CONSUMPTION AND PACKAGE SALES TO CENTRAL TAVERN, LLC D/B/A MIMBRES VALLEY BREWING CO., AT 915 UNIVERSITY AVENUE, BUILDING 985, SUITE 1B, LAS CRUCES, NEW MEXICO. SUCH APPROVAL WILL ALLOW THE APPLICANT TO PROCEED WITH THE APPLICATION PROCESS.

The City Council 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 915 University Avenue, Building 985, Suite 1B to the property line of New Mexico State University is 85 feet; and

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

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 Central Tavern, LLC d/b/a Mimbres Valley Brewing Co. at 915 University Avenue, Building 985, Suite 1B, 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 of the State of New Mexico, 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 5th day of December 2011.

APPROVED:

ATTEST:

Mayor

City Clerk

(SEAL)

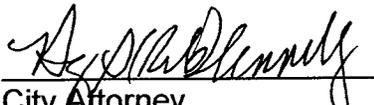
VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney



Susana Martinez
GOVERNOR

J. Dee Dennis, Jr.
SUPERINTENDENT

Steven A. Reinhart, Esq.
DIRECTOR

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New Mexico Regulation and Licensing Department
ALCOHOL AND GAMING DIVISION

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87505
PO Box 25101, Santa Fe, NM 87504-5101
(505) 476-4875 ▪ Fax (505) 476-4595 ▪ www.rld.state.nm.us/agd

October 26, 2011

Certified Mail No.: 7006 3450 0000 3001 0456

City of Las Cruces
Esther Martinez, City Clerk
P.O. Box 20000
Las Cruces, NM 88004-0000

Re: License / App. No.: A-790540
Applicant Name: Central Tavern LLC
Doing Business As: Mimbres Valley Brewing Co.
Proposed Location: 915 University Ave., Bldg. 985, Suite 1B
Las Cruces, New Mexico 88001

ATTENTION: Department or person responsible for conducting or preparing the public hearing for liquor license transfers or issuance of new liquor licenses.

Greetings:

The Director of the Alcohol and Gaming Division has reviewed 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 (45) 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 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; and (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 SEEKING A SMALL BREWER OFF-SITE LICENSE FOR ON PREMISE CONSUMPTION AND PACKAGE SALES.

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 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 not properly zoned. Because this office is in receipt of a Zoning Statement from 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 as to whether the local governing body has approved or disapproved the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application 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,



Rose L. Garcia
 Hearing Officer
 NM Regulation & Licensing Dept.
 Alcohol & Gaming Division
 Phone: 505-476-4552
 Fax: 505-476-4595
 Email: rosel.garcia@state.nm.us

Enclosures:

1. Original Page 1 of the Application (must be signed and returned).
2. Copy of Page 2 of the Application.

New Mexico Regulation and Licensing Department
 ALCOHOL AND GAMING DIVISION



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/agd

LIQUOR LICENSE APPLICATION

Application fee - \$200.00 Fees are non-refundable.

State Liquor License # 290540
Application Number 2005
Local option (AGD use) 2005
Record Owner of Existing License _____
Current D/B/A Name _____
Current Premises Address _____

Application is for: Change of Stock _____ Change of Officers/Directors _____ Transfer Ownership of Existing License _____ Transfer Ownership and Location _____ Transfer Location _____ Other _____
Issue New License Type of License being applied for SMALL BREWERS DISPENSER - off-site Martini # 6807
Applicant is: Individual _____ Corporation _____ Partnership (General or Limited) _____ Limited Liability Company

NAME OF APPLICANT (company or individual) CENTRAL TAVERN, LLC
ADDRESS (including city, state, zip) 200 S. GOLD AVE
TELEPHONE NUMBER 575-202-2763

D/B/A name to be used: MIMBRES VALLEY BREWING CO.
Deming, NM 88030
Phone number for licensed premises: 575-202-2763

Physical location where license is to be used: 915 UNIVERSITY AVE., BUILDING 985, SUITE 1B, LAS CRUKES, NM 88001
(Include street number / highway number / state road, city and county, state, and zip code)

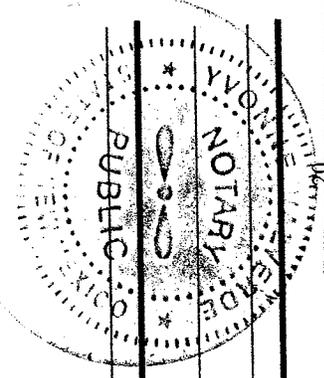
Mailing address: 200 S. GOLD AVE, DEMING, NM 88030

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

I, (print name) BYRON REEDY, as (title) MEMBER, being first duly sworn upon oath deposits 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.

I must sign and date this form in the presence of a notary public.
Signature of Applicant Byron Reedy Date 9/21/11

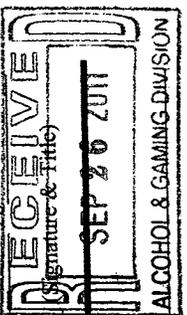
SUBSCRIBED AND SWORN TO before me this 22 day of September, 20 11 by Byron Reedy
Notary Public Yvonne Johnson My Commission Expires 12-10-2013

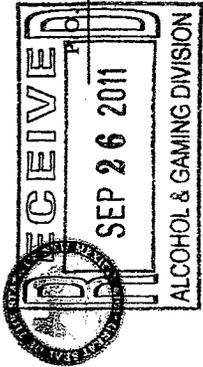


Local Governing Body of: _____ (City or County). Hearing held on _____

Check one: Approved _____ Disapproved _____ City/County Official _____

Approved _____ Disapproved _____ Director Approval _____ Date _____
For Alcohol and Gaming Division Use Only





New Mexico Regulation and Licensing Department - Alcohol and Gaming Division
Box 25101 - Santa Fe, New Mexico 87504-5101 - (505) 476-4875 - Fax (505) 476-4595 - www.rld.state.nm.us/agd

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) CERVANTES III LTD. CO.
B. Date and term of lease SEPTEMBER 6, 2011 (5 YEARS)

3. Premises location is zoned (example C-1) UD - UAZ
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).

Miles/feet 1335.45' Name of church NEWMAN CENTER CHURCH BUDA Address/location of church 2615 S. SOLANO, LAS CRUCES, NM

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

Miles/feet 442.01' Name of school NEW MEXICO STATE UNIV. Address/location of school UNIVERSITY PARK, LAS CRUCES, NM

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

Miles 98.1 Name of Military Installation, circle one: 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) Small Brewer - off-site



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: November 18 and 25, 2011

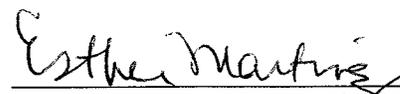
Copy to publish:

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 waiver of the church/school distance restriction for the issuance of a Small Brewer off-site liquor license for on premise consumption and package sales to Central Tavern, LLC d/b/a Mimbres Valley Brewing Co. at 915 University Avenue, Building 985, Suite 1B, 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, December 5, 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 17th day of November 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: November 20 and 27, 2011

Copy to publish:

NOTICE OF INTENT TO ADOPT

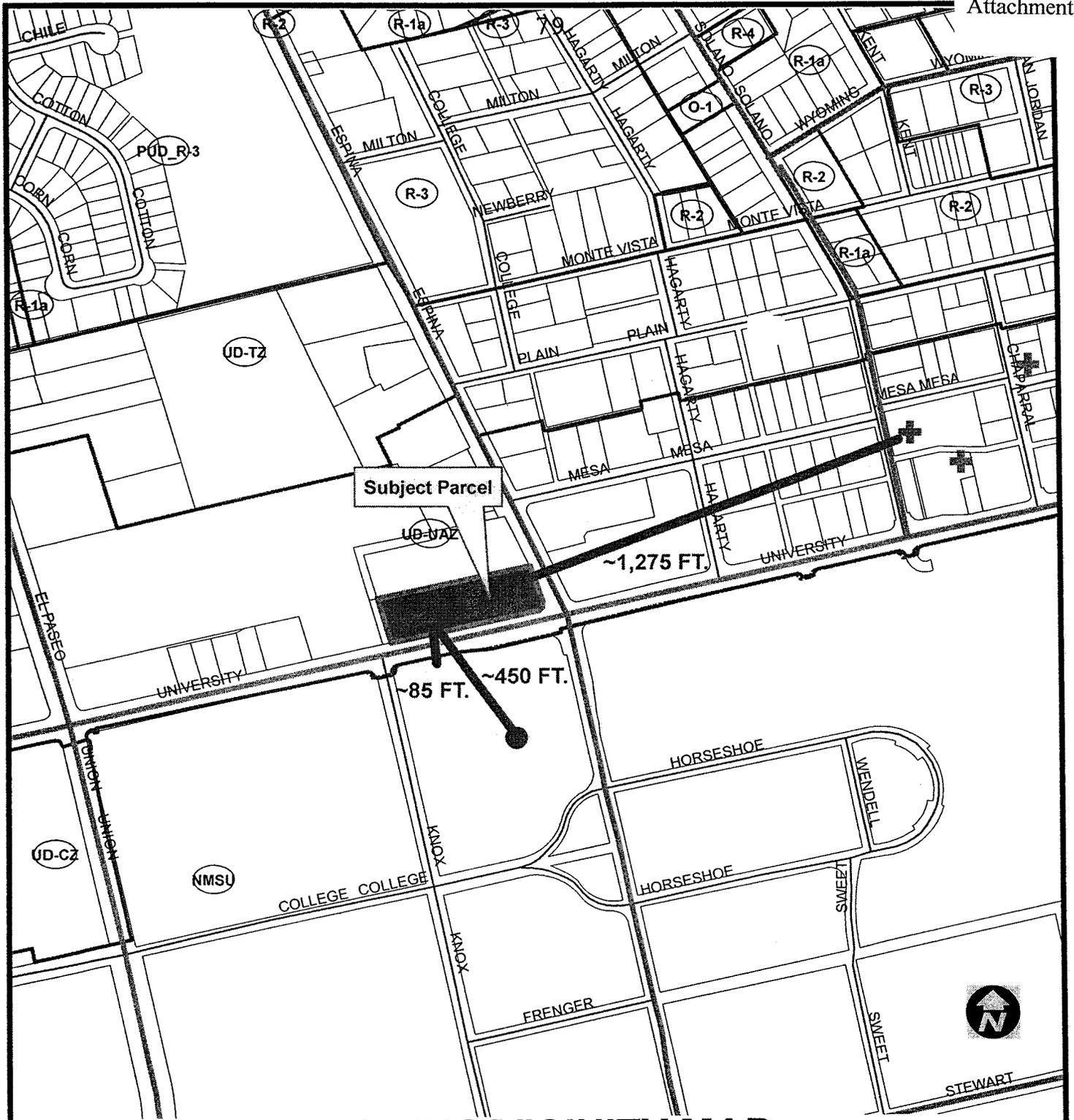
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Witness my hand and seal of the City of Las Cruces on this the 17th day of November 2011.



Esther Martinez, CMC, City Clerk



ZONING/VICINITY MAP

915 UNIVERSITY AVENUE
 PARCEL ID#: 02-40890
 ZONING: UD-UAZ

DISTANCE TO NEAREST CHURCH: ~1,275 FEET
 DISTANCE TO NEAREST SCHOOL (PROPERTY): ~85 FEET
 DISTANCE TO NEAREST SCHOOL (BUILDING): ~450 FEET

 ZONING
 CHURCH
 SCHOOL
 0 100:00 400 600 800
 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 City (575) 528-3043.

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ANDERSON KENNETH W
PO BOX 700
BOERNE, TX. 78006

BCF PROPERTIES LP
2510 S ESPINA # 1
LAS CRUCES, NM. 88001

CASA BANDERA INVESTORS LLC ET AL
C/O AMERICAN SPECTRUM REALTY
MGMT
1443 E WASHINGTON BLVD STE 820
PASADENA, CA. 91104

CERVANTES INVESTMENTS &
DEVELOPMENT LLC
PO BOX 158
LA MESA, NM. 88044

CERVANTES JOSEPH & ORLANDO
2610 S ESPINA
LAS CRUCES, NM. 88001

DICKERSON HOLDING LLC
PO BOX 161
FAIRACRES, NM. 88033

LAULES+M FAMILY RENTALS LLC
C/O LAURA CONNIFF
2223 MISSOURI AVE
LAS CRUCES, NM. 88001

N M ALPHA GAMMA RHO BUILDING
ASSN
C/O JUSTIN NORSWORTHY
329 LINDA VISTA RD
LAS CRUCES, NM. 88005-2007

NEW MEXICO STATE UNIVERSITY
DIRECTOR OF REAL ESTATE - MSC
ORE
PO BOX 30001
LAS CRUCES, NM. 880038001

PHILIPPOU LLC
PO BOX 6190
LAS CRUCES, NM. 88006

Bruce Kite, General Counsel
New Mexico State University
PO Box 30000, MSC 3UGC
Las Cruces, NM 88003-8001