City of Las Cruces®
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Council Action and Executive Summary

Item # 4 **Ordinance/Resolution#** 2673

For Meeting of November 19, 2012 (Ordinance First Reading Date) **For Meeting of** December 3, 2012 (Adoption Date)

Please check box that applies to this item:
☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE APPROVING A ZONE CHANGE FROM A-2 (RURAL/AGRICULTURAL) TO AN R-1A (MEDIUM-DENSITY, SINGLE-FAMILY RESIDENTIAL) DISTRICT ON A 2-ACRE PARCEL LOCATED AT 900 MCCOY AVENUE. SUBMITTED BY WILLIAM D. WRIGHT, PROPERTY OWNER (Z2856).

PURPOSE(S) OF ACTION:

Zone Change.

COUNCIL DISTRICT: 1		
Drafter/Staff Contact:	**Department/Section:**	**Phone:**
Susana Montana	Community Development/Building & Development Services	528-3207
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The proposed zone change from A-2 (Rural/Agricultural) to R-1a (Medium-Density, Single-Family Residential) is for a property located at 900 McCoy Avenue in the northwest corner of the City. The proposed zone change is to bring the property into compliance with the 2001 Zoning Code and to establish a compatible land use designation with the surrounding area. The A-2 District designation was abolished with the adoption of the 2001 Zoning Code and properties with remnant 1981 zoning designations are deemed legal, nonconforming uses. However, owners of such properties may not add new buildings nor intensify the use of the property. The property owner seeks to build a 1,500 square foot accessory structure on his property for personal use. A zone change is necessary to allow this new building on the property. The 2001 Zoning Code land use designation that is compatible with nearby residential development and zoning is the R-1a District.

On October 23, 2012, the Planning and Zoning Commission considered the staff report and presentation for the rezoning and voted 7 to 0 to recommend approval to the City Council on Case No. Z2856 based on the findings in the staff report. No public input occurred at the Commission meeting.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Site Plan.
3. Exhibit "B", Findings for approval of the rezoning.
4. Attachment "A", Staff Report to the Planning and Zoning Commission for Case Z2856.
5. Attachment "B", Draft minutes of the October 23, 2012 Planning and Zoning Commission meeting.
6. Attachment "C", Vicinity Map.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue? N/A	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____ for FY__.
	No	☐	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 affirm the Planning and Zoning Commission recommendation for approval and the subject property would be rezoned from A-2 (Rural/Agricultural) District to R-1a (Medium-Density, Single-Family Residential) District.

2. Vote "No"; this will deny the recommendation made by the Planning and Zoning Commission and the current zoning designation of A-2 would remain on the property. The proposed accessory structure would not be permitted to be built on the property. Denial of the zone change would require new information not identified or presented during the Planning and Zoning Commission meeting and new findings would need to be articulated to explain the decision to deny the rezoning.
3. Vote to "Amend"; this would allow Council to modify the Ordinance by adding conditions of approval for the rezoning, as determined appropriate.
4. Vote to "Table"; this would allow Council to table/postpone the Ordinance action and direct staff to provide additional information accordingly.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. N/A

COUNCIL BILL NO. 13-018
ORDINANCE NO. 2673

AN ORDINANCE APPROVING A ZONE CHANGE FROM A-2 (RURAL/AGRICULTURAL) TO AN R-1A (MEDIUM-DENSITY, SINGLE-FAMILY RESIDENTIAL) DISTRICT ON A 2-ACRE PARCEL LOCATED AT 900 MCCOY AVENUE. SUBMITTED BY WILLIAM D. WRIGHT, PROPERTY OWNER (Z2856).

The City Council is informed that:

WHEREAS, Mr. William D. Wright, the property owner, has submitted a request for a zone change from A-2 (Rural/Agricultural District) to R-1a (Medium-Density, Single-Family Residential District) for the property located at 900 McCoy Avenue; and

WHEREAS, the A-2 zoning designation of the 1981 Zoning Code was abolished by the adoption of the 2001 Zoning Code, thus making the A-2 zoned property a legal, non-conforming use; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on October 23, 2012, recommended by a unanimous vote of 7 to 0 that said zone change request be approved.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the land located at 900 McCoy Avenue also known as Parcel 02-00512 and more particularly described in Exhibit "A," attached hereto and made part of this Ordinance, is hereby zoned R-1a (Medium Density Single-Family Residential District).

(II)

THAT the zoning approval is based on the findings contained in Exhibit "B" (Findings), attached hereto and made part of this Ordinance.

(III)

THAT the zoning of said property be shown accordingly on the City Zoning Atlas.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____ 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
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

PLAT OF SURVEY

65

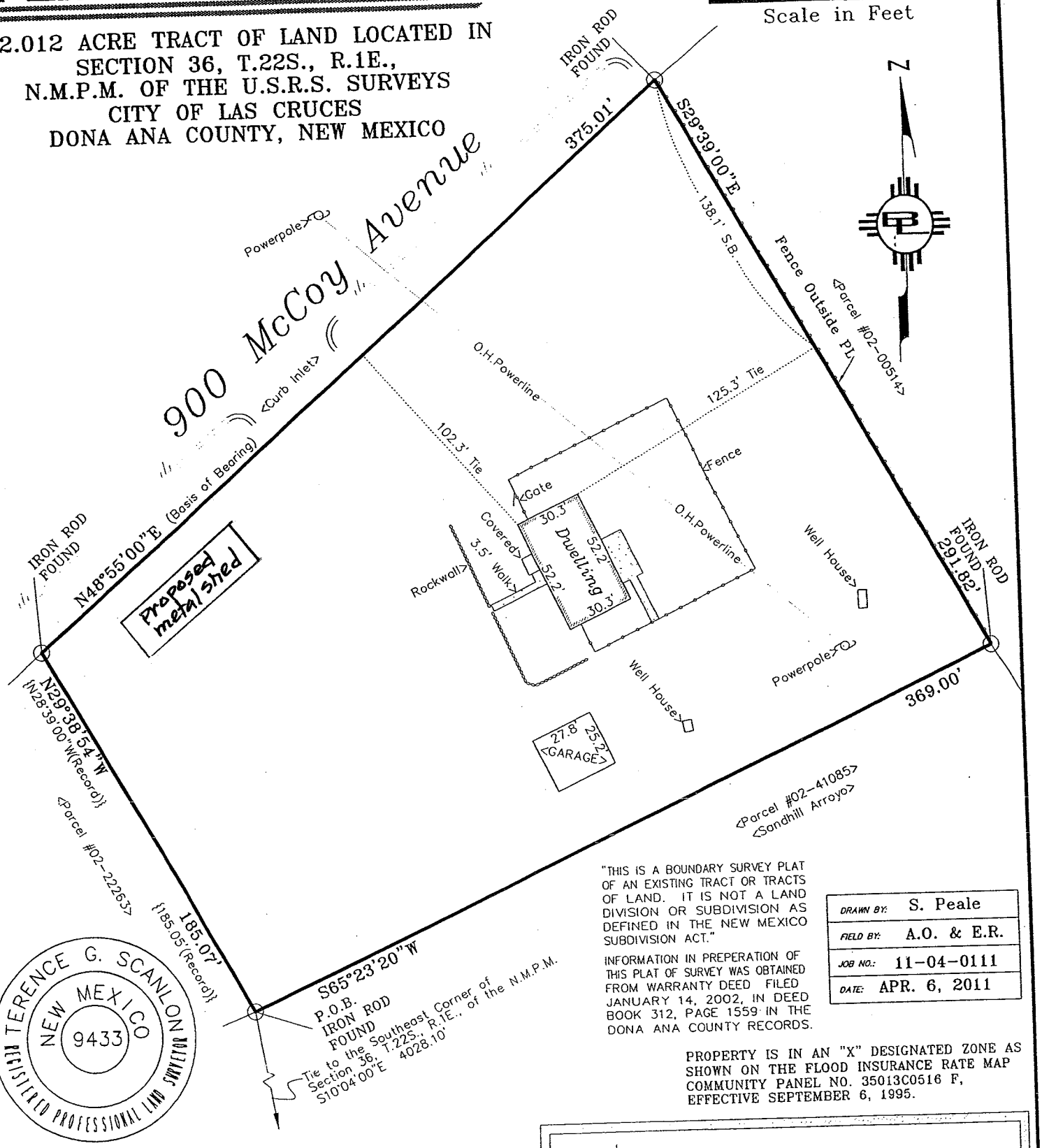
Exhibit "A"

1" = 60'

0 60 120

Scale in Feet

A 2.012 ACRE TRACT OF LAND LOCATED IN SECTION 36, T.22S., R.1E., N.M.P.M. OF THE U.S.R.S. SURVEYS CITY OF LAS CRUCES DONA ANA COUNTY, NEW MEXICO



"THIS IS A BOUNDARY SURVEY PLAT OF AN EXISTING TRACT OR TRACTS OF LAND. IT IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT."

INFORMATION IN PREPERATION OF THIS PLAT OF SURVEY WAS OBTAINED FROM WARRANTY DEED FILED JANUARY 14, 2002, IN DEED BOOK 312, PAGE 1559 IN THE DONA ANA COUNTY RECORDS.

DRAWN BY:	S. Peale
FIELD BY:	A.O. & E.R.
JOB NO.:	11-04-0111
DATE:	APR. 6, 2011

PROPERTY IS IN AN "X" DESIGNATED ZONE AS SHOWN ON THE FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 35013C0516 F, EFFECTIVE SEPTEMBER 6, 1995.

TERENCE G. SCANLON
NEW MEXICO
9433
REGISTERED PROFESSIONAL LAND SURVEYOR

SURVEYOR'S CERTIFICATE

THIS IS TO CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, THAT THIS PLAT WAS PREPARED FROM FIELD NOTES OF AN ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECTION AND THAT IT IS TRUE AND CORRECT, MEETING THE MINIMUM REQUIREMENTS OF THE STANDARDS FOR LAND SURVEYS IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

APR. 6, 2011
DATE OF SURVEY

TED G. SCANLON - PS NO. 9433
2540 TELSHOR BLVD SUITE B, LAS CRUCES, NEW MEXICO 88011

BORDERLAND
ENGINEERS AND SURVEYORS LLC.
2540 N. TELSHOR BLVD. STE B
Las Cruces, New Mexico 88011
Phone: (575) 522-1443
Fax: (575) 522-9958

Exhibit "B"

The Z2856 rezoning approval is based on the following findings:

1. The proposed rezoning to R-1a would be consistent with residential development and zoning in the surrounding area.
2. The rezoning to R-1a would replace an antiquated zoning designation from the 1981 Zoning Code with one that would bring the property into compliance and allow new development on the property consistent with the purposes of the single-family residential zoning designation.
3. The R-1a zoning would allow Accessory Uses and Structures as specified in Section 38-51 of the 2001 Zoning Code, as amended.
4. The rezoning to R-1a meets the Purpose and Intent of the 2001 Zoning Code as specified in Section 38-2.
5. The rezoning to R-1a is consistent with the applicable goals and objectives of the 1999 Comprehensive Plan.
6. City agencies have reviewed the rezoning request and recommend approval.

City of Las Cruces®
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Planning & Zoning Commission Staff Report

Meeting Date: October 23, 2012
Drafted by: Susana Montana, Planner

CASE NO.	Z 2856	**PROJECT NAME:**	900 McCoy Avenue rezoning
APPLICANT/ REPRESENTATIVE:	William D. Wright	**PROPERTY OWNER:**	William D. Wright
LOCATION:	900 McCoy Avenue	**COUNCIL DISTRICT:**	District 1 (Miguel Silva)
SIZE:	2 acres	**EXISTING ZONING/ OVERLAY**	A-2, Rural Agricultural District

REQUEST/ APPLICATION TYPE: Zone change from A-2 (Rural Agricultural) to R-1a (Medium-density Single-family Residential) District

EXISTING USE: Single-family residential.

PROPOSED USE(S): Single-family residential with the addition of a 1,500 square foot (sf) metal storage building.

STAFF RECOMMENDATION: Approval based on the evaluation described in Section 3 and the findings noted in Section 4.

TABLE 1: CASE CHRONOLOGY

Date	Action
8/20/12	Application submitted to Development Services
8/21/12	Case sent out for review to all reviewing departments
9/7/12	All comments returned by all reviewing departments
10/15/12	Staff reviews and recommends approval of the zone change
10/7/12	Newspaper advertisement
10/3/12	Public notice letter mailed to neighboring property owners
10/5012	Sign posted on property
10/23/12	Planning and Zoning Commission public hearing

SECTION 1: SYNOPSIS OF PROPOSAL

The Applicant proposes to rezone the property from a non-conforming designation of A-2 (Rural Agricultural) to R-1a (Medium-density Single-family Residential) District to become compliant with 2001 Zoning Code in order to construct an accessory building for personal use. The property currently contains a single-family residence, garage, and other accessory structures. The Applicant seeks a zoning designation that allows the accessory structures and that is compatible with the surrounding neighborhood

The A-2 District (Rural Agricultural) zoning designation for the property is an antiquated zoning designation from the 1981 Zoning Code and no longer exists. The A-2 District was intended to conserve and protect farms and other open land uses and prevent urban and agricultural land use conflicts. It discouraged small lots or residential subdivisions where public facilities such as water, sewage disposal, trash collection, schools, parks or safety services are not available. Detached single-family homes were allowed in this District as well as the keeping of large animals.

The A-2 District was eliminated by the repeal of the 1981 Zoning Code and the adoption the 2001 City of Las Cruces Zoning Code. Properties with A-2 or other 1981 zoning designations are deemed legal, nonconforming uses can continue to be utilized as they were established in so long as do not expand their land uses, intensity their land uses, expand existing structures, or add additional structures. New development on parcels located in antiquated zoning districts requires a rezone to bring the property into compliance with the 2001 Zoning Code prior to issuance of building permits.

The R-1a District (Single-family medium density) is intended to accommodate single-family site built/manufactured dwelling units, including patio homes and townhouses, and to maintain and protect a medium density residential character of development. This district is also intended to serve as a transition between the single-family high and single-family low density residential development. The maximum density of this district is eight dwelling units per acre. This designation would allow the proposed storage structure on the property, provided the setback requirements and other development standards applicable to the District are met (see Table 2 below).

TABLE 2: DEVELOPMENT STANDARDS & SITE CHARACTERISTICS

Standard	A2 Req	R-1a Req	Existing	Proposed
Max # of DU/parcel	N/A	1	1	1
Max Density (DU/ac.)	N/A	8	0.5	0.5
Minimum Lot Area	10 acres	5,000 sf	2 acres	2 acres
Min. Lot Width	120'	50'	375'	375'
Min. Lot Depth	200'	70'	185' to 291' (odd shaped parcel)	185' to 291'
Structure Height	35'	35'	14	14'
Setbacks				
Front	50'	15'	102' (front yard is McCoy frontage)	25'
Side (West)	20'	5'	125'	15' to 50'*
Side (East)	20'	5'	213'	275' to 310'
Rear	50'	20'	185'	130'

TABLE 2: DEVELOPMENT STANDARDS & SITE CHARACTERISTICS CONT.

Standard	A2 Req	R-1a Req	Existing	Proposed
Accessory Structure				
Max. height	15'	35'	14'	14'
Max. lot coverage	30% of rear yard	30% of rear yard	13% (700 sf) of rear yard	13% (700 sf) of rear yard
Max. size of accessory structures on lots > ½ acre	Max. size of 800 sf with 15' rear yard setback and 7' side setbacks	Tier 3 Accessory Structure: 5% of lot size	Less than 1%	Less than 3%
* The proposed accessory building would meet required setbacks.				

TABLE 3: SPECIAL CHARACTERISTICS

Characteristic	Applies to Project?	Explanation
EBID Facilities	No	
Medians/ Parkways Landscaping	No	
Other	N/A	

TABLE 4: ADJACENT ZONING AND LAND USE INFORMATION

Location	Existing Use	Overlay District	Zoning Designation
Subject Property	Single-family dwelling	None	A-2 (Rural Agricultural)
North	Vacant lot	None	R-1a (medium-density single-family residential)
South	Vacant lot	None	A-1 (Flood Control)
East	Single-family dwelling	None	R-1a (medium-density single-family residential)
West	Vacant lot	None	A-1 (Flood Control)

TABLE 5: PARCEL HISTORY

Number	Status
Permit	No permit history
Ordinance	No legislative history
Resolution	None

SECTION 2: REVIEWING DEPARTMENT/AGENCY RECOMMENDATIONS

For specific comments and/or conditions, see Attachment 7

Department Name	Approval (Yes/No)	Conditions (Yes/No)
CLC Development Services	Yes	No
CLC Long-Range Planning	Yes	No
Metropolitan Planning Organization (MPO)	Yes	No
CLC CD Engineering Services	Yes	No
CLC Traffic	Yes	No
CLC Land Management/ROW	Yes	No
CLC Parks / Facilities	Yes	No
CLC Fire & Emergency Services	Yes	No
CLC Utilities	Yes	No
DAC Community Development (Planning)	Yes	No
Neighborhood Association	None	N/A
Other:	N/A	N/A

SECTION 3: STAFF ANALYSIS AND CONCLUSIONS

Decision Criteria

The Planning and Zoning Commission shall review each request in relation to the goals, objectives and policies of the comprehensive plan, plan elements, other applicable plans, and the purpose and intent of this Code, Section 38-2 and 36-1 of the sign code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria. The Las Cruces Municipal Code Section 2-382 specifies the Planning and Zoning Commission shall determine whether a proposal will:

1. Impair an adequate supply of light and air to adjacent property or otherwise adversely adjoining properties.
2. Unreasonably increase the traffic in public streets.
3. Increase the danger of fire or endanger the public safety.
4. Deter the orderly and phased growth and development of the community.
5. Unreasonably impair established property values within the surrounding area.
6. In any other respect impair the public health, safety or general welfare of the city.
7. Constitute a spot zone and, therefore, adversely affect adjacent property values. The term "spot zoning" means the singling out of a lot or small area for a zoning change which is out of harmony with the comprehensive plan and surrounding land uses to secure special benefits for a particular property owner without regard for the rights of adjacent landowners.
8. Be in harmony with the purpose and intent of the zoning code, sign code, design standards and other companion codes.

In addition to those decision criteria required by the City of Las Cruces Municipal and Zoning Codes, there are also measures based on case law to consider when evaluating rezoning requests which include the following:

1. There was an error when the existing zoning map pattern was created; or
2. Changed neighborhood or community conditions justify the change; or

3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other applicable City master plan(s), even though criterion (1) or (2) above do not apply because
   a. there is a public need for a change of the kind in question, and
   b. that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

Applicable Comprehensive Plan Elements & Policies

As specified by the decision criteria listed above, the proposal should be in concert with the 1999 Comprehensive plan. The following polices from the 1999 Comprehensive Plan are relevant to the current proposal:

Land Use Element, Goal 1 (Land Uses)

Policy 1.2.2 *Agriculture and ranching activities are encouraged in the fringe areas of the City.*

Policy 1.3.1 *An urban residential use shall be so designated where these uses occur at a density of greater than two dwelling units per acre. A rural residential use shall be so designated where these uses occur at a density of less than or equal to two dwelling units per acre.*

Policy 1.3.5 *All residential development shall address the following urban design criteria: compatibility to the adjacent neighborhood in terms of architectural design, height/density, and the provision of landscaping. Architectural and landscaping design standards for residential uses shall be established in the Comprehensive Plan Urban Design Element*

Policy 1.3.3. *An assortment of lot sizes should be provided for single-family residential developments to promote a variety of lifestyles within the community. With small urbanized lots (such as 3,500 square feet parcels) to large tracts of land (five acres in size), the City shall address all segments of the population.*

Policy 1.3.16 *The City shall encourage rural residential uses in the north and south fringe areas of the City.*

Growth Management Element, Goal 2

Policy 2.1.6 *The City shall discourage "leap frog" growth. "Leap frog" growth shall be defined as any development proposed beyond the predominantly urbanized area and lacks readily available infrastructure. Such development bypasses areas of vacant or rural land and requires the extension of new roads, utilities, and other facilities in accordance to City specifications.*

Urban Design Element, Appendix, Mitigation Techniques

Compatibility: New development should be compatible with the surrounding area/neighborhood. Compatibility does not mean that new development must replicate existing design characteristics, but that the developer should take design characteristics into consideration when designing the development/structure. Form, scale, structure, lay-out, materials, landscaping, and over-all design are attributes which should respect the character of the existing neighborhood.

Applicable Purposes and Intents of the 2001 Zoning Code

Additionally, Section 38.2 of the City of Las Cruces 2001 Zoning Code, as amended, identifies the Purposes and Intent of the Zoning regulations and should also be utilized as part of the decision criteria. The relevant purpose and intent statements to the proposed rezoning are:

A. Ensure that all development is in accordance with this Code and the Las Cruces Comprehensive Plan and its elements;

C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses;

L. Ensure that development proposals are sensitive to the character of existing neighborhoods;

M. Foster a more rational relationship between different land uses for the mutual benefit of all; and

Q. Mitigate conflicts among neighbors.

Conclusion

The current zoning designation of A-2, Rural Agriculture, is a remnant of the 1981 Zoning Code and no longer exists in the 2001 Zoning Code. The non-conforming use provisions of the 2001 Zoning Code effectively "freeze" the subject property in place as no expansion of the home or garage can take place. In order to create a usable space for his hobby in his retirement years, the Applicant seeks a rezoning to a compatible zoning designation to allow the construction of an accessory structure for personal use. The current A-2 designation is not reflective of the scale and type of development that has taken place over the past twelve years since the 1981 Zoning Code was replaced by the 2001 Zoning Code. Since 1981, there has been a significant change in the type, scale and density of development in the vicinity and area and the neighborhood surrounding the subject property has developed into a suburban residential neighborhood with the exception of adjacent vacant lands to the west and south which are located within the floodplain.

The subject property lies along the northwest edge of the City limits and is surrounded on three sides by vacant lands. The vacant land to the north is zoned R-1a (Medium density, single-family residential) and the vacant lands to the west and south are zoned A-1, the 1981 Flood Control District, which is equivalent to FC, Flood Control Zoning District, in the 2001 Zoning Code. The property abutting the Site to the east is a 2-acre single-family residential property zoned R-1a.

The more rural zoning designations of Equestrian Estate (EE) or Residential Estate (RE) allow for the raising and keeping of animals and would be similar to the intent of the 1981 zoning designation of A-2. These 2001 zoning designations were initially reviewed as potential zones for the proposal; however, the Applicant does not wish to keep large animals on the property nor are any of the adjacent properties zoned EE or RE. Although the EE or RE district would serve as a transition zone from the flood zone designation to the west (A-1 zone) and the medium-density residential districts to the north, east and south (R-1a zones), rezoning the subject property to the R-1a designation would be consistent with nearby suburban-scale residential neighborhoods, would be suitable for the applicant's future development needs, would be more consistent with the zoning designations of developed properties to the northeast, east and southwest, and would provide a transition to the adjacent Extra-Territorial Zone (ETZ) lands to the northeast which are currently zoned ER4 (single-family residential; one-half acre minimum lot size).

The rezoning to the R-1a zoning designation from the antiquated A-2 designation is deemed justified and appropriate for the following reasons:

1. There has been a significant change in the neighborhood conditions over the past two decades with R-1a-type medium-density, suburban-scale development taking place on adjacent and nearby properties;
2. The current owner does not wish to keep large animals on the property consistent with more rural zoning designations;
3. The rezoning would accommodate the Applicant's desire to build an accessory structure for personal use;
4. The rezoning would not increase traffic, impair light and air to the adjacent properties, nor would it deter orderly growth in the area;

5. It would not constitute a "spot zoning" for the Site; and
6. The rezoning meets the decision criteria outlined in City Regulations.

SECTION 4: STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the project based on the following findings:

FINDINGS FOR APPROVAL

1. The proposed rezoning to R-1a would be consistent with residential development and zoning in the surrounding area;
2. The rezoning to R-1a would replace an antiquated zoning designation from the 1981 Zoning Code with one that would bring the property into compliance and allow new development on the property consistent with the purposes of the single-family residential zoning designation;
3. The R-1a zoning would allow Accessory Uses and Structures as specified in Section 38-51 of the 2001 Zoning Code, as amended;
4. The rezoning to R-1a meets the Purpose and Intent of the 2001 Zoning Code as specified in Section 38-2;
5. The rezoning to R-1a is consistent with the applicable goals and objectives of the 1999 Comprehensive Plan; and
6. City agencies have reviewed the rezoning request and recommend approval.

ALTERNATE FINDINGS AND CONDITIONS

If the Planning and Zoning Commission deems the zone change unsubstantiated, staff recommends the following alternate findings for **DENIAL**:

FINDINGS FOR DENIAL

1. A rezoning to a more rural land use designation, such as Single-Family Equestrian Estate and Agriculture (EE) or Single-Family Residential Estates (RE), would provide a better transition between the flood zone lands to the northwest, west and south and the R-1a Medium Density Single Family Residential properties to the northeast, east and southeast.

ATTACHMENTS

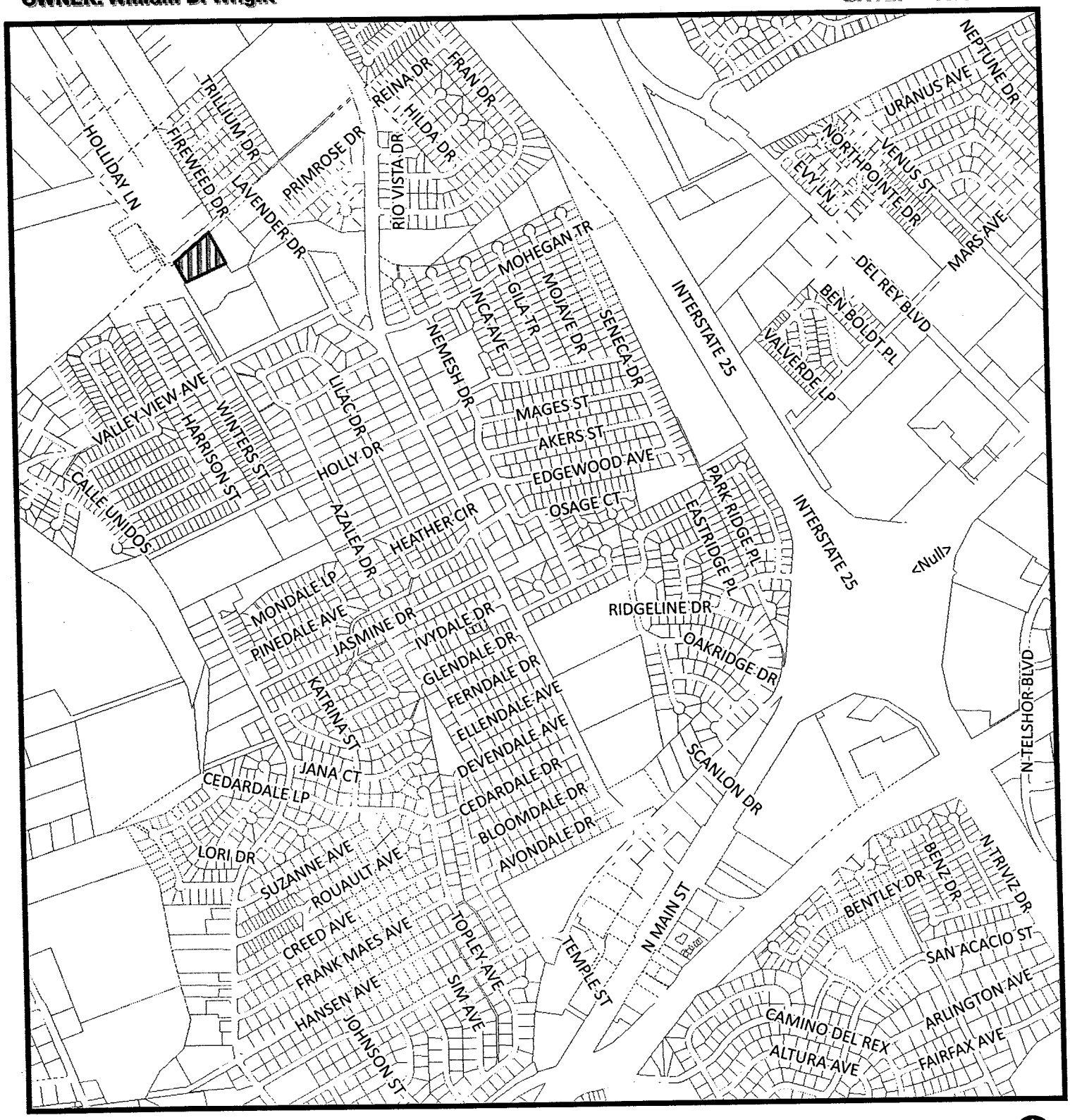
1. Location Vicinity Map
2. Aerial Site Map
3. Area Zone Map
4. Site Zone Map
5. Site Plan
6. Sample building type image
7. Development Statement/Application
8. Department Comments

1

ZONING: A-2 to R-1a
OWNER: William D. Wright

Location Vicinity Map

PARCEL: 02-00512
DATE: 10/15/12



Feet

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

Legend

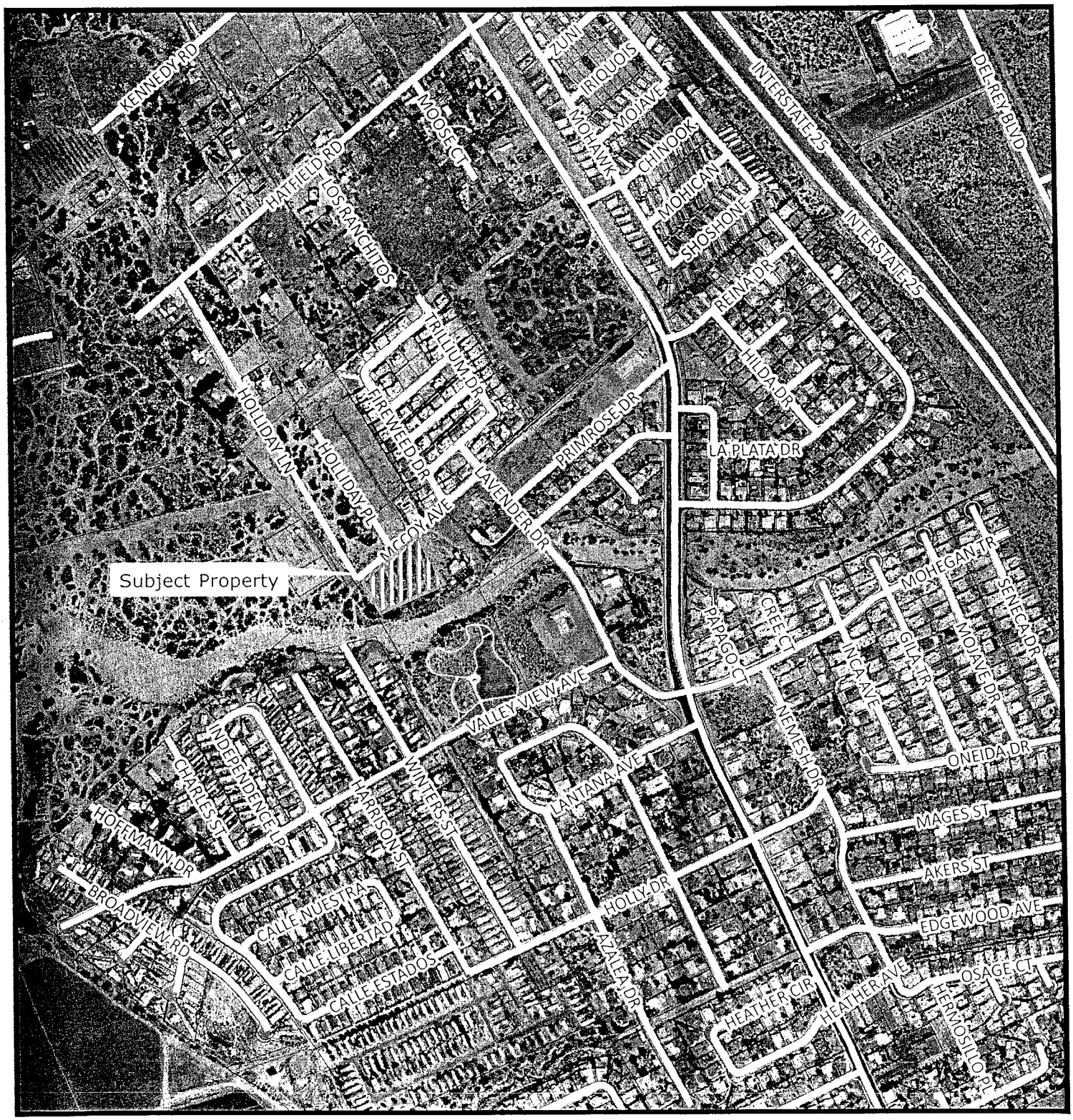
City Parcels

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.

ZONING: A-2 to R-1a
OWNER: William D. Wright

Aerial Site Map

PARCEL: 02-00512
DATE: 10/15/12



15075 0 150 300 450 600 750 9001,050 1,200
Feet

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

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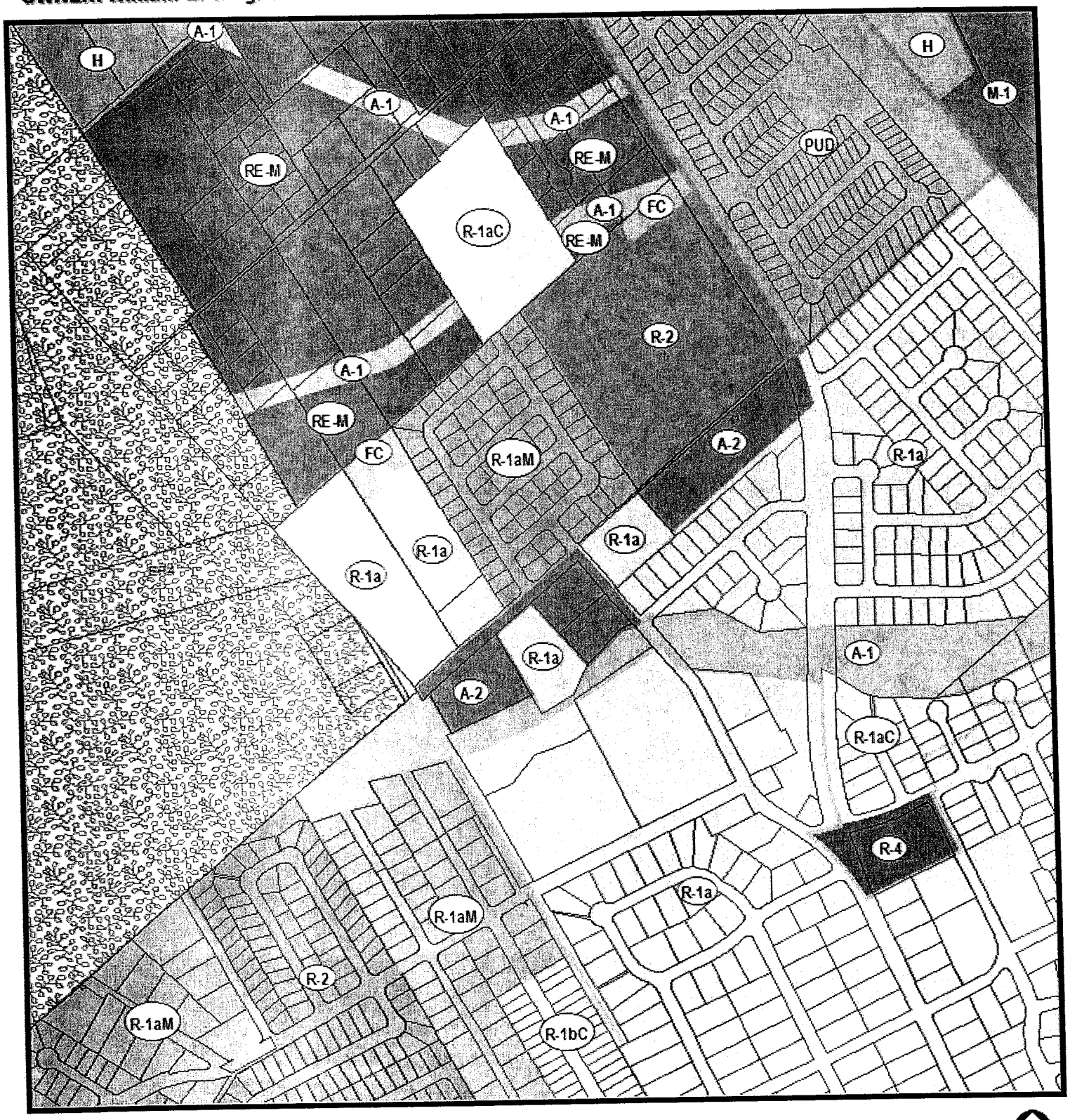
5

ZONING: A-2 to R-1a
OWNER: William D. Wright

Zone Map

PARCEL: 02-00512
DATE: 09/18/2012



15075 0 150 300 450 600 750 900 Feet

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

Legend
SITE_Zoning

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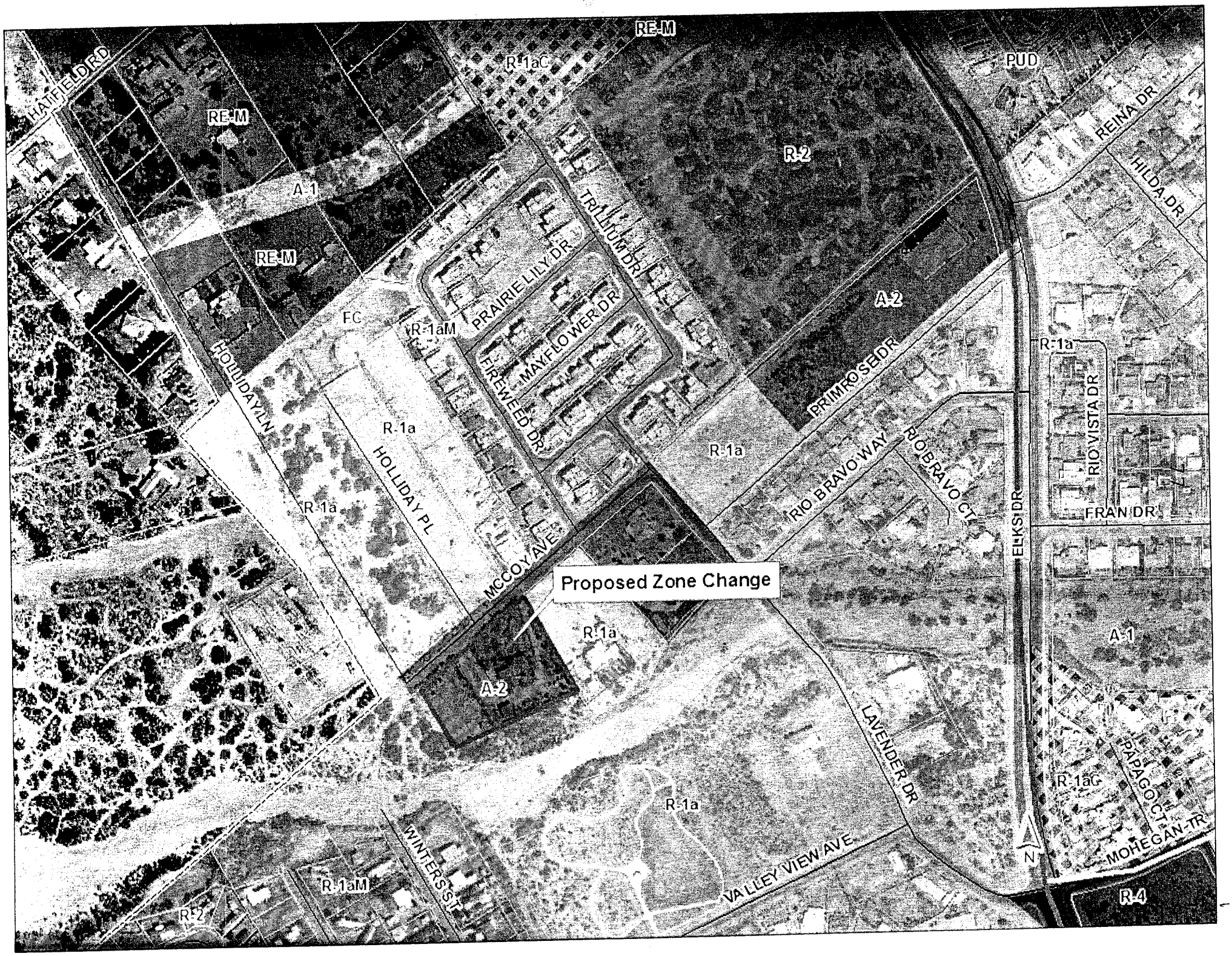

RE-M
R-1aC
PUD
HATFIELD RD
RE-M
R-2
REINA DR
HILDA DR
A-1
TRILLIUM DR
RE-M
PRAIRIE LILY DR
A-2
FC
R-1aM
MAYFLOWER DR
R-1a
HOLLIDAY LN
FIREWEED DR
PRIMROSE DR
R-1a
R-1a
HOLLIDAY PL
RIO BRAVO WAY
ROBRAVO CT
RIO VISTA DR
R-1a
ELKS DR
FRAN DR
MCCOY AVE
Proposed Zone Change
R-1a
A-1
A-2
LAVENDER DR
R-1aG
PAPAGO CT
R-1a
MOHEGAN TR
WINTERS ST
N
R-1aM
VALLEY VIEW AVE
R-4
R-2

PLAT OF SURVEY

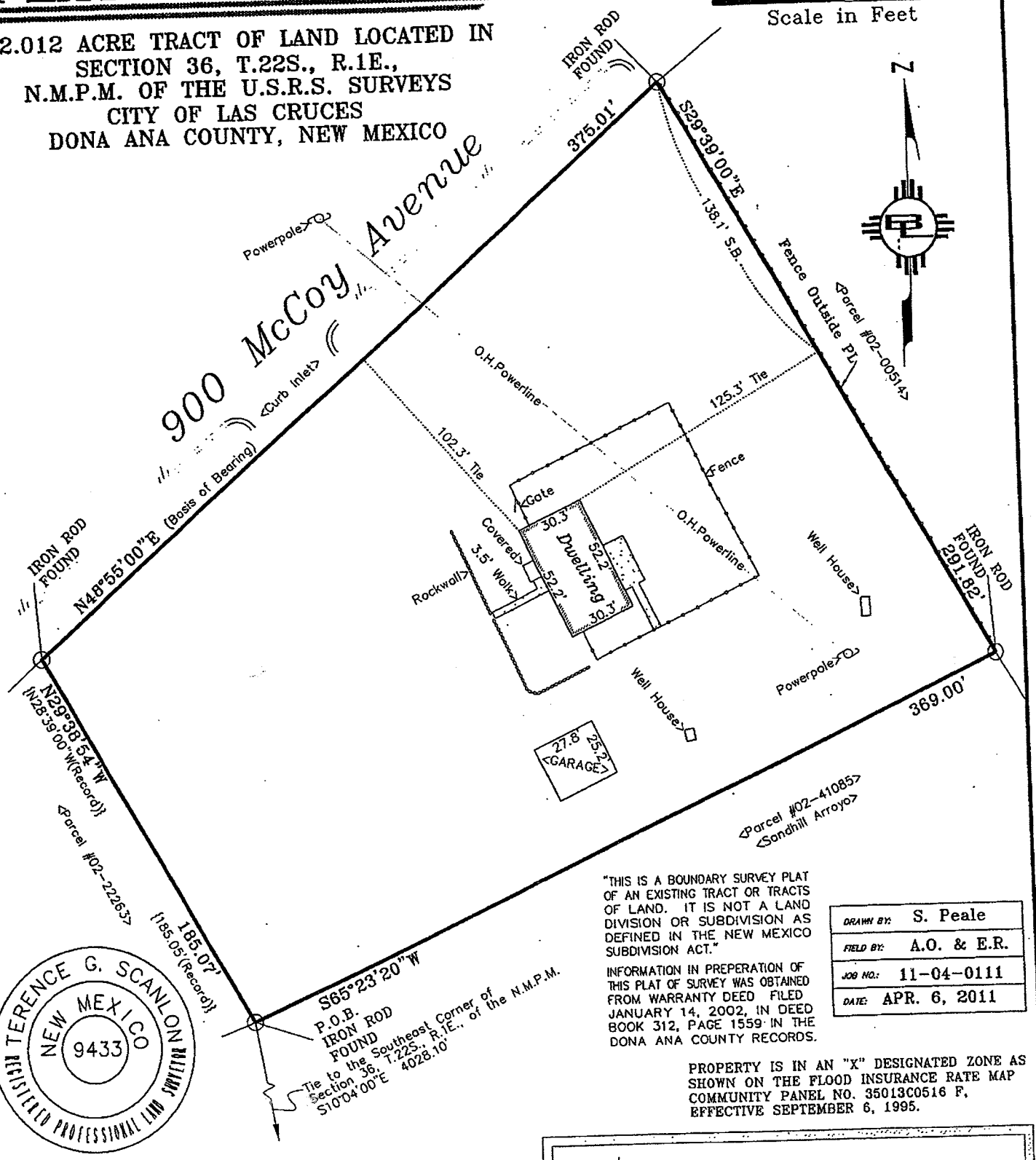
78 02-00512

1" = 60'

0 60 120

Scale in Feet

A 2.012 ACRE TRACT OF LAND LOCATED IN SECTION 36, T.22S., R.1E., N.M.P.M. OF THE U.S.R.S. SURVEYS CITY OF LAS CRUCES DONA ANA COUNTY, NEW MEXICO



"THIS IS A BOUNDARY SURVEY PLAT OF AN EXISTING TRACT OR TRACTS OF LAND. IT IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT."

INFORMATION IN PREPERATION OF THIS PLAT OF SURVEY WAS OBTAINED FROM WARRANTY DEED FILED JANUARY 14, 2002, IN DEED BOOK 312, PAGE 1559 IN THE DONA ANA COUNTY RECORDS.

DRAWN BY:	S. Peale
FIELD BY:	A.O. & E.R.
JOB NO.:	11-04-0111
DATE:	APR. 6, 2011

PROPERTY IS IN AN "X" DESIGNATED ZONE AS SHOWN ON THE FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 35013C0516 F, EFFECTIVE SEPTEMBER 6, 1995.

TERENCE G. SCANLON
NEW MEXICO
9433
REGISTERED PROFESSIONAL LAND SURVEYOR

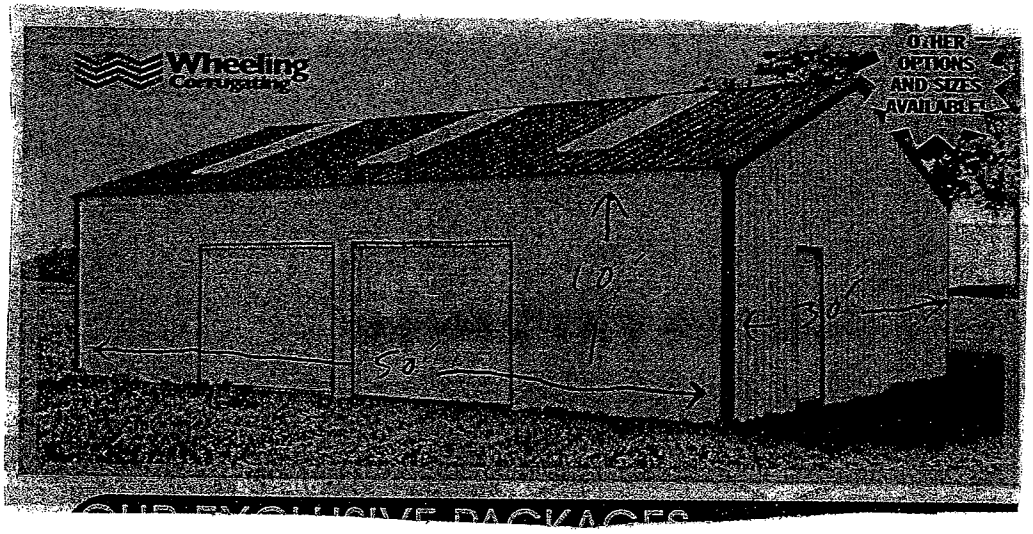
SURVEYOR'S CERTIFICATE

THIS IS TO CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, THAT THIS PLAT WAS PREPARED FROM FIELD NOTES OF AN ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECTION AND THAT IT IS TRUE AND CORRECT, MEETING THE MINIMUM REQUIREMENTS OF THE STANDARDS FOR LAND SURVEYS IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

APR. 6, 2011
DATE OF SURVEY

TED G. SCANLON - PS NO. 9433
2540 TELSHOR BLVD SUITE B, LAS CRUCES, NEW MEXICO 88011

BORDERLAND
ENGINEERS AND SURVEYORS LLC.
2540 N. TELSHOR BLVD. STE B
Las Cruces, New Mexico 88011
Phone: (575) 522-1443
Fax: (575) 522-9958


Wheeling
Corrugating
OTHER
OPTIONS
AND SIZES
AVAILABLE
10'
50'
30'

AUGUST 31 2012

TO WHOM IT MAY CONCERN:

I William D. WRIGHT, WOULD LIKE TO AMEND MY APPLICATION FOR REZONING OF MY 2 ACRES OF PROPERTY AT 900 McCOY AVE, LAS CRUCES N.M. 88007 FROM EE TO RIA FOR THE PURPOSE OF BUILDING A 1500 FT SQ GARAGE ON THE SW SIDE OF THE PROPERTY.

THIS LETTER SUBMITTED ON AUG. 31. 2012

Sincerely, William D. Wright

RECEIVED
AUG 3 1 2012
CITY OF LAS CRUCES
DEVELOPMENT SERVICES

7b

City of Las Cruces®
PEOPLE HELPING PEOPLE

CITY OF LAS CRUCES DEVELOPMENT APPLICATION

700 N. Main Street, Suite 1100 or PO Box 20000, Las Cruces, New Mexico 88004
(575) 528-3043 (Voice) (575) 528-3155 (FAX) 1-800-659-8331 (TTY)

A preapplication meeting is required prior to the filing of an application at which the subdivider shall submit a concept plan of the proposed development to the community development staff for review.
Community Development staff will not accept incomplete applications.

The City of Las Cruces does not discriminate on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability in the provision of services. **The City of Las Cruces will make reasonable accommodation for a qualified individual who wishes to attend this meeting. Please notify the City Community Development Department at least 48 hours before the meeting by calling (575) 528-3043 (voice) or 1-800-659-8331 (TTY) if accommodation is necessary.** This document can be made available in alternative formats by calling the same numbers listed above.

(Case # Z2856)

SUBJECT PROPERTY ADDRESS: 900 McCOY AVE. LAS CRUCES 88007

PROPERTY TAX ID# 4-000-132-476-124 **PARCEL ID#** 02-00512

PROPERTY OWNER(S) of record: William D. WRIGHT

Address: 900 McCOY AVE. City LAS CRUCES State NM Zip 88007

Phone: Home(575) 523-0286 Work( ) Mobile( ) Fax( )

APPLICANT/CONTACT PERSON: If different from owner, additional space provided on the back.

Name: William D. WRIGHT Title/Company:

Address: 900 McCOY AVE. City LAS CRUCES State NM Zip 88001

Phone: Home(575) 523-0286 Work( ) Mobile( ) Fax( )

email address:

Check and complete all boxes that apply:

	PLANNING AND ZONING COMMISSION		
✓	Zoning From A-2 to EE		Master Plan
	Variance From to		Preliminary Plat
	Special Use Permit (SUP)		Final Plat
	New / Renewal/Time Ext. / Amendment		Replat
	Planned Unit Development (PUD)		Alternate Summary
	1. Concept Approval		Infill Sub. Conceptual Plan
	2. Final Site Plan Approval		Vacation Subdivision
	3. Amendment		Annexation Petition/Plat/Initial Zoning Req.
	4. Renewal / Time Extension		
	West Mesa Ind. Park		University District
	Infill Development Requests(s):		South Mesquite
APPEAL TO:		PLANNING & ZONING COMMISSION	CITY COUNCIL

7.c

SIGNATURE(S): By signing the a lication, you hereby acknowledge t **ALL** the information submitted on and with this application is true and correct to the best of your knowledge. No application will be accepted without the original signature of the owner(s) of record of the described property. If more than one owner, **ALL** owners must sign the application.

Owner(s):

Would the property owner like to receive a copy of all correspondence sent to the applicant?

Property Owner Please Initial: Yes WDW. **No** _____

_____ Date 8-20-2012

Property Owner 1

William D. Wright Date 8-20-2012

Property Owner 2

_____ Date _____

Applicant/Representatives(s), if different from owner:

NOTE: The Owner, Applicant or legal representative must attend all public hearings.

ADDITIONAL APPLICANTS / CONTACT PERSONS, if different from owner:

Property Owner 1:

Name: William D. WRIGHT Title/Company: _____

Address: 900 McCOY AVE. City LAS CRUCES State NM Zip 88007

Phone-Home (575) 523-0286 Work(___) _____ Mobile(___) _____ Fax(___) _____

Property Owner 2:

Name: _____ Title/Company: _____

Address: _____ City _____ State ____ Zip _____

Phone-Home (____) _____ Work(____) _____ Mobile(____) _____ Fax(____) _____

Applicant/Representative:

Name: _____ Title/Company: _____

Address: _____ City _____ State ____ Zip _____

Phone-Home (____) _____ Work(____) _____ Mobile(____) _____ Fax(____) _____

**********STAFF USE ONLY**********

Accepted by:	LU	Fee Paid:	$ 600	Date Fee Paid	8/20/12
Receipt No.	# 3519456	Check Number	# 1393	Case Number	ZC856
Submittal Date	8/20	Submittal Complete		Assigned to:	SM

DEVELOPMENT STATEMENT for **City Subdivision/Zoning Applications**

Please note: The following information is provided by the applicant for information purposes only. The applicant is not bound to the details contained in the development statement, nor is the City responsible for requiring the applicant to abide by the statement. The Planning and Zoning Commission may condition approval of the proposal at a public hearing where the public will be provided an opportunity to comment.

Applicant Information

Name of Applicant: William D. WRIGHT

Contact Person: SAME

Contact Phone Number: 575-523-0286

Contact e-mail Address: —

Web site address (if applicable): —

Proposal Information

Name of Proposal: 30'x50' 1500 SQ FT. GARAGE ON CONCRETE SLAB

Type of Proposal (single-family subdivision, townhouse, apartments, commercial/industrial)

GARAGE (METAL) FOR STORAGE OF ANTIQUE AUTOMOBILES

Location of Subject Property 900 McCOY AVE LAS CRUCES 88007

(In addition to description, attach map. Map must be at least 8 ½" x 11" in size and clearly show the relation of the subject property to the surrounding area)

Acreage of Subject Property: 2.0

Detailed description of **current** use of property. Include type and number of buildings:

RESIDENTIAL 1 HOUSE 52.2' X 30.3' EXISTING GARAGE 27.8' X 25.2' BOTH WOODFRAME STUCCO

Detailed description of **intended** use of property. (Use separate sheet if necessary):

I WOULD LIKE TO HAVE ERECTED A 30'X50' METAL GARAGE BUILDING ON A CONCRETE SLAB FOR PERSONAL USE STORAGE OF MY VINTAGE AUTOMOBILES. CURRENT ZONING LIMITS SIZE

Zoning of Subject Property: A-2 REZONE TO EE OR RE

Proposed Zoning (If applicable): EE

Proposed number of lots 1, to be developed in _____ phase (s).

Proposed square footage range of homes to be built from _____ to _____

Proposed square footage and height of structures to be built (if applicable):
30'x 50' 1500 SQ FT. APPROX 14' IN HEIGHT

Anticipated hours of operation (if proposal involves non-residential uses):
personal use only

Anticipated traffic generation _____ trips per day.

Anticipated development schedule: work will commence on or about _____

and will take _____ to complete.

How will stormwater runoff be addressed (on-lot ponding, detention facility, etc.)?

_____

Will any special landscaping, architectural or site design features be implemented into the proposal (for example, rock walls, landscaped medians or entryways, entrance signage, architectural themes, decorative lighting)? If so, please describe and attach rendering (rendering optional). _____

_____

_____

Is the developer/owner proposing the construction of any new bus stops or bus shelters? Yes ___ No X Explain: _____

Is there existing landscaping on the property? DESERT

_____

Are there existing buffers on the property? _____

_____

Is there existing parking on the property? Yes ✓ No ___

If yes, is it paved? Yes ___ No ✓

How many spaces? _____ How many accessible? _____

Attachments

Please attach the following: (* *indicates optional item*)

Location map

Subdivision Plat (If applicable)

Proposed building elevations

*renderings of architectural or site design features

*other pertinent information

Dona Ana County--Planning
REZONING Case Review Sheet

R.O.W: 900 McCoy Avenue

Case #: Z2856 Date: August 31, 2012

Request: Zone Change Request from A-2 to R-1a

COMMENTS: Request for R-1a zoning appears to fit with surrounding area zoning. No comments at this time

STM
Madown

RECOMMENDATION: ✓ APPROVAL _____ DENIAL

Z2856 (A-2 to R-1a) September 4, 2012

Advanced Planning Comments (Carol McCall)

Conclusions

This request for a zone change from A-2 to R-1a brings the 2-acre parcel into compliance with the 2001 Zoning Code. The A-2 designation is left over from the 1981 Zoning Code and is no long used. The zone change request is consistent with residential land use policies in the 1999 Comprehensive Plan and is also consistent with surrounding zoning which is primarily medium and low density single family residential. Therefore, staff supports the proposal.

The following polices from the 1999 Comprehensive Plan are relevant to the current proposal:

Land Use Element Goal 1

Residential (R-1a)

Policies

1.3. 1. An urban residential use shall be so designated where these uses occur at a density of greater than two dwelling units per acre. A rural residential use shall be so designated where these uses occur at a density of less than or equal to two dwelling units per acre.

1.3.3. An assortment of lot sizes should be provided for single-family residential developments to promote a variety of lifestyles within the community. With small urbanized lots (such as 3,500 square feet parcels) to large tracts of land (five acres in size), the City shall address all segments of the population.

1.3.4. High density uses shall be encouraged to concentrate in and around transportation and communication corridors, thereby supporting a mixed distribution of uses. Lower and rural density residential uses shall be located away from such corridors.

1.3.5. All residential development shall address the following urban design criteria: compatibility to the adjacent neighborhood in terms of architectural design, height/density, and the provision of landscaping. Architectural and landscaping design standards for residential uses shall be established in the Comprehensive Plan Urban Design Element.

1.3.10. High density residential uses shall be located and designed to minimize traffic flow through adjacent neighborhoods and should locate on or near existing or future planned transit routes.

1.3.14 The City shall encourage urban residential development on the East Mesa.

1.3.16. The City shall encourage rural residential uses in the north and south fringe areas of the City.

City of Las Cruces
Planning and Zoning Commission
Rezoning Case Review Sheet

PARKS:

Case #: Z2856 Date: August 21, 2012

Request: 900 McCoy Avenue; rezoning from A2 to EE

Are park impact fees going to be assessed for the proposed development?
Yes _____ No X

If no, why?
No new dwelling units

COMMENTS:

RECOMMENDATION: _____**APPROVAL** _____**DENIAL**

City of Las Cruces®
PEOPLE HELPING PEOPLE

Rezoning Case Review Sheet

To: Engineering Services - Drainage

Case #: Z2856 Date: August 21, 2012

Request: 900 McCoy Avenue, zone change from A-2 to EE

FLOOD ZONE DESIGNATION:

Zone A	(Flood elevation needed)	____
Zone AE	(Flood elevation known)	____
Zone AH	(Flood 1' – 3' ponding)	____
Zone AO	(Flood 1' – 3' – steep slopes)	____
Zone A99	(100-year flood)	____
Zone X		X
Zone X(500)	(500 Yr. flood zone)	____
Zone D	(Unknown flood determination)	____

DEVELOPMENT IMPROVEMENTS:

Drainage Calculation needed	YES ___	NO X	N/A ___
Drainage Study needed	YES ___	NO X	N/A ___
Other drainage Impr. needed	YES ___	NO X	
Sidewalk extension needed	YES ___	NO X	
Curb & gutter extension needed	YES ___	NO X	
Paving extension needed	YES ___	NO X	
NMDOT permit needed	YES ___	NO X	

DEPARTMENTAL RECOMMENDATION & OTHER COMMENTS:

Recommendation: X Approval _____ Denial

Rocio Domínguez

CITY OF LAS CRUCES
PLANNING AND ZONING COMMISSION
CASE REVIEW SHEET

CASE #: Z2856 DATE: 08/21/12

REQUEST: A-2 to EE

WATER AVAILABILITY & CAPACITY*

Water Provider

CLC _____

Other Well

CLC Water System capable of handling increased usage

Yes _____

No _____

Comment: _____

WASTEWATER AVAILABILITY & CAPACITY*

Wastewater service type

CLC Sewer _____

On-lot Septic ✓

CLC Wastewater System capable of handling increased usage

Yes _____

No _____

Comment: _____

NATURAL GAS AVAILABILITY & CAPACITY*

Natural Gas Provider

City of Las Cruces ✓

Other _____

CLC Gas System capable of handling increased usage:

Yes ✓

No _____

Comment: _____

**** To receive City utility service to this property, the property owner/applicant/subdivider is responsible for (1) the acquisition of all necessary water, sewer, and gas easements, (2) the construction of all necessary utility lines, and (3) compliance with all applicable City of Las Cruces requirements.***

Additional comments: No utility issues.

John Reid
08/27/12

City of Las Cruces
Planning and Zoning Commission
Rezoning Case Review Sheet

RECEIVED
AUG 22 2012
L.C. FIRE PREVENTION

FIRE PREVENTION & EMERGENCY SERVICES BUREAU:

Case #: Z2856 Date: August 21, 2012

Request: 900 McCoy Avenue; rezoning from A2 to EE

ACCESSIBILITY ISSUES: *

	CONCERN		
	Low	Medium	High
Building Accessibility	X		
Secondary Site/Lot Accessibility	X		
Fireflow/Hydrant Accessibility	X		

Type of Building Occupancy: R

Closest fire department that will service this property:

Name Station 6

Address/ Location 2750 Northrise

Distance from subject property (miles) 3 mi

Adequate capacity to accommodate proposal? Yes X No ____

Explain: ____

Any new improvements, at either the time of subdivision or building permit, will require conformance with City of Las Cruces Design Standards, Subdivision Code, Building Code, and/or Fire Code.

DEPARMENTAL RECOMMENDATION & OTHER COMMENTS:

Recommendation: X Approval ____ Denial

City of Las Cruces
Planning and Zoning Commission
Rezoning Case Review Sheet

TRAFFIC ENGINEERING:

Case #: Z2856 Date: August 21, 2012

Request: 900 McCoy Avenue, rezoning from A2 to EE

SITE ACCESSIBILITY: *

Adequate deriving aisle	Yes ___	No ___	N/A ✓
Adequate curb cut	Yes ✓	No ___	N/A ___
Intersection sight problems	Yes ___	No ___	N/A ✓
Off-street parking problems	Yes ✓	No ___	N/A ___

ON-STREET PARKING IMPACTS:

None ✓ Low ___ Medium ___ High ___

Explain: _____

FUTURE INTERSECTION IMPROVEMENTS:

Yes ___ If yes, what intersection? _____
No ✓ when (timeframe)? _____

Is a TIA required? Yes ___ No ✓

If yes, please provide findings: _____

Any new improvements, at either the time of subdivision or building permit, will require conformance to either the City of Las Cruces Curb Cut Ordinance #1250, the City of Las Cruces Design Standards, or the City of Las Cruces Zoning Code (2001, as amended).

DEPARTMENTAL RECOMMENDATION & OTHER COMMENTS:

Recommendation: ✓ Approval ___ Denial

Kimla Espinoza 9/5/12

MPO REZONING REVIEW COMMENTS
Planning and Zoning Commission Cases

Case #: Z2856 Date: August 21, 2012

Request: 900 McCoy Avenue

MPO Thoroughfare	Dist. to Thor.	Functional Class	MTP Class	ROW Required	Dist. to Transit	AADT (year)	Current Bike Fac.	Planned Bike Fac.
N/A								

Recommended Conditions of Approval

No MPO thoroughfares present in the area.

Additional Comments

9i

City of Las Cruces
Planning and Zoning Commission
Rezoning Case Review Sheet

R.O.W. 900 McCoy Avenue

Case #: Z2856 Date: August 21, 2012

Request: rezoning from A2 to EE

COMMENTS:

RECEIVED
AUG 2 2 2012
CITY OF LAS CRUCES
LAND MANAGEMENT

RECOMMENDATION: ___X___ APPROVAL _____ DENIAL

8j

City of Las Cruces®
PEOPLE HELPING PEOPLE

DATE: August ~~8~~ 21, 2012

TO: Development Services

FROM: Susana Montana, Planner

CASE NO.: Z2856 (Review No.1)

SUBJECT: 900 McCoy Avenue
Zone Change from A2 to EE

Attached are a brief description, general location/address, and/or site plans for a proposed rezoning request. Please make comments on the following proposal in response to the impacts that it may have on the City from the standpoint of your City function, activity, department, or other jurisdiction.

Your review comments may be included in the staff report on the proposed development for the Planning and Zoning Commission's and/or City Council's review.

Please use the attached review sheet to record your comments. Please make copies of the review sheets if you need more. If you need more information concerning a specific case, please contact me at 528-3204.

Please review and return to the Community Development Department no later than **[August 28, 2012].**

IF YOU REQUIRE AN EXTENSION, PLEASE NOTIFY ROBERT KYLE, DEVELOPMENT SERVICES ADMINISTRATOR AT rkyle@las-cruces.org.

APPROVED AS IS: YES NO

APPROVED WITH CONDITIONS:

DATE: 9/10/12

REVIEWER NAME: Susana

REVIEWER CONTACT NO. 7207

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
October 23, 2012 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Charles Scholz, Chairman
Godfrey Crane, Vice Chair
Charles Beard, Secretary
Ray Shipley, Member
Donald Bustos, Member
Shawn Evans, Member
William Stowe, Member

STAFF PRESENT:

Robert Kyle, Building and Development Administrator, CLC
Katherine Harrison-Rogers, Senior Planner, CLC
Adam Ochoa, Planner, CLC
Susana Montana, Planner, CLC
Mark Dubbin, CLC Fire Department
Rusty Babington, CLC Legal Staff
Becky Baum, Recording Secretary, RC Creations, LLC

I. CALL TO ORDER

Meeting was called to order at 6:00 p.m.

Scholz: Good evening and welcome to the Planning and Zoning Commission for October 23rd, 2012. My name is Charles Scholz, I'm the Chair of the Commission.

II. CONFLICT OF INTEREST - *At the opening of each meeting, the chairperson shall ask if any member on the Commission or City staff has any known conflict of interest with any item on the agenda.*

Scholz: Before we begin we always ask if there are any conflicts of interest. Gentlemen, any conflicts of interest in the cases that we're going to discuss tonight? No, staff any conflicts of interest, nothing, okay. Next I want to introduce the Commissioners, on my far right is Commissioner Shipley, he represents Council District 6. Next to him Commissioner Crane, he is Council District 4. Next to him is Commissioner Stowe, Council District 1. Then there's Commissioner Evans who is Council District 5, Commissioner Bustos, Council District 3. On my immediate right is Commissioner Beard who is also the secretary of our Commission

and he represents Council District 2. And I am the Mayor's appointee to the Commission.

III. APPROVAL OF MINUTES

1. September 25, 2012 - Regular meeting

Scholz: Our first order of business is the approval of the minutes for September 25th, 2012. Are there any additions or corrections to those minutes? Commissioner Crane.

Crane: I beg your pardon sir, minutes?

Scholz: Yes, any additions or corrections to those.

Crane: I have a couple.

Scholz: Okay.

Crane: Page 56 which is where my speech is.

Scholz: 56.

Crane: 56, line 18. I believe I said the complete sentence in that line "I don't think there's anything good to be said about it."

Scholz: Okay.

Crane: Line 21-22 there's a duplication so if you'll cut out everything after "a great deal has to be said" through the words "in favor", then it will make sense.

Scholz: All right.

Crane: And thirdly same page line 41 that is "clear conscience". And finally, 62, line 6, again I think there's been something dropped, I think I said "maybe if it just says The Bronx is okay".

Scholz: Okay. Thank you.

Crane: Thank you.

Scholz: Commissioner Shipley.

Shipley: Line 19, page 60, strike the word "some", though to be controlled somehow. We're talking about the exits.

Scholz: Right. Okay, anything else? Commissioner Beard.

Beard: Page 54.

Scholz: Go ahead.

Beard: Line 19, 10 minutes.

Scholz: Yes, those are two words.

Beard: Line 40, I think there's an "a" should be inserted there "is there such a business".

Scholz: Okay, anything else?

Beard: No.

Scholz: All right. I'll entertain a motion to approve the minutes.

Shipley: So moved.

Scholz: Is there a second?

Beard: Second.

Scholz: Shipley moved and Beard seconded. All those in favor say aye.

Shipley: Aye.

Crane: Aye.

Beard: Aye.

Scholz: Aye. Those opposed same sign, and abstentions.

Evans: Abstention.

Stowe: Abstention.

Bustos: Abstention.

Scholz: All right gentlemen. Thank you.

IV. POSTPONEMENTS - None

Scholz: Okay, are there any postponements Mr. Ochoa.

Ochoa: No sir, nothing tonight.

Scholz: Okay.

V. CONSENT AGENDA

1. **Case S-12-024:** MOVED TO NEW BUSINESS

2. **Case Z2856:** MOVED TO NEW BUSINESS

Scholz: On the consent agenda then we have two items. This is how the consent agenda works folks, if you haven't been here before, we take one voice vote on the items that are presented in the consent agenda, if there's no one on the Commission or the staff or the public who wants to speak to these items. So, does anyone want to speak to Case S-12-024? You do Commissioner Shipley, okay. We're going to make this then the first item under new business. All right anyone wish to speak to Case Z2856. Commissioner Shipley, you do again, okay that'll be our second number on new business. Well that finishes our consent agenda. That was simple, wasn't it?

VI. OLD BUSINESS - None

Scholz: All right, is there any old business we have before the Commissioners?

Ochoa: No sir, nothing tonight.

VII. NEW BUSINESS

1. **Case S-12-024:** Application of Area 51, LLC for a preliminary plat known as Sonoma Ranch East 2, Phase 11 on a 31.612 +/- acre tract located generally east of the future extension of Calle Abuelo, north of Azure Hills Road, north of the Alameda Arroyo, and within the Sonoma Ranch East 2 master planned area; Parcel ID# 02-37615. Proposed Use: 87 single-family residential lots. Council District 6 (Thomas).

Scholz: Okay, so our first item of new business then will be Case S-12-024 and are you going to speak to this Mr. Ochoa.

Ochoa: Yes sir.

Scholz: Okay, good. By the way folks here is how this works, the City presents its case first, then we ask the applicant to present his or her case, then we allow public to discuss on these cases. When we close it for public discussion then the Commissioners discuss on it and then they vote on it.

Okay. Go ahead Mr. Ochoa.

Ochoa: Thank you. I just have a question for you gentlemen, would the Commission like a full presentation or were there just specific questions you might have on this case?

Scholz: Well, Commissioner Shipley was particularly interested in this so I'll let him answer that.

Shipley: We're talking about the new business?

Scholz: Yes, we're talking about the first case, it's now from the consent agenda, it's Case S-12-024. You said you had a concern about that case.

Shipley: Yes I do.

Scholz: Okay. Do you want a full presentation or do you just want to ask questions?

Shipley: Well I guess I can ask the question and then we can discuss it or whatever.

Scholz: Okay.

Shipley: First thing is, I couldn't find a sign anywhere on the property, all three of the entrances, the streets that entered the property from the south that showed that there was going to be a public hearing. There was no yellow sign anywhere to be found at this property. Secondly, there's a great deal of area that is under flood control, and on the map that you gave us it says flood control open space and my concern about this issue is, or about this particular thing is that you're building 87 homes in this particular neighborhood and there is no park. There's no place for kids to play. As I went around looking at this particular thing I went through neighborhoods and I saw kids that live in similar neighborhoods just south of there playing football in the street, in fact when I drove through they had to get out of the way so that I could drive my car back to the back area to look at that area. So, my concern is that, and I've said this before especially with Sonoma Ranch, is that we have no areas built into these neighborhoods, we're building 87 homes in this particular neighborhood and there's not a park one in this area and they're saying that there's a regional park down on Sonoma Ranch Boulevard that's going to cover for all of these things. They also say as I understand it that there's open space which the kids can go play. I looked at the flood control area that they're talking about and the open space and I walked it and in my opinion it's not satisfactory, you can't take a stroller back there, you can't take a kid back there, and if you get rains, and that you're going to end up with snakes back there and

somebody's going to get hurt, so I think we need to look at this a little bit better and maybe we need to talk about the entire case and go over it and see if we have ... you know just because this is something that's been done and been passed before, if it's not working we need to change it while it's still on a piece of paper as opposed to building and finding out we've got problems, and there are some other issues that I would like to discuss about this particular item.

Scholz: All right, Mr. Ochoa.

Ochoa: All right. I'll go ahead and start a full presentation then gentlemen to kind of touch on some of those items, and I will allow the applicant to touch on the other concerns that Mr. Shipley might have had.

First case tonight is Case S-12-024, it is a request for approval of a preliminary plat known as Sonoma Ranch East 2, Phase 11, Preliminary Plan. The subject property highlighted here in the purple I guess if you will, located here, quasi triangular shaped lot, North of Azure Hills Road, east of the future extension of Calle Abuelo and north of Calle Jitas. The Alameda Arroyo actually runs south of the property and the actual Alameda Arroyo starts adjacent to the west, southwest of the subject property. Here showing the zoning designation within that area, the primary area that'll be built on will be the R-1a zoned area here with single-family homes and of course there is that flood control/open space recreational area in the whitish blue area here.

The subject property is located within the Sonoma Ranch East 2 master planned area which was approved back in 2004, so this area was already designated for single-family development with the required not only densities, but I guess planning parcels for single-family development. Subject property is zoned R-1a single-family medium density which requires a minimum of 5,000 square foot lot, requires everything else under the R-1a development standards to be followed as well. The entire area encompasses approximately 31.612 acres and like Mr. Shipley said, the applicant is proposing 87 single-family residential lots in this development. This preliminary plat was previously approved with the same name, Sonoma Ranch East 2, Phase 11 that was approved back in 2007. The final plat was submitted by the applicant about a year later but that was never approved and never moved forward, it essentially expired now. That is the reason why we're coming back with the preliminary plat to take care of that expiration. The proposed subdivision does comply with the Sonoma Ranch East 2 master plan and it also complies with the 2001 Zoning Code, City of Las Cruces Subdivision Code, and the City of Las Cruces Design Standards. All reviewing departments in the City of Las Cruces did review this and approve the proposed subdivision including our Parks and Recreation Department as well.

Here looking at the subject property from an aerial view, kind of

looks like the moon in the middle of nowhere if you will. Again, just to kind of show a little bit better the future roads that would be extended into the subdivision would be Prado Del Sol Avenue and I believe this is Silver Hawk Road that would go over that open space/flood control area into that subdivision and more local residential roads will be built in there. Showing here on the preliminary plat that Silver Hawk Avenue single-family residential throughout. The actual flood control area/open space recreational area will be dedicated to the City as open space/flood control areas, and here's the remainder of those 4 sheets that were attached to your packet.

On September 26, 2012 the Development Review Committee reviewed the proposed preliminary plat. Some minor discussion did occur at the DRC meeting requiring the applicant to add a couple of notes and change a couple of items on the actual plat. The applicant agreed and that did happen to them. At the meeting the DRC did recommend approval for the proposed preliminary plat. Now with that gentlemen, the Planning and Zoning Commission have final authority on this preliminary plat, your options tonight are: 1) to vote yes, recommend approval as recommended by DRC for Case S-12-024; 2) to vote yes for the preliminary plant with conditions deemed appropriate; 3) to vote no to deny the preliminary plat request; and 4) to table or postpone. Staff did receive a couple of phone calls from adjacent property owners just basically wanting more general information of what would be built out there; concerns of multifamily and low-income housing and so forth like that did come up. Staff just let them know it was single-family development that is being proposed up there. The applicant is here present and has a presentation for you all if you wish to hear it as well. I'm sure they can provide any other additional information you might need. And I stand for questions as well.

Scholz: Okay, any questions for this gentleman? Commissioner Crane.

Crane: You mentioned that this had been previously applied for or submitted but was not approved. Why wasn't it approved? Was it voted down or never came up to the meeting?

Ochoa: Mr. Chairman, Commissioner Crane, the preliminary plat did come before the Planning and Zoning Commission back in 2007 and that was approved. The final plat which would've been taken care of administratively and approved administratively with construction drawings was submitted for one review and that's essentially where it just stopped. The applicant never resubmitted any more review, so it essentially kind of expired. The preliminary plat expired since the final plat was never resubmitted or approved for final approval and possibly the applicant can answer more questions as to why that happened.

Crane: But it has never been adjudicated before by this body or any other?

Ochoa: Not the final plat, no sir.

Crane: And do you know where this park is that Commissioner Shipley eluded to that public space on Sonoma Ranch Boulevard did you say? Do you know where that is? Can you point it out?

Ochóa: Mr. Chairman, Commissioner Crane, I believe there is a park in this oval shaped area here on Sedona Hills. I believe there are some other additional parks and the applicant can probably answer that question for you. Just to go back and answer your question about the signs for the public meeting sir, staff did go out and actually we put up 2 signs, one at the end of the cul-de-sac of Prada Del Sol Avenue and one at the end of Silver Hawk. I really don't know what happened unfortunately to those signs. They were up for a couple of weeks, but they were placed and we do have pictures of that sir.

Scholz: Okay, may we hear from the applicant please?

Soleman: Good evening. My name is Brian Soleman with Sonoma Ranch. I'm an engineer. To answer a couple of your questions Mr. Shipley, in this particular slide the park that you're referring to is right here in this location and this is approximately a 5-acre park. Going back to the East 2 master plan when this was approved we had several discussions with staff, Parks Department and what we realized and found was the smaller pocket parks as dedicated to the City were becoming more and more of a problem. In the original master plan approximately in this area right here which was the top of the hill next to the water tank, I'm sure that a lot of you remember the water tank, we did have a park located there. Since then, we have increased the size of that and moved that just south of that and there's about a 4.5-acre park that we have committed to build and some other things within the master plan. So what we've decided to do as a whole within this master plan community, there are some private parks here and here, was to go ahead and construct a larger park as a community park which seems to have a little more interest within the Parks Department and with us to provide a larger park for the community as a whole.

Shipley: May I ask ...

Scholz: Yes, Commissioner Shipley go ahead.

Shipley: The problem I see with this ... the layout of the land though is that you've got the open space which cuts that and that storm retention area and if I were a parent I wouldn't let my child get on a bicycle and ride around

through the streets to get to the park that you're talking about. There's nothing in this area for a young 3, 4, 5, 6, 7, 8, 9-year-old kid to be able to go and throw a football to do that. The lot sizes here are not big enough, the kids can't do that in their backyard because they don't have enough room, so they do it in the street, and that's the problem that we've created, is that we've got such density without any kind of infrastructure there for the families to have a place to recreate. It doesn't have to be a huge park and I recognize that the City, did they say they don't want to maintain the parks, but you're getting ready to turn over that arroyo to them as is and the City's going to have that and if there's a problem with a flood or whatever the City's going to have to repair it, replace it, do whatever is necessary. But my whole point is that we need parks that are easily accessible from homes and if you put 87 to 100 homes in an area, there ought to be a park within some kind of reasonable distance that a family cannot have to get in their car and drive to, but they can trust their kids to be able to go a half a block or 3 blocks away and have some place to throw a football, throw a frisbee, do something like that, and it doesn't have to be a large park with slides and apparatus and all that kind of stuff. It does need to be a place where people can get there and do that so the kids are not playing football or baseball in the street and that's the problem with the kind of development that we're seeing is that that's the only place the kids have to play right now and you can drive lots of places in the City and we have the ability right now to turn that around and figure out a way to solve that and not waste time you know and money later by doing that. But it's just that I feel like this is a chance for us to redesign this and put something in there that'll take care of that and make it a precedence so that we do it all the time so that each neighborhood has a neighborhood park and then kids have a place to play.

Soleman: Duly noted Mr. Shipley. Again we have looked at some of the smaller parks and we get back to the issue of the maintenance. The park that we're providing in the southern part of this master plan is considerably larger than what is required under City regulations, so at the time the amount of work and energy in designing ... we've come up with a master plan that works well for the community, for us, and what we've seen out there to maintain something that's cost effective for us as well for lot sales and to make things more cost effective. So, I do understand your concerns, we did spend a lot of time on this master plan back in 2004 and 2009 to come up with a plan that works for everybody.

Scholz: All right, any other questions for this gentleman? Okay, thank you very much. Is there anyone from the public who wishes to speak to this? Yes ma'am. Would you come down and identify yourself please?

Podruchny: My name is Cora Podruchny and I live on Azure Hills. And my question is, the arroyo behind our yard, is that going to be still an arroyo or are they

going to place houses on the arroyo?

Scholz: Well it looks to me like the arroyo is undeveloped. I think the only development across it is going to be that street that's Silver Hawk Avenue.

Podruchny: Because we've lived there for about 4 years now and when it rains even if it's a really quick flash flood, that arroyo runs really fast through there. I can't imagine them placing houses right behind our yard. We have a little hill that goes up to our fence and I don't know how they would be placing those homes if it would be ... are they going to flatten that whole mountain behind the arroyo and put houses right behind our rock walk, or are they going to do it below where the arroyo runs?

Scholz: Well from the plat I've seen, and I'll let the developer speak to this in a moment, from the plat I've seen the arroyo is left open and so the houses that would be built are on the far side of the arroyo. So there's no, and perhaps Mr. Ochoa can show that map.

Soleman: This location, it looks like you're located somewhere along here.

Podruchny: 4555.

Soleman: This would be the boundary here along the north side of your property and then you would have the natural arroyo and then ...

Podruchny: So that's not going to be removed?

Soleman: No. It's not going to be removed.

Podruchny: Okay, great.

Soleman: What we're doing in this area, we'll have to place some fill in there. We've already completed a conditional letter of map revision for FEMA that is not an established flood plain so we already went through the process for that. It'll be across the way.

Podruchny: Thank you.

Scholz: Thank you ma'am, anyone else in the public wish to speak to this? Okay, I'm going to close it for public discussion. Gentlemen, what is your pleasure? Commissioner Crane.

Crane: I'm impressed by Commissioner Shipley's arguments and I move that this be tabled and brought back to this Commission when more adequate arrangements for public park are included.

Scholz: Okay, I'm going to hold that for a moment and let us have discussion on that and then we'll have motions. But I appreciate your chipping in. Commissioner Beard.

Beard: Actually I was going to say the same thing that either we table this or we reject it. And I was wondering Mr. Shipley would you rather table it or would you like to vote it down?

Shipley: I would like to see the developer come in with a plan that covers that. I mean we don't want to destroy the neighborhood and that's not our purpose in doing this, but what we are saying is that there is no way ... all the parks that he's talked about are on the south side of that arroyo. And there's no way for the kids that live up there to get there that's within a reasonable amount of time. I think it would be appropriate to table it and give them an opportunity to see if they can figure out a way to do that that's beneficial to them, that they have a chance to do that and I think that's a reasonable approach.

Scholz: Okay, Commissioner Evans.

Evans: I'm kind of struggling with that because you know the City has a process that they go through to develop these areas. And if the City feels that this is adequate and it meets their standards, then the question is whether or not the city needs to change their standards so that all the developments meet that requirement. So I mean I kind of wonder if we shouldn't just ... if Mr. Ochoa wants to discuss what the standards are and evaluate that and if it looks adequate to the Board, then we would press. You know I'm not in favor of doing this piecemeal, you know project by project. I think if we have some concerns then we should bring it up to staff and then they should change their requirements.

Scholz: Okay, thank you Commissioner Evans. Commissioner Stowe, a comment. No, okay. Commissioner Bustos. Okay. I went out and visited the property, by the way I did see a yellow sign, I think it had been blown down, but there was a yellow sign there. So I walked it. I walked over the arroyo you know and looked at the property. It seems to me that this wasn't too far from the large park that's been proposed, but of course that park isn't built yet. I'm not sure how quickly this development would go in. I noticed there were some empty lots in the development south of the arroyo. So obviously there's not you know a pressing need it seems to me to get this, you know to fill this up so they would have time to build that park. I'm not sure that would be an onerous burden on young people. I grew up in the city in Chicago where we had parks probably half a mile to a mile from where we were and we rode our bikes over there. You know these are all interior streets, right? They're not going to be crossing any really busy streets it seems to me. So I think if it meets the City standards

and if you read the draft you know you realize it was passed by the Design Review Committee, so it seemed like you know it was meeting their standards and Parks and Recs signed off on it. So, go ahead Mr. Shipley.

Shipley: I too am fortunate that when I grew up it was the same thing we rode our bikes to places that way. But today is different and there are people who don't even allow their kids to walk to school. Parents drive their kids to school today and that's ... I go out during the day and they don't do that. There aren't kids who ride their bikes to school. There aren't kids that walk to school. And if a park is not close by you know the kids play in the street and to me that's more of a danger. That's the problem that we've created because we haven't put these small parks in and I recognize for the City that it is more costly to have a small park than it is to build a regional park and to be able to send a team of men out to maintain and empty trashcans and do those kinds of things.

Scholz: Right.

Shipley: But we really are not looking in my opinion for that type of park. We're looking at a place that maybe just you know like when I was a kid growing up there were vacant lots, we made it into a baseball diamond and we played in the vacant lots and we did those kinds of things. We played baseball and we played football etc. and that's what's missing now and we need to set aside some space to do that. I looked seriously about the arroyo because that was the one thing that I know that the City and the developer has said over and over again is that he's giving this open space that can be used for recreation, people can hike in it and they can do those kinds of things, and to me that particular space is not suitable for that. It is very dense, there is a lot of mesquite and a lot of creosote and there are a lot of opportunities for people to get hurt in that area and I think we need to have a standard where the developers and the City, and I agree with Mr. Evans that we need to go back and say that if you're going to build a hundred homes you've got to have a park, a small park, a neighborhood park and that way they know from the very beginning that that's what we want in the City and I think that's open for discussion.

Scholz: All right. Thank you. Commissioner Crane.

Crane: Two things Mr. Chairman, one of the Commissioners brought up a good point about riding bicycles and how close it's reasonable for a park to be before children can be expected to ride bicycles safely to it and we also have to remember as Mr. Shipley brought up that there are mothers with children in strollers or maybe bicycles with training wheels who will not want to go to that park that's been pointed out already. My second point is in agreement with you Mr. Chairman, I would like to know if the City has a fixed ratio of open space to total space of a development. If it doesn't, it

seems to me a very good thing to do. A half-acre park out of 31 acres would not seem to be too much to require and I realize that some of the 31 acres is essentially unusable a lot of the time, yes you can hike in an arroyo, I do that. I'm a hiker, but the bicycles and the baby strollers are out and there is a danger of snakes, thank you sir.

Scholz: Commissioner Bustos.

Bustos: I was just going to add, probably just my own personal opinion but I know on these smaller parks at least that when I drive by they're hardly being used anyway. I mean other than the 2 big parks, Apodaca Park and Young's Park which people drive to them, those are the ones that always seem to be full. But these small regional parks, at least when I've gone by them I mean there might be 3-4 kids any way. So, that's just my own personal opinion. I don't see it'd be such a big deal.

Scholz: Okay, any other comments, questions? Mr. Ochoa do we have a ratio of open space to ... or I should say park land to development? I don't recall what's in the code. Yes, Mr. Kyle.

Kyle: Mr. Chairman if I may address, the City does have a Parks and Recs master plan and I think they just recently approved a new one and within that document it does talk about the level of service that City is trying to provide and that is a ratio of land population. I don't know what those exact numbers are. But the City does have a Park and Rec master plan that drives parks decisions largely on how they want to acquire and operate and maintain open space, park lands, and that sort of thing. This proposal, obviously the master plan that this preliminary plat falls under was reviewed under the current standards that the City had at that particular time. Parks again has reviewed this particular proposal and feels that it does comply with the current City requirements. One thing to keep in mind is even a small lot that's grassed in has to have an irrigation system and water meter and there is cost and you still have to send a crew out to do it and so I think that the current City policy is for the larger more regional and community sized facilities as opposed to the smaller pocket parks or neighborhood level parks and I believe that is the current direction of the new Parks and Rec master plan. I'll have to review it to determine that fully, but Parks has reviewed this and has recommended approval of it and it is consistent with the master plan etc. Now, you know again as a policy issue that is certainly something that the Commission raises that can be brought up to the Parks and Rec's advisory board as well as City Council and if City Council wants to direct a change in that policy certainly staff would take the necessary steps to incorporate that.

Scholz: Okay, thank you Mr. Kyle. Gentlemen there were 2 proposals or at least 2 mentions of tabling this proposal. You recall that in order to table

something we have to have the approval of the applicant.

Soleman: I think at this time we would like to go ahead and move forward with a vote. I do feel like we have met all the master plan requirements. We've spent extensive time with City staff working on this proposal and the majority of the time with the master plan did involve the formation of the park and the sequence of events and how we would install the park, how well we would create, what we would be required to build within the park, the grass, the sprinklers, and so we've dedicated that amount of acreage based on the requirements at the time. For us to come back into this plan and revisit looking at a park would kind of defeat our master plan and I think that we've met all the requirements and I would like to have a vote.

Scholz: All right. Thank you. Yes, a question Commissioner Evans.

Evans: Would the applicant consider building out that park you know in conjunction with the development to maybe appease some of the Board members here? To you know provide that asset or that recreational area now instead of later when the rest of the area is built out.

Soleman: Commissioner Evans. I really don't have a good answer for that other than the fact that the way that the master plan is written and the way that the park functions as a dual use park, in order to create the park with it being on the lowest side of the development it really wouldn't make sense for us to construct the park at this time. In the master plan when we do begin development around that area which is the tank, once we hit a certain completion, it's not the full build out of the master plan, we would begin construction of the park. We've tried to locate the park for its best use located just north of the arroyo so that we could utilize it for its dual use purpose. By constructing it at an earlier date it would just become a maintenance problem and I think that by fulfilling the requirements of the master plan in constructing that area would only make sense to construct it then. I guess when we're looking at future development north of the half portion of this section we could work with City staff on some of these issues. But I feel like at this time we've met all the requirements and to go back through and make these changes, we'd be happy to sit and talk with staff on some of the submittals that we have coming in the future. There could be some time out before we do anything within this, it's just one of the projects where we had it lapsed and it was expired and we need to kind of get back up and running. But we'd be happy to sit with staff and look at some of these things with Parks and obviously with the concerns it's something we'd be happy to sit with Parks and Recs and see if there's something that they may like changed.

Scholz: All right. Commissioner Crane you have a question?

Crane: In view of what the applicant's representative has said sir, I will withdraw my motion to table.

Scholz: All right, thank you, thank you sir, any additional discussion among the Commissioner now? Okay, I'll entertain a motion to approve.

Bustos: So moved.

Scholz: Okay, Bustos moves, if there a second?

Stowe: Second.

Scholz: And Stowe seconds. All right I'll call the role. Commissioner Shipley.

Shipley: Nay, findings, discussion, and site visit.

Scholz: Commissioner Crane:

Crane: Nay, findings and discussion.

Scholz: Commissioner Stowe.

Stowe: Aye, finding, discussion, and site visit.

Scholz: Commissioner Evans.

Evans: Aye, findings, discussion.

Scholz: Commissioner Bustos.

Bustos: Aye, findings and discussion.

Scholz: Commissioner Beard.

Beard: No, findings, discussions, and site visit.

Scholz: And the Chair votes aye, findings, discussion, and site visit. So the motion is approved 4:3.

2. **Case No. Z2856**: Application of William D. Wright to rezone from A-2 (Rural Agricultural District from the 1981 Zoning Code) to R-1a (Single-Family Medium Density) to bring the property into compliance with the 2001 Zoning Code for a 2.00 +/- acre parcel located at 900 McCoy Avenue; Parcel No. 02-00512. Proposed Use: Single-family residential with accessory structures. Council District 1 (Silva).

Scholz: All right our next case is, and this is one you had some concern about as well Mr. Shipley. This was a rezoning. It's Case Z2856.

Shipley: Yes, my only question was I wanted to know if there was a site plan for the garage. Because it just says in the plan the size of the garage, but it didn't say where it was going to be located and how it came out on the site plan.

Montana: Thank you. For the record my name is Susana Montana, Planner and Mr. Chair, Commissioner, this is a little too early to have to submit a site plan but the proposed garage would be in the northwest corner of the property where the corral is now. The backside of the building ... okay I do have a little drawing.

Scholz: There you go.

Montana: So the shed would be right around here, with the opening facing toward the house and the back facing toward the street so that the view of this electrical station would be obscured by that shed, from the applicant's home.

Scholz: Right. Does that answer your question Commissioner Shipley?

Shipley: I'm not sure. The view of what would be shielded?

Montana: Oh this is an electrical power station right here.

Shipley: Okay.

Montana: And from his living room he has a direct view of that and he would be placing, if this were approved, his shed right there so it would obscure the view, would block his view and should the rezoning be approved, then he would submit his building plans for that structure.

Scholz: All right, any other discussion gentlemen? Okay. Do you need to hear from the applicant at all? No, okay, any public discussion of this particular item? Okay, seeing none, I'll close it for public discussion. I'll entertain a motion to approve.

Shipley: Move to approve Case Z2856 and I don't believe there were any conditions.

Scholz: No, I didn't see any.

Bustos: Second.

Scholz: Okay, Mr. Shipley and Mr. Bustos second it. It's been approved and

seconded. I'll call the role. Commissioner Shipley.

Shipley: Aye, findings, discussion, and site visit.

Scholz: Commissioner Crane.

Crane: Aye, findings and discussion.

Scholz: Commissioner Stowe.

Stowe: Aye, findings, discussion, and site visit.

Scholz: Commissioner Evans.

Evans: Aye, findings, discussion.

Scholz: Commissioner Bustos.

Bustos: Aye, findings and discussion.

Scholz: Commissioner Beard.

Beard: Aye, findings, and discussion.

Scholz: And the Chair votes aye for findings, discussion, and site visit. Okay so that's approved 7:0.

3. **Case A1716:** Application of Lisa Carlson to vary 15-feet from the minimum required 20-foot rear yard setback for a resulting 5-foot rear yard setback on a 0.141 +/- acre property zoned R-3 (Multi-Dwelling Medium Density) and located at 4752 Radiant Court; Parcel ID#: 02-39622: Proposed Use: The continued use of an existing non-conforming rear porch. Council District 6 (Thomas).

Scholz: All right our next item is Case A1716 and that was our first item under new business actually.

Ochoa: That is correct sir.

Scholz: Mr. Ochoa you're making the presentation?

Ochoa: Yes, sir. The third item tonight gentlemen is Case A1716. It is a request for a variance to the minimum required 20-foot rear yard setback for a property located at 4752 Radiant Court. Looking here at the vicinity map, the subject property is located on the east side of Radiant Court, relatively close to that northern cul-de-sac of that street, north of White Sage Arc

and relatively east of Sonoma Ranch Boulevard. Just showing here the subject property is located within an area which is the White Sage Subdivision in the Sonoma Ranch area which primarily is zoned R-3 but is all developed for single-family development with some commercial zoning to the north, west, and south, and the R-1aC to the east is actually a school, I believe that is Sonoma Elementary. The actual area in the 2001 Zoning Code that we're looking at is under Article IV, Section 38-31D which calls out the minimum building setback requirements for the R-3 Zoning District. Single-family home is required to provide a minimum of 20-foot front yard setback, 25 front yard setback for a garage or carport, 5-foot side yard setback, and what we're reviewing of course is the required 20-foot rear yard setback and this property is located at 4752 Radiant Court. The subject property encompasses approximately 0.141 acre and is zoned R-3 multidwelling medium density. The subject property currently contains a single-family residence with an attached non-compliant, unpermitted rear porch, of course in the rear yard of the property. There are also 2 other existing accessory uses in the back yard, both permitted, an attached deck type of structure attached to the rear wall of that home and an above ground pool as well which both did receive permits. Tonight the applicant is requesting the variance in order to keep that unpermitted porch in the rear of the property which encroaches 15-feet at its closest point to the rear property line, essentially giving it a 5-foot setback from that rear property line. When this variance did go through review, staff and other reviewing departments really saw no significant health or safety issues with the proposed variance but engineering services did recommend that the condition that the additional runoff of the porch would be required to be retained and managed on site utilizing on-lot ponding, considering this area was actually master planned for regional ponding so the additional runoff would be required to be on site with an on-lot ponding area. The Las Cruces Fire Department also recommended that all walls of the porch along the property lines be required to be 1R Fire rated.

Since you saw the aerial picture that was in you packet our (inaudible) was a little outdated unfortunately. Taking this aerial view from an on-line webpage the subject property is designated here with the blue sign showing back there the attached porch on the northern part of the property and that kind of deck area to the southern part of the home. As you can see the entire area is essentially just single-family homes. Going off to the site plan here showing a little more detail, the existing dwelling, the patio does meet the 5-foot setback on the side, showing the 5-foot setback here and approximately a 9-foot setback along the other corner there, but of course what the variance is for, for the 15-feet that would cover all bases for the structure.

Here are some site photos from the applicant essentially showing a panoramic view of the whole rear yard showing the pool to the south of the property, that deck area, and the new semi enclosed attached porch. Here's a closer view of that attached porch with electrical work and so

forth as shown here and picture looking from south to north showing the pool, the deck again, and of course the unpermitted structure in the rear. Essentially the Planning and Zoning Commission is required to review these variances and essentially are required to make a decision looking at the policies in the Comprehensive Plan and Section 38-2 of the 2001 Zoning Code and that section showing here essentially gives you criteria for granting a variance saying that that should be based on 3 different criteria; 1) being a physical hardship with the subject property either topographical restraints or right-of-way taking and so forth like; 2) being the potential spreading of economic development at neighborhood citywide level if the variance is granted; 3) but definitely not as a whole as a monetary consideration of the allowing the variance to proceed. Taking these into consideration staff did review the request and had no basis of granting the variance, so that forced staff to recommend denial of the proposed variance based on the findings and the staff report before you.

With that gentlemen your options tonight are 1) to approve the variance request; 2) approve the variance request with conditions determined appropriate by the Planning and Zoning Commission, some of those conditions would be possibly something like that engineering services recommended and that of the Fire Department as well; 3) deny the variance request as recommended by staff; and 4) table and postpone the variance request. Staff did provide a couple of e-mails; 3 e-mails approximately to the P&Z with concerns, one actually supporting the proposed variance. The applicant is here and she has additional documentation as well for you all to take a look at if you wish about her variance. I stand for questions.

Scholz: All right, questions for this gentleman? Commissioner Crane.

Crane: You showed a photograph Mr. Ochoa of the back of the house with, yeah, that one with the above ground pool. Is that pool on the subject property?

Ochoa: Mr. Chairman, Commissioner Crane yes it is on the subject property. It's in the southern rear yard of the subject property.

Crane: Okay, I have some questions that may be better directed at the applicant. May I ask Mr. Chairman if the applicant is present?

Scholz: Yes, we can get to that. I want to see if there are any other questions for Mr. Ochoa first of all.

Crane: Okay.

Scholz: Yes, Commissioner Stowe.

Stowe: How do we know that the engineering has been done to guarantee that

the electrical work for instance has been safely installed?

Ochoa: Mr. Chairman, Commissioner Stowe, being that the Code Enforcement department actually found this structure being built without a permit, the applicant was essentially red tagged, asked to cease work on that project. The applicant will be required of course if approved, to pull permits for the building structure and the electrical work as well which she would be assessed a double permit fee for those permits for building without a permit. To add to that staff did also I guess require an additional fee for building without a permit, I believe the building code calls it building a structure without a valid permit that breaks the rules of the 2001 Zoning Code, that fee was already assessed as well. But as the electrical work, foundation work, structural reviews will be taken care during the permitting process if this gets approved sir.

Stowe: Thank you.

Scholz: Okay, that was my question too, other questions for Mr. Ochoa? Okay, may we hear from the applicant please?

Carlson: My name is Lisa Carlson. I'm the property owner. I have a slide show to show you as well. Just to give you a little background. This is my first home, purchased from Hakes Brothers when they were building these homes out here. I'm originally from Minnesota, so coming down here and building your own place is pretty exciting. So when I initially was building the house and looking at the lots I made it known to Hakes Brothers that I wanted to have an additional porch put on. I even requested that they actually extend the concrete slab but the guy at the time was like well you've got to talk to the contractor and stuff like that, and I'm like well I'll just wait on that until the house is built instead of delaying the process of the house building at the time. They never mentioned anything about setbacks or anything about rules or anything such as that. And I come from a farm and I know it's not an excuse but we never got permits to build anything on the farm so I kind of came in this blindsided when I received the citation and actually was a criminal summons in July and those two other structures that were permitted were built after, so I didn't know beforehand.

First of all I just wanted to go over ... the Community Development's mission and you know I went to the page to back up this and say that the mission is to assist citizens to achieve their desired lifestyles by contributing a better quality of life through community improvement. This is accomplished by integrating land use, transportation planning, affordable housing, and economic development, and build economic and social environment of our community. So again desired lifestyles, I guess coming into this it was dream to put this on the back of the house. In addition to that the New Mexico sun has become a problem

for me and you know another reason why I wanted a shaded structure in the back yard in the first place. Then only to find out that I had precancerous lesions, or precancerous moles on my back and my stomach and I had those removed and biopsied and following that they told me they were precancerous so I had to go back in and get surgery for them and they took about a dollar-sized chunk out of my back and sewed me up and on my stomach as well. So I know you guys got some paperwork. I wasn't sure if you were able to review it, but basically the doctor is saying she had removed the precancerous lesions from the abdomen and my back and at risk of developing more and recommended limited sun exposure; you can do it with sunblock, protective clothing, and shade of the structures and the doctor recommending as well a shaded structure cause you can't get away from the New Mexico sun too much and of course down here as I'm learning and sorry for the grotesque pictures, this is a post surgery on my back and on my stomach. I'll speed through those so you don't have to look at them too long.

And of course you've already seen this and as I would disagree with the Community Development as far as not having a physical hardship because as you can tell the lot is crooked and I guess how the Hakes Brothers built it on the other side it probably would have never faced this problem. I mean a non-permitted structure, I can fix that I can get the permits, but since there's an issue of a 20-foot setback, that's the only thing that's holding me back from you know finishing you know what we're doing and the dream in the back yard. So this is one of the photos from the corner looking, this will be the corner closest to the wall, so where that 5-feet is looking straight north and as you can see there's a semi circled up there so you can see a lot of traffic and the structure blocks Highway 70 from my view, as well as everybody's on the south side.

This is a picture looking north, again you can see what we've done as far as construction. Everything is finished except for the stucco. We were almost done when we received the citation and that's pretty much how far we've gotten. Again you've seen this picture already and I'd like to again re-phrase that we got the permits for the pool and for the deck you know after we found out about the need for this permitting. And this is looking eastbound and again the view he had shown you before. This is looking southbound, you can see the other lots. These are the lots that are affected by Highway 70 getting blocked. It also blocks out a lot of the noise. Now this is looking westbound or northwest, you can see how it just stays along with the house, just needs to be stuccoed and I wanted to show you some interior photos to show you I guess the progress that had went along. This is a custom job between me and my now fiance. He was helping long before and you know the construction work has been done very well and you know I've done all the little pretty girly things I guess you could say on that stuff, tile cutting, has all been custom job and spent many weekends. We both work full time you know and days off, evenings working on this, going back and forth to Lowes, Home Depot,

Sutherlands, many times, sometimes more than one time in a night and you know we put a lot of heart and soul into it and you know I do realize I made a mistake and you know I apologize and I've been doing everything now in my power to rectify this so that I don't have this thing get destroyed after all the work that we put into it.

So, you know not only is it a beautiful addition to the backyard of my property, but you know I went around and talked to the neighbors as well. I went around and got a petition signed. These are my neighbors, the ones that were home and each box represents one household and they were ... I explained to them. I came around and I showed them pictures cause most of them got the certified letters and if they didn't I was informing them what was going on cause a lot of them can't even see my backyard and I was asking them if they had a problem with it and if they'd be willing to support me on this and my immediate neighbors to the south of me have written this note and says that "I think the addition looks great and once the finish coat of stucco is put on it will look even better. The addition also serves as a sound barrier to the noise and traffic on Highway 70. The addition at 4752 in my opinion looks better than the other neighbor structure that was built. In addition it's very eye pleasing, it's very nice detail for an outdoor living space", and that was signed by Terrell and Vanessa Gresham. My neighbor to the north basically she gets to see the whole gray wall at the moment. Her name is Jonna Edwards and again she's right next door. "The addition to the property being added to 4752 Radiant Court causes no concern for me. The owners are great neighbors and all of this DIY projects (do it yourself projects) had done nothing but improve the appeal of the home." Then the other next door neighbor to this girl, this will be the top of the cul-de-sac and she says, Kryle and Kristy Tarwater say that "We feel that there's no problem with the addition. It is aesthetically appealing and it benefits the entire neighborhood. It also adds a sense of privacy barrier. It doesn't hinder our view of surrounding landscape, it actually adds to it." And from Barb Thie at 4752 Prentice Place, she says "That it helps as a noise barrier. It increases the value of the home which is beneficial to all the other homeowners."

And this Adam already went over and you guys have copies of this, traffic, fire, utilities, and engineering services, MPO, and Development services. Everybody had approved it I guess except for Community Development which they're very by the books, and again I understand that you know it was my mistake and I paid the fines and I'm willing to work with everything and get everything to be up to code and make sure that everything is kosher for this. I just ask that you consider granting this variance in the backyard and taking into consideration everything my neighbors have said and all the work we've put into it. I would appreciate your help with this for our desired style of living I guess, as a community member. Do you have any questions for me?

Scholz: Okay, questions for this lady? Commissioner Crane.

Crane: I understand you were the first owner of this house?

Carlson: Yes sir.

Crane: And about when did you buy it?

Carlson: It was about 2 years ago, so I believe it was 2010 I started construction in May, or I didn't personally, Hakes Brothers did and I moved in in September of 2010.

Crane: And when did you start construction of this noncomplying porch?

Carlson: This started about fall of 2011. I mean it had always had been a dream of mine to get it started, just hadn't got it going until about then and again I didn't have any knowledge of building permits until I got that citation in July 2012.

Crane: So it's about a year before you started on the porch from the time that you moved into the completed house. Okay. Thank you.

Scholz: Other questions? Commissioner Shipley. I'm sorry, Commissioner Evans, go ahead.

Evans: I just have one question and actually may be directed towards staff, but was there any ... so you're looking for a variance for the full 15-feet I believe, was there any discussion about you know looking at an alternative that the staff would support, because right now they're recommending denial and that's for the full 15-feet.

Scholz: Mr. Ochoa.

Ochoa: Mr. Chairman, Commissioner Evans, we contacted the applicant after we got together in our planning meeting, our (inaudible) meeting to discuss the proposed variance and we did come up with different options and I kind of thumbed through them a little bit with her about possibly detaching it, possibly adjusting the structure to meet setbacks, but unfortunately it is just encroaching into the rear setback too much to take care of anything administratively possibly. But we did discuss about possibly it becoming an accessory structure and detaching it. I believe there were some other options we spoke with her, but I believe the applicant did choose to go ahead and come forward with the way the structure is constructed now.

Scholz: Okay. Commissioner Beard.

Beard: If you detach it how does that affect the structure? I mean do you have to remove any of it?

Ochoa: Mr. Chairman, Commissioner Beard, yes sir, the 2001 Zoning Code calls out that an accessory structure is allowed into the rear property line as long as it meets 3-foot setback from the property line and meets a 10-foot separation from the home. That could though be encroached upon as long as the 1R fire rated wall and no openings are allowed along that wall adjacent to the home. So that's one option that she might have had to detach the actual structure but as you can see she did let me know that the inside, had all that work done on the inside with that bar and so forth like that which is why she wanted to continue with this; with the variance with the structure the way it is now.

Beard: So the way I understand it there has to be a 10-foot separation between the detachment and the house.

Ochoa: Mr. Chairman, Commissioner Beard, that's the way the code requires. There is an exception though that allows as long as a 3-foot setback is kept from the property lines the building can encroach, can be closer than those 10-feet to the primary dwelling as long as the wall of the accessory structure is fire rated and no openings or windows are allowed on that wall.

Scholz: Commissioner Crane.

Crane: Does that bar with the 2 or 3 chairs against it, is that on the newly built porch or is in the footprint of the house? Did you take down a wall to put that in?

Carlson: No sir, we never took down anything from the existing house. We only added to it. Where the bar is actually at is kind of in the middle of where the new concrete slab was put, and then right where the column was, that would probably help visually ... basically in the center there, so it'd be right at the edge of the existing porch. So you see where that column is?

Crane: Okay. So the rear wall of your house, the original rear wall is where that window is.

Carlson: Yeah this was actually, this is you know of course the house that Hakes Brothers built. This was open at first and we just closed up the wall so that the entire porch would be one flowing area basically to go out and it'd be like another living space where we could have dinners outside and everything and, of course, the bar was put here and this is what Hakes Brothers, you know the column there. We never took down anything, we've only added to it.

Crane: That black object there is a grill?

Carlson: Yes sir. And this is a concrete countertop that we custom made as well.

Crane: Mr. Ochoa, one out for the applicant is to make this, as you say, an accessory structure. What's the best case for her? How much of that space has to be opened up? You mentioned 10 feet but that it could be encroached on in certain circumstances. I didn't fully understand it.

Ochoa: Mr. Chairman, Commissioner Crane, as long as there is some type of separation between the 2 structures, between the accessory structure and the home itself they could encroach upon that 10-foot setback if you will. So this area right here would have to be essentially detached and closed off with a fire rated wall, whatever construction requirements are allowed for that and no opening will be allowed along that wall either sir.

Crane: But there has to be some minimum separation doesn't there? Is 6 inches going to make it?

Ochoa: Mr. Chairman, Commissioner Crane, the 2001 Zoning Code doesn't stipulate and exact separate, it just says encroachment into that required 10-foot setback can be done. That's the way the code reads.

Crane: Okay.

Scholz: All right. Commissioner Evans you had your light on. Go ahead.

Evans: Just for the applicant's edification, we really haven't gone out and approved these types of things, in fact this would be really out of the ordinary. And actually I think you've done a really good job. I think it's esthetically nice. I think it's a great idea, but it does infringe upon your neighbors and even though those neighbors today you know may be satisfied with it, they may sell the home and then the new occupants may have an issue with it. So, we really have kind of abstained from approving these type of things, but what I would recommend is I'm very open to granting waivers, but I'd like to see the City and the applicant come back and put together a plan which addresses some of the City's concerns and then is palatable for you, and then you know come back to this Committee and you know with another waiver if required. I don't know. I mean I would just throw that out that we table this and give the staff and the applicant the opportunity to put together a plan that meets both parties concerns.

Carlson: May I speak as far as the wall goes, I know he said there's no distance required as far as the, what did you say that was, exception, the only

problem I guess that when you block off that entire wall there and you separate the 2 rooms, the structure is still there at the end of the day and whether you know like you said the neighbors are affected by it or not, the same structure's going to be there the only difference is it won't be connected. So, I feel that it takes away from the aesthetic look of it, it takes away from the value of the house to have to put, just for the sake of technicality, just detach it just 6 inches and then put a big wall there and then there's no opening so we can't even communicate with the people on the other side let alone put dishes for food on it, you've got to go walk around and in the elements again and stuff. So I mean this is why, I know they explained it to me, but this is why I wanted to continue forward cause you know either way the structure will be there, but I would like it to stay as is and then all the work that we've done and the planning and flow of the whole porch itself.

Evans: And I'm actually not advocating that we put the wall there. But I would like to see some type of arbitration between you know the applicant and the staff to mitigate some of their concerns instead of just saying you know what we're not going to address any of those things, we're just going to get a waiver.

Carlson: What concerns were you speaking of, just in general?

Evans: The concerns of meeting the codes and regulations established by the City.

Carlson: Okay.

Evans: Like I say, that's just a suggestion. It's up to the Chair and you know the rest of the board members if they ... you know what they want to do.

Scholz: All right. Thank you Mr. Evans. Commissioner Crane you're back on.

Crane: Yes sir. I like Mr. Evans suggestion and what you call a technicality Ms. Carlson is going to get you legal. It grieves me to think of you having to tear down this, but that is really the alternative and I also recall recently a somewhat similar situation only a few months ago in which some such accommodation was reached and the City planning people said yes there was a fine involved and suggested the applicant be ready to pay the fine. Because it's not the first time this thing has come up in which people have added to a house and then said I didn't know, and we've discussed even having little seminars for big realtors to tell them that they've got to tell their clients that there are rules and where City Hall is and you had a year to chat about this and investigate it. I recognize that coming where you come from this is kind of strange. It's a nice piece of work and you've done marvelous to make it fit and when it's stuccoed it'll be even better,

but there are several views of it which are quite intrusive on the lives of your neighbors. However, if you could make this compliant it would of course be something that you're privileged to have. So I like Mr. Evans suggestion.

Scholz: All right, other discussion, Mr. Evans.

Evans: Just to reiterate though, it doesn't have to be 100% compliant, you just have to mitigate some of their concerns and then they can ... you know repetition to come before this Committee again and get a variance on whatever you know ...

Scholz: Stay close to the mike Shawn.

Evans: So I just want to clarify that. So, but I think it's a beautiful thing and I wish I had one on my house.

Scholz: Okay, I have a couple of questions for the applicant and a concern about one of the things you stated. When you saw the house being built you knew it was close to Highway 70 didn't you?

Carlson: Yes sir.

Scholz: Yeah, well so you figured you'd get the noise and view of Highway 70. I mean it struck me as a rather naive comment that you didn't realize that the Highway was there and then it was there and then it was noise and ...

Carlson: Oh no that's not what I meant. It's just you know that the structure itself creates a noise barrier so like my bedroom is right on the side of the house so I noticed that after we built this structure the noise significantly reduced. It wasn't a problem when I got the house of course, but it just was one of those bonus things that we realized, hey this is kind of nice, don't have to listen to Highway 70 at night.

Scholz: Okay. You said your neighbors are generally approving of this, we have a letter here from Frank and Linda Field who own 4748 Radiant Court which I think is right next to you.

Carlson: Okay.

Scholz: Just south of you on the street and they say you know they talk about, Mr. Field, evidentially was a contractor. He talks about setbacks and things like that and he's very concerned about the view and he takes a picture of it and shows a picture from his property and obviously it's sticking out, it's blocking his view and he's upset by that. You didn't mention him. I don't know if you talked to him at all.

Carlson: No actually the neighbors that live next door are Terrell and Vanessa and they're renters from him and those are the ones who gave us their opinion on that side and they love it. They don't want to look at Highway 70, you know according to them and you know there's not much of a view to the north.

Scholz: But they don't own the property, do they?

Carlson: No, and he's never been there to see it. She took that picture for him as far as I am ... what she told me she took a picture for him and you know that he was more upset about I guess not knowing in the first place. Like I said you can see the Dona Ana Mountains are a little bit back here but you can see the traffic as well on that side and as far as it goes you see into the neighbor's yards as well. So it's a little bit more privacy for them.

Scholz: Okay. I understand you know failing to get a permit, but who built this?

Carlson: It was me and my fiance because my boyfriend at the time we recently got engaged.

Scholz: Are you a contractor?

Carlson: No sir.

Scholz: Are you a developer?

Carlson: No sir.

Scholz: Okay. Are you a licensed anything to do this? Would you speak to the microphone please sir? Identify yourself.

Luis: Hi, my name is Luis. Well basically my dad, he has background experience so I've been getting a lot of feedback from him. He's helped me, and my uncle.

Scholz: And they are licensed contractors?

Luis: No, they build like their own houses, so that's how I got the background experience like building porches.

Scholz: Well one of the problems I think we have with this is unlicensed builders and people who don't follow code you know, and that's exactly the situation we're looking at here and I realize you've done you know what looks like an incredible job, but I have no idea if this is up to specs or not and if we approve a variance of this and you'd have to you know bring it

up to specs, what does that involve? Does that involve you know tearing up the slab because you didn't pour it correctly? Does that involve rewiring it because you didn't do that correctly? I don't know and that's a concern of mine. You know we want things that are well built here in Las Cruces. We want things that follow code and I have no idea if this is well built or not because neither of you are contractors or developers or you know masons or anything like that and having worked as a carpenter myself you know I realize for licensed contractors and so on, I had to follow very strict rules, you know I had to be very careful about what I was doing. I have no idea if you've done this. I'm not accusing you of not doing it, I'm just saying we don't know here and so I think it would be very difficult for us to approve a variance on something that we don't know is well built. That's my concern.

Carlson: That's true sir and we are more than willing to comply with all the building and inspections. I mean if we have to fix something we'll fix it according to that.

Scholz: I understand.

Carlson: So that's the initial ... we're going to comply with everything to make sure it's up to code.

Scholz: Commissioner Shipley.

Shipley: There's also another e-mail from Barry Law who ...

Scholz: Did I miss that? I'm sorry.

Shipley: And he's a property owner and ...

Scholz: There we go, on the last page. Go ahead.

Shipley: And it also is against it.

Luis: Well if you see how many people are with us, you only get two people and one of the persons that actually gave you a letter, he doesn't even live there. He doesn't provide to this local economy. He doesn't even ... he is the property owner and he pay taxes on it, but in reality he's another person from out of state. That he doesn't even live one day on his property and he's complaining about a structure that he hasn't even seen personally. His tenants, they've seen the structure, they love it. They like that it's blocking the view from the highway. It's blocking the noise and yet again this person has never stepped a foot for one day on his property. He is complaining about it.

Shipley: I understand your comment, but he still is the owner and he has a legal right to do that. Ownership gives him that right. So, if he's not for it he can state his opinion and we have to consider that as well.

Luis: Yeah, but like you consider that, wouldn't you consider all the signatures and all the other letters.

Shipley: We do, we are, but I think we're also trying to express the concerns, as the Chairman stated that we're trying to be sure that we do the right thing because we set precedence when do things like this and when people do something incorrectly you know there's a way to mitigate it and do it correctly and we want to go through those steps. We don't want to cost you more money than you should have to do, but by and large if someone makes a mistake and let's say for example your wiring causes the house to burn down and it blows over onto the next house and causes that to burn down, we have a responsibility for that and we hope that that never happens, but we don't have a crystal ball that says these are the things that you can do and you've done everything correctly. So the whole point of what our discussion is tonight is to make you aware that you have certain obligations by being a homeowner and you have to know about setbacks and you have to know how to maintain things and you have to know about permits and things like that when you live in a community with homes as close to the home next door to you and you have to maintain your property in a certain way. So, the whole point of what we're trying to say here as a body is that this is a learning thing for you just as it is for us because we have to look out for the community as a whole as opposed to your individual desires. So we would like to see you come meet with the City and see if we can't work something out that's beneficial to both of you and hopefully do that. We want you ... you're going to have to have this inspected and if there's anything wrong in there, if the wiring doesn't meet code, or the slab doesn't meet code, you're going to have to fix it and if you don't do that then it'll have to be demolished, and I understand all of your points and I understand all of the other things, but you just have to realize that we are looking out not only for your interests but we're looking out for the interests and the safety of the people who live near you.

Carlson: Absolutely.

Shipley: Okay.

Carlson: I understand that.

Shipley: All right. Thank you very much.

Scholz: All right, any other questions for the applicant, thank you folks.

Carlson: Thank you.

Shipley: Mr. Chairman.

Scholz: Yes, Commissioner Shipley. I just wanted to see if there's anyone else from the public that wishes to speak to this issue? No, okay, go ahead Commissioner Shipley.

Shipley: I would just like to say I think the point that Mr. Evans made about trying to see if the city and the group can get together I think is appropriate at this time. I think we need to let some time go on this, maybe postpone this for about 30 days and let them see if they can work something out and if they can't, then bring it back to us and we should look at it.

Scholz: All right. Let me ask Mr. Ochoa or perhaps Mr. Kyle, for you know input on this. Mr. Ochoa, what do you think?

Ochoa: Mr. Chairman, I guess, if I'm incorrect please correct me, but what I'm understanding is you're requesting that possibly the applicant come with staff to try to come up with an in between where staff would be happy with some type of proposal and to come back and have that in front of you. Staff's perspective is they need to meet setback requirements. They need to meet that 20-foot setback requirement by having to do that that means that porch, since the rear wall of that home sits about 23-feet from that rear property line that means it's a 3-foot porch essentially that they're allowed on that one corner, the northern corner of their lot. There are some possible administrative flex development standards that we might be able to take care of administratively and it wouldn't have to come back to the Planning and Zoning Commission, but since this is such a large encroachment, it's out of our hands and it's up to you essentially to approve or deny the variance. Staff's opinion is still recommendation of denial, basically we have to follow the setback requirements and from the code perspective there's no way we could support a possible variance with that.

Scholz: Commissioner Evans go ahead.

Evans: So I don't think we're going to get away from the setbacks, right, the 15-foot. I mean that's a tremendous amount and probably more than we've seen here in a long time. But the idea that it can be separated to some extent and make it a stand-alone structure and then look at that to where something that the City can get behind and still meet the intent of the applicant, and so I mean, and I don't want to design by committee you know. I don't know if there's something that can be done there or, I'm sure there is, just what is that and what is palatable to the applicant.

Ochoa: Mr. Chairman, Commissioner Evans, there's a discussion about detaching the structure and it becoming an accessory structure.

Evans: Right.

Ochoa: If that's the case then the variance for setback would no longer be required to the rear yard setback since an accessory structure is only required to meet a 3-foot setback from rear and side property lines. That being said, of course there are other requirements that an accessory structure must meet, so much coverage cause only allowed in the backyard and so forth like that. So it's a potential for more variances to come forward if that happens as well, but when it comes to the other way of it staying attached just basically requiring it to meet setbacks.

Evans: Well, okay. So, I would like to take a look at that if the applicant is agreeable, to look at what those requirements are for the stand-alone structure and then have staff review that and then if there has to be a 10-foot separation, maybe we can put together some type of variance to that, which is you know more palatable to the applicant than having to tear the whole thing down. I mean, to some extent I'd like to prevent having to remove ... what are our alternatives here, we either approve it and set precedence, or we ask the applicant to tear the whole thing down. So is there another step in between those two that meets the intent of the City and is palatable for the applicant and that's what my question is and I don't think we can address that now. I think we're going to need you know to give the engineers and the applicant some time together to see if they can come to some sort of resolution.

Scholz: Okay, Mr. Kyle and then Commissioner Shipley.

Kyle: Mr. Chairman, Commissioners, if the applicant is willing to postpone this to a future date, there may be some ability to look at some potential options including ones that might even result in it staying in its current condition, should that rear yard setback variance ultimately be granted. But I think there probably is a little bit of room for us to look at some options related to the structure.

Scholz: Okay. Commissioner Shipley.

Shipley: I just wanted to clarify for the Commission that when we're talking about a 10-foot setback, you said that they can go up to 3-foot if it's detached. They can go up to 3-feet within the wall at the back. So they're right now within that setback as long as they detach it from the building. In other words they can go ... they're only at what 15-feet right now, and so they've got 5-feet between the end of the building and the wall as it sits today. So the point is, if they detach it and make it a detached structure,

they could actually move that 2-feet farther back and still be within the code. So, the whole point of what I'm trying to make is that it doesn't really have to move that far, if they just were to take off you know 6-inches, but could there ever be and the question for staff is, could there be a variance to allow a pass-through structure. She mentioned the thing about passing food from the kitchen into this open area, because it says in the code that the wall has to be a fire rated wall, okay, and could you put a fire rated structure like a door or something in that wall that would still satisfy the requirements so they could have a pass-through?

Ochoa: Mr. Chairman, Commissioner Shipley, the way the code reads is that that wall would have to be 1R fire rated and no opening or windows would be allowed on there. So, essentially a door would be considered an opening.

Shipley: And we could not authorize a variance for that?

Ochoa: Since a variance is numerical in nature sir I don't see a way we could take care of that numerically and it become a variance.

Scholz: I saw fire was interested in making a comment on that sir.

Dubbin: Mr. Chairman, the fire code addresses a number of options for construction of accessory structures next to a dwelling. It could be addressed, but ultimately it's going to be more of a zoning issue than a fire code issue.

Scholz: Thank you. Okay, Commissioner Beard. I'm sorry, Mr. Kyle you had another comment?

Kyle: Yeah, I just wanted to kind of add to what Mr. Dubbin said, we're dealing with building code issues, fire code issues, and zoning code issues. The zoning code issue is kind of the biggest problem right now because we can't really address the building code side of it because the structure encroaches into the zoning. Mr. Dubbin's right, there are a multitude of building ways that you probably could accomplish stuff, some may cost a lot more than what they've actually already put into it. But there are some options that definitely could be looked at, but those building code options fall outside the purview of this Commission. You have your zoning authority. We could address the zoning side of it, then I think the building side of it could probably ultimately get things resolved, but the zoning component that's got us where we're at. We could not issue a permit on the structure because it does violate the setbacks, it is attached to the home so it is basically the home, not the porch, the home encroaches into that rear yard setback now because it is one structure. But again if we can get the zoning component worked out, I think the building side of things ultimately can be addressed and it may as you mentioned require

some deconstruction of that to some degree so that the necessary inspections can occur and it may you know require the reworking of certain things to ensure that the building codes are being met.

Scholz: Okay, thank you Mr. Kyle. Commissioner Beard you had a comment or question.

Beard: Both, I think that we're doing exactly what Commissioner Evans said that we probably shouldn't and that's designing this thing by a committee.

Scholz: Okay, that was your comment. Do you have a question?

Beard: First thing is, I'm looking at the two homeowners that are right adjacent to this property and we've got to think about them, that's number one. That this structure is in their view not legal and they think it's going to devalue their property and I think they have a legitimate stake in us voting on this particular issue. The second thing is, this really is a hard thing for us to address. It really is. Every time people come up here, put their money, time, and effort into doing a nice structure and then we say you have to tear it down, that is really hard on us to do that. I know it's hard on you too. The other thing is, if we do allow it, then other people are going to want to do it. Well we'll just build this property without going and getting a permit and we can maybe count on the Commission to say approve it because we didn't know any better and we get that statement an awful lot by the way. I think that rather than coming up with an alternative to this, a variance that's different than what they have right now, is not the right way to go. I mean to me it looks like the modification is going to cost a lot of money. To me it looks like starting all over may be the best way to do it. I mean I hate to put the burden on the homeowner that had put this lovely thing together, but I really think that starting over is really the way to go in my estimation, and I really do think that the two property owners adjacent who have written statements saying that they don't like this, that their concerns should be weighed very heavily. Thank you.

Scholz: All right. Yes, please Commissioner Bustos.

Bustos: I have a comment here. Maybe staff or legal can help us out a little bit. But how long has this Commission been doing variances, 3 years, 4 years? No, I mean the variances just came up to us not too long ago. We've probably been doing variances ...

Scholz: You mean how long have we been allowed to do variances? It's been as long as I've been on the Commission and I've been on the Commission six years now.

Bustos: I think it came a little after us but I was told, I think I've been here the

longest, and I know that at the time they were telling us that we're not setting precedence. It may be like I said legal can clarify that, that we're not setting precedence and that actually each case needs to be voted on, on a case-by-case basis. Is that true or is that ...?

Scholz: Mr. Babington.

Babington: Yes sir, Mr. Commissioner, it's somewhat true. I think there's no legal precedence but as I think all the Commissioners are aware once you make a decision everybody points back, well they did it in that particular case and I'm pretty similar, so no legal precedence but people look at your decisions.

Scholz: Okay.

Kyle: Mr. Chairman, if I may just to answer the question, February 27th, 2006 is when the amendment to the Zoning Code giving the Planning and Zoning Commission authority on variances.

Scholz: Right, so it has been six years. Yeah, that's what I thought. All right, any other questions for the applicant then? Okay, thank you very much. You can step down.

Carlson: Could I add a couple of things I forgot?

Scholz: No, I think you've given us a full case. Thank you very much.

Carlson: Thank you.

Scholz: Okay, we have two options here, it seems to me that one of the options is to, as suggested is to delay the approval or denial of this and ask the applicant and the City to try to work out a compromise and the other option is obviously to vote it up or down. So let's have discussion.

Crane: I suggest we go for the deferment.

Scholz: Okay. Commissioner Stowe.

Stowe: It may be difficult for staff. I think I hear that in between the words of Mr. Ochoa to find a way to go around the regulations. It might be useful for the applicants to find a qualified licensed and certified contractor who would advise them in his professional opinion what would meet the variance requirements instead of staff.

Scholz: Okay, any other discussion? Okay, Mr. Ochoa you just talked to the applicant, is the applicant willing to delay or table this to a future date?

Ochoa: Yes sir, Mr. Chairman, the applicant has chosen to go ahead and take a vote tonight please and not postpone the variance.

Scholz: All right, okay gentlemen, unless there's further discussion I'll entertain a motion to approve this variance.

Crane: So moved.

Bustos: Second.

Scholz: Okay, Crane moves and Bustos seconds. I'll call the role. Commissioner Shipley.

Shipley: Nay, findings, discussion, and site visit.

Scholz: Commissioner Crane.

Crane: Nay, findings, discussion, and site visit.

Scholz: Commissioner Stowe.

Stowe: Nay, findings, discussion, and site visit.

Scholz: Commissioner Evans.

Evans: No, findings, discussion, and site visit.

Scholz: Commissioner Bustos.

Bustos: No, findings and discussion.

Scholz: Commissioner Beard.

Beard: No, findings, discussion, and site visit.

Scholz: And the Chair votes no, findings, discussion, and site visit. So the variance is denied, thank you gentlemen.

4. **Case No. SUP-12-04**: Application of Debbi and Bill Caldwell for a Special Use Permit (SUP) to expand their home day care operation from a 6 children to 12 children located at 4423 Nambe Arc in The Pueblos at Alameda Ranch Subdivision. Hours of operation would be from 6:30 AM to 60:30 PM, weekdays. Council District 6 (Thomas).

Scholz: All right our next case then is Case SUP-12-04 and Ms. Montana you're

up.

Montana: Thank you Mr. Chair, Commissioners. What you have before you is a request for a special use permit to expand an existing family home childcare operation, six children under her care to a group home childcare facility for up to 12 children and I'd like to show you the location, Sonoma Ranch Road to Northrise Drive to the gated community of Pueblos de las Alamedas Phase 1, and Nambe Arc. Here's another view of it, Northrise to Nambe Arc, here's where the gate is and here again, Nambe Arc and the gate here. Right now as you can see a lot of the homes are undeveloped and some are under construction, so the gate is open during the hours of operation of the childcare facility currently.

This is an aerial view of the property, the backyard where children play. This is the area where most of the daycare operation takes place in a later slide you'll see the interior. Here is the little parking area for parents and the driveway which is subject to some concern. In this photo the original site visit shows the driveway with the applicant's vehicles there. This is a 2,700 square foot home in the gated community of Pueblos at Alameda Ranch. The zoning is a planned unit development which is an equivalent to an R-1a single-family residential district. The care of up to sox children is allowed as a home occupation and is a conditional use, the conditions being that the operator get a business license, a City business license and is licensed by the state as a daycare provider. The applicant has both, the City license and the state license. The hours of operation are weekdays 6:30 a.m. to 6:30 p.m.. Parents park in front of the house now, recently they've been allowed ... some of the driveway space has been made available to them and in a later slide you'll see that. The parents sign in and sign out daily. The applicant I believe just yesterday or the day before e-mailed a sample of the sign in sheets which I e-mailed to you and you have hard copies before you at the dais.

The expansion is again for up to 12 children which is deemed a group childcare home and that is a special use in this R-1a equivalent district. Again, the hours of operation would be the same, weekdays 6:30 a.m. to 6:30 p.m.. They would remain licensed by the state, it would be a different license and they would maintain their valid home occupation, business registration with the City. Parent parking would be allowed again on the on-street parking and then two spaces in the driveway, independently accessible spaces in the driveway would be made available to them. If in the future the subdivision is built out and the gates are locked, the parents would stop at the gate where there's a callbox and they would call the house and the operator would buzz them in.

This is a slide aerial photo that shows the gate that would be locked here and another gate that would be locked here. Parents could enter either gate and drive to the property. They would park either on street at this little bump out, or they would park in the driveway. Again, the

applicant states that the parents arrive at staggered hours so there are not all three parents or all four parents that would pick up the children or drop them off at the same time.

This is some images of the interior space. The parents would come into the courtyard, they would sign up about here and then the daycare area would take place here and some of the playrooms. This is the main living area there are little stations of activities for the different age groups and the different children, the outdoor play area, and an enclosed sort of outdoor sunroom. The issues of concern are related to parking and traffic and increase in activity in a gated community. You have in the staff report an analysis of the Comprehensive Plan, policies that relate to this project, the municipal code, decision criteria of the Planning Commission, and the purposes and intent of the Zoning Code. I won't go into detail here, but I'd like to bring to your attention the issues of parking. The traffic engineer deems that the parking on the property is for residential purposes and not for daycare purposes, and so the traffic engineer has recommended denial of the permit. In addition, there is concern by residents of not only the gated community but of the homeowner's association. Staff does not enforce or recommend, the City doesn't enforce conditions, covenants, or restrictions, CCRs, but that was raised as a concern that there's a business taking place in a gated community, in a residential gated community which may or may not conflict with the homeowner's association. That was just a comment we're not judging that as a criteria for your evaluation or denial of this project. But there is concern about additional noise from traffic. The potential for the reduction in the peace and quiet because of people who do not live there having access to the code, the gated community code and that sort of thing. There were 15 neighbors within the gated community and you have in your staff report a map showing where they are in relation to the site and I'll show on a later slide where they live. There are also seven letters of support from parents and contractors or licensees or licensors of the operation that do support the operation. I believe there are members of the public that wish to testify as well.

This is a slide that shows you the property and neighbors that are protesting the expansion of the daycare operation through the special use permit. Now I'm bringing this to your attention because earlier the neighbors did complain about traffic congestion. There was only one on-street parking space available for the parents. These vehicles here are pertinent to the homeowner and after receiving comments from the neighbors, I sent all the copies of the protests to the applicant so she was aware of the concerns of the neighbors. She did make space available, independently accessible parking space available in the driveway for parents so that they would not be parking on the street. However, based on the parking concerns, the recommendation of the traffic engineer conflicts with the intent purposes of the Comprehensive Plan, municipal code, criteria for the Planning Commission decisions, and the purposes

intent of the Zoning Code, staff is recommending denial of the expansion of the daycare operation from 6 to 12 children.

The Commission has options to vote yes to approve the special use permit, to vote no to deny the special use permit, to vote to approve the special use permit with conditions of approval that the Commission deems would address or mitigate potential impacts of the project, and last to table or postpone the case and direct staff and the applicant to provide more information or try to work out some mitigation measures themselves and with that I'm happy to answer any questions you may have.

Scholz: Okay, questions for Ms. Montana. Commissioner Evans.

Evans: This question actually goes to you and the applicant. Has there been any type of effort to mitigate the disparity between the applicant's request and staff's recommendation of denial?

Montana: Yes, and we've had difficulty because the concern about the parking. It's a gated community, the homeowner's association as a group within this subdivision maintain the roads, the private roads, maintain the gate and any repairs and maintenance for the gate and neighbors are concerned that they themselves would have to support this business in the sense that they would have to maintain the infrastructure and that is a concern that we couldn't mitigate. There's another concern about just the parents coming in rush hour and causing congestion and they're speeding to get to the home so they could pick up their child before the close at 5:30 and so there's no way to control that. I did speak with the applicant about clearing out the driveway and she has done that. I spoke with the applicant about creating a little drive circle on her property but there's an elevation change and significant landscaping so that seemed you know difficult or expensive. So we tried to work out some mitigation measures that would address the issue of the resident neighbors, but we didn't feel that they were workable.

Scholz: All right, any other questions? Commissioner Crane.

Crane: I would just like to make the observation regarding parking, that when I visited there about 4:30 this afternoon I was in the neighborhood going back and forth for at least five minutes and there were four vehicles parked on that pad, that driveway and no sign of activity. It makes me wonder if any of them were vehicles of parents picking up children.

Montana: Thank you sir.

Scholz: Okay, anything else, all right. May we hear from the applicant please?

Caldwell: Hi I'm Debbie Caldwell. And to answer your question first, both of those

cars in addition to two cars of ours were parents picking up which are here right now. And so one of them did come and hang out and ate dinner with us and we all came down here together.

Crane: Thank you.

Caldwell: But two extra cars were parents. The only two cars that are ours are the black jeep and the Mercedes or the one that's in the garage will be another white jeep and the van and the truck are no longer there.

Crane: Thank you.

Caldwell: Okay, we've been doing this for over a year now and there's never been any complaints as far as noise, traffic, gate codes, any of it and believe me there would've been complaints if there was any you know truth to that. So I feel like it's all been fabricated once they got notice from the City. They kind of like whispered down the lane with children, oh there's a daycare, oh there's a problem, oh there's ... and they kind of look at it like it's a bad thing when in fact we're doing a good thing for the community and I've been doing this business for over 26 years. It's not my ... I didn't wake up one day last year and say, oh I think I'll do daycare today. I have a lot of experience, I have a degree in it. It's very organized, structured, and I feel like we've accommodated everything that Ms. Montana and Willie had asked us to do. I asked him where he came up with 3 cars per, and he said a scientific calculation he did. I don't know where he got that from, but anybody knows that I have six children enrolled. It doesn't mean there's six parents. Parents have more than one child enrolled. So I don't plan on ever having 12 in my house, but there are some parents right now that are expecting in the summer of next year and spring and I would like the opportunity to take those children which are two more children which wouldn't add two more cars because parents already have children enrolled. So I feel like they're being misled as far as 12 kids, 12 parents, 12 cars, traffic. They all work different schedules and so they are staggered and I do have sign-in sheets. You know at one time, I would say maybe sometimes there are two parents at a time that are there. No more than that and so I feel like we've accommodated and we've done everything in our power to accommodate. I'm not going to tear up my landscaping and do that. Our house is for sale. I have no intention of staying there, and so as soon as it sells we'll be on to the next house which will not be in a gated community because we feel like we want to ... this is a community asset what we do, and I do take care of children with special needs, I have that ability, and I have never had a complaint with the state, the City, the management company for the Pueblos. I spoke to one of the group management teams and he has never had a complaint as far as noise, traffic, anything like that. So I feel like it was kind all fabricated as soon as they got notice from the City, oh, you're kidding,

right, oh, okay this is a bad. I don't know why people look down on daycare like that but unless ... I know some of them have never had children and so they don't understand what we're doing here.

But also I have spoken to my direct next door neighbor who I believe is here right now and she told me a week before she got notice that she didn't know that we had a daycare there for the past year. So that tells you right there that all those e-mails you got and all their web (inaudible) for the Pueblos was all just, everybody jumped on board. Fourteen people in that gate right there that are opposed, that really affects Nambe Arc and then Chimayo, gates right there, that it would really affect, fourteen out of 84 homes, that's 15 percent and to me when I read their letter for denial, that's not substantial to me. I mean out of 84 homes it would affect, 15% have a problem and those are so called the little friendship you know that one person says, oh this is a bad thing, and oh it's just so invasive, the noise and the traffic. Are you kidding me? You didn't know about it until you got a letter. So it's like, come on, you know. I don't know, I just feel like we've accommodated. We'll do whatever we can to accommodate. This is my career. I'm not going to change careers. I am going to sell my house, and go from there, but I don't plan on ... I'm not going to stop what I'm doing right now, so they just need to get on board with it or we'll just live with it.

Scholz: Okay, questions for this lady? Commissioner Evans. You're up Commissioner Evans. That is you.

Evans: How did you come up with the number 12?

Caldwell: Because you either have to be licensed for six and then the next step up from that is 12 with the state. Like I said, I don't ever intend on having 12 children in my home, that would just be too much for any people, I wouldn't do that, but I do in fact want to take on the parents that I do have that are expecting and that's what kind of got me geared to go forward because I don't want them to have to drop their children at two different places nor do I want to leave the ones that we already have enrolled.

Evans: So historically we've had some other cases similar to this where they went from 6 to 12 and we were able to come to a number which was more palatable for the surrounding community and to meet your expectations too and again I hate designing by committee, but is that something that would be palatable for you in that you know because I mean you could sit down, look at the parents that you have, look at the parents that are expecting which would increase your flock, and you know not have to reach for the full 12.

Caldwell: Right. And the thing is with the state like I said you're licensed for six ... let me back up for a minute, when I first did this I only was registered

which meant I could only keep four. And I started this very professionally and I wanted to introduce each child, it's not like I'm going to open the door and there's going to be six kids standing there. I didn't want to do that to the child or myself or my house. So I did one at a time and I don't ever have any ... I have one child that's under a year old and I have several calling that want to ... cause we're on the state New Mexico kids and they give referrals and I have several calling, but I won't do that to the under one-year-old or myself because I think he needs attention so I won't take another younger one like that until that one is one. But to answer your question, the license is you can have up to 12. Me personally, I would be comfortable probably at nine because I just feel like as far as like how we have it organized centers and play area and there are two of us, that's fair. I mean I have five kids of my own so I know I can handle five by myself and he could, you know. You know what I'm saying? Then my mom's with us during the day too, so we have plenty of adults there that you know have hands on.

But can I go back to something real quick about the gate code, I just thought about that? We've never given our gate code. The gates for the five and half years that we've lived there, way before our neighbors that have complained, have built their homes there, the gates have never been locked. When my daughter comes, the one, I watch two of my grandkids, she is a nurse so sometimes she will come early in the morning which she's allowed to have my gate code, you know she's my family and that won't change. I mean she can stay for dinner; if there's an extra car in the driveway that might be hers. To me that's no one else's business. I mean they can't tell me who to have at my house and my family and how long they can stay and what time their dropping off their children. She's a nurse, she has to be at work at 6:00. It might be 5:30. But from 5:30 to 6:00 they're not daycare kids, they're my grandkids. You know what I mean, that's how I look at it. It's like I don't feel like I need approval from my neighbors to have my family there nor do I feel like they should tell me what business they're running in their house which they are and you say you know like the Pueblos and running a business in your home, they run one, right next door to us. And people do have business. A majority of people work from home. They're treating it like it's a 55 and older community, it's not. This is a family community. It may not be kid friendly in their eyes, but it is a family community and when we bought our house they didn't say anything about, we didn't have to give them our job application or our financials or what we want to do five years from now, it was you know that was it.

Scholz: All right, I see a couple of lights. Did you have another question Commissioner Evans?

Evans: Yes I do.

Scholz: Go ahead.

Evans: Real quickly, so this is a gated community and there's a covenants associated with that gated community.

Caldwell: Yes.

Evans: Does it stipulate in there that you cannot have a daycare or any other type of home?

Caldwell: No.

Evans: So this whole …

Caldwell: They're trying to make it like that, and they do change it as they go along. We've noticed that like you weren't allowed to have solar panels on your house, but all of a sudden when someone wants it they change it. They just do whatever they want. There's one little group of people who does whatever they want.

Evans: So I guess I'm kind of struggling and maybe this is a question for staff because you continue to mention how it's a gated community and this type of thing, I don't want to say tolerated, but I guess I don't see where they entered into a contract that's binding in the sense that they can't do these type of things as long as they conform to City and state requirements.

Scholz: Well I think that's true Commissioner Evans and as a matter of fact I talked to Mr. Babington and I also talked to Mr. Kyle about this, about covenants and they both said that covenants are not enforceable by the City. Covenants are only for the homeowner's association and so those are the things that the homeowners association has to agree on.

Evans: Right.

Scholz: And they can enforce through civil matters.

Evans: Civil, right. But if they've entered into a contract and purchased the home and were provided the covenants at that time and you know this type of business as prohibited, then they wouldn't have entered into that contract originally.

Scholz: Yes, I'm inclined to think that and that was going to be my question. But of course it's a moot question.

Evans: Yeah.

Scholz: Obviously it didn't apply. And for them to be in a sense grandfathered in, you know if in fact the covenants are changed, that would be a fairly logical thing and the sort of thing that's often done in civil cases. Unless you have other questions I want to get to these two.

Evans: I have one more.

Scholz: Okay, go ahead.

Evans: Is there a representative from the homeowner's association that can speak to that?

Scholz: Yes there is. I see one in the ... he raised his hand. And so when we get to public discussion we'll hear from that. Okay, Commissioner Beard you've been waiting very patiently. Go ahead.

Beard: Typically we favor homecare activities. We usually approve them if there isn't very much opposition. In your case you have an awful lot of opposition and I think it would go a long way with this Commission if you could work out some of your concerns with the concerns that the opposition has with you. We have to look at not just you, but we have to look at everybody else.

Caldwell: And let me just say something. The people ... when you all sent the letter to the HOA, that has 3 subdivisions in it, Phase 1 which we live in, Phase 2, and the condominiums. Okay, Phase 1 on our street that wraps around the two gates, there are 84 homes. There were 14 opposed on there. The majority of them came from out of our subdivision, across a divided Northrise which those people are not impacted by, unless they're hanging out in front of my house, they're no impacted.

Beard: I saw that, but there's an awful lot that are in your gated area that said they'd oppose.

Caldwell: Right. But off the sides of the streets, but I'm just saying where they would really be affected, its 15 or 14.

Beard: Again it's a ... if they allow you to do it then they're going to allow somebody else to do it.

Caldwell: But like I say we have gone through state regulations, zoning, fire, to get me licensed to where it is right now, we were approved by all our City codes, and state.

Beard: That might be, but it's your neighbors that you have to be concerned with.

Caldwell: And they should be concerned with me as well and my well-being and what I want to do. I don't tell my next door neighbor that she can't have delivery trucks speeding up and down the street stopping in front of my house. I mean I don't get into ... I'm not that kind of neighbor, I don't want to cause problems with my neighbors. I don't bother, I'm too busy for that. And I just, it seems like ... I can tell you right if there was ever a complaint it would've been noted in the management company of the Pueblos.

Beard: Well as I say it would go a long ways for us if you were to sit down with these people that are opposing you and say, what can I do to make it better, I mean is it 10 a limit or is eight a limit or?

Caldwell: It's not that way because it's one person and all her little friends and that's it and like I say as soon as they received their letter all of a sudden there was a problem. There was never a problem. So you tell me, you can't reason with people. I just want to do my job.

Beard: I sympathize with you.

Caldwell: And because we're selling our house because it's not a friendly place to be, and they've got way too much time on their hands. And I don't. I'm not retired. You know I have a long way to go and this is what I chose to do and I don't think I should be down for it. You know I love what I do.

Beard: Being in a gated community actually poses a problem. I mean it really does. It's a different animal than if you were not in a gated community. Because you have more strict homeowner association codes, you have the gating problem.

Caldwell: We haven't broken any of those codes or anything.

Beard: Well I'm just saying it's a different game and we have to look at it that way.

Caldwell: We realize that now. We didn't realize that until everybody started building their houses around us and started telling us what to do. You know, I was like maybe they should've checked who they were moving next door to.

Beard: Okay. Thank you.

Scholz: Okay, Commissioner Crane.

Crane: Yes, by what means did you get your present permit that allows for 6 children? Did you have to come to the City or this Commission?

Caldwell: No, it's a state license.

Crane: Okay.

Caldwell: And what happens is I had to get fire inspection, zoning approving, like just make sure that the house was really the house and that we were the owners. And so it was zoning, fire, and then the state requirements.

Evans: Special use permit.

Caldwell: There was no special use permit required until you want to watch over 6 kids and then you have to ... and that's what a special use permit is for and that's what I was trying to explain in my e-mails, it's like that is why there is such an animal. A special use permit means this is what it's for, you're trying to acquire this so you can do your job. It's not I'm asking to rezone my house commercially. I'm not going to put up billboards and anything you know.

Crane: Okay. Did you have to apply for a special use permit for the 6 children?

Caldwell: No I did not.

Crane: Why, I know it's in here, I'm sure it's in here, save us all a little time, why are you having to apply for it for 12?

Caldwell: It's just their requirement for the state. They say that you have to have a special use permit over six children in the state of New Mexico.

Crane: The state requires this of you. Okay.

Caldwell: The people who license me.

Crane: And the City.

Caldwell: Yes.

Crane: The City does not care if you have less than 12.

Caldwell: Yes, less than six.

Crane: I see. Okay. This is perhaps a small point but on the signup sheet for two weeks in a row you have seven children. Should we be concerned about that?

Caldwell: No you shouldn't be concerned because one of them is an after schooler and he comes and when one of the parents is ... well actually my daughter is picking up two of the children. She is there and she takes

them ... she's a nurse, she works till 2:30. We pick up the one child at 2:30 and don't get him back to the house till 2:40. My daughter may still be there with her children but I'm never over ratio. I mean I'm not trying to do anything wrong. I have all eyes on me.

Crane: Thank you.

Caldwell: Thank you.

Scholz: Commissioner Shipley.

Shipley: Thank you, just a couple of questions. When I came out to take a look at the site I looked very closely at that, one of the things that we really have to concern ourselves with is that there's a vacant site adjacent to your house. People are going to build a house on that eventually and the parking for drop off and pick up is going to affect them because it's right there close together to your driveway. The other thing is, I did note your house is for sale. This special use permit would be contingent upon you staying in the house.

Caldwell: Correct.

Shipley: Also you cannot operate a daycare center if you're not a resident of that home, is that correct? The state code requires you to be a resident? It's not transferrable in other words to another site?

Scholz: I'm sorry, is that mike off, I can't hear you.

Caldwell: It will end when the house is sold, cause it's actually for the address.

Shipley: Yes, okay that's what I just wanted to be sure. Because you know I noticed you changed all of your phone numbers from a local area code to a Texas area code.

Caldwell: Yes, well we've always had the Texas cell phones.

Shipley: Okay.

Caldwell: And when we changed our internet and satellite and things like that we didn't have a need for that phone number.

Shipley: Local number.

Caldwell: So we use our other two numbers.

Shipley: Okay. So everybody calls you long distance from here. Okay.

Caldwell: They text.

Shipley: Okay. But I was just going to say you have to live in the home. You can't have a business in a neighborhood that was one of the concerns that I had. Okay. Thank you.

Scholz: All right. any other questions for these folks? Okay, thank you very much.

Caldwell: Thank you.

Scholz: Now there was some concern about the homeowners ... you're a member of the homeowner's association sir, would you like to speak to this? You'll have to come up to the microphone and speak. Identify yourself please.

Olson: Are we on? Yes. Mr. Chairman.

Scholz: Stay close to the mike please.

Olson: My name is Tom Olson. And I live at 4419 Nambe Arc. We are the homeowners immediately adjacent to his site and I don't like ... I don't appreciate being categorized I guess as an evil neighbor. I am also on the design and control committee of the homeowner's association. Ms. Caldwell would be mistaken to think that the activities of her daycare center have not been noticed in the neighborhood over the last year or so as these number of cars have increased and as the traffic has generally increased there and I know that at a time she was caring for I think grandchildren and there were a couple of kids going out and nobody was concerned about that. But there has been concern about this increased traffic and activity there. The homeowner's association, the covenants are not black and white on what kind of a business a person can operate in the development. There are clearly people who are consultants and do various things, work at home, that's just the nature of life today. But there is no, hesitate to call it a retail business, but there's no other activity where people regularly use their home as an office or as a place of business. In other words there's nobody who has an accounting service or a tax service or any of those kinds of things that might be operated in this kind of a neighborhood. So the traffic is one concern. Over the last, we've been there for four and half or five years, the Caldwell's have always had, until the last week or so, have always parked four cars in their driveway. So parking has been a concern at that residence.

I can't speak to the issue of ... the approval is there for a daycare center for six. It seems to me, or it seems to us and I think to our neighbors that moving to a level of 12 is quite a different level of activity. We do have ... let me back up. These lots in this ... this is not only a gated community. This is a zero lot line community. So on one side of the

lot, you know what these are, but on one side of the lot the house is directly on the lot line. And on the other side there's a required 20-feet of space, so our backyard on the zero lot line side is directly next to the Caldwell's property. And clearly there is backyard noise with kids out playing. There is a concern about it and as you pointed out, one of the Commissioners pointed out, the PUD in this area is not fully built out and so there are within 500 feet there are three, at least six lots remaining to be built which is going to add more traffic there and also there is the issue, those are lot owners who are trying to sell their lots and our concern and I think our neighbors concern is an issue quite clearly about property values. And I cannot see how having a daycare center for 12 children next door to us is not going to be a serious matter in terms of our property values. Anyway, those would be my concerns and I would urge you to vote in favor of the staff recommendation. Thanks very much.

Scholz: Thank you, questions for this gentleman? Commissioner Evans.

Evans: Yes, so you said that having a business you know per your covenants is not black and white.

Olson: It's not black and white.

Evans: So what exactly does it say, or does it say anything?

Olson: It doesn't say much about this. It does say that there is a set aside area for commercial activity that is somewhere within the PUD. That's what it says. And so what the homeowner's association would try to do in terms of changing covenants and whether they would try to seek an injunctive relief which would be probably their only recourse that I couldn't speak to that, that would be up to the board to make that decision. And the covenant changes are clearly a matter of I think not only majority I think it's two-thirds majority of the residents to change the covenants which have been changed from time to time as these places ... that happens in all gated communities. Sure.

Scholz: Okay, Commissioner Beard.

Beard: Do you think that if you were to sit down with the Caldwell's that you might be able to work some type of an agreement or the homeowners just really adamant against this?

Olson: I doubt that an ... you know there's nothing that's going to be done about the six, but I think that if we were talk about more my guess is that we would have a hard time coming to an agreement.

Beard: You think it would be worthwhile sitting down and talking? I mean, I really

hate to see this turned off you know so easily and I appreciate your position on this particular issue, you want to maintain a certain style within that gated community.

Olson: We absolutely do and I pay a lot of real estate taxes in this town and I want to see that ... and I want to be paying my real estate taxes for a property that's worth value that I'm paying that tax on. Just as you are and anybody else that's here, sure.

Beard: I'm just trying to get some type of a compromise like Commissioner Evans was talking about. I would like to see a sit down and see if we couldn't work it out before we really say no to this situation.

Scholz: Any other questions or comments for this gentleman? Thank you very much sir.

Olson: Sure, of course.

Scholz: Okay, someone else wants to speak to this. Yes, ma'am. Go ahead. I assume someone is watching your child at the moment.

Reno: Oh absolutely. We're a community up there. My name is Natalie Reno. I have been with the Caldwell's the longest I think other than her grandchildren, since last October. I'm a teacher at Desert Hills Elementary school. My husband's a Border Patrol Agent. And so she actually does sit down and chose her families. As you can see all of the families are here, so we fully support her and her family's daycare. My daughter is the one with special needs. I wrote an e-mail to Ms. Montana. She can't attend a regular daycare because she can't eat on regular intervals. A daycare if you don't eat lunch, you don't eat lunch. She has a heart defect so her esophageus isn't straight so when she doesn't eat small meals she vomits and so the loving Caldwell's feed her every 30 minutes if she needs to eat or hour. So this is an ideal situation for us. I'm also one of the parents that comes every day to drop her off and pick her up. I have never had the gate code. I have never needed the gate code. Not only that, but I do not speed through the neighborhood because I don't need to. I get there and I end up hanging out because my daughter loves it there so much. So if you drive by you'll probably see my car there for a little while. It is usually parked in their driveway. Once in a while I do park on the street. The neighbor mentioned that they always have four cars in their driveway, that's not true. Actually they had two cars in their driveway up until their son's moved back in, in August. Then they had four cars up until Ms. Montana had told them about the traffic issues and then they quickly moved the other two cars, so leaving 2 spaces for us to park. So since then I've always parked in the driveway, not leaving a problem. When I see another parent comes I know that there have been some

issues with the neighbors so I will leave at that point so that I don't cause any other traffic issues. What else? As with the noise outside, she runs a very structured daycare. They do have outside hours for a little while in the morning and then a little while in the afternoon. Who does not like the sound of kids having a good time outside? I don't know. But every time that I've been there in the afternoon I have never seen the neighbors outside so I don't know how much the noise could possibly affect them. But I do know that they also wrote complaints about them being out front or the worries that they're going to have basketball hoops out front. I don't know if you've seen these kids or heard how much noise they've made in the last, what, we been here, like three hours, they're not that noisy.

Scholz: And they're not tall enough to reach the basketball hoop either.

Reno: Nor would I bring my daughter to this daycare if they allowed them to play on the street. Look at their backyard. There are pictures in there, it's an amazing grass backyard, part of the reason why I bring them to that daycare. They enjoy the backyard. It's beautiful. Another thing that they complained about was the worry that they would bring 12 kids to the pool. None of them know how to swim. Why would you bring 12 kids who do not know how to swim to a pool? Not only would I as a parent not allow that to happen because you need one-on-one if you're going to bring a child to a pool, but they are perfectly happy with a tiny blowup pool with an inch of water out back. It's a safety thing and they're smart enough to know better and that's why we all bring our children there. What else did I want to say? If I ever plan on having another child, like she said, would not want to drive to two different daycares because this gated community would not allow me to bring my child to the same people that I have brought Jewel to since last October. They have become my family. We don't have family here, so whether or not Jewel went to this daycare, we would still be at their house just as much as we are now. She calls them Nana and Pop, if I were to bring her up here and say who's girl are you, she'd say Pop, not momma which makes me sad a little bit, but she would say Pop cause that's her New Mexico grandparents. So, whether she even went to this daycare or whether you said you know it doesn't really benefit me at this point, if you let her increase it. But I'm still here supporting her because we love them like family. Another side note, I used to rent a house in this gated community up until last October when I moved to Picacho Hills and they rent to anybody, so I'm not saying I'm anybody but I'm saying they don't do these crazy background checks and things like that, they will rent to anybody so and let anybody have a gate code. So why are they so worried about gate code, gate code, gate code. You can go through a rental company and rent a house through here and they will give anybody a gate code. So we're not getting the gate codes, but they don't check who they rent to through some of the rental companies as well.

Scholz: Okay, any questions for this woman? No, okay. Thank you very much. Is there anyone from the public with additional information? Yes, ma'am.

White: Good evening. My name is Brandie White.

Scholz: Yeah, raise the microphone so we can hear you.

White: I am also one of the parents who brings my two children to the Caldwell's daycare. My three year old daughter and my now six year old son who is the afterschool child that they care for and I just want to express to the Commission how much I appreciate having a family centered home based daycare in my neighborhood. I do live in Sonoma Ranch East and the Caldwell's are the only daycare that is home based that I was able to find in my area. It's cost effective. I know that my kids are cared for there at a higher level than they would be in a center and I can't imagine sending them anywhere else. I also am very respectful of the community. I work with volunteers, I am volunteer coordinator for a program here in town and one of my volunteer's lives in the community and she has expressed to me that she has never been impacted by the daycare. She's not here. She didn't take one side or the other but I do know that it has not impacted here. I'd also like to just note for you all that this community is less than a mile from Sonoma Elementary, which means there's constant noise from the school. This is a family area and that's just in my opinion to be expected in that proximity to a school. That's all I have to say. Thank you.

Scholz: Okay, comments or questions, all right. Thank you very much. Okay, anyone else with additional information?

De Jong: Hi Chairman. Hi Commissioners. My name is Marijn De Jong and this is my husband Andrew Brandford. We bring our two year old daughter to Debbie and Bill, been doing so almost a whole year and I'm also expecting. So I'm expecting a baby next year, April, and currently we would not be able to bring the baby to Debbie and we would be in a dilemma as to what to do. So for us it is important that this gets approved and as far as I'm aware Deborah Caldwell has no intention of getting actual 12 kids there. She just wants to have the couple extra kids if necessary for the couple of us who are expecting. I myself do not speed up and down that street. Ever since I've been notified to not park on the street since some of the neighbors have issues with it, I have been parking in the driveway every single time I go. Both me and my colleague, she works at the same place, we have difficult working hours so our hours are from 9:00 to 6:00, it is almost impossible to find a daycare center that will allow you to pick up your kids after six o'clock. We've tried repeatedly in an actual daycare where you do that, it gets very expensive. We did not

have the means for that, both my husband and I work two jobs to try to afford getting by.

Scholz: Okay.

De Jong: And I know for a fact every time I go pick my daughter up there is never more than two total people there and it's always me and my colleague who gets off around the same time, we drive over there, pick up the kids. I've never seen a huge amount of traffic or traffic congestion or any of the things that the neighbors are complaining about.

Bradford: Yeah, I'd just like to say that I'm usually the one that picks up our daughter.

Scholz: Close to the microphone sir.

Bradford: I'm usually the one that picks up our daughter and I would have to agree that most of the parents who arrive, arrive at staggered times. And I think one of the important things is all of us are aware of the other homeowners concerns and I think we're all trying to adapt to their concerns, parking in the right direction, coming in through the other gates. I personally don't speed. I have seen vehicles speeding behind me, in front of me as I'm picking up my daughter. And these are not cars that are going to the Caldwell's house. But I think as parents we're all willing to adapt to the other homeowner's needs and respect their wishes. That's all.

Scholz: Okay, questions or comments? No. Thank you very much folks. Okay, I'm going to close public discussion at this point and I'm going to ask that the Commission discuss. Commissioners what do you say? Commissioner Crane.

Crane: I think this application has merit. I think there's need for some expansion in this enterprise. I also think as do other Commissioners there's a need for mitigating the impact on the other people living on Nambe Arc and I would vote for approval of this special use permit application with the condition that the cap on the number of children be nine.

Scholz: Okay, someone else? Commissioner Evans.

Evans: Actually I sympathize with the community homeowner's, what is it?

Scholz: Homeowner's association.

Evans: Thank you.

Scholz: Bring your mike a little closer would you Shawn.

Evans: I appreciate your concerns and traffic would be a concern for me also and one of the things that we've done in the past to mitigate some of the effects of the traffic is to actually have a staggered time at which the parents would drop off and pick up their kids. So that you didn't get folks kind of piling up in the street trying to pick up their kids at the same time. So I would think that something like that would be easily, or should be supported by the applicant also and then added as a condition along with Commissioner Crane's recommendation.

Scholz: Commissioner Stowe I thought you had your light on earlier.

Stowe: To make a comment I think you families are very fortunate to have found the home based childcare service you have. It seems to me that the Caldwell's have maintained a home based business under the radar with six children as the maximum. The complaints appear to be for increasing the number of kids under care to 12. I would join with Commissioner Crane in agreeing that a smaller number, I know the permit itself would say 12, I believe that's how the law goes, but limiting it to nine children.

Scholz: Okay. Commissioner Beard.

Beard: I agree with coming up with another number but the homeowner's association doesn't want that and I think we have to respect the people that live in this gated community. I mean I would love to have 9 or 12 people be allowed, or kids be allowed to be home schooled or whatever it is that they do there, but we have to think about the people that live there. And this is a gated community. There is an awful lot of opposition to this. There really is a lot of opposition. If you would like to table it and get a consensus from the community, from the gated community to go with nine then I would support it, but otherwise I can't support the nine.

Scholz: Okay. Commissioner Shipley.

Shipley: I just have a question. Was there someone here from the board of directors of the homeowner's association?

Scholz: No, the gentleman who spoke, Mr. Olson who spoke, he's on the design and control committee.

Shipley: Yeah, but he's not on the board of the directors.

Scholz: He's not on the board, no.

Shipley: So there basically has been no one from the homeowner's association other than the resident next door that has spoken to us about this

problem.

Scholz: That has spoken in opposition, yes, that's correct.

Shipley: That's correct.

Scholz: Yes, we have a number of letters and e-mails of course.

Shipley: Yes, but the homeowner's association has not taken a position?

Scholz: Not as far as I know.

Beard: I think they have. According to that one view graph we saw.

Shipley: No that just says ...

Scholz: Ms. Montana you have a comment on that?

Montana: Mr. Chair, Commissioner, a member of the homeowner's association did come to the office after receiving notice about the project. Staff typically sends the homeowner's association notice of this kind of application so we did send it actually to the HOA. A member did come to the office and discuss it. He said that the board would not address this. The board would not vote on this but they would send this to their members through their website which they did. So the board chose not to comment on the argument.

Shipley: But what I read though is that parking congestion was a concern, they don't want the applicant to give parents the access code, and they don't do that because the gates are always open. And I live up in that area and I'm up and down that street frequently and those gates haven't been closed one time in five years. So that's not a problem.

Scholz: No, I thought the whole gate code thing was moot. I didn't think it applied here.

Shipley: So then the third thing was don't think the house is large enough to accommodate 12 children. That's an opinion. The ratio of children to adults may require the addition of adults with 12 children ... and doesn't think the CCRs would allow business in the subdivision and I don't think that that's a problem because ...

Beard: I thought speeding was in there also.

Shipley: No, it doesn't say anything about speeding. At least that's his comments is what I was quoting. Okay. So my point is this, we have historically

looked at home based childcare from a standpoint that it's something that's very necessary. We want to get qualified people that do a good job to do that. We do have a concern and we should have a concern about this because the permit is for 12 people, or for 12 children, and whether or not we always plan for the worst case. That's what this Commission looks at. And so you can assure us that there's only going to be seven and a half, but once you got a permit for 12, you get to 12. And that's what we have to look at. Now, is what we've seen tonight adequate for 12? My opinion is no. Parking in the street doesn't allow that. You don't have enough room to park there. I know you can mitigate it by going at separate times and those kinds of things and I know that you've got multiple people, or multiple kids with one parent and so forth and I think that's understandable.

I was really concerned about several things when I went out to look at the property; I was concerned about where you could park and the fact that there are vacant lots that are going to have homes eventually and this is, you know you put this in there and they move in and it's a problem because people are parking in their driveway or blocking their driveway. That's a problem that's going to come to fruition later on and we're supposed to see those problems today and preclude them from happening tomorrow. That's one of our responsibilities. The other thing, I was concerned when I saw the house was for sale and I understand why you're doing that and that's why I asked the question about whether or not the special use permit goes, it dies if they sell the house and that doesn't hurt the community, that basically helps the people that are against it and so forth. So I'm not concerned with that.

I think the other thing that's very important though is the public input and everybody, you know we have to do this because this is something that's necessary to take care of the kids and if we can do this and they can work something out for parking, I think it's a good thing to do. I'm 50/50 on how to carry this out, but I do think that the number of homes that are on here and where this home is located is really critical because of that curve in the street. You've got so many houses and you've got a flag lot back there that's got a driveway access only, and the house is back in the back. And it doesn't take very many cars you know, six cars or four cars or whatever to block somebody else's access and then you have a problem. So, from a traffic standpoint I think it's not a suitable location for this business to expand. I think that if you can do 6 where you are and continue to serve the residents or your clients now I think that's wonderful and you're complying with that. But I think even to go and to say we will restrict you to nine I don't know if legally we can restrict them, can we? You're shaking your head.

Babington: Mr. Chairman, Commission members, because it does require local jurisdiction approval of the special use permit I think the Commission does have the authority to place a limit. The state right now is 7 up to 12 and

that's how the license is, but I think the local jurisdiction via this special use permit can place a limit on that number and that the state would recognize that since local jurisdiction approval is necessary.

Scholz: Right, so it's a condition of the approval.

Shipley: Okay.

Babington: That's my understanding.

Shipley: Then 9 might be the number.

Scholz: Okay, anyone else, yes, Commissioner Crane.

Crane: A lot of attention has been paid to traffic and I've looked at the first week, 3rd to the 7th of September which had four functioning days. Arrival times varied from about 7:00 to about 11:00 in the morning and there were six discrete arrival times, six different vehicles for seven children. And five or six in the morning and the afternoon from about 3:00 to about 7:00 there were five or four vehicles arriving. It does not seem to me that that can be called much of a traffic impact on a loop that has I think the applicant said 38 houses, I forget, but in any event Nambe Arc has quite a lot of houses and 38 may be on the low side. To add that many vehicles spread out like that doesn't strike me as a problem and I speak as somebody who does live in a fairly congested area. So I'm satisfied that this can go forward if there is a cap of nine on the number of children which would increase the traffic since there are seven children coming anyway, by no more than two vehicles.

Scholz: Okay, any other comments, discussion? Yes, Commissioner Beard.

Beard: In looking at what's going on today and what might happen tomorrow, is not what probably will happen a year from now. And we're approving a permit that's going to go on for quite a while. So you've got to consider that even though the cars may be staggered for a while or that there are not whatever problems we might be discussing might be not occurring now, if we go ahead and approve it, it doesn't guarantee what's going to happen a year from now.

Crane: Well agreed Mr. Chairman, but I don't think it's likely that even with nine children we're going to have even 9 vehicles arriving in a 15-minute span which would be I think would be tolerable. I just don't see an increase from seven to nine being a significant impact and I think this is a very valuable enterprise for the community.

Scholz: Commissioner Beard, go ahead.

Beard: I think it is a valuable contribution to the community. The homeowner's, especially adjacent homeowner, has complained about the noise of the kids, three more kids back there, were six to nine, three more kids a little bit more noisy, a little bit more cars. It's their concern I think we have to respect their concern. I would really like to see the Caldwell's and the homeowner's association board get together and agree upon nine.

Crane: Compromise is always preferable to force, yes. I agree. But perhaps what we're suggesting is a compromise, a directed compromise if it passes, but we don't have a motion yet of course.

Scholz: We don't have a motion and I wanted to make a comment, but go ahead Commissioner Evans.

Evans: Well, so what I propose is that we make a recommendation of approval with the following conditions; a limit of nine children at the daycare operation, and to develop a staggered drop off and pick up of the children under the care with the approval of the traffic department or you know in 15 or 5 minute increments or something to that effect. And that's what we've done historically. So we actually write that into the conditions so we never get that situation where cars are showing up, all nine cars are showing up at the same time.

Scholz: Okay, I understand your conditions. A couple of comments, well a question actually, I wasn't here for the July meeting I believe, no I'm sorry it was the June meeting when you approved a daycare in my neighborhood as a matter of fact on Fairway. What was the discussion there? I didn't get a chance to read the minutes? What were the concerns if there were concerns?

Beard: Traffic was the big concern. I don't think there were any other concerns as I remember.

Scholz: Just traffic.

Beard: Yes.

Scholz: Okay. They have a circular driveway of course you know in front of their house and I see people using that all the time.

Beard: They did and one of my concerns was that if there was a vehicle in there and once there's a vehicle in there then you can't get another vehicle in and out.

Scholz: Okay. But you approved it as I recall. Did you approve it with conditions?

Beard: I don't think so. We talked about how we would ... being a special use permit how could we reject the special use permit once it was approved and it was if there were accidents out there on the street because of the cars, then it could be rejected, I think this is what we talked about.

Scholz: Okay, a liability issue in order words. Okay, well I was concerned about that. Just reviewing my notes here, I agree that the gate code is you know a red herring you know, it has nothing to do with this case since the gates are wide open. I've seen that in a number of developments. And I think someone proposed or pointed out that the reason for that was that the place was still under construction and once it was completely built out or you know they've stopped construction then I think there'd be a gate code access. I was concerned about the number of homeowners who responded to this as Ms. Caldwell pointed out, though some of them were from the condo area which has nothing to do with this property. It is across on the other side of Northrise, south of Northrise. There was also the concern about the traffic engineer, I think he probably overstated the case though I understand the concern about parking. And I think that's something we obviously have to think about. I am kind of half way there on this. I think home based childcare is a valuable thing and I think it's probably preferable to you know large daycare centers and so on. My kids were in home based daycare and I think they grew with it, it was a good thing for them from what I remember. So, you know since there were no covenants in the original contract, you know they were not told they couldn't do this at the outset, it seems to me that some of these protests are "oh my god there's a daycare center in our neighborhood". You know as Ms. Caldwell pointed out, you know perhaps this was trigged by the City's sending something to the homeowner's association.

I'm also concerned if the homeowner's association really has an active board that takes an interest in this, I wonder why they didn't send a representative to this meeting or you know make a statement you know from the homeowners association, that is an official statement from the board. It seems to me that they're avoiding this you know and well that's their choice, but that means to me that the complaints that we're hearing or the concerns that we're hearing while they might be legitimate concerns, don't seem to be backed by the authority of the board, the homeowner's association. So, gentlemen if we're through with our discussion, I'll entertain a motion to approve.

Evans: Mr. Chairman I move that we approve SUP-12-04 with the following conditions:

Scholz: Okay.

Evans: A limit of nine children will be allowed at the daycare operation and the

development of a staggered drop off and pick up of the children under the daycare operation must be approved by the City traffic engineer using a minimum of 10-minute intervals.

Scholz: I'm concerned about your second condition Commissioner Evans and I see Mr. Kyle chewing on something there. Mr. Kyle would you give us the benefit of your wisdom please.

Kyle: Mr. Chairman, Commissioner Evans, my concern with involving the City's traffic engineer and developing that plan is not enforceable from our standpoint. Make a condition that they need to have staggered drop offs and pick up is one thing, but to involve us to have to actually develop that, regulate that, and try to enforce it, not going to happen.

Evans: Okay. Well that's fine with me. I would have just thought that they would've been interested in ensuring you know just participating in the development of that, but if not, I'm comfortable with 10-minute intervals unless the Commission has ...

Scholz: Well my suggestion would be a staggered you know drop off and pick up, period.

Evans: Just leave it at that.

Scholz: Yes, just leave it at that.

Evans: Okay.

Scholz: Because that's what seems to be operating right now.

Evans: Okay, so develop a staggered drop off and pick up schedule for the children under the oversight of the daycare operation.

Scholz: Okay, Commissioner Shipley.

Shipley: And I think we need to ... I just want a point on the first condition, is that I heard tonight somebody say something about family doesn't count against this nine. If you're doing daycare, it doesn't make any difference if it's family or people for hire, nine children is all, period, so you can't have more than nine and I think that the Caldwell's need to be aware. That's what's required.

Scholz: Yes, right, nine total. Okay, so moved. Is there a second?

Crane: Second.

Scholz: Okay.

Kyle: Mr. Chairman, point of information, since the recommendation of staff in your packet was written as a denial, you made a motion to approve it and seconded that motion. What typically happens is we vote based on findings, site visit, whatever. The findings you have been provided, at least in the packet, are findings for denial, so if you're going to vote for it, and that's fine, but you need to state findings. Don't just say findings, because those are not the findings you want to use. They can be other factors, it can be site visit, discussion this evening, the fact that you don't believe there's a traffic problem, whatever, but we need you to specify the findings upon which you're basing that decision.

Scholz: Thank you very much Mr. Kyle. Yes.

Dubbin: Mr. Chairman, members of the Commission. I would also like to remind you that the fire code does not allow more than five children under the age of 2.5 for a daycare operation and if the Commission wishes we would appreciate that condition.

Scholz: What would that ... do we have to restate that in the conditions?

Dubbin: I don't believe that there were any conditions in the recommendations so I think the motion would have to contain that.

Scholz: Okay. Commissioner Shipley, you had a comment on that? Please turn your mike on sir.

Shipley: I was just saying that would have to be added as a third condition.

Scholz: Okay. No more than five children under 2.5, right and that's a fire code thing. Yes, I remember that coming up a couple of years ago, right. okay.

Crane: To clarify a point in our voting Mr. Chairman, Mr. Kyle is saying that we should explicitly state that we are ignoring or are un-persuaded by the findings.

Scholz: Excuse me gentlemen, the motion has been made but not seconded. Was there a second to this?

Crane: I seconded it.

Scholz: You seconded it. Thank you Commissioner Crane. Go ahead.

Crane: So Mr. Kyle requires us to explicitly state that we are not persuaded by the Community Development's arguments.

Scholz: Mr. Babington.

Babington: Commissioner, what you have to do on your findings is we have negative findings by staff, so for example if you look at page 8 of 8 on your staff recommendations and you have findings for denial.

Crane: Yes, I have them.

Babington: Yes, sir. The first one could be your finding is that applicant can have no more than nine children and that would be adequate and would provide adequate off street parking. Right now it's a negative, we find there's no adequate parking but if you agree and say I find that with nine children there would be adequate parking, that would be a finding there. With respect to 2 and 3, you could say for number 3 for example, the proposed expansion would have minimal traffic impact. Number 4 could be proposed expansion would address the policies of the City's 1999 Comprehensive Plan.

Crane: I'm sorry what was your position on number 4?

Babington: Yes, sir. For an example would be it does meet the 1999 Comprehensive Plan.

Crane: Oh we would say it does. Okay.

Babington: Yes, sir.

Crane: And each of us has to go through this litany if we are not persuaded.

Babington: If you find and you agree with staff findings, you would simply say on an affirmative proposal right now you would say no based on staff findings, site visit, comment tonight. If you are in favor of it, then you would basically say, based on nine children I find adequate parking would exist, for example. But it's your finding if you will.

Crane: We have to explicitly mention each of the denial ...

Scholz: No, Commissioner Crane all you have to do is justify your stand in some way.

Babington: Mr. Chairman and Commission all that staff is looking for is we need to know what findings the decision is being based on, because the official findings that you've been given were supportive of a denial and so if you just say findings, then we're lost, we're struggling to figure out what findings they were.

Crane: I understand.

Babington: And you do not have to address those specific ones that we listed.

Crane: Okay.

Scholz: All right. I'm going to call the role. Commissioner Shipley.

Shipley: I vote aye based upon the discussion and the findings for approval, and site visit.

Scholz: Commissioner Crane.

Crane: Aye, based on discussion and my finding that 9 children will be the maximum, will not present off street parking problems, and site visit.

Scholz: Okay. Commissioner Stowe.

Stowe: I vote aye based on site visit, discussions this evening, and the findings this evening from those discussions.

Scholz: Commissioner Evans.

Evans: I vote yes based on the discussion, I think it's a valuable contribution to the community and I think that the nine children, there's more than adequate parking and with the addition of staggered drop off and pick up meets, I think there shouldn't be any traffic constraints.

Scholz: Commissioner Bustos.

Bustos: I vote yes based on findings from the discussions that went on tonight for approval.

Scholz: Commissioner Beard.

Beard: No, based on findings.

Scholz: And the Chair votes aye for I think there's adequate off street parking for nine. I do have concerns about the protests of the residents, but I think they're probably overstated and I don't think there would be increased traffic which would cause the homeowner's association any problems. So that gives us 6 in favor and 1 against. So it passes 6:1. Thank you very much folks.

VIII. OTHER BUSINESS - None

Scholz: Okay, is there any other business? No.

IX. PUBLIC PARTICIPATION

Scholz: All right, any other public participations? I don't think so, the public is leaving.

X. STAFF ANNOUNCEMENTS

Scholz: Staff announcements? No staff announcements, gosh I'm disappointed and finally, Commissioner Beard had a question or comment.

Beard: First of all I'd like to say how well of a job that Becky Baum and our secretaries have done in doing the recordings and putting out the minutes. This last meeting that we had I thought was exceptionally difficult with all the varied types of people and their various accents and slurs, you did an absolutely great job in putting those 60 pages of minutes together. Secondly I would say that Chairman Scholz you did a very good job also of handling that crowd that we had. It was over 400. So congratulations on that, job well done.

Scholz: Thank you very much. I've actually had people come up to me and thank me not only for doing that but for the decision that I made in the minority. So there you are.

XI. ADJOURNMENT

Scholz: All right I say we're adjourned at about 9:02 p.m. Thank you very much folks.

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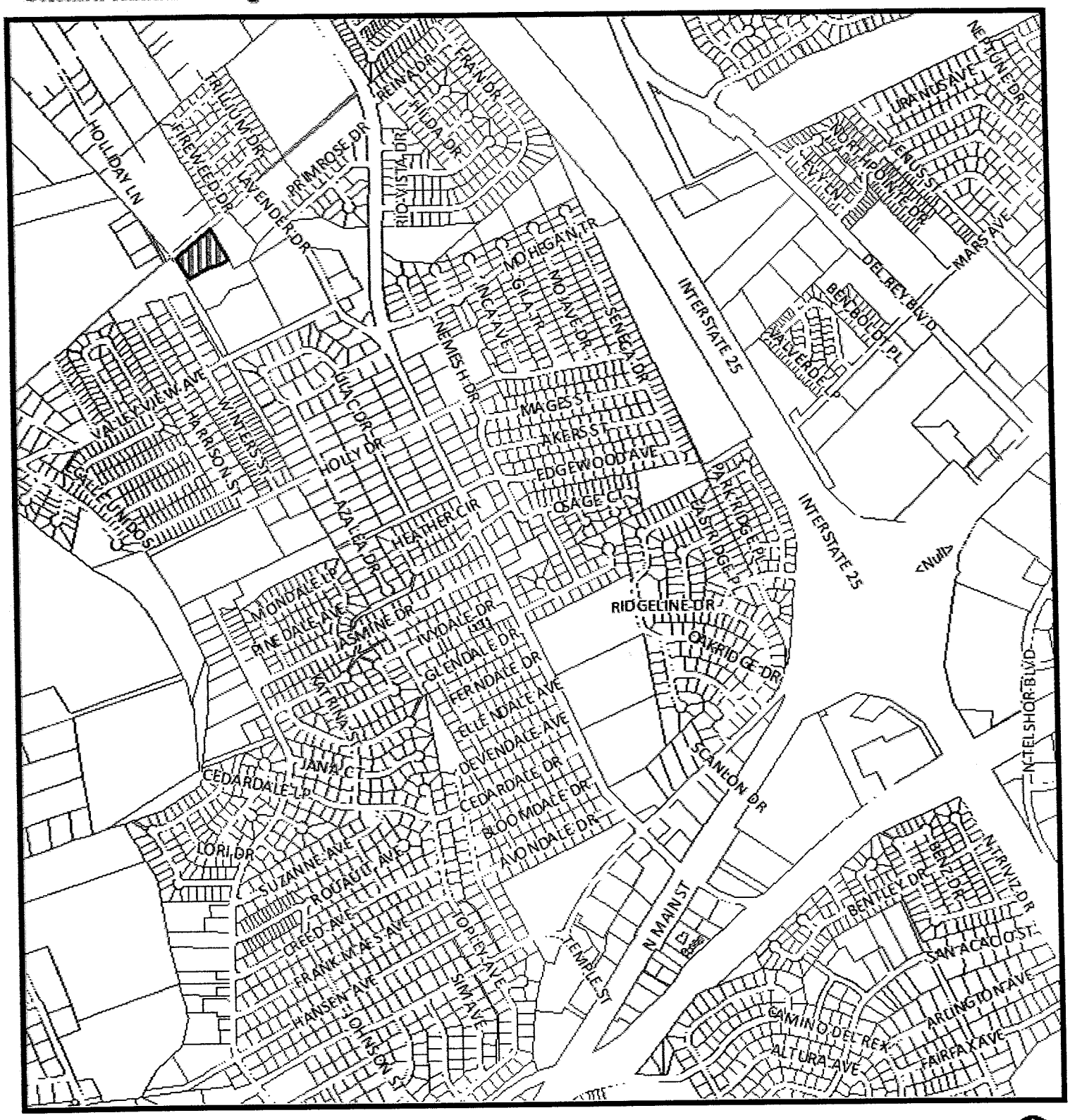
Chairperson

ZONING: A-2 to R-1a
OWNER: William D. Wright

Location Vicinity Map

PARCEL: 02-00512
DATE: 10/15/12



1575 150300150300750900 0 125 250 500 750 1000 Feet

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

Legend

City Parcels

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.