

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 5 Ordinance/Resolution# 13-129

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of April 1, 2013
(Adoption Date)

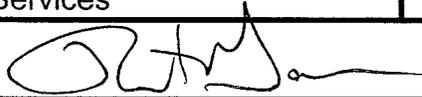
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING THE VACATION OF A PORTION OF MANZANITA STREET AND THE ASSOCIATED VACATION PLAT, VACATING APPROXIMATELY 1,568 SQUARE FEET OF EXCESS CITY RIGHT-OF-WAY LOCATED AT THE CORNER OF LUCERO AVENUE AND MANZANITA STREET AND DEEDING IT TO THE ADJACENT PROPERTY OWNER, ELIZABETH G. ONTIVEROS, ON BEHALF OF THE AFFORDABLE HOUSING PROJECT WITHIN THE CORPORATE LIMITS OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO.

PURPOSE(S) OF ACTION:

Authorization for Vacation of Excess Right-of-Way.

COUNCIL DISTRICT: 1		
<u>Drafter/Staff Contact:</u> Ray Sartin	<u>Department/Section:</u> Community Development / Planning & Neighborhood Services	<u>Phone:</u> 528-3027
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Manzanita Street was designed and dedicated as part of the County Assessors Plat No. 2 subdivision filed in August 1947. At the time this area was subdivided, the proposed vacated area was platted as excess right-of-way, perhaps for future road widening or a turning lane area. However, this area was never improved as a public street.

Community Development staff is working with Elizabeth G. Ontiveros, the adjacent property owner located at 641 E. Lucero, on an Affordable Housing Rehabilitation Project of her home. As part of this project, Community Development staff has submitted the Manzanita Street vacation plat requesting that this 1,568 square foot (0.036 acre) unimproved, excess right-of-way be vacated and deeded to the adjacent property owner (Ms. Ontiveros). Ms. Ontiveros' existing fence and driveway encroach on the excess right-of-way. In hopes of clearing up site constraints necessary to finalize the project, City staff is assisting Ms. Ontiveros to cure the encroachment issue. By vacating this portion of the roadway, the City benefits from eliminating

the potential for liability and the associated maintenance costs on this section of unimproved right-of-way.

After review by City staff, no objections to the vacation were noted, and the Development Review Committee recommended approval of the Manzanita Street vacation plat on February 20, 2013. All affected utility companies have also reviewed and approved the proposed vacation of the right-of-way with the requirement that the entire vacated area be designated as a utility easement to allow for the existing service lines in the area. As part of this vacation, Ms. Ontiveros agrees to grant the easements needed to fulfill this requirement.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Manzanita Street vacation plat.
3. Exhibit "B", Statement of Vacation.
4. Exhibit "C", Quitclaim Deed.
5. Exhibit "D", Grant of Utility Easements.
6. Attachment "A", Vicinity map.
7. Attachment "B", Pictures.
8. Attachment "C", Draft Development Review Committee minutes, dated February 20, 2013.
9. Attachment "D", Vacation of right-of-way to home rehabilitation client.

SOURCE OF FUNDING:

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

BUDGET NARRATIVE

Community Development Block Grant (CDBG) allocated funds to the Home Rehabilitation Program and provided a loan and a grant to this client to complete the project. The remaining funds of \$753.87 will make final payment to the surveyor for the completion of the replat. The replat will complete the project and all project funds will be expended.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Community Development (Fund 2000)	20184240-722196-10534	\$753.87	\$753.87	\$.00	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and vacate the 1,568 square feet of undeveloped excess right-of-way of Manzanita Street.
2. Vote "No"; this will deny the Resolution and the undeveloped excess right-of-way of Manzanita Street will not be vacated.
3. Vote to "Amend"; this will allow Council to modify the Resolution as determined appropriate.
4. Vote to "Table"; this will allow Council to table/postpone the Resolution for consideration at a later date and direct staff 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

RESOLUTION NO. 13-129

A RESOLUTION APPROVING THE VACATION OF A PORTION OF MANZANITA STREET AND THE ASSOCIATED VACATION PLAT, VACATING APPROXIMATELY 1,568 SQUARE FEET OF EXCESS CITY RIGHT-OF-WAY LOCATED AT THE CORNER OF LUCERO AVENUE AND MANZANITA STREET AND DEEDING IT TO THE ADJACENT PROPERTY OWNER, ELIZABETH G. ONTIVEROS, ON BEHALF OF THE AFFORDABLE HOUSING PROJECT WITHIN THE CORPORATE LIMITS OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO.

The City Council is informed that:

WHEREAS, Community Development staff is working with Elizabeth G. Ontiveros, the property owner located at 641 E. Lucero, on an Affordable Housing Rehabilitation Project; and

WHEREAS, the City occasionally receives requests to vacate dedicated right-of-way which no longer serves its intended purpose, has no real benefit to the general public and often represents a maintenance liability to the City; and

WHEREAS, as part of this project, Community Development staff has submitted the Manzanita Street vacation plat requesting that 1,568 square feet (0.036 acre) of unimproved, excess right-of-way be vacated and deeded to the adjacent property owner to eliminate site constraints, including the fence and driveway encroachments; and

WHEREAS, requests to recommend approval or denial of the vacation of the right-of-way were sent to City departments and utility companies. All departments and utility companies recommended approval; and

WHEREAS, pursuant to Chapter 37 (Subdivision Code), Article VIII (Vacation Plats) of the Las Cruces Municipal Code, City Council takes final action on right-of-way vacation plats and requests; and

WHEREAS, pursuant to Chapter 37, Article VIII, Section 37-238 of the Las Cruces Municipal Code, the Development Review Committee (DRC) is a recommending

body to the City Council on matters such as this, and pursuant to a meeting held on February 20, 2013, the DRC in a vote of 6-0 recommended approval of the vacation plat.

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

(I)

THAT the 0.036 acre portion of excess right-of-way located at the northwest corner of Manzanita Street and Lucero Avenue, in the City of Las Cruces, Dona Ana County, New Mexico, as shown on Exhibit "A," is hereby vacated, as stated in Exhibit "B," and deeded to the adjacent property owner, Elizabeth G. Ontiveros, as conveyed in Exhibit "C" .

(II)

THAT subsequent to the approval of the City Council, the duly approved Manzanita Street vacation plat (Exhibit "A") shall obtain all the necessary signatures and be filed in the Office of the Clerk of Dona Ana County, New Mexico.

(III)

THAT although the right-of-way is vacated, utility easements will be identified on the plat (Exhibit "A") and granted by Elizabeth G. Ontiveros as depicted in Exhibit "D," securing legal placement and access for maintenance for all applicable utilities.

(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 _____ 2013.

APPROVED:

ATTEST:

Mayor

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Smith: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

STATEMENT OF VACATION

A PORTION OF MANZANITA STREET A 50 FOOT WIDE STREET LOCATED WEST OF EAST LUCERO AVENUE IN COUNTY ASSESSORS PLAT NO. 2 SUBDIVISION WITHIN THE CORPORATE LIMITS OF THE CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO.

The City of Las Cruces, owner of the street described as follows:

That portion of Manzanita Street contiguous to Lot 8, Block 206 of the "County Assessors Plat No. 2", filed in Plat Book 6 on page 64 of the records of Dona Ana County and depicted on Exhibit "A" which is attached hereto and made a part hereon, does hereby state and declare, in accordance with Section 3-20-12 NMSA 1978 Comp., such street to be vacated. As grounds, therefore, it further states that said right of way no longer functions as originally intended, and the vacation will not adversely affect the interest or rights of any of the owners in the property contiguous to said street.

Approved as to Form:

Mayor Ken Miyagishima
City of Las Cruces

City Attorney

State of New Mexico)
)ss.
County of Dona Ana)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Ken Miyagishima, Mayor of the City of Las Cruces, a New Mexico municipal corporation.

My Commission Expires:

Notary Public

QUITCLAIM DEED

The CITY OF LAS CRUCES , A NEW MEXICO MUNICIPAL CORPORATION for consideration paid, quitclaims, to ELIZABETH (GOMEZ) ONTIVEROS, whose address is 641 East Lucero Avenue, Las Cruces, NM 88001 the following described real estate in Doña Ana County, New Mexico:

A 0.036 acre tract of land located at the Northeast corner of East Lucero Avenue and Manzanita Street, being a portion of Manzanita Street contiguous to Lot 8, Block 206 of the "County Assessor's Plat No. 2", filed August 18, 1947 in the Dona Ana County Records, City of Las Cruces, Dona Ana County, New Mexico, depicted and being more particularly described on Exhibit "A" attached hereto and made a part hereof:

WITNESS its hand and seal this day of _____, 2013.

Approved as to Form: _____ (Seal) CITY OF LAS CRUCES _____ (Seal)

BY: _____ (Seal) BY: _____ (Seal)
City Attorney Ken Miyagishima, Mayor

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF DOÑA ANA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by KEN MIYAGISHIMA, as MAYOR of the CITY OF LAS CRUCES, a NEW MEXICO MUNICIPAL CORPORATION, on behalf of said corporation.

My Commission Expires:
(Seal)

Notary Public

GRANT OF UTILITY EASEMENT

ELIZABETH (GOMEZ) ONTIVEROS ("Property Owner"), as Grantor, for valuable consideration, grants to the **CITY OF LAS CRUCES**, a New Mexico Municipal Corporation, whose address is PO Box 20000, Las Cruces, New Mexico, 88004, ("City"), as Grantees, an unrestricted continuous 0.036 acre Utility Easement as depicted and being more particularly described on Exhibit "A" attached hereto and made a part hereof, but not limited to allow access for the right, to construct and thereafter access, operate and maintain underground utilities and related improvements across real property owned by Property Owner.

Property Owners states that they are the owners of said real property, and that said real property is free and clear of all encumbrances and liens which might affect the Property Owner's ability to validly convey this easement to the City.

EXECUTED on this 6th day of March 2013.

Elizabeth D. Ontiveros

Elizabeth (Gomez) Ontiveros

ACKNOWLEDGEMENT FOR NATURAL PERSON

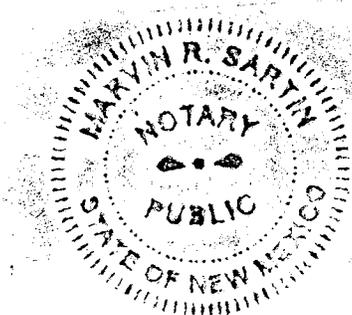
State of New Mexico)
)ss.
County of Dona Ana)

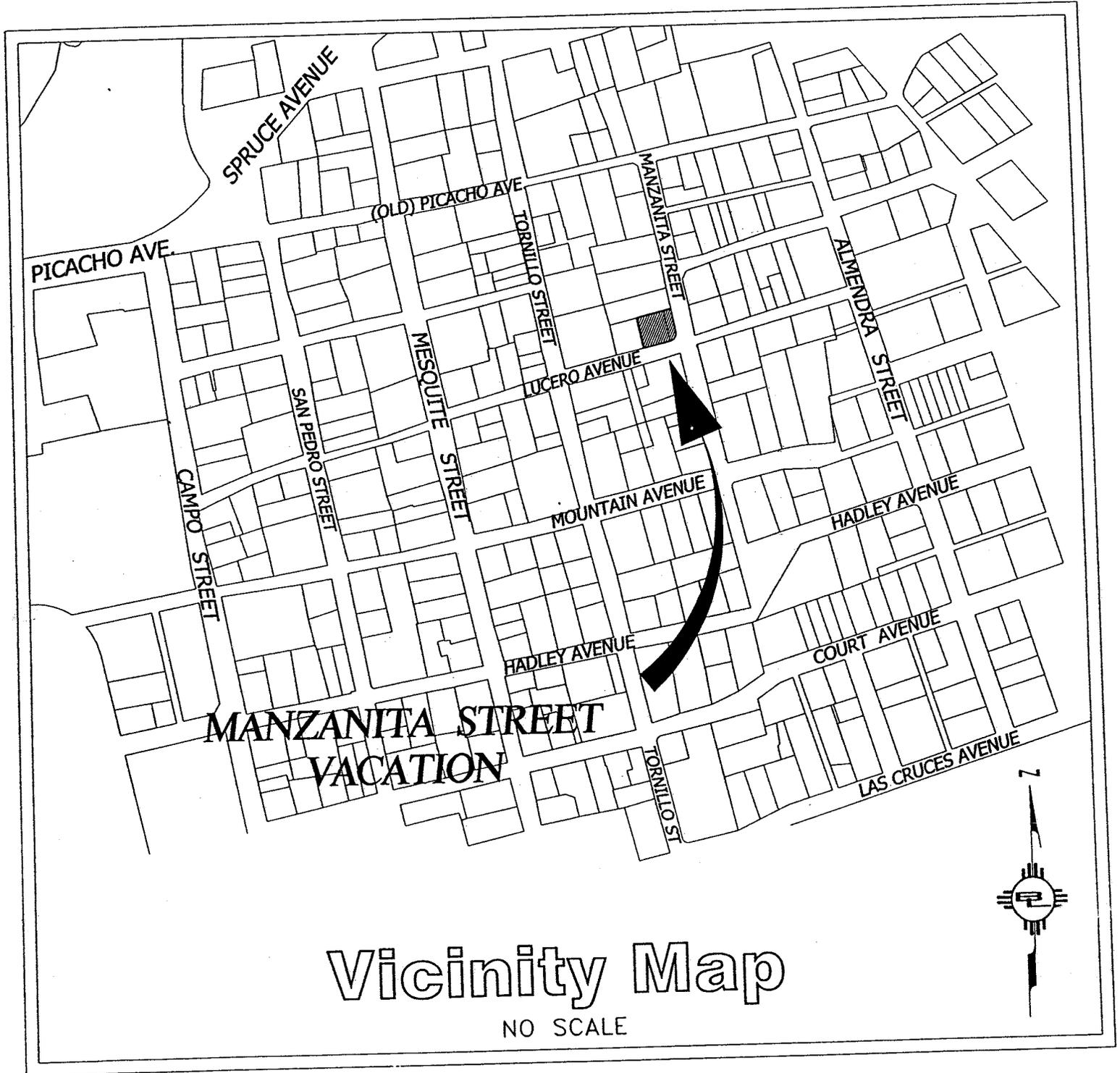
This instrument was acknowledged before me this 6th day of March, 2013,
by Elizabeth (Gomez) Ontiveros

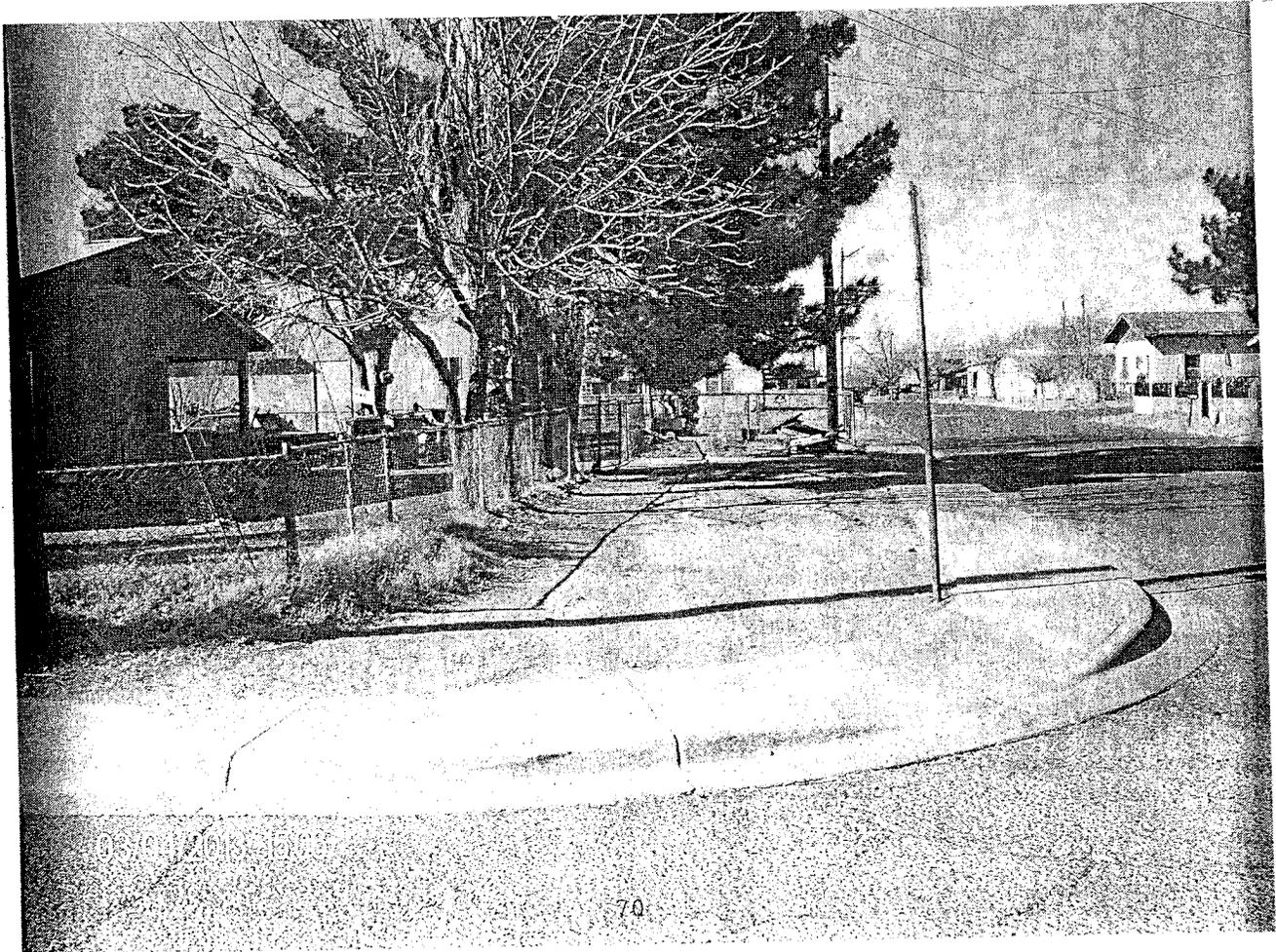
My Commission Expires: 3-23-2013

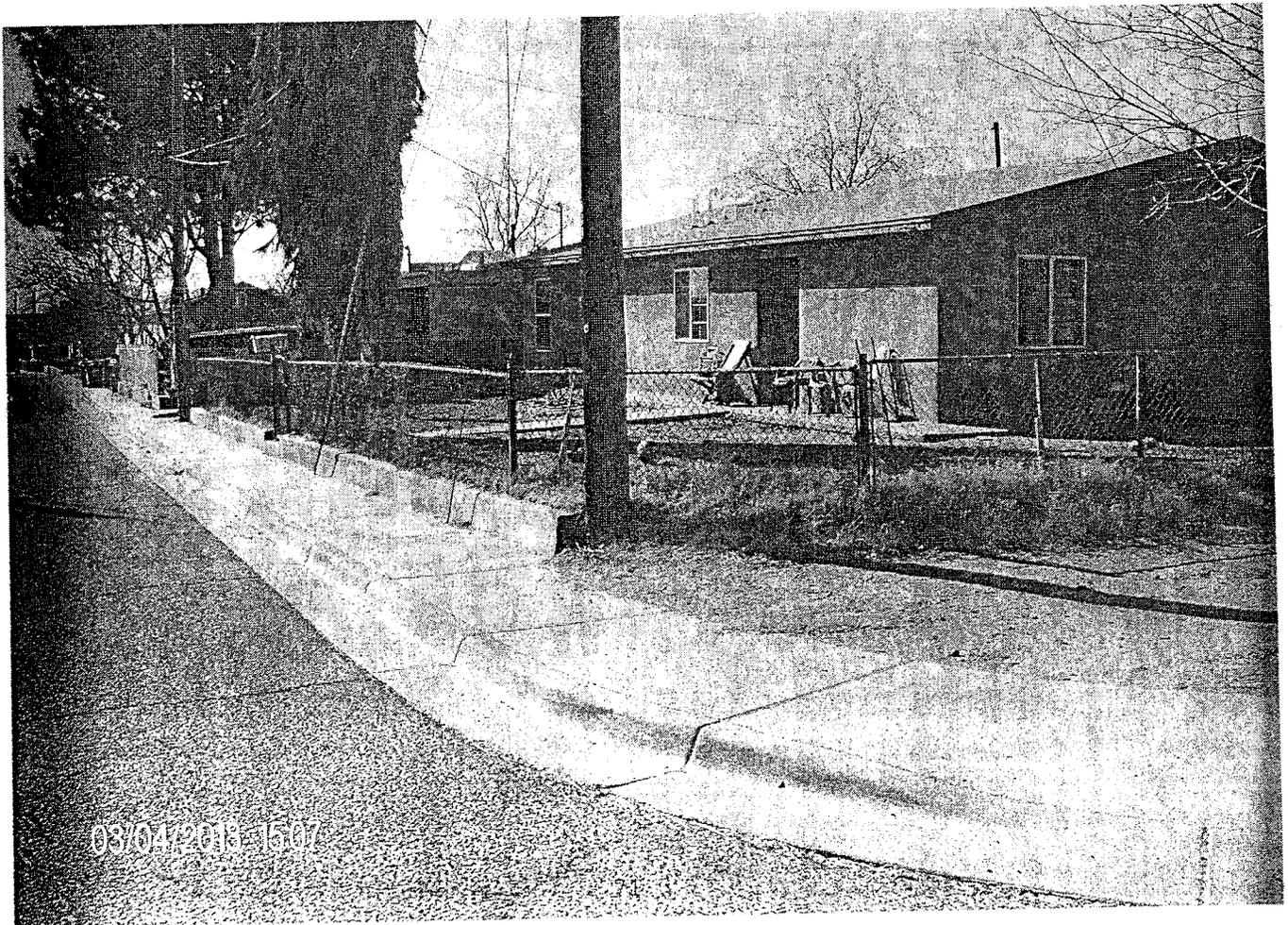
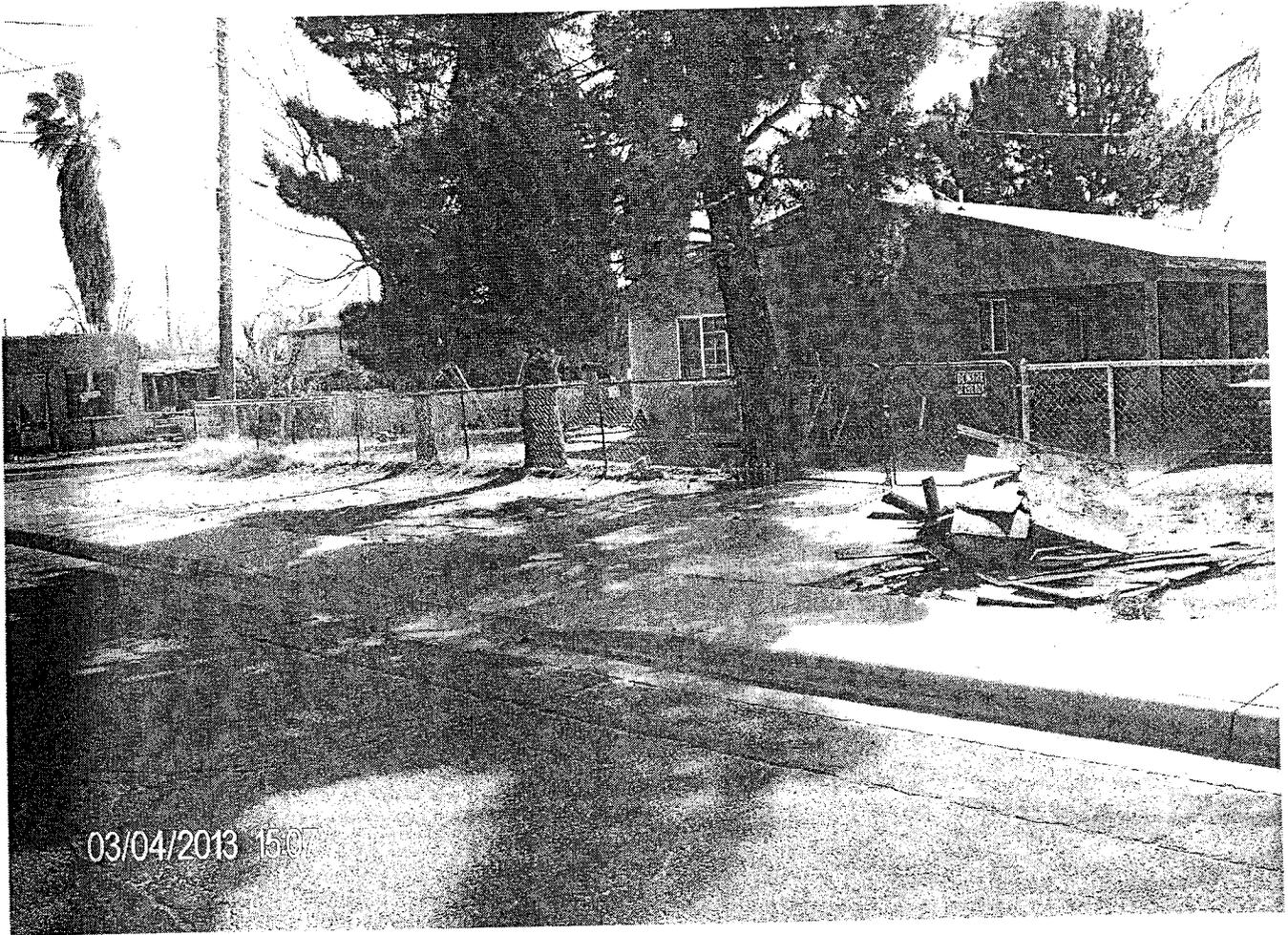
Marvin R. Sarty

Notary Public











City of Las Cruces

DEVELOPMENT REVIEW COMMITTEE (DRC)

The following are the verbatim minutes of the Development Review Committee (DRC) who met on **Wednesday, February 20, 2013 at 9:00 A.M.** in Room 1158 located at the City Hall, 700 North Main Street, Las Cruces, New Mexico.

DRC PRESENT: Robert Kyle, Community Development
Meei Montoya, Utilities
Mark Johnston, Facilities
Natashia Billy, Community Development/Engineering Serv.
Tom Murphy, MPO
Ted Sweetser for Mark Dubbin, Fire Department

DRC ABSENT: Mark Dubbin, Fire Department

STAFF PRESENT: Katherine Harrison-Rogers, Community Development
Todd Taylor, Community Development
Ray Sartin, Community Development
Kevin Wilson, Community Development
Bill Hamm, Public Works, Land Management
Robert Benavidez, Public works
Bonnie Ennis, Community Development

OTHERS PRESENT: Ted Scanlon, Borderland Engineering

I. CALL TO ORDER (9:02 am)

Robert Kyle called the meeting to order.

II. APPROVAL OF MINUTES

Kyle: The first item is approval of the minutes for January 30, 2013.

1. January 23, 2013

Kyle: The first item is approval of the minutes for January 30, 2013. Do you have any amendments or corrections to those minutes? Seeing none, may I have a motion to approve?

Johnston: So moved. Mark Johnston.

1
2 Montoya: Second. Meei Montoya.
3
4 Kyle: All those in favor?
5
6 All: Aye.
7
8 Kyle: Any opposed? Very well. The minutes for January 30th are approved.
9

10 **III. OLD BUSINESS – None**

11
12 Kyle: We have no old business on the agenda.
13

14 **IV. NEW BUSINESS**

15
16 **1. S-12-044: Manzanita Street Vacation**

- 17 • A request to recommend the approval of Manzanita Street Vacation, being
18 a replat of a part of Lot 8, Block 206, County Assessor's Plat No. 2, and a
19 partial vacation of Manzanita Street.
- 20 • The plat proposes to vacate a 0.036 ± acre portion of the west side of
21 Manzanita Street, north of its intersection with Lucero Avenue. The
22 vacated portion Manzanita Street would become combined with the
23 property to the west to create Lot 1.
- 24 • Submitted by the Borderland Engineers and Surveyors LLC, on behalf of
25 Elizabeth Gomez Ontiveros and the City of Las Cruces, property owners.

26
27 Kyle: New business: we have one item: case: S-12-044, Manzanita Street
28 Vacation. Staff, can you give us a quick brief on the request?
29

30 Taylor: Todd Taylor, Associate Planner, Building and Development Services.
31 Again, this item is case S-12-044, Manzanita Street Vacation. It is a
32 combination vacation plat and replat. The proposal is to vacate a portion
33 of Manzanita Street and combine it with an adjacent piece of property to
34 the west, creating Lot 1. The vacated portion of Manzanita Street is 0.036
35 acres in size and is 77 feet in length. It is located on the west side of
36 Manzanita Street north of its intersection with Lucero Avenue. The entire
37 portion of vacated right-of-way is being granted as a utility easement. This
38 item went through two reviews and all parties have now recommended
39 approval.

40 Regarding the next steps in the process after receiving a
41 recommendation from this body the vacation plat will proceed to to a City
42 Council meeting, along with a Resolution in order to grant the vacation of
43 the right-of-way. With that, I'm available for questions.
44

45 Kyle: Very well. Applicants? Borderland? Anything...

46
47 Scanlon: Yes. Just real quickly... as I get to sit on both sides of the fence this time.
48 We're kind of working for the City and the Housing Authority on this one.

1 Basically, there was kind of an anomaly in the right-of-way on the west
2 side of Manzanita Street there and it was really wider than it was
3 anywhere else up and down the block; it was just there. So this would line
4 the right-of-way up with the normal way the rights-of-way line up the street
5 and curb and gutter and so forth. If we could combine that into the lot it
6 would make a more usable space for the Housing Authority to utilize the
7 lot to build a house on.
8

9 Kyle: Okay. But as it is being granted as a utilities easement I assume there's
10 in-ground...?

11 Scanlon: Right.

12 Kyle: All right. We'll go around the room. MPO?

13 Murphy: What's the remaining right-of-way width for Manzanita Street?

14 Taylor: It indicates that it varies.

15 Scanlon: It does vary but it is approximately 50 feet.

16 Murphy: Okay. No further questions.

17 Kyle: Utilities?

18 Montoya: We reviewed it the second time and there are no comments. But I have a
19 quick question for Ted: by your concern in granting this almost 21 feet of
20 right-of-way to the utility easement, you're not planning on putting any
21 above ground structure such as a fence?
22

23 Scanlon: No. It'll be developed as a normal city lot; but we would just estimate that
24 utility easement. It works kind of like a building set back.
25

26 Montoya: So there are no above ground fence, structures, (inaudible – someone
27 coughing) area...
28

29 Scanlon: Yeah.

30 Montoya: ...Within the utilities easement. Okay. Thank you.
31

32 Kyle: Fire?

33 Sweetser: In speaking with Mark Dubbin I don't think there are any issues with this.
34

35 Kyle: Okay. Land Management?

36 Hamm: Yeah. Bill Hamm, for the record. Concurrently, with the plat filing there
37 will be a quit claim deed furnished to the property owner to convey
38

1 ownership of the vacated right-of-way segment. The plat in and of itself
2 will not convey that ownership so a separate deed with description will be
3 filed.

4
5 Kyle: And that will be simultaneous with the filing of the replat?

6
7 Hamm: Correct.

8
9 Kyle: Parks and Rec?

10
11 Johnston: Mark Johnston, Parks and Recreation. No issues.

12
13 Kyle: Community Development, Engineering and Technical?

14
15 Billy: No comments.

16
17 Kyle: Very well; and Building and Development Services, Planning, do you have
18 any other comments besides...

19
20 Taylor: No comments.

21
22 Kyle: I see no outstanding issues. Can I have a motion to recommend approval
23 of the vacation?

24
25 Murphy: So moved. Tom Murphy.

26
27 Kyle: Second?

28
29 Montoya: Second. Meei Montoya.

30
31 Kyle: All those in favor please signify by saying aye?

32
33 All: Aye.

34
35 Kyle: Any opposed? Seeing none the motion just passed.

36
37 **V. ADJOURNMENT (9:07 am)**

38
39 Kyle: Any other items for the DRC? Seeing none, can I have a motion to
40 adjourn?

41
42 Murphy: So moved.

43
44 Johnston: Second.

45
46 Kyle: We are adjourned.

DRAFT



City of Las Cruces
Community Development
Memorandum

To: Robert Garza, City Manager

From: Ray Sartin, Housing Development Coordinator *RS*

Subject: Vacation of Right-of-Way to Home Rehabilitation Client

Date: March 14, 2013 File No.: M-13-066

In 2011, the City of Las Cruces (CLC) Home Rehabilitation Program provided a substantial rehabilitation to the home of Elizabeth Ontiveros, 641 E. Lucero. During the construction project it was discovered that the adjoining unimproved property at the northwest corner of Lucero Avenue and Manzanita Street is CLC right-of-way. The Community Development staff is assisting Ms. Ontiveros to resolve the encroachment issues through the requested vacation.

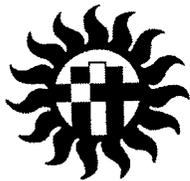
There is no direct vehicular access to the Ontiveros' property from Lucero Avenue. The family accesses their property from Manzanita Street by means of a curb cut. The curb cut was provided by the City at some point in the past during a street project on Manzanita. However, the access encroaches on the CLC right-of-way. Also, the existing fence on the east side of the Ontiveros' property runs parallel to Manzanita St. and encroaches into the right-of-way approximately 6.6 feet, at its widest point.

The 1,568 square foot (.036 acre) unimproved right-of-way will be vacated and deeded to Ms. Ontiveros. The vacation request was reviewed by appropriate City staff as well as all utility providers. There was no objection to the vacation request as long as it is entirely designated and shown on the plat as a granted utility easement. The vacation request was submitted to the CLC Development Review Committee (DRC) on February 20, 2013. The DRC recommended approval by a vote of 6-0.

The right-of-way vacation resolves the encroachment issues for Ms. Ontiveros; benefits the City from a liability perspective; and eliminates CLC maintenance responsibilities. The deeded area will be identified on the plat as a utility easement and will stay accessible for maintenance for all applicable utilities.

Thank you for your consideration.

cc: David Weir, Community Development Director *DW*
 Vincent Banegas, Community Development Deputy Director
 Andy Hume, Senior Planner *Andy Hume*



City of Las Cruces®

PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of April 1, 2013
(Adoption Date)

TITLE:

A RESOLUTION APPROVING THE VACATION OF A PORTION OF MANZANITA STREET AND THE ASSOCIATED VACATION PLAT, VACATING APPROXIMATELY 1,568 SQUARE FEET OF EXCESS CITY RIGHT-OF-WAY LOCATED AT THE CORNER OF LUCERO AVENUE AND MANZANITA STREET AND DEEDING IT TO THE ADJACENT PROPERTY OWNER, ELIZABETH G. ONTIVEROS, ON BEHALF OF THE AFFORDABLE HOUSING PROJECT WITHIN THE CORPORATE LIMITS OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Ray Sant</i>	3027	3-15-13
Department Director	<i>[Signature]</i>	3067	3-15-13
Other			
Assistant City Manager /CAO	<i>[Signature]</i>	2078	3/15/13
Management & Budget Manager	<i>[Signature]</i>	2107	3/15/13
Assistant City Manager/COO	<i>[Signature]</i>	2271	3/19/13
City Attorney	<i>[Signature]</i>	2128	3/20/13
City Clerk	<i>[Signature]</i>	2215	3/22/13