



**City Council
of the
City of Las Cruces**

Regular Meeting

June 2, 2014

1:00 P.M.

Council Chambers, City Hall

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MEMBERS PRESENT:

STAFF:

Mayor Ken Miyagishima
Councillor Miguel Silva, District 1
Councillor Greg Smith, District 2
Councillor Olga Pedroza, District 3
Councillor Nathan Small, District 4
Councillor Gill Sorg, District 5
Councillor Ceil Levatino, District 6

Robert Garza, City Manager
Harry (Pete) Connelly, City Attorney
Esther Martinez-Carrillo, City Clerk

DRAFT

I. OPENING CEREMONIES

Mayor Miyagishima called the meeting to order and asked for a moment of silence. Councillor Pedroza led the Pledge of Allegiance.

Cody Havers sang the National Anthem.

Mayor Miyagishima and a representative from the Animal Services Center of the Mesilla Valley presented the Pet of the Week.

Mayor Miyagishima and Councillor Silva presented Certificates of Appreciation to the Weed and Seed Youth for planting 100 trees.

II. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27(E)(2). *At the opening of each council meeting, the chairperson shall ask if any member of the city council, city manager, or any member of the city staff has any known conflict of interest with any item on the agenda.*

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2 Mayor Miyagishima asked if anyone had any conflicts with anything on the agenda?
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4 There were no conflicts given.

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8 **III. PUBLIC PARTICIPATION**

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10 Vincent Jeffers, Member of the Public said I just want to thank Councillor Silva for attending the
11 conference in Albuquerque this weekend.

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15 **IV. ACCEPTANCE OF AGENDA: THOSE ITEMS ON THE AGENDA INDICATED BY**
16 **AN ASTERISK (*) ARE ON THE CONSENT AGENDA AND WILL BE VOTED ON**
17 **BY ONE MOTION.**

18
19 Mayor Miyagishima said Item 8 needs to be removed from the Consent Agenda for discussion.

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23 Councillor Smith Moved to Approve the Agenda as Amended and Councillor Small Seconded the
24 motion.

25
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28 Mayor Miyagishima called for the roll on the Motion to Approve the Agenda as Amended and it was
29 Unanimously Approved. 7-0

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33 **V. CITY COUNCIL MINUTES**

34
35 *(1) Regular City Council Meeting of May 5, 2014

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39 **VI. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA**

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- 1 *(2) Resolution No. 14-189: A Resolution Authorizing the Write-Off of Uncollectible
2 Miscellaneous Accounts Receivable From Fiscal Year 2009 in the Amount of \$70,756.33.
3
- 4 *(3) Resolution No. 14-190: A Resolution Authorizing the Write-Off of Uncollectible Utility
5 Accounts Receivable for the Remainder of the Fiscal Year 2009 in the Amount of
6 \$268,199.00.
7
- 8 *(4) Resolution No. 14-191: A Resolution Approving a Home Investment Partnerships Act
9 (HOME) Recoverable Grant Agreement Between the City of Las Cruces and Mesilla Valley
10 Habitat for Humanity (MVHFH) For Acquisition and New Construction of Affordable
11 Housing Units.
12
- 13 *(5) Resolution No. 14-192: A Resolution Approving a Home Investment Partnerships Act
14 (HOME) Recoverable Grant Agreement Between the City of Las Cruces and Tierra Del Sol
15 Housing Corporation (TDS) for Acquisition and New Construction of Affordable Housing
16 Units.
17
- 18 *(6) Resolution No. 13-14-433: A Resolution Approving the Purchase of a 2014 ARBOC Spirit
19 of Mobility 26-Foot Bus Between the City of Las Cruces and Creative Bus Sales of
20 Albuquerque, New Mexico Through the State of New Mexico Price Agreement No. 01-805-
21 00-05591 in an Amount of \$180,518.00.
22
- 23 *(7) Council Bill No. 14-029; Ordinance No. 2714: An Ordinance Repealing LCMC 1997,
24 Sections 2-707 Through 2-709 Pertaining to the Senior Programs Advisory Board and
25 Enacting New LCMC Sections 2-707 Through 2-710.
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29 **VII. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION**
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- 31 *(8) Council Bill No. 14-031; Ordinance No. 2716: An Ordinance Approving a Zone Change for
32 Parcels 02-19544 Located at 5110 Porter Drive, 02-19541 at 6121 Reynolds Drive, 02-19537
33 at 6141 Reynolds Drive, 02-19535 at 6151 Reynolds Drive, 02-28347 at 6171 Reynolds
34 Drive, 02-28345 at 6251 Reynolds Drive, 02-28348 at 6191 Reynolds Drive and 02-28346
35 at 6221 Reynolds Drive, for a Total of 5.41 Acres from R-4 (Multi-Dwelling High Density
36 and Limited Retail and Office Use) to C-3C (High Intensity Commercial, Conditional)
37 District. Submitted by the Property Owner, City of Las Cruces.
38

39 Councillor Small Moved to Approve Council Bill No. 14-031; Ordinance No. 2716 and Councillor
40 Smith Seconded the motion.

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4 Susana Montana, Planner said we received an email regarding one of the allowed uses, which is
5 bar/tavern dancing allowed, for this property but the person didn't understand that the occasional
6 dancing events would be for senior citizens at a special event with a caterer providing the alcohol.

7

8 Carl Schluter, Member of the Public said I have concerns with the uses for this property and I think
9 a park would be a better thing to put on that property because using it for an industrial type use
10 would degrade all the property values in our area. We have a lot of children in this area and they
11 would benefit from having a good park in this area. Also, I do have some letters from some of my
12 neighbors that were unable to be here today.

13

14 Councillor Smith asked can Ms. Montana clarify what is intended for this site and what changes that
15 brings to what is currently there?

16

17 Robert Garza, City Manager said this parcel is the Sage Café so the building is already there and in
18 operation but staff discovered the zoning for that property is improper so this zone change would
19 bring it where it needs to be with the Zoning Code. Nothing is changing and we are still planning
20 on building a park between the Sage Café and the pool area.

21

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23

24 Mayor Miyagishima called for the roll on the Motion to Approve Council Bill No. 14-031;
25 Ordinance No. 2716 and it was Unanimously Approved. 7-0

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29 (9) **BEFORE CONSIDERATION OF THE FOLLOWING RESOLUTION NO. 14-193;**
30 **A PUBLIC HEARING MUST BE HELD:**

31

32 Mayor Miyagishima said the Public Hearing for Resolution No. 14-193 is now open.

33

34 Ted Sweetser, LCFD gave an overhead presentation and said our current conditions cause an
35 increased risk of fire due to the dead and dry vegetation. There are a considerable amounts of land
36 within the city that are still natural vegetation landscape. The National Weather Services predict
37 continued above normal temperatures, winds to continue, and there is a poor chance for precipitation.
38 Therefore, there is a significant threat to the health, safety and welfare of the residents of Las Cruces.
39 These restrictions will not restrict permitted public displays and it will not restrict the sale of
40 fireworks that are currently permitted by vendors. It will restrict the use of fireworks to areas that are

1 paved, barren or have a readily available water source and it will ban the use of all fireworks within
2 the areas that are covered wholly or in part by timber, brush or native grass.

3

4 Mayor Miyagishima said this is similar to what we put in place last year.

5

6 Mayor Miyagishima said the Public Hearing for Resolution No. 14-193 is now closed.

7

8 Resolution No. 14-193: A Resolution Authorizing the Issuance of a Proclamation Declaring
9 Severe or Extreme Drought Conditions and Imposing Restrictions on the Use of Fireworks
10 Within the City Limits.

11

12 Councillor Smith Moved to Approve Resolution No. 14-193 and Councillor Sorg Seconded the
13 motion.

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17 Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 14-193 and it was
18 Unanimously Approved. 7-0

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22 (10) Resolution No. 14-194: A Resolution in Support of the Value of Structures of Important
23 Local History and Interest.

24

25 Councillor Sorg Moved to Approve Resolution No. 14-194 and Councillor Smith Seconded the
26 motion.

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29

30 Councillor Smith said we have nine buildings within the city that are in possession of the City and
31 we currently don't have anything in place governing how they are to be treated. I felt this resolution
32 would help us in handling these structures in a thoughtful and appropriate way. There was a question
33 regarding the definition of the word "significant" so here is an Exhibit B that states the definition
34 as "a change that is readily visible with those structures" so regular maintenance, regular care,
35 regular repairs would not be a problem.

36

37 Mayor Miyagishima said maybe we can add something in there that states that if it is the same color
38 and the same materials are used then it is okay because what if we're redoing the roof and we use
39 the same color and the same material then it shouldn't be a problem.

40

41 Councillor Smith said I think that is what the second paragraph attempts to address.

1

2 Mayor Miyagishima asked Robert, do we need to make an amendment or is that pretty clear to staff?

3

4 Robert Garza, City Manager said no, I think it is clear as it is written.

5

6 Councillor Silva said at one point we had a mayoral ad-hoc committee to look at a preservation ordinance; so where are we with that committee?

8

9 Mayor Miyagishima said I think the committee did dissipate because we really can't tell a private land owner what to do with his property.

11

12 Robert Garza said there was a lot of discussions, a lot of meetings, work sessions, neighborhood interactions with both the Alameda and the Mesquite Historical District representatives but no one could come to a consensus so it was left unfinished.

15

16 Councillor Silva said this is for public buildings but what if a private entity would like to be included on this list?

18

19 Councillor Smith said the City cannot take on the responsibility of a private property so this would be strictly for City-owned properties. Hopefully this will set the example and in the future there can be an ordinance to help with additional properties.

22

23 Councillor Small said I do plan on supporting this resolution today and I do think it offers opportunity and a foundation for a wider community effort.

25

26 Councillor Pedroza said I think this is a good idea but I also think we should have a work session regarding all the aspects of this issue.

28

29 Irene Oliver-Lewis, Member of the Public said I live in the Mesquite Historic District neighborhood and I work in the Alameda Historic District. I'd like to thank Councillor Smith for bringing this issue up and I think this could be the first step in a very important movement in our city. I also want to commend you with what you are doing with your staff in bringing the arts and culture into the Downtown area.

34

35 David Chavez, Member of the Public said I live in the Mesquite Historic District and I'd like to thank Councillor Smith for bringing this up. We already have a South Mesquite Historic Preservation Ordinance in place and that might be something for you to look at as an example whenever you get ready to do your ordinance.

39

40 Dr. Beth O'Leary, Member of the Public said I teach preservation management at NMSU and I'd like to commend Councillor Smith for this action. There are many more historic buildings so we do need to step up to the plate and put together that committee again.

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 4 Councillor Pedroza Moved to Amend Resolution No. 14-194 to create a new Roman Numeral Six
 5 which will read "THAT Exhibit B defining "significant" is hereby attached and made a part hereof;
 6 and the old Roman Numeral Six will go to Roman Numeral Seven and Councillor Levatino
 7 Seconded the motion.

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 10
 11 Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 14-194 to create a
 12 new Roman Numeral Six which will read "THAT Exhibit B defining "significant" is hereby attached
 13 and made a part hereof; and the old Roman Numeral Six will go to Roman Numeral Seven and it
 14 was Unanimously Approved. 7-0

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 16 -----
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 18 Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 14-194 as
 19 Amended and it was Unanimously Approved. 7-0

DRAFT

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 23 (11) Resolution No. 14-195: A Resolution Amending the Personnel Manual.

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 25 Councillor Sorg Moved to Approve Resolution No. 14-195 and Councillor Smith Seconded the
 26 motion.

27
 28 -----
 29
 30 Andre Moquin, HR Director gave an overhead presentation and said this amendment includes
 31 changes to the compensation methodology for certain job classes which will also put in place
 32 longevity increases, changes to the health benefits provider, changes to the appraisal format, and
 33 other minor adjustments.

34
 35 Robert Garza, City Manager said regarding the compensation methodology for certain job classes,
 36 that is for non-exempt, non-represented employees and that pretty much describes much of our
 37 administrative staff that are currently in the merit increase system. So, this would give them the
 38 opportunity to get an increase based on how long they have been doing good in their position.

39
 40 Councillor Sorg asked how would this work with people who transfer from one department to
 41 another?

1

2 Andre Moquin said this is based on a date of hire method so it doesn't matter what department you
3 are in.

4

5 Councillor Smith said basically this is a cleanup to address matters in a more appropriate way to our
6 operations.

7

8 Andre Moquin said we evaluated the success of the merit program for several years and we don't
9 believe that the broad job classes that were in there allowed it to be successful so this is an
10 adjustment that seems to be fair.

11

12 Councillor Smith asked is there any resistance with this approach?

13

14 Andre Moquin said we have had requests over the years for us to go back to this system so this is
15 kind of in response to that but we haven't necessarily pooled our employees.

16

17

18

19 Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 14-195 and it was
20 Unanimously Approved. 7-0

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22

23

24 (12) Council Bill No. 14-030; Ordinance No. 2715: An Ordinance Enacting the Las Cruces
25 Minimum Wage and Creating LCMC 1997, Sections 14-60 through 14-68 and Division III
26 the Las Cruces Minimum Wage Act.

27

28 Councillor Silva Moved to Approve Council Bill No. 14-030; Ordinance No. 2715 and Councillor
29 Levatino Seconded the motion.

30

31

32

33 Councillor Silva gave an overhead presentation and said this is in response to requests made from
34 the residents. We all agree that minimum wage does need to be increased so that is our common
35 ground. It comes down to what is a reasonable increase and what is not reasonable. Trying to
36 determine what is a living wage has been an issue; however, Councillor Small showed us the MIT
37 Study which calculates the amount of a living wage for an area. The MIT Study shows the living
38 wage for our area is \$8.12. When we had our tabletop meetings with the business community and
39 many of them expressed that \$8.50 is about what this community could handle which is around the
40 same amount as other places in New Mexico so I think \$8.50 is an appropriate amount. This
41 ordinance includes a review every four years so Council would be forced to look at what the
42 minimum wage is in this city and determine if it is appropriate at that time.

1
2 Councillor Levatino said I think what is important is that this is an attempt to take into consideration
3 the needs and desires of the different types of stakeholders. We considered the employee and the
4 employers and everyone is impacted by this one way or another so I think this is a balanced
5 approach.

6
7 Councillor Smith said whatever form our minimum wage ordinance takes, I ask that we view the
8 issue holistically and continue to seek ways to improve the lives of all of our citizens through efforts
9 and programs that increase the likelihood of finding employment in Las Cruces, increase the number
10 of well paying jobs, improve our quality of life, and reduce the cost of living here. There seems to
11 be a consensus that we must set a local minimum wage so we need to find a balance between the
12 ability of our employers to pay higher wages, the needs of our minimum wage workers, and the
13 ability of this community to afford and support what we determine the minimum wage to be.

14
15 Councillor Small said we have heard from business owners and the Greater Chamber of Commerce
16 stating that they would like to see a lower wage than what is being proposed by the initiative so what
17 evidence do you have of feedback from low range workers that they believe this is the best solution?
18

19 Councillor Levatino said I would defer that question until we hear from the audience.
20

21 Councillor Silva said we had conversations with Café and businesses owners and I think that the
22 MIT study that was presented by Councillor Small is a good resource and gives us a starting point
23 for the minimum wage for this area. I do think we are in the ballpark of what this community can
24 afford.

25
26 Councillor Small said I did select individuals that make minimum wage or close to it, to attend the
27 Great Conversations. It has been represented that this has taken into consideration the minimum
28 wage or close to minimum wage earners but the fact that we have an ordinance before us but we
29 cannot site individuals who contributed to that from that perspective, that should be of deep concern
30 for something that is meant to represent the entire community. Councillor Silva does site the
31 minimum wage calculator that was done by MIT and I would ask, does Councillor Silva think most
32 of the people who make minimum wage are single people without any dependents?
33

34 Councillor Silva said as a policy maker, I'm not going to make a discriminatory decision based on
35 family size. I will make the best decision based on the information that is in front of me.
36

37 Councillor Small said we need to consider that if the majority of our population is by themselves
38 then this resolution probably hits the mark but if the majority of our population are not by themselves
39 then this resolution falls short. This also allows an employer to deduct \$1.00 from the hourly wage
40 if they provide daycare or healthcare for the employee but does the City keep track of employers that
41 pay for healthcare?

1

2 Robert Garza, City Manager said no.

3

4 Councillor Small said this resolution doesn't list the definitions of things like healthcare, it doesn't
5 provide protection to whistle-blowers, and it allows for businesses like the bigger box retailers to
6 subsidize their profits on the backs of our citizens by allowing them to continue to pay poverty wages
7 to people who are not by themselves.

8

9 Councillor Pedroza said I represented farm workers for seventeen years and by in large my cases
10 were for wage claims. A concern I have with this proposal is with the allowance of the employer to
11 withhold \$1 per hour for providing childcare or healthcare because I think that is a violation of the
12 Fair Labor Act.

13

14 Councillor Silva said if we base our decision on things like family size then we could be encouraging
15 people to have kids and put themselves in that type of situation and I will not go down that path.

16

17 Nancy Anderson, Member of the Public said I am a Café board member and I have been gathering
18 signatures for our version of a minimum wage ordinance. My neighbors are overwhelmingly stating
19 that they want to see this issue on the ballot so the voters can make the decision and I am asking you
20 to vote no on this item.

21

22 Cassandra Calway, Member of the Public said I am asking you to vote no on this ordinance. I
23 represent the tip workers in this situation and I think there is a difference between surviving and
24 living.

25

26 Angelica Rubio, Member of the Public said I am with Café and I am here to give you hard copies
27 of the memo that we emailed to all of you. We would like for you to consider what we have outlined
28 in this memo. Since we received our petitions on Thursday, we have collect 1,400 signatures and we
29 think this is a big demonstration of what the community wants which is to be allowed to vote on this
30 issue. As a voter, I urge you to vote no on this proposed ordinance.

31

32 Roseann Vasquez, Member of the Public said I am with Café and I am also a mother and a
33 grandmother. As a single mother I continually heard that my children where at-risk youths and would
34 be young mothers or in jail and thankfully none of that has happened. They are working their way
35 through college and my daughter also works at a daycare where she is now making \$8.20 an hour
36 but is unable to make it on those wages. I believe that no one who works full-time should have to
37 live in poverty so I would ask that you vote to table this proposal today.

38

39 Susan Fitzgerald, Member of the Public said it seems to me that this council has a lot of questions
40 regarding this proposal so perhaps the prudent thing to do would be to table it. Over the past four
41 days, my husband and myself have collect almost 200 signatures and I think the residents are saying
42 "we want a chance to vote on it".

1

2 Jake Shavers, Member of the Public said I think you are making a mistake when you tie a living
3 wage with a minimum wage. The biggest problem here is with the price of gas and if you are having
4 to pay more to get to work than you're making, then it won't work for you.

5

6 Jerry Nachison, Member of the Public said I am with Café and I would ask that Councillor Silva and
7 Councillor Levatino consider talking with workers since it is apparent that they have not done so.
8 I would also challenge all of you to leave your houses for a month and work for minimum wage to
9 see how far it will go.

10

11 Barbara Lynn Hayes, Member of the Public said I work at the assisted living building at the Village
12 of Northrise and many of my co-workers make minimum wage and they have to work second jobs
13 during the weekends.

14

15 Denali Wilson, Member of the Public said I am a low-wage worker and I am asking that you vote
16 no on this ordinance. There are people picketing for \$15 an hour so this is not a compromise and this
17 excludes tipped workers so again, this is not a compromise. I feel disrespected by this proposed
18 ordinance and it is carelessly written with questionable enforcement mechanisms and exclusionary
19 clauses so I don't think it deserves any support from Council.

20

21 Pablo Martinez, Member of the Public said I support Café and am against this ordinance because it
22 is a band-aide solution that is not going to help organize labor. We are asking that you do the right
23 thing and allow this to go to the voters. If you increase their wages then they will spend more and
24 it will help increase business.

25

26 Allan Dicker, Member of the Public said I work at a supermarket and am a student but I had to leave
27 school this year because of money. I generally work jobs that pay minimum wage and I think there
28 hasn't really been that much input from workers. The big issues at the places I work are that the
29 workers don't have a voice where we work. We can get fired for any reason or have our hours cut
30 and the workers have no input about it. I feel that what you need to be doing is things that would
31 allow the workers to have a voice in their workplace.

32

33 Dr. Robert Markus, Member of the Public said the group I'm here for is a Native American group
34 that is trying to rebuild their community and we have been dealing with the issue of poverty for a
35 very long time. There is a connection between the cost of living and minimum wage so when
36 expenses go up then the minimum wage should also go up.

37

38 Rich Ferrary, Member of the Public said tip wage was set in 1992 at \$2.13 which at that time was
39 fifty percent of the base minimum wage so we should continue with that fifty percent ratio. Also,
40 Albuquerque had set the \$1.00 off the hourly rate before the Affordable Care Act so now there are
41 employers that have to supply healthcare to their employees by law. That means that we are allowing

1 big employers who have to follow the law, get a dollar an hour break and the smaller businesses have
2 to pay the higher wages and that doesn't make any sense to me. This ordinance does exactly what
3 the NRA (National Restaurant Association) wants which is to not touch the tip wages. Also, I think
4 Councillor Smith has a conflict of interest and should recuse himself.

5

6 Roger Ruth, Member of the Public read a letter he wrote to the Washington Post and said I have a
7 daughter who works two jobs and is having a hard time making it. I was also out of work and ended
8 up having to take a job that pays \$8.50 an hour. I asked my daughter what she thought about raising
9 the minimum wage and she said she was against it because she is getting paid \$8.60 an hour so it
10 wouldn't help her at all.

11

12 Steve Chavira, Member of the Public said I'm asking you to approve this ordinance because we need
13 to make smart decisions that keep us going in the right direction. You have to consider the business
14 owners and all the people they employ so lets work together and accept this proposal.

15

16 Troy Tudor, Member of the Public said the one thing that I have not heard today is personal
17 responsibility. When I started working minimum wage was \$3.35 an hour and now I'm 47 years old
18 and I'm a father of four girls. I work a full-time job and do many things on the side and my wife
19 works a full-time job to help support our family because we are responsible for ourselves and our
20 destiny. It is not the responsibility of the business community to meet the needs of every individual
21 in this community. It is the individual's personal responsibility and they need to do what they need
22 to do just like every other hard working American. Business owners are people who worked hard
23 to better themselves, then started a business and employing others. Café should be teaching people
24 how to better themselves and build themselves up instead of taking it from those who have already
25 worked hard to get it. We pulled a survey at the Chamber of the business community and 83% of
26 them said that an increase of \$10.10 an hour would damage their business and their ability to go
27 forward.

28

29 Russell Allen, Member of the Public said I own Allen Theaters and I pay my employees minimum
30 wage. Everyone thinks they should be getting paid more but there are a lot of opportunities for
31 people to better themselves so they can make better wages. The box stores will still be able to pay
32 their employees an increased minimum wage but the small business owners are the ones who will
33 have a problem. I want to continue to be able to hire teenagers but that unreasonable increase would
34 prevent me from hiring them.

35

36 Nan Ruben, Member of the Public said I moved here from New York and this proposed wage is an
37 insult. This shows no respect for the workers and I would like the \$10.10 increase to be in place.

38

39 Oscar Andrada, Member of the Public said I own the Pic Quiks in Las Cruces and I started off
40 getting paid minimum wage and I've worked hard to bring myself up. Eight-five percent of my
41 workforce work full-time but a lot of my workers don't want to work full-time or overtime because

1 they will lose their subsidies from the government and their tax breaks. I ask you to vote yes on this
2 ordinance.

3

4 Eddie Binns, Member of the Public said this is a complicated subject and it sounds like we need
5 more jobs to put more people to work. This makes a domino effect because when you raise the
6 wages of the person at the bottom it affects everyone on top because they will be expecting an equal
7 amount of an increase in their wages. I think we do need adjustments in wages and the proposal that
8 is in front of you has been discussed and everyone has been able to give their input on it. I'm an
9 employer and I don't have a minimum wage employee on my payroll because I can't find a reliable
10 person that works for minimum wage. This should be handled now and not postponed because you
11 should be using your time to work on other issues.

12

13 Ron Camuñez, Member of the Public read a quote out of the New York Times and said its
14 interesting to me that the ones who are opposing this are mainly people who are retired and don't
15 own a business.

16

17 Vince Vaccaro, Member of the Public said I own Lorenzo's and I think this is a fair proposal. I don't
18 think the Café people are looking at everyone because they're only considering employees and not
19 the small business owners.

20

21 Sarah Melton, Member of the Public said I am an aspiring social worker and I was asked to help this
22 women with budgeting her finances because every month she was unable to pay her rent. She worked
23 full-time and after working on her budget, at the end of the month she only had \$12 left. Every
24 month things come up and \$12 is not enough of a cushion to handle those things. We need your
25 voices for those who are the most excluded.

26

27 Leslie Fritze, Member of the Public said I'm employed by the National Education Association of
28 New Mexico and we endorse increases in minimum wages across the country because our economist
29 have determined that, that raises the level and brings all of us together which increases our quality
30 of life. I am asking that you vote no on this and allow this question to go to the voters.

31

32 Dolores Connor, Member of the Public said you have probably already made up your mind on this
33 issue because each of you have done your research to support your decision. However, a family
34 living on minimum wage is unfair. The effect of your vote won't be shown until about five years out
35 so don't jump so far ahead of a \$10.10 minimum wage. I suggest that you take this low route and
36 adjust if you need to in the future.

37

38 Richard Aguilar, Member of the Public said I am speaking on behalf of the Hispanic Chamber of
39 Commerce and Tresco. This proposal is a reasonable increase amount and business owners would
40 be able to adjust. An increase to \$10.10 an hour would be devastating for businesses like Tresco.

41

1 Bill Allen, Member of the Public said I'm with the Chamber of Commerce and this is a more
2 reasonable number for an increase because it would be less of an impact on our local small
3 businesses.

4

5 Councillor Levatino said I think we've heard a broad spectrum of concerns and suggestions so at this
6 point I would request to call the question.

7

8 Mayor Miyagishima said I haven't spoken yet so why don't we take one last comment from each
9 councillor.

10

11 Councillor Levatino said okay, I'm sorry.

12

13 Councillor Sorg said I have heard it all and I haven't heard anything new today. I have worked for
14 minimum wage so I do know what it is like to live on those wages. When you add up the housing
15 and transportation cost of a person in Dona Ana County it is about 63% of their income and studies
16 show that anything over 45% is considered living in poverty. I do think the minimum wage does
17 need to go up higher than \$8.50 and that is one reason why I can't support this ordinance. Also, this
18 proposal does have very vague things in it that I cannot support which are things like the lack of a
19 definition of healthcare.

20

21 Councillor Smith said I would like to make some amendments to Section 14-63 (A) Item 2, given
22 that the average CPI for cities is between 1% and 3%; I would like to amend that to read 3% as
23 opposed to 2%. In that same section, if there is a way for us to set increases based upon local
24 numbers then I would think that would make more sense than basing it on national CPI. Is there a
25 way that staff could take the national numbers that are given to us and determine a reasonable local
26 CPI or are we stuck with the national numbers?

27

28 Robert Garza said certainly our staff could do that but I think it would be safer to use the national
29 standard which would not be debatable.

30

31 Councillor Smith said I will withdraw the local CPI and perhaps in the future we might be able to
32 amend it.

33

34 Councillor Silva said I would also like to amend page 344, Section 14-63 (C) to begin on January
35 1, 2016 in order to avoid violating the Fair Labor Act.

36

37 Councillor Pedroza said if you allow \$1.00 for childcare and \$1.00 for healthcare then that's \$2.00
38 which would be below minimum wage and be a violation of the Fair Labor Act.

39

40 Councillor Silva asked Pete, do you think we should add a sentence after benefits stating that it
41 should not go below the Federal minimum wage level?

1
2 Mayor Miyagishima said I think if we just put something in there stating that it does not apply to tip
3 workers then it will be okay.
4
5 Councillor Pedroza said there is still issues with it. It isn't clear what healthcare or childcare is; so,
6 an employer could say I have a lady down the street who will provide daycare and that is it or that
7 they pay for one doctor visit and that is it. It just isn't clear so I cannot support it. Also, if a person
8 is working for \$8.50 an hour and the employer provides healthcare then they're down to \$7.50 an
9 hour and they also provide childcare then they'd be down to \$6.50 an hour which at that point
10 becomes a violation of the Fair Labor Act.
11
12 Mayor Miyagishima said then we will exclude tip workers and put a maximum \$1.00 credit.
13
14 Councillor Small said I strongly believe that a larger minimum wage would be more beneficial for
15 our community. In seeking to maximize opportunities for our citizens. We are including a cost of
16 living increase but then we are capping it. By doing that, we are limiting the opportunities of our
17 citizens. I do think the wage amount for tipped workers does need to increase but there is room for
18 discussion on that issue. Also, there are several issues with the enforce-ability of the \$1.00 credit.
19 I think we are all here because of the petition process that is currently going on and I think 1,400
20 signatures in four days shows that this would likely be approved for the ballot and be passed by the
21 citizens of this community. I intend to offer a motion to table this because I think this was done
22 entirely without workers input and I think by allowing the citizen petition to go to the voters, that
23 will allow everyone the opportunity to give their input.
24
25 Councillor Sorg said employers of tip workers are suppose to make up the difference if their tips are
26 not enough to cover the minimum wage but there was a study done on tip workers within the past
27 five years and they found that 80% of the restaurants don't make that difference up. So, I can't accept
28 this type of tip wage ordinance. I would rather it be a flat rate across the board, the same wage for
29 everyone.
30
31 Councillor Levatino said I think there is a lot of misinformation out there regarding this proposal and
32 Café's proposal. The vote today does not prevent Café from collecting their signatures and putting
33 it on the ballot. I worked for minimum wage for a long time and when I was a registered nurse in
34 New York, the janitor across the street at the VA hospital, made more money than I did. When I
35 needed more money I worked extra shifts. I did something about it and I didn't expect my employer
36 to do it, I did it myself. I understand that isn't possible for some people but we just can't solve
37 everyone's problems. As a councillor, we also have to consider the effects of minimum wage on the
38 City's budget. If we go to \$10.10 an hour, it would raise City expenses by about \$1.8 million so we
39 would have to address that by deciding if we need to raise taxes, eliminate jobs, and/or cut services.
40
41 Mayor Miyagishima said I still have a hard time telling employers how much they have to pay. I am
42 a public servant but I'm also a business owner so as a public servant, they say we have to raise our

1 wages then that's what we do; however, as a business owner, if they tell me I have to raise the wages
2 of my employees then that's a different story because I also have to pay rent, utilities, and all the
3 other expenses. So I understand both sides of the issue.

4

5

6

7 Councillor Small Moved to Table Council Bill No. 14-030; Ordinance No. 2715 to August 4, 2014
8 and Councillor Pedroza Seconded the motion.

9

10

11

12 Mayor Miyagishima called for the roll on the Motion to Table Council Bill No. 14-030; Ordinance
13 No. 2715 to August 4, 2014 and it Failed. 3-4 Councillor Pedroza, Councillor Small and Councillor
14 Sorg voted Aye. Councillor Silva, Councillor Levatino, Councillor Smith and Mayor Miyagishima
15 voted Nay.

16

17

18

19 Councillor Smith Moved to Amend Council Bill No. 14-030; Ordinance No. 2715 in Section 14-63
20 (A) Item 2, change the cap from 2% to 3% and Councillor Silva Seconded the motion.

21

22

23

24 Councillor Small asked why do you seek to limit the earning opportunity of workers under the cost
25 of living increase?

26

27 Councillor Smith said we are trying to be reasonable about the increases because the cost of living
28 increase can fluctuate and is unpredictable so this would create a more stable, ongoing adjustment.

29

30

31

32 Mayor Miyagishima called for the roll on the Motion to Amend Council Bill No. 14-030; Ordinance
33 No. 2715 in Section 14-63 (A) Item 2, change the cap from 2% to 3% and it was Approved. 6-1
34 Councillor Silva, Councillor Pedroza, Councillor Sorg, Councillor Levatino, Councillor Smith and
35 Mayor Miyagishima voted Aye. Councillor Small voted Nay.

36

37

38

39 Councillor Silva Moved to Amend Council Bill No. 14-030; Ordinance No. 2715 to eliminate
40 Section 14-63 (C) and Councillor Levatino Seconded the motion.

41

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2
3 Mayor Miyagishima called for the roll on the Motion to Amend Council Bill No. 14-030; Ordinance
4 No. 2715 to eliminate Section 14-63 (C) and it was Approved. 6-1 Councillor Silva, Councillor
5 Pedroza, Councillor Sorg, Councillor Levatino, Councillor Smith and Mayor Miyagishima voted
6 Aye. Councillor Small voted Nay.

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10 Councillor Small Moved to Amend Council Bill No. 14-030; Ordinance No. 2715 on page 343,
11 Section 14-63 (B) strike \$2.13 per hour and insert \$4.00 per hour for tip workers and Councillor
12 Pedroza Seconded the motion.

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16 Mayor Miyagishima called for the roll on the Motion to Amend Council Bill No. 14-030; Ordinance
17 No. 2715 on page 343, Section 14-63 (B) strike \$2.13 per hour and insert \$4.00 per hour for tip
18 workers and it Failed 3-3-1 Councillor Pedroza, Councillor Small and Councillor Sorg voted Aye.
19 Councillor Silva, Councillor Levatino and Mayor Miyagishima voted Nay. Councillor Smith
20 Abstained.

21
22 -----
23
24 Councillor Small Moved to Amend Council Bill No. 14-030; Ordinance No. 2715 on page 343,
25 Section 14-63 (A) change \$8.00 per hour to \$8.50 per hour, then at the conclusion of the sentence,
26 change \$8.50 per hour to \$9.00 per hour and Councillor Sorg Seconded the motion.

27
28 -----
29
30 Mayor Miyagishima called for the roll on the Motion to Amend Council Bill No. 14-030; Ordinance
31 No. 2715 on page 343, Section 14-63 (A) change \$8.00 per hour to \$8.50 per hour, then at the
32 conclusion of the sentence, change \$8.50 per hour to \$9.00 per hour and it Failed 3-4 Councillor
33 Pedroza, Councillor Small and Councillor Sorg voted Aye. Councillor Silva, Councillor Levatino,
34 Councillor Smith and Mayor Miyagishima voted Nay.

35
36 -----
37
38 Mayor Miyagishima called for the roll on the Motion to Approve Council Bill No. 14-030;
39 Ordinance No. 2715 as Amended and it was Approved. 4-3 Councillor Silva, Councillor Levatino,
40 Councillor Smith and Mayor Miyagishima vote Aye. Councillor Pedroza, Councillor Small and
41 Councillor Sorg voted Nay.

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VIII. *APPEAL PROCESS*

Council members shall not privately discuss with any interested person or persons the merits of a case which is, or may be pending before the City Council. If there have been any such discussion or discussions, they should be disclosed by the appropriate Councillor(s) or individuals at this time.

Appeals to be presented before the Las Cruces City Council shall follow the procedure outlined in LCMC 1997, Section 38-13.

(13) **APPEAL** - **Resolution No. 14-196**: A Resolution Appealing the Decision of the Planning and Zoning Commission for a Proposed Subdivision Known as Jornada South Unit 3-B, Replat of Lot 29, Block L. The Proposed Subdivision Encompasses 2.889 ± Acres and is Located on the South Side of Real Del Sur, 85 ± Feet East of Its Intersection With Feliz Real. Submitted by Western Lands Surveying on Behalf of Robert Fishback, Property Owner (S-13-034).



Councillor Small Moved to Approve Resolution No. 14-196 and Councillor Sorg Seconded the motion.

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Katherine Harrison-Rogers, Senior Planner gave an overhead presentation and said Mr. Mayor and members of City Council, this is an appeal of Case S-13-034; this was the Jornada South Unit 3-B Replat of 29, Block L. Let me open this up. So essentially, this property is located on the south side of Real Del Sur, it's about 85 feet east of the intersection with Feliz Road. This particular property is zoned R1-A which is single-family medium density which allows for a 5,000 square foot lot, that's the minimum, it encompass a little under three acres and it is currently undeveloped and vacant. They're proposing to subdivide this one lot into three individual single-family residential lots. All approximately just shy of an acre. They are proposing to provide improvements to Real Del Sur which includes a cul-de-sac at the end of that dead end road, and the proposal is currently meeting all Subdivision Code and Zoning Code requirements. This is just a zoning map, so you can get a sense of what's around it, you have the Mesa Grande Estates over here, and the Alameda, excuse me, the Pueblos Alameda Ranch down here, that is a PUD. And of course an aerial so you can get a sense of what's around it. You can see you've got one acre lots over here, some larger lots in here, and then some smaller lots here. And just a view of that particular replat so you get a sense of what they are proposing, those three lots. Some history of why this is being appealed and what's happened thus far. At the design, the Development Review Committee, the DRC, on April 2, 2014, they reviewed the replat after some discussion, they did recommend approval with some minor conditions. The P

1 & Z Meeting was held on April 29th, I would like to point out, there is an error in both the ordinance
2 and the CAES that you all have, it states April 22nd, that was the original date of the meeting which
3 was then postponed to April 29th, I want to state that for the record. The Planning and Zoning
4 Commission did vote to deny that proposed replat by a vote of 4-2-0. They found essentially that the
5 approval of the subdivision wasn't in keeping with the character of the neighborhood, that's what
6 they stated. And the appeal to this was submitted on April 30th by the applicants representative and
7 that was basically based on the fact it was denied on insufficient grounds. Again, the proposed replat
8 does meet all the requirements of the Zoning Code, the Subdivision Code, and the Design Standards
9 for the City of Las Cruces. With that I will entertain any questions or turn it over to Mr. Fishback
10 or his representative to discuss what the appeal was about.

11

12 Mayor Miyagishima said thank you Katherine. Now this is a different appeal that both the applicant
13 and any witnesses that are going to speak has to be sworn in, so I'm going to turn that over to Esther
14 and Mr. Fishback, like to come forward? Yes sir, please come forward.

15

16 Harry (Pete) Connelly, City Attorney said anybody who plans to give any testimony or speak on the
17 matter, just stand and raise your right hand and face the clerk please.

18

19 Esther Martinez-Carrillo, City Clerk said please state your name for the record.

20

21 Robert Fishback said my name is Robert Fishback.

22

23 Anthony Gutierrez said my name is Anthony Gutierrez.

24

25 Dr. Robert Pennington said my name is Dr. Robert Pennington.

26

27 Dr. Rebecca Kramer said my name is Dr. Rebecca Kramer.

28

29 Robert Kramer said my name is Robert Kramer.

30

31 Jan Escalante said my name is Jan Escalante.

32

33 Esther Martinez-Carrillo said please raise your right hand. Do you swear or affirm that you will tell
34 the truth, the whole truth, and nothing but the truth, under pains and penalties of purgery?

35

36 Robert Fishback said my I do.

37

38 Anthony Gutierrez said I do.

39

40 Dr. Robert Pennington said yes, I do.

41

42 Dr. Rebecca Kramer said I do.

Regular Meeting
June 2, 2014

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1

2 Robert Kramer said I do.

3

4 Jan Escalante said I do.

5

6 Harry (Pete) Connelly said thank you all.

7

8 Mayor Miyagishima said okay, the applicant and witnesses have all been sworn in. Mr. Fishback,
9 you wanted to give your side or Mr. Gutierrez? Please state your name every time you speak and
10 know that you are under oath.

11

12 Anthony Gutierrez said yes Mr. Mayor, City Council; thank you for having us today and on top of
13 the presentation that was already given by City staff, we'd also like to; I'm going to pull something
14 up here just to make sure that; any members of the Planning and Zoning Commission are not here
15 participating in this appeal per City Ordinance Section 38-13, it doesn't allow them to participate
16 in the appeal process. So if there is anybody, I know Joanne Ferrary was attending previously so I
17 just wanted to make sure that wasn't the case. As City staff mentioned, we did appeal this based on
18 grounds of the denial as well as currently Mrs. Ferrary is running for office in this district and since
19 the bulk of my presentation is the same as the City staff's with the exception of what I just
20 mentioned so I'm going to go ahead and stip ahead. With the exception that if you have any
21 questions regarding the development, I can answer those now, in regards to improvements or lot
22 layout, those types of questions. If not, I will move forward in my presentation.

23

24 Joanne Ferrary is running for office right now, for District 5, State Representative, during the hearing
25 she was the commissioner that stood in opposition to our project. This is a map of the vicinity that
26 covers District 37 for State Representative. Our project is located by the area you see here, this is
27 where the development is, the case right before us, she abstained from voting which lied in the same
28 district. In our case, she did not abstain. Constituents that are also here tonight, were also there at the
29 meeting. We feel this is a conflict of interest and per Municipal Code and Zoning Code or
30 Development Code, what have you, her statement should be stricken from the record and from the
31 minutes and should not be used in the judgement of this case. I state a disclosure of conflict of
32 interest, Commissioner Crane did come forward and offered the ability to do that, she did not
33 abstain. If there is a conflict of interest, I highlighted this portion out of the code, discuss, debate,
34 deliberate about, act upon, vote upon, or otherwise participate in or influence in the decision making
35 process.

36

37 There was a letter that was given by one of the neighborhood residents that specifically focused on
38 some statements that were considered hearsay. Commissioner Clifton called that out prior to Mrs.
39 Ferrary's statements. He made it clear and concise that these were statements that were hearsay and
40 he stuck with the code. He stuck with the guidelines that were suppose to be followed and that is in
41 Section 2-38, criteria for decisions. If you read through these criteria, the criteria that were stated in

1 the denial did not fit that criteria. These are the individuals taken out of the minutes as they voted:
2 Stowe, based on discussions and site visit; Ferrary voted no for discussion; Alvarado, based on
3 discussion and findings; Beard, based on site visits and discussions; Crane, also on discussions;
4 Clifton, on the other hand, voted Aye on the findings that the proposed replat does comply with all
5 the requirements of the 2001 Zoning Code, Chapter 38 of the Las Cruces Municipal Code as
6 amended and the Las Cruces Subdivision Code, Chapter 37, and Las Cruces Design Standards, and
7 as City staff already stated, this follows the letter of the law. Our conclusion is such, we feel like we
8 are here because code was not followed. We applied for the appeal process, we've gone by the book
9 through the Design Review process and we have had many hurdles along the way. We had a meeting
10 with Mr. Garza prior to this because of some issues we had with development staff. He met our
11 concerns and we were able to move forward and we appreciate that. In this sense we feel that this
12 commission should be aware of what they're commissioned to do and in this case, did not do that.
13 They failed at it and it is their job to notify and let the community know what these rules are. If the
14 rules need to be changed, there's facilities to do that but in this case, they had rules to follow and did
15 not follow them and led the public to believe that we can just change whatever we want to. So we're
16 asking that all of Ferrary's statements and participation be stricken from the record based on that.
17 Two, that City Council approve the application in this case, that formal recognition be given to
18 Commissioner Clifton for upholding the intent and letter of the Municipal and Zoning Code. The
19 refund of all fees associated with the appeal to the City Council be considered. Thank you very
20 much. If you have any questions, I'll be happy to answer them.

21

22 Councillor Sorg said I didn't catch your name.

23

24 Anthony Gutierrez said Anthony Gutierrez.

25

26 Councillor Sorg asked are you an attorney?

27

28 Anthony Gutierrez said no, I'm not.

29

30 Councillor Sorg said okay, thank you.

31

32 Mayor Miyagishima asked any other comments? Mayor Pro-tem.

33

34 Councillor Smith said so, if I understand correctly, then your basic concern is that someone on the
35 commission who should have recused herself did not and are you asking us then to overturn the
36 whole decision or are you asking us to put it back to the commission and ask that, that person recuse
37 herself?

38

39 Anthony Gutierrez said this case was on the consent agenda. It was taken off based on a letter that
40 was considered hearsay by one of the commissioners. It should have ended there. We believe that
41 we meet all of the requirements and it should be upheld. That's what we are asking for.

1 Councillor Smith said thank you Mr. Gutierrez. Thank you Mr. Mayor.

2

3 Mayor Miyagishima said thank you Mayor Pro-tem. Councillor Small.

4

5 Councillor Small said thank you Mr. Mayor. Thank you Mr. Gutierrez. I would ask first City
6 Manager Garza or Attorney Connelly, is there any further staff presentation or is that intended to be
7 the extent? I do have questions, I just wanted to make sure we give due.

8

9 Katherine Rogers said Mr. Mayor, Councillor Small, if you need some additional information we
10 are prepared to answer that, we have some additional slides in case your interested. The primary
11 reason for denial was essentially circled around discussions having to do with the lot size being
12 smaller than one acre and also the configuration of said lots. And we have additional information
13 if you need you'd like to look at that.

14

15 Councillor Small said great. It seems to me that I guess there are two questions here; one, there
16 premise given that one of the commissioners was bias; what was the vote again?

17

18 Katherine Rogers said 4-2-0.

19

20 Councillor Small said 4-2-0. So if that commissioner would have recused himself then presuming
21 that she voted or that commissioner voted against this; what would have been the vote?

22

23 Katherine Rogers said 3-2-0.

24

25 Councillor Small said okay. In the premise that the commissioner was biased was again because of
26 why?

27

28 Anthony Gutierrez said this development had a really good turnout with the neighborhood; well I
29 should say a decent turnout, there was several issues leading up to this case. It was scheduled for a
30 P & Z hearing, that P & Z hearing was cancelled and a gentleman still came up and spoke at that
31 cancelled hearing. They didn't have a recording device present so they had to cancel the whole
32 hearing. So the next week when it was rescheduled, he was able to gather more people on top of the
33 already, the notification process had already gone out. And in that hearing, the subsequent hearing
34 that, thereafter, he was able to have representatives here to speak for him and have a letter read. It
35 brought a lot of attention out that otherwise probably would not have been there. Not that the
36 attention is bad but he made statements in that letter that he could not defend and he wasn't there to
37 do so and Ferrary acted in defense of those statements in her minutes. If you read through the
38 minutes you will see that clearly and she acted as an advocate for the community that she's right now
39 running in office for which is easily a conflict of interest.

40

1 Councillor Small said thank you and thank you Mr. Gutierrez for the answer. It seems to me there
2 is a number of ifs that are presupposed here and a general desire for less community engagement and
3 it seems that many things are much more focused on enlarging community engagement. So I
4 appreciate very much obviously laying out and there must be some very strong feelings that have
5 caused that to do so but it does not seem to me that there is a compelling statement that says
6 somehow the evidence that connects that is quite tenuous if even there at all but respecting kind of
7 the thought. I guess as far as, there have been additional information that was eluded to by staff for
8 both lot size and configuration. Can staff summarize the concerns related to both lot size and
9 configuration that exist.

10

11 Anthony Gutierrez said if I may add if we are going to get into that, I think, it would be prudent to
12 represent the case to City Council, if that's the case, that way everyone is clearly communicated with
13 instead of reacting to possibly those statements, possibly presenting the development to you from
14 the beginning.

15

16 Mayor Miyagishima said let me; I'll ask Pete for these comments; let me just share with my
17 colleagues, since they don't get a chance to do these types of things that often, I know when I was
18 a county commissioner this was par for the course. A lot of times when you have something that
19 basically fits with what the administration says, with Robert's administration, if staff says "yes, this
20 fits the perimeter," you really can't deny it. Just like when that adult center came, it set; I mean if you
21 were to deny it on any other reason it would just be what you call arbitrary and capricious which I
22 think a couple of you may have been on the Planning and Zoning once upon a time. So you can only
23 really deny it on the findings of facts. If there are certain facts that can be proven, okay, then you can
24 deny it, and I think that's really what is being said here. Although I will say "was that something that
25 the commissioner should have done, recuse herself", probably, "was it a conflict", probably not
26 because I don't think there was any financial gain. But nonetheless, I think based on what staff has
27 had to say and what I have been able to read, I think it probably should have been moved forward.
28 You're welcome to hear the presentation if you'd like but unfortunately Ms Ferrary you can't speak.
29 I know you're here, you raised your hand, but I can't have you speak. So it's up to what the Council
30 wants to do. If you want to hear some; is that acceptable Pete, to have them give another presentation
31 or can we only go off of the minutes that we can read?

32

33 Harry (Pete) Connelly, City Attorney said the hearing is like an appeal process. The hearing is
34 controlled by what the appellant has said that there are people who if they testified at the Planning
35 and Zoning are allowed to testify before here and they are subject to cross examination by the
36 applicant.

37

38 Mayor Miyagishima said okay but I guess the question is, I think it seemed like there may be a
39 couple of council members who wouldn't mind having a brief explanation of what the actually
40 crooks of the...

41

1 Harry (Pete) Connelly said theoretically, it is in the record. It would be in the record and that would
2 be it. The only thing the people who are here to testify would be to, if you will, supplement the
3 record.

4

5 Mayor Miyagishima said additional supplement.

6

7 Harry (Pete) Connelly said right.

8

9 Mayor Miyagishima said not rehashing what they said at the meeting.

10

11 Harry (Pete) Connelly said no, not rehashing what they said.

12

13 Mayor Miyagishima said so basically we're not going to rehear the information, this is just what
14 anything that may have transpired since the meeting, something new.

15

16 Harry (Pete) Connelly said it is pretty well controlled by what the appellant has stated in his; I will
17 give you a good example, if you remember the Bronx, that was controlled by what the appellant said
18 in the Notice of Appeal and this is very much the same thing. You can't go beyond what the
19 appellant has brought forward. If the appellant has brought grounds forward enough that you feel that
20 you can decide without any contrary matters, I think you're free to go ahead and decide so long as
21 it's a fair hearing and again the board members are not allowed to speak here.

22

23 Mayor Miyagishima said well okay, there you go. So basically you're saying that if what the
24 appellant wants to talk about, we can listen, and if the witnesses want to supplement their testimony
25 then they can do so.

26

27 Anthony Gutierrez said I would like to add that my client is also the appellant and I think he would
28 like to speak.

29

30 Mayor Miyagishima said absolutely. Just a reminder Mr. Fishback, you are under oath and just to
31 clarify things, just to make it simpler, what I'll do I'll make some suggestions, you go ahead and give
32 us what you want to say, tell us why you feel it should be approved or not approved, just your
33 feelings and give us the findings of the facts.

34

35 Robert Fishback said yes sir, I will. My name is Robert Fisback. I'm here to try to get a division of
36 2.88 acres that I have, divided into three acres, into three individual lots. I apologize, I don't speak
37 publically very much at all so if I'm not doing something correctly I apologize to all of you now. I'm
38 not a public speaker, never wanted to be. This is a straight forward. I bought this property when a
39 church was going to buy the property. Instead of coming down to the City Council and complaining
40 about it, I just bought it. Well with the economy going the way it is the only way I can try to get my
41 money out is go ahead and subdivide this piece of property into one acre lots approximately and sell
42 it at a reduced price just to get my money out. That's the idea of doing this. It's well above the

1 standards the City has zoned for this property. The members that live in this subdivision have
2 complained about Mesa Grande from day one. We've had interchange with all of them, just as the
3 City has requested, with meetings with all of the citizens and stuff. Mesa Grande is still there, we're
4 still trying to make a living and what I'm doing on this thing is trying to make a better piece of
5 property out what we have. We are going to take the three lots, we're going to hook them up to
6 sewer, take them off of septic tanks, we're putting a turnaround in for the City. Two of the lots are
7 just about an acre and one lot is a little smaller because we are giving the City a piece of property
8 tentatively I have that lot, the smallest, sold, with the outcome of this hearing. I don't know what else
9 I can say that, you can ask me any question you'd like to know, I'd be more than happy to answer
10 it.

11

12 Mayor Miyagishima said okay, so what you want to do is subdivide it and you are going to provide
13 all of the utilities that are there or available.

14

15 Robert Fishback said all of the utilities are already there except for sewer. When Mesa Grande
16 Estates came in we went to the home owners and said we'd run sewer up Real del Sur into our
17 subdivision; they didn't want it in there. I would have gave them sewer to the subdivision and the
18 City would have the ability to go ahead and put sewer in all those homes. So they fought us on
19 putting that in but we, as we designed it, knowing that piece of property there, I have an easement
20 across one of ours and a tap into an oversized main that can more than handle it and it goes through
21 the Pueblos and so we planned it when we planned Mesa Grande. So it gives us three lots that have
22 gas and all City utilities, cable tv, telephone, everything. So we have in essence increased these lots
23 in value and taken septic tank systems out of three pieces of property.

24

25 Mayor Miyagishima said if you were to sum it up, the reason why you feel that residents were not
26 in support of it, what would you say?

27

28 Robert Fishback said if I were to sum it up, after the last approval the City Council here for Mesa
29 Grande Estates; not only did I get sued, the company got sued, I believe the Mayor got sued, City
30 Councillors got sued, and it was thrown out of court in five minutes because there was no, these
31 people from day one because we didn't want to make one acre lots over the entire subdivision
32 thought there was an agreement that Mr. Moore has to make one acre lots everywhere. That's no
33 such the case, there never was a case, this piece of property is designed exactly like almost every
34 piece of property there is in the county, in the State of New Mexico. We buy the property, we figure
35 out what we can do with it to develop it, we talk to an engineer, we tell him "I want 80 by 125 is the
36 standard size of lots, start working on trying to figure out about how many we can get. That's exactly
37 the same premise that the Moore's have. Mr. Moore is an impeccable developer and builder here in
38 Las Cruces for 50 years and everybody here knows him, he not only over does everything, at the time
39 he started Phase 2 Jornada South, the Jornada South area, the City Council went from one-half acre
40 to three-quarters acre for septic tanks. So him and his son talked about developing it and said "well
41 we'll put one acres in there and then we'll have no problems whatsoever". The other main dictating
42 force to say what size the other lots are is by the engineer being able to plat the lots on the contours

1 of the existing land and to try to get the most lots that he can and still stay in the area of one acre.
2 Some are acres and a half, some are two acres....
3
4 Mayor Miyagishima said excuse me Mr. Fishback, sorry for interrupting, first, you are doing a great
5 job with public speaking, second, I need you to kinda stick to this appeal. I know you kinda going
6 off a tangent, I agree with Mr. Moore; you're talking about Roy Moore?
7
8 Robert Fischback said yes, sir.
9
10 Mayor Miyagishima said he does a fantastic job or did and so, it was the state that required the three-
11 quarter acre not the City.
12
13 Robert Fishback said I apologize.
14
15 Mayor Miyagishima said no problem. But if you can stay focused on this please, I'd appreciate it.
16
17 Robert Fishback said what else would you like me to say on it?
18
19 Mayor Miyagishima said if that's what you got then you.....
20
21 Robert Fishback said what I have is three one acre lots approximately where I can have eight per
22 acre, is what the zoning calls for, so if I wanted to sell my house and come back in there and build
23 twenty houses, I could do that, I'm not interested in that. We've always felt like we want to try and
24 give as much continuity to any piece of land that we develop and we've been developing for 15 years
25 in Las Cruces. So, another thing I wanted to do with the very first part of it was to take these off of
26 septic tank systems if we could. We have a lot that aren't in parish homes and I'm going to go across
27 the end to his and tie it in. So I've solved more problems with this piece of land and made a better
28 piece of land for the City of Las Cruces to approve and we fall well within all the guidelines of the
29 City's zoning for this property. There is no reason why this piece of land should not be approved.
30 It is completely within every guideline of the zoning for this land.
31
32 Mayor Miyagishima said yes, sir. Thank you. I'll turn it, open it up to the Council members, if they
33 have any specific questions. Councillor Pedroza, Councillor Levatino; and the City Manager is going
34 to have to run for a different appointment so I apologize for that but Brian will be taking over. So,
35 Councillor Pedroza, you had a comment.
36
37 Councillor Pedroza said thank you Mr. Mayor. Thank you Mr. Fishback. I'm reading a letter by Mr.
38 John Mc...
39
40 Robert Fishback said Mercurio I believe.
41

1 Councillor Pedroza said yes, and I would like to hear your answers. One is that your proposal to
2 subdivide the property would effectively cram three homes in chock-a-block fashion between the two
3 existing homes. Is that accurate? Is that what you....

4

5 Robert Fishback said I don't believe it is. One acre lot is a large lot in the City of Las Cruces to buy.
6 There aren't that many of them, because they are hard to sell. Number two, Mr. Mercurio lives on
7 a one acre lot that was cut off from another one. So he lives in the same kind of lot that I'm doing
8 now; so, I don't believe his is a chopper-block lot. I think it is a nice lot where his house is.

9

10 Councillor Pedroza said okay, then he kind of repeats the same thing. He's saying that, and this is
11 a couple of paragraphs down, "I must remind the Commission, City Council, Las Cruces Community
12 Development, that their rule is to protect the rights of all citizens. While Mr. Fishback's desire for
13 substantial financial gain effectively tripled by turning a piece of property originally zoned and set
14 aside for a single homes into three homes". Is that accurate?

15

16 Robert Fishback said that's his opinion of what he thinks it is but next door to me was a lot cut-off
17 of an acre and a half cut off another existing lot. There is a home that has a private road across a lot
18 to a home in the back that's been done there. In 1973 there was a, when they had restrictive
19 covenants there were homes re-subdivided and its been the history of the property. If I was going to
20 make the most money I could possibly make, I'll put a cul-de-sac in there and put 20 houses in.

21

22 Councillor Pedroza said you couldn't if it wasn't zoned for that.

23

24 Robert Fishback said it is zoned for eight per acre and I have 2.88 acres. All I'm asking is....

25

26 Councillor Pedroza said that was the next question I was going to ask you because on the last page
27 it says, and I'm reading, "the design of Jornada South is a matter that Mr. Fishback as a developer
28 and builder is very much aware of now and at the time he acquired the property". So I guess what
29 Mr. Mercurio is saying is that if it's already zoned for what you want, why did you have to go to
30 Planning and Zoning?

31

32 Robert Fishback said when I originally bought it I didn't buy it to build on it. I bought it to protect
33 it from a church that wanted to buy it. I think if people complain to the City Council about
34 everything, why don't you just step up and put your money up and that's what I did. I bought it. I
35 gave them their price for it and I paid them. The economy has not been the best for the building
36 industry in the last five years.

37

38 Councillor Pedroza said I understand.

39

40 Robert Fishback said and the infrence that builders are just, I mean developers are just crooks and
41 money grabbers....

42

1 Councillor Pedroza said I don't think anybody said that....no no no...
2
3 Robert Fishback said why don't you buy a couple of hundred acres and debt service for five years?
4
5 Councillor Pedroza said okay, thank you.
6
7 Robert Fishback said thank you, ma'am
8
9 Mayor Miyagishima said any other comments? Councillor Silva, oh sorry, I mean Councillor
10 Levatino and then Councillor Silva.
11
12 Councillor Levatino said can you tell me exactly what each of those three lot sizes will be?
13
14 Robert Fishback said yes ma'am we can. Lot 29A is 110 feet wide by 376 feet deep; B is 110 wide
15 by 379; and C is 110 by a lesser amount, I think it's 357.
16
17 Councillor Levatino said okay, so each of those newly proposed lots would be pretty darn close to
18 an acre each.
19
20 Robert Fishback said yes ma'am. The only one that is the smallest is one that I have already talked
21 to a gentleman who wants it that size and will take it with a turnaround up front. He wants to buy
22 it now. To my west is another home, they subdivided their property into an acre and a half and he
23 built a home on there. I'm in talks with him to taking this lot 29A and having him buy it with the
24 option to add it to his home there or sell his home and build himself a smaller one.
25
26 Councillor Levatino said okay, and the rest of the lots in this development are an acre, a little over
27 an acre, two acres, what are we comparing these too?
28
29 Robert Fishback said there are no other lots less than an acre and there are lots as much as; Mr.
30 Mercurio across the street has maybe two plus acres, I don't know how much. Some other lots are
31 bigger, some are smaller, but nothing smaller than an acre which is the same as these.
32
33 Councillor Levatino said okay. I think that answers my question, thank you.
34
35 Robert Fishback said thank you ma'am
36
37 Mayor Miyagishima said thank you Councillor. Councillor Sorg.
38
39 Councillor Sorg said thank you Mr. Mayor and thank you Mr. Fishback for your answers. I have just
40 a couple of things and one thing is that why wouldn't you want to divide it into two parcels instead
41 of three?
42

1 Robert Fishback said well I'd like to try to save as much of my money as I possibly can for what
2 prices I have to sell them for, if I do two I'll lose a lot of money. This way I'm only going to lose
3 a little money.

4

5 Councillor Sorg said okay.

6

7 Robert Fishback said strictly economics sir.

8

9 Councillor Sorg said okay, and then another thing, it's more of a statement more than anything else;
10 this neighborhood I'm quite familiar with, it use to be in my district. I know some of the people, not
11 very well but I know of some of the people there and I know the area both on this side of the
12 highway and by the other side of the highway which by the way were the P & Z Commissioner
13 Ferrary lives. But I just wonder why these people, obviously they may not be aware of the fact that
14 we have a program here in the City called a Blue Print Plan and I would strongly recommend that
15 the people in this neighborhood get together and form a Blue Print Plan for your neighborhood. And
16 with than Mr. Mayor, I would like to hear from some of the neighbors there.

17

18 Mayor Miyagishima said okay but before we go there I want to make sure there is no more Council
19 members to ask the applicant, then we will go with your suggestion Councillor; okay. Councillor
20 Silva you still have comments for Mr. Fishback.

21

22 Councillor Silva said thank you very much. Mr. Fishback, I'm not familiar with that area because
23 that's not my district but if I'm reading this, and I sit on the ETA Committee, these are the cases we
24 handle on a monthly basis. If I'm looking at what is proposed verses the code requirement, am I
25 reading this correctly, that you're looking at increasing lot sizes than what is code required? Your
26 lot sizes are larger.

27

28 Robert Fishback said yes sir.

29

30 Councillor Silva said so you're not packing them in basically.

31

32 Robert Fishback said absolutely not sir.

33

34 Councillor Silva said and just for the record Mayor, if I'm not mistaken this vote is not to send it
35 back to the P & Z, right, for a re-vote. We're acting on the appeal whether to vote for it or not. Okay,
36 and if I'm looking at your subject property....

37

38 Mayor Miyagishima said we would overturn the P & Z....

39

40 Councillor Silva said overturn, exactly. So basically what we're looking to do if we're looking at the
41 subject property, up to the north it's R1-A, everything seems intact, you're conforming to your
42 surroundings.

1 Robert Fishback said it's right next to my own home.

2

3 Councillor Silva said okay. So you live on a half acre.

4

5 Robert Fishback said I live on lot, you can see my name here where the streets ends right into my
6 property.

7

8 Councillor Silva said okay.

9

10 Robert Fishback said and I wouldn't do anything there that would, I have my house for sale, I
11 wouldn't do anything that would jeopardize my personal home to sell it.

12

13 Councillor Silva said okay. And if I'm looking at, I think this would be a staff question, as I'm
14 looking at the approvals, the only one who didn't, well there's two, survey and traffic did not
15 approve. Have those items been addressed?

16

17 Adam Ochoa said Mr. Mayor, Councillor Silva, those two reviewing departments, those were the
18 conditions that were stated at the DRC meeting, that they're outstanding comments be resolved prior
19 to the actual final filing of the plat and we have been working with the applicant's representative and
20 those comments are being taken care of so essential taken care of already so those conditions have
21 been met, sir.

22

23 Councillor Silva said okay, so basically we've made progress on that in terms of resolving those two
24 items.

25

26 Adam Ochoa said yes sir. It was just those items on this side of the cul-de-sac and so forth like that
27 and those items have been, being taken care of at the same time.

28

29 Councillor Silva said okay, Adam if you just want to stay there cause, and I'll just ask you if the
30 analysis, it says staff proposed a, you all support this or you know, how does it read, "staff
31 recommends approval with conditions" and you list the conditions there. Would we have to amend
32 this or just, if we were supportive of this, how would we do it, would we just support it with the
33 conditions as listed or do we need to amend this at all? What's the process here as considered as how
34 we do it in the ETA?

35

36 Adam Ochoa said Mr. Mayor, Councillor Silva, since you are voting on this appeal, I believe you
37 can place conditions on that appeal, you could move forward, I haven't done an appeal in a while
38 so I apologize if I'm rusty on what you can and cannot do, but I believe conditions can be placed on
39 an appeal.

40

1 Councillor Silva said as the Mayor said, we're just overturning it, it wouldn't be, it wouldn't be
2 approval with additional conditions, it would just be those conditions that were in the initial appeal;
3 right? If I'm not mistaken.

4

5 David Weir, Community Development Director said basically what you could do, you're being asked
6 to overturn the decision of the Planning and Zoning Commission. If you felt that you agree with the
7 conditions that were recommended by staff, you could overturn the decision of the P & Z and place
8 those conditions on the plat if you chose.

9

10 Councillor Silva said so I guess my question, Mr. Weir, if we approve it as is and we approve it with
11 those conditions that are already listed so we don't need to amend it or anything. We're just..

12

13 David Weir said that be correct.

14

15 Councillor Silva said okay, are there any conditions that you all see since the process, during the time
16 it came in front of the Commission and to this point, have there any, has anything else come up, an
17 additional condition of some sort that would need to be added?

18

19 David Weir said Mayor and Councillor Silva, no. What we would want to see is the cul-de-sac
20 constructed and approved and then any staff comments would be addressed before the plat would
21 be recorded.

22

23 Councillor Silva said okay, thank you very much. Thank you Mr. Mayor.

24

25 Mayor Miyagishima said thank you Councillor. Any other comments? I will just share with you
26 something that I just spotted here, back when I would be on that particular decision making mode,
27 I would look at the surrounding area here and if you look at this, I guess it's called Mesa Prieta
28 Drive, you can tell there's smaller lots and I'm going to venture to say that if you took the square
29 footage of those lots it would probably equal what is being proposed and normally if it's that close
30 to, I guess you would say, the buffer, I'm usually okay with that. Now obviously if it were right in
31 the middle of it then I could see where it would be a problem. I guess what I'm trying to say is that
32 I think what is being proposed kind of is in line with the surrounding, immediately surrounding land.
33 I guess it's designated EE-C, what is that Brian or David? Is that where they allow farm animals?
34 I think so.

35

36 Adam Ochoa said Mr. Mayor, EE is a equestrian estates, you are allowed to have the keeping of
37 animals there. I'm not sure of the condition restricts anything because it is EE-C.

38

39 Mayor Miyagishima said it's usually a few animals, like three or four, but I think you're allowed to
40 have horses there.

41

1 Adam Ochoa said yes sir, of course that is all mandated by Chapter 7.

2

3 Mayor Miyagishima said I shouldn't have said horses there Councillor Small. You're thinking back
4 you're sure riding right now I'm sure. Councillor Pedroza.

5

6 Councillor Pedroza said thank you Mr. Mayor. I have one more question and it's possibly for staff.
7 The letter from Mr. Mercurio really intrigued me. If there was no need for, I'm going to call it a
8 variance, even though that may not be the technical term, then why did Mr. Fishback go to the
9 Zoning for this particular, why didn't he just do what he wanted to do?

10

11 Adam Ochoa said Mr. Mayor, Councillor Pedroza. The applicant was subdividing a property that
12 is already part of an existing subdivision. Since he is increasing the number of lots it is required to
13 go to a public hearing for final approval, it actually would have been, if it had been approved it
14 would have ended at the Planning and Zoning Commission. So that is a requirement by code.

15

16 Councillor Pedroza said so some of the things that Mr. Mercurio says are in fact true, accurate or
17 whatever you want to call it. That the subdivided property in question and I won't use the word
18 "cram" but put three homes where there should only be two or set a side a single home to three
19 homes and is that accurate?

20

21 David Weir said Mayor and Councillor Pedroza. The size of lots within a subdivision is dictated by
22 the zoning in this particular case the property is zoned R1-A and I believe since the time that it was
23 developed, at least back to 1981, it has had an R1 zoning on it. The minimum lot size for that district
24 is 5,000 square feet so....

25

26 Councillor Pedroza asked how much of an acre is that?

27

28 David Weir said that's approximately an eighth to a tenth of an acre. So these lots are, easily meet
29 the minimum lot size for a R1 district. The applicant would also like to address that question.

30

31 Councillor Pedroza said okay, thank you.

32

33 Mayor Miyagishima said I will say that I will probably loose two Council members here in about five
34 or ten minutes. Right, Mayor Pro-tem Smith and Councillor Pedroza. Before, let me just ask is there
35 members of the public, were any of you planning on speaking? Okay that's fine. We still have
36 enough to do, have a quorum, I just wanted to make sure that you guys were going to be here. So,
37 or that you guys had a comment. Okay, so if you see Councillor Pedroza and Mayor Pro-tem leave
38 you'll know why but we still have enough to continue, conduct business. Okay.

39

1 Anthony Gutierrez said I would just like to add that when a developer subdivides, there is actual
2 intent that goes into leaving lots larger size so that they can be subdivided later. If you'll look along
3 Bataan Memorial up on the slide that I have here, there are commercial lots that are left large for the
4 specific intent to be subdivided at a later date. That's why we use the Zoning Code to establish what
5 those smaller lot sizes will be and like previously stated, he's within those limits, well within those
6 limits.

7

8 Mayor Miyagishima said how about we hear from some of the members of the public that came here
9 today. So are we good Mr. Fishback, you've said your peace?

10

11 Robert Fishback said thank you very much for your time. I appreciate it.

12

13 Mayor Miyagishima said okay, you're going to stick around still. Okay. I believe there were some
14 members of the public who would like to come forward and say some comments. Could I limit you
15 to three minutes each, if you don't mind?

16

17 Dr. Robert Pennington, Member of the Public said Mr. Mayor, Councillors. Mr. Mayor, Mr.
18 Fishback cannot speak to our thinking any more than we can speak to his thinking. Just for your
19 information, the original final plat of the Jornada South neighborhood, I don't know if you could see
20 this cursor here but it was just the top part of this so a lot of this has been added to this neighborhood
21 since 1976 when the original final plat was filed. This is an appeal and the Planning and Zoning
22 Commission made a good decision based on neighborhood preservation. It is in the minutes. They
23 looked at this neighborhood and they said that "we have very little of this, this is a unique
24 neighborhood, we need to preserve this". In the grounds for Mr. Fishback's appeal, now he's added
25 some since he's filed his appeal, so I don't think that should be considered. The original appeal, the
26 objection to Commissioner Ferrary was that she said she lives in Jornada North, a neighborhood that
27 has no direct access to Jornada South, is separated by eight lanes of highway and this Council saw
28 fit to put into a separate Council District. At the P & Z meeting I gave some neighborhood history
29 including some things that Commissioners might have heard, what I said, they might have heard, I
30 clearly identified as hearsay and I told the Commissioners I had no documentation and yet its part
31 of the oral history of a neighborhood. I think that the Planning and Zoning Commission made a valid
32 decision that is consistent with the Subdivision and Zoning Codes that Mr. Gutierrez has shown you.
33 It is also consistent with the City's Comprehensive Plan. When I spoke to the P & Z Commission
34 I did not speak for or against this application. I only spoke giving neighborhood history but now that
35 the Planning and Zoning Commission has made their decision, I would like you to uphold that
36 decision because I think it does have good, strong foundation in the Subdivision and Zoning Codes
37 and the City Comprehensive Plan. What are your questions?

38

39 Councillor Pedroza left the meeting at approximately 6:12 p.m.

40

1 Mayor Miyagishima said thank you for that. Basically, what I wanted to do and you kind of beat me
2 to the punch, I give you basically three minutes to make your statement and then Council members
3 can ask you questions. So it could actually be longer than three minutes, its not like you have three
4 minutes and then you have to sit down. So, thank you for offering the opportunity for questions.
5 That's what I'm going to do to our Council members. So, questions of Dr. Pennington. Councillor
6 Silva.

7
8 Councillor Silva said define preservation.

9
10 Dr. Robert Pennington said the character, well, I am looking at, I'm trying to recall what Chairman
11 Crane said in the minutes.

12
13 Councillor Silva said I apologize for interrupting but that's why I asked the question. What's the
14 surrounding area zoned at and if it complies with the surrounding area and you're asking for
15 preservation and I'm asking, that's what my question is, define preservation with what is currently
16 zoned. I mean, you say no land or are you saying one house; define preservation for me, sir.

17
18 Dr. Robert Pennington said what the Commission Chairman said was that if we allow subdivision
19 of this lot then this sets a precedence for subdivision of more and more and more lots and then we
20 no longer have this kind of neighborhood that he clearly stated was unique and something that we
21 want in the City of Las Cruces.

22
23 Councillor Silva said but if I understand it, it's already zoned, he could do three homes on this
24 property, he's allowed to do that but he's only choosing to do two homes if I'm not mistaken. Am
25 I reading that correctly? No.

26
27 Mayor Miyagishima said it's subdivided into three lots councillor. It's subdivided into three lots,
28 almost quite an acre a piece, not quite but near. Oh, I'm sorry, he's able to do one but he's adding
29 two more for a total of three.

30
31 Dr. Robert Pennington said Councillor Silva, yes, I agree with what he had proposed but what I'm
32 saying is that the Planning and Zoning Commission made their decision and absence some
33 compelling reason to overturn that decision, I think you should uphold that decision.

34
35 Mayor Miyagishima said okay, questions of Mr. Dr. Pennington. No. Okay, thank you. No, Anthony,
36 we're gonna go right to the; yes, yes, please. Just your opening comments, you know, three minutes,
37 but if you need more, that's the general idea.

38
39 Dr. Rebecca Kramer, Member of the Public said my husband and I are homeowners in Jornada South
40 subdivision and we've lived there just under 19 years. It has not changed much in that time and I

1 would like to point out that the development directly to the east of the Jornada South subdivision
2 which is called Mesa Grande Estates, agreed to a minimum lot size of one acre for the land that
3 directly abuts the Jornada South community. You can see that on your screen, at least I think it's up
4 on your screen.

5
6 Mayor Miyagishima said Dr. Kramer, does the cursor not work?

7
8 Dr. Rebecca Kramer said I don't know. I haven't been here. I'm freezing to death, I'm sorry. I am
9 so cold. These properties right here, it doesn't really show up that well.

10
11 Mayor Miyagishima said the ones that are smaller.

12
13 Dr. Rebecca Kramer said those are a minimum of one acre in size and that was agreed to because
14 it was recognized that our community, our South Jornada community, was very unique, it had large
15 lots, that's why we moved there and we want to retain that. If you want some definition of
16 preservation, I'm not a dictionary but I think that is kind of what we are trying to do, is to retain the
17 character, the lot size, and so we feel that since this restriction has been placed on this buffer zone
18 or whatever you want to call this transition zone into the next development, it would be very
19 inappropriate and inconsistent to now allow less than one acre lots to be formed within our South
20 Jornada development. Questions. I also have other comments. I've written to Councillor Levatino
21 about this.

22
23 Mayor Miyagishima said go ahead and share your other comments that's fine. You still have some
24 time left.

25
26 Dr. Rebecca Kramer said just that it's been recognized that by the developers at that time, they
27 agreed to do this, of one acre minimum. I also strongly recommend an alternative suggestion and that
28 is to re-plat the 2.889 acres that Robert Fishback has, into two lots only. I'm not trying to keep him
29 out of the neighborhood by any means, I just think there are many lots, I think the two next door, just
30 directly to the west of him, of his questioned lot, I think they are approximately 1.4 or 1.5 acres a
31 piece. Is my time up?

32
33 Mayor Miyagishima said it is. Go ahead and finish your statement.

34
35 Dr. Rebecca Kramer said so, couldn't we compromise and have it into two lots? Why three? I mean
36 I'm sorry if he needs to make more money but that's not a justification for changing the whole
37 character of a very nice and distinctively unique neighborhood. Let me also say that there is no
38 connection, no roadway, vehicular roadway, connecting our subdivision with Mesa Grande Estates
39 which is directly east to us. That is blocked off. So, it's not like these two neighborhoods drive
40 together. So to compare his quarter acre lots over on Mesa Prieta is really, there is no comparison.

1 Councillor Smith left the meeting at approximately 6:17 p.m.
2
3 Mayor Miyagishima said alright, thank you.
4
5 Dr. Rebecca Kramer said thank you. Any questions?
6
7 Mayor Miyagishima said yes, Councillor Levatino. Councillor Small.
8
9 Councillor Levatino said thank you Mr. Mayor. I don't understand what I'm looking at on this map.
10 What's east, what's west, where's Mesa Grande?
11
12 Councillor Small said and that's a great; if I might ask perhaps staff could approach just for purposes
13 of mouse navigation.
14
15 Dr. Rebecca Kramer said that would be great. Thank you.
16
17 Brian Denmark, Assistant City Manager said Adam, while you're at it, go ahead and explain the
18 different names of the subdivisions too and reflect the boundaries so they understand that as well.
19
20 Adam Ochoa said yes sir. This here is a slide that staff put together just for your information. What
21 is considered the Jornada South subdivision kind of follows this, kinda pie shaped area here. As you
22 can see most of the lots are roughly about an acre or over an acre in size. The actual average in here
23 is about 2.2 acres. To the east, that is Mesa Grande Estates. This is that buffer that she was eluding
24 to, of one acre lots and then they do go down substantially east of there and directly south, that is the
25 Pueblos at Alameda Ranch, that is a PUD, single family homes and those range anywhere between
26 under a quarter of an acre to a little over half an acre in size. Everything around here though is for
27 single family. So hopefully that clarifies it for you Councillor Levatino. U.S. 70 up here, Jornada
28 South....
29
30 Councillor Levatino said now that I can see the street names I understand where I am. There weren't
31 any street names. As a realtor I know this area very well. Thank you.
32
33 Mayor Miyagishima said thank you Councillor. Any, let's see who's next. Someone else had a
34 question of Dr. Kramer. Councillor Small.
35
36 Councillor Small said actually my question is for Mr. Ochoa or perhaps for Mr. Weir but, so I will
37 defer if there is any others for....
38
39 Mayor Miyagishima said well let's make sure we have no more questions for Dr. Kramer. No. Okay.
40

1 Dr. Rebecca Kramer said thank you very much.
2
3 Mayor Miyagishima said hopefully it will warm up here in a moment.
4
5 Dr. Rebecca Kramer said okay. Thank you.
6
7 Mayor Miyagishima said okay. So, that is my fault for that, I keep it kinda cool in here.
8
9 Councillor Levatino said he is a hot blooded male.
10
11 Mayor Miyagishima said okay. So...
12
13 Councillor Levatino said sorry, Mr. Mayor.
14
15 Mayor Miyagishima said that's okay. Councillor Small, you had questions of Adam.
16
17 Councillor Small said yes sir, thank you very much Mr. Mayor and thank you Mr Ochoa. This is a
18 very helpful map. I guess the question is at what point, the number of units per acre is not in
19 question; that is that the developer, as it is now, could put a total of eight units on that single lot. Is
20 that correct?
21
22 Adam Ochoa said Mr. Mayor, Councillor Smith....
23
24 Councillor Small said Small, the Mayor Pro-tem....
25
26 Adam Ochoa said yes, he's gone. I apologize. The subject area is R1-A single family medium density
27 and that actually, it's a maximum density of eight dwelling units per acre. So since this lot is actually
28 2.88 acres definitely more than eight, of roughly about twenty dwelling units can technically....
29
30 Councillor Small said and that's, and I apologize, and that had been stated, that helped clarify for me.
31 So I certainly understand that I guess the two points that I would bring up, the first, and this is a bit
32 where I started, it seems to me that I don't agree with the characterization of the conflict and further,
33 the fact that the vote would of gone against the applicant even if the individual who given no
34 recourse today, has been accused in public which I find reprehensible, but even if they had not voted,
35 if they weren't there for that, for whatever reason, on that day, the vote tells us that the Planning and
36 Zoning Commission would have denied this and I do give significant weight to the Planning and
37 Zoning Commission. That's why they are there. Now it seems to me that it would be quite cut and
38 dried if there was ten different units proposed for this one property. As unsettling as that might seem,
39 those kind of are the rules. The rules also state that when a property is subdivided, that it does have
40 to come up for review and there, I see the difference that has been given to that one acre size. So I'm

1 interested, I don't know if there, I know there is one other individual here from the public or other
2 folks who might wish to have the brief chance to speak so I'll stop my remarks. Again, the first part,
3 as far as this idea of recusal, it seems both, well it's the right to say for the applicant and that must
4 be respected, I do respect that. I, it seems to me that it is not supported and that it would not have
5 impacted the outcome at the Planning and Zoning Commission. But I think the more important issue
6 moving on from that and taking aside some of the suggestions as far as docking of different things.
7 We have this zoning issue to address today so if there is other public comment, I'd certainly be
8 interested and respect to hear that and then we can finalize and see what if any other requirements
9 are triggered through the subdivision process. If they're not then I think that is also why they are
10 appeal processes to get things right as they're laid out in the Code and I also respect that but we do
11 need to hear from other folks. Thank you.

12

13 Mayor Miyagishima said okay.

14

15 Robert Kramer, Member of the Public said Mr. Mayor, Council members, thanks for listening to us.
16 My name is Robert Kramer and I live in this subdivision. This is my lot right here and we've lived
17 there since 1995 and the one reason that we picked....

18

19 Mayor Miyagishima said I can't see your lot.

20

21 Robert Kramer said okay, right here. So, we've lived there since 1995. We haven't seen, we've seen
22 some building go on in the neighborhood but I can't recall any lots being split. These two lots down
23 here, this lot I believe was already split. If you go back to the old plat maps, I think it was already
24 split at that time. So the other lots that have been split, I believe the platting was made where a
25 couple of lots up here next to us, this use to be one continuous lot and this use to be one continuous
26 lot and then this lot down here, there's a back lot here, this one acre lot is the lot that has the road
27 going across it to get back into there. But basically we moved there because of the size of the lots
28 and just the feel of the neighborhood. There's not a lot of traffic going through the neighborhood.
29 You basically know all the people in the neighborhood. For us to be sitting here and looking at the
30 last lot in the neighborhood, being asked to be split up into multiple lots for more houses, seems to
31 be a little bit concerning to me. One thing that I wanted to say, I've been sitting over there listening
32 to people say I could build eight houses on that acre, I don't believe that is the case. I've talked to
33 Planning and Zoning and they said if you have to put a septic system in, you need three-quarters of
34 an acre. That is a State law, it's not a City law or anything else. So, there's no way that they can put
35 whatever it is, 24 houses on that piece of property. We fought very hard, not so much over here, I
36 believe Planning and Zoning figured out that what we were looking at when Sonoma Ranch first
37 went in, they came back here and they wanted eight units per acre down in this area and we went to
38 a Council meeting and got a decision on that, that basically said there is a transition zone from large
39 lot to small lots and that transition zone, they basically, they made these people comply, Sonoma
40 Ranch to comply in that. On this other area, they did a much bigger lot which was pleasing to us

1 although, well, so that's all I can say is that we moved to the area because of the neighborhood and
2 then to see the last lot in the neighborhood to be split up and change the road, etc, etc, is perturbing.
3 So I would ask that you uphold the decision of Planning and Zoning.

4

5 Mayor Miyagishima said you can stay there Mr. Kramer. That was just for your testimony and we
6 can still ask you questions so you don't have to rush off or anything. Councillor Silva, no, nobody,
7 okay.

8

9 Councillor Silva said Mr. Mayor, I appreciate this map. I think this map says a lot when you look
10 at what's across the street, when you look at a lot of those, you know, I'm okay with the, I don't see
11 any conflict of interest in regards to, and I'm just going on information provided. It seems like each
12 lot is going to be just shy under an acre. Where's going to be the proposed cul-de-sac? That's
13 basically what my question is.

14

15 Mayor Miyagishima said I think what Mr. Fishback was saying was..

16

17 Robert Kramer said right down in here I believe is where it is going to be, on the last of his third lots.

18

19 Mayor Miyagishima said that is what he would have done and since Adam is up there, Adam, I
20 suppose how, what Mr. Fishback was saying about eight units; can you go back to the map that was
21 just up there before? I suppose just south of him they're hooked up to sewer, not necessarily City
22 sewer but some sewer system.

23

24 Adam Ochoa said Mr. Mayor, that is correct. The subdivision to the south, Pueblos Alameda Ranch
25 is connected to sewer. Of course if they would do any more lots like the 20 stated or whatever, 8
26 stated, they would have to provide a sewer system...

27

28 Mayor Miyagishima said and hook-up. That's how they would do that Mr. Kramer. Because if they
29 were on City sewer then, what you're talking about is for septic tank, so....

30

31 Robert Kramer said I was here earlier Mr. Mayor and listened to your discussion on preservation and
32 history of Las Cruces and the City and I know we're not as old as the Mesquite District but a lot of
33 us have lived there since this subdivision was originally platted and now what we're looking at is
34 you're saying "well you know we could allow that one lot to go to 20 houses on there. It wouldn't
35 change the look of the neighborhood" I think if you're talking about preserving some tradition maybe
36 you want to preserve this subdivision, the Jornada South subdivision. It is a unique subdivision in
37 town. Look around the rest of the town, you don't see anything like this, you really don't.

38

39 Mayor Miyagishima said Mr. Kramer, my comment was just to explain how they were going to be
40 able to get eight, that's all.

1 Robert Kramer said so he'd have to go over some, I don't know where the easements are for him to
2 get to the sewer line. If he's going to go south, he's going to go across some people's land. Already
3 these houses that are down south of here, I don't know where the cursor went, but down in here Mr.
4 Mayor. If he's going to go this way, I know there's sewer going down this road so he's gonna have
5 to cut across somebody's property to get there and I didn't think that was proper. Most of the sewers
6 I've seen in this town and other towns run down the city streets which the City has control over.

7
8 Mayor Miyagishima said if those land owners give an easement then they give an easement. But you
9 know we're getting off the subject. I just want to just point that out. Councillor Sorg, you have a
10 question.

11
12 Councillor Sorg said I don't have a question, I just wanted to emphasize the fact that to the neighbors
13 there, rather than discuss this forever here, get busy and do a blue print then you can decide exactly
14 what your lot size should be an all the zoning for it. It's wasting time here to discuss that now here.

15
16 Robert Kramer said what is a blue print? We use to have a covenant and the covenant went away.

17
18 Councillor Sorg said it is like a covenant only different. It's the City that does it. I think David,
19 Doctor, Mr. Weir would explain a little better but you can do that another time too.

20
21 David Weir said my mother would be proud if you called doctor. Mayor and City Council, a blue
22 print is basically a neighborhood plan for that and it has a series of actions that the City can take and
23 can adopt various policies. The most solid or concrete would be a zone change to some district that
24 will have the minimum lot size at an acre or two acres, as long as there's an R1 zoning on this there's
25 a potential that any of those lots could be, a request could come in to subdivide those and as long as
26 they met the access requirements, the zoning, the ability to provide the utilities to it, didn't provide
27 any damage from drainage, it, subdivision is more of an administratial act, that's a little more
28 difficult to deny a subdivision

29
30 Councillor Sorg said thank you Mr. Weir.

31
32 Mayor Miyagishima said thank you David.

33
34 Councillor Sorg said thank you Mr. Mayor.

35
36 Mayor Miyagishima said no further questions of Mr. Kramer then we'll go to Ms. Escalante I
37 believe.

38
39 Jan Escalante, Member of the Public said my name is Jan Escalante and I don't live in the
40 subdivision. I'm a friend of John Mercurio's and I wanted to let you know that he would certainly

1 be here to defend himself though all of this. He was the one who wrote the letter. He asked me if I
2 would read the letter. I understand from Councillor Pedroza that you have the letter so there's no
3 reason to waste your time doing that. He's out of the country, he'll be back Thursday. All of this
4 happened while he was out of the country. So it has been quite stressful for him. I just want you to
5 know that I had called today to, I don't get his mail so I didn't get any of this information until Friday
6 and then I started scrambling around, it was too late to do anything. I called Mr. Ochoa today and
7 asked about reading the letter and he said he assured me that he would get back with me before noon
8 today. I had no phone call. I just wanted you to know where Mr. Mercurio is and that he will be back
9 on Thursday.

10

11 Mayor Miyagishima said thank you Ms. Escalante. Any questions of her? That's okay. I believe that
12 takes care of all the people who wish to speak. So let's get questions of staff before we move
13 forward. Do you have any clarification? Anything you need to know?

14

15 Councillor Sorg said I have a comment.

16

17 Mayor Miyagishima said sure, go ahead.

18

19 Councillor Sorg said even though that our general policy of smart growth is to have greater density,
20 I believe there needs to be neighborhoods in the city, all be it small ones as far as numbers go, there
21 is a larger lot size for those kind of neighborhoods. That gives us better diversity of the different
22 kinds of people as well as different kinds of dwellings and homes that you can live in and that gives
23 the city some better character. For that reason I don't think I would overturn this appeal.

24

25 Mayor Miyagishima said okay, thank you Councillor. Adam, do mind going back to the, I think it
26 was the slide before or after shows, the total square footage, I think it was like point, can you make
27 that, expand on that so it shows the acreage?

28

29 Adam Ochoa said since its presentation mode I cannot but I can let you know the final one, the first
30 lot to the west, lot 29A, is .959 acres. The one right in the middle. Lot 29B, is also .959 acres and
31 Lot 29C is .863 acres.

32

33 Mayor Miyagishima said so really I guess the question is do you feel that although not quite an acre,
34 neither of them, if you were to take them into percentages, one at 96%, two of them at 96%, one of
35 them at 86%, is that enough to, granted that's probably the last subdivision or division of land in that
36 area, I guess it's really the question is do you feel adequate to serve the neighborhood? Yes,
37 Councillor Levatino.

38

39 Councillor Levatino said thank you Mr. Mayor. I'm sorry to go back and we're all suppose to be at
40 a going away party for General Bingaman right now. Why did P & Z turn down, turn this down?

1 Adam Ochoa said Mr. Mayor, Councillor Levatino, from what staff can gather the findings of, by
2 the P & Z was that the approval of the subdivision would not be in keeping with the large land lot
3 character original intent of the original Jornada South neighborhood subdivision.

4

5 Councillor Levatino said okay. Now my next question is, to the best of your knowledge, did Mr.
6 Fishback do everything he was suppose to do, did he do everything correctly, has he done everything
7 correctly in coming and going before the Zoning Commission, what he is proposing is perfectly
8 legal?

9

10 Adam Ochoa said Mr. Mayor, Councillor Levatino, the proposed replat does meet all City
11 requirements. It meets all 2001 Zoning Code requirements. It does meet the Las Cruces Subdivision
12 Code requirements as well and after the conclusion of the construction of the cul-de-sac, he will meet
13 all the Design Standards as well. So he does meet everything required by the City.

14

15 Councillor Levatino said okay, thank you. You know as a realtor, I absolutely empathize with the
16 home owners there. I am always concerned about people who have purchased and invested and taken
17 care of their properties, be able to maintain the values and not have anything that could negatively
18 impact their values. I am very, very conscious of that but as a city councillor I find it difficult to
19 uphold the P & Z ruling. Mr. Fishback has done nothing wrong. He's done everything correctly and
20 as long as he is within the zoning requirements of the City of Las Cruces, I'm having difficulty not
21 allowing him to go ahead. This is a toughie, it really is a toughie but in the end I'm going to have to
22 vote to overturn the P & Z ruling.

23

24 Mayor Miyagishima said thank you Councillor. Any other closing comments before we go for the,
25 call for the question? No, okay. Esther.

26

27 Councillor Small said Mr. Mayor, can we have clarity on the vote so there's a, the vote in affirmative
28 upholds the Planning and Zoning Commission decision, or the vote in the affirmative reverses.
29 That's a question.

30

31 Mayor Miyagishima said Esther.

32

33 Esther Martinez-Carrillo, City Clerk said Mr. Chairman, Councillor Small, if you approve this
34 resolution it will appeal the decision of the Planning and Zoning. It will reverse it.

35

36 Councillor Small said understood, thank you very much.

37

38 Esther Martinez-Carrillo said this is on approval of Resolution 14-196. Councillor Silva.

39

40 Councillor Silva said yes.

1 Esther Martinez-Carrillo said Councillor Pedroza is absent. Councillor Small.

2

3 Councillor Small said no.

4

5 Esther Martinez-Carrillo said Councillor Sorg.

6

7 Councillor Sorg said no.

8

9 Esther Martinez-Carrillo said Councillor Levatino

10

11 Councillor Levatino said yes.

12

13 Esther Martinez-Carrillo said Councillor Smith is absent. Mayor.

14

15 Mayor Miyagishima said yes.

16

17 Esther Martinez-Carrillo said it fails.

18

19 Mayor Miyagishima said you have to have four votes so, sorry.

20

21

22

23 Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 14-196 and it

24 Failed. 3-2 councillor Silva, Councillor Levatino and Mayor Miyagishima voted Aye. Councillor

25 Small and Councillor Sorg voted Nay. Councillor Pedroza and Councillor Smith were absent.

26

27

28

29 Mayor Miyagishima said what happened was that this did not get overturned because there has to

30 be four votes regardless of there being a quorum here there were not four votes in the affirmative so

31 it still remains as is.

32

33 Councillor Silva said Mr. Mayor, just out of curiosity for the appellant and I know this happens at

34 the ETA, they're provided the opportunity that all voting members will be present. Does it apply

35 differently?

36

37 Mayor Miyagishima said no, the next step if they take, is to probably take it to District Court.

38

39 Councillor Silva said okay.

40

DRAFT

1 Mayor Miyagishima said that's their next, that's their last final appeal is District Court.

2

3 Councillor Silva said okay, thank you very much.

4

5 -----

6

7 **IX. BOARD APPOINTMENTS**

8

9 Mayor Miyagishima reappointed L.L. (Lonnie) Hamilton (District 6) and Eugene W. Suttmiller
10 (District 1) to the Capital Improvement Advisory Committee.

11

12 Councillor Small Moved to Approve the Mayor's board reappointments of L.L. (Lonnie) Hamilton
13 (District 6) and Eugene W. Suttmiller (District 1) to the Capital Improvement Advisory Committee
14 and Councillor Sorg Seconded the motion.

15

16 -----
17 **DRAFT**

18 Mayor Miyagishima called for the roll on the Motion to Approve the Mayor's board reappointments
19 of L.L. (Lonnie) Hamilton (District 6) and Eugene W. Suttmiller (District 1) to the Capital
20 Improvement Advisory Committee and it was Approved. 5-0 Councillor Pedroza and Councillor
21 Smith were absent.

22

23 -----

24

25 Mayor Miyagishima appointed Carol Gaines (USMC League) to the Veterans Advisory Board.

26

27 Councillor Small Moved to Approve the Mayor's board appointment of Carol Gaines (USMC
28 League) to the Veterans Advisory Board and Councillor Sorg Seconded the motion.

29

30 -----

31

32 Mayor Miyagishima called for the roll on the Motion to Approve the Mayor's board appointment
33 of Carol Gaines (USMC League) to the Veterans Advisory Board and it was Approved. 5-0
34 Councillor Pedroza and Councillor Smith were absent.

35

36 -----

37

38 **X. NOTICE OF PROPOSED ORDINANCE(S) ----- 1.) *There will be no public discussion.***
39 **2.) *A councillor may ask staff for clarification on the proposed ordinance(s).***

40

1 (14) Council Bill No. 14-034; Ordinance No. 2719: An Ordinance Approving a Zone Change
 2 From A-2 (Rural Agricultural District From the 1981 Zoning Code) to R-4 (Multi-Dwelling
 3 High Density & Limited Retail and Office) on 2.5 ± Acres of Land Located on the South
 4 Side of Northrise Drive, 0.29 ± Miles Northeast of its Intersection With Roadrunner
 5 Parkway. Submitted by Cheryl Reome on Behalf of Marcos Chapunoff, Property Owner
 6 (Z2871).11
 7

8 Mayor Miyagishima and Council agreed to bring this item back.
 9

10 -----

11
 12 **XI. CITY COUNCIL MEMBER BOARD REPORTS**
 13

14 Mayor Miyagishima said Councillor Pedroza is not here so we will have to move her report to
 15 another meeting.
 16

DRAFT

17
 18
 19 **XII. GENERAL DISCUSSION**
 20

21 a.) Mayor
 22

23 Mayor Miyagishima passed.
 24

25 -----

26
 27 b.) City Council
 28

29 Councillor Levatino passed.
 30

31 -----

32
 33 Councillor Sorg passed.
 34

35 -----

36
 37 Councillor Small said I'm passing out information regarding Wage Plus that has been updated. This
 38 resolution will hopefully come before us on June 16th.
 39

40 -----

1
2 Councillor Silva said we're going to have a District Meeting tomorrow at six o'clock at the
3 American Legion on Madrid.

4

5

6

7

c.) City Manager

8

9 Brian Denmark, Assistant City Manager said the MVRDA Ground Breaking Ceremony is on
10 Thursday at 11:00 a.m. at 911 Las Vegas Court.

11

12 Frenger Pool is down due to repairs. We had a mechanical failure so we are in the process of getting
13 that back up.

14

15 It is very hot outside so just to let the public know, they can contact the City for assistance whether
16 it be for coming to the Library where it is nice and cool during the day or their local Fire Station for
17 any assistance they may need.

18

19

20

21 Councillor Sorg Moved to Adjourn and Councillor Small Seconded the motion.

22

23 Mayor Miyagishima said all of those in favor signify by saying "Aye."

24

25 Council said "Aye."

26

27 **Meeting Adjourned at 6:47 p.m.**