City Council
of the
City of Las Cruces

Regular Meeting

October 6, 2014
1:00 P.M.
Council Chambers, City Hall

MEMBERS PRESENT:	**STAFF:**
Mayor Ken Miyagishima	Robert Garza, City Manager
Councillor Miguel Silva, District 1	Harry (Pete) Connelly, City Attorney
Councillor Greg Smith, District 2	Esther Martinez-Carrillo, City Clerk
Councillor Olga Pedroza, District 3	
Councillor Nathan Small, District 4	
Councillor Gill Sorg, District 5	
Councillor Ceil Levatino, District 6	

DRAFT

I. OPENING CEREMONIES

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

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

Councillor Small presented Certificates of Recognition to Coach Sedillo and the Bulls-Eye Junior and Senior Teams for the National Rifle Association Youth Hunter Education Challenge.

Councillor Small presented a Proclamation to David Weir and declared October 2014 as Community Planning Month.

Councillor Small presented a Proclamation to Shirley Gonzales and declared October 2014 as National Disability Employment Awareness Month.

Councillor Small presented a Proclamation to Ashleigh Curry and declared October 2014 as International Walk to School Month.

Councillor Small presented a Proclamation to Gary Camarano and Eric Montgomery and declared October 3, 2014 as National Manufacturing Day.

Councillor Small presented a Proclamation to Ted Sweetser, Las Cruces Fire Department and declared October 5 thru October 11, 2014 as National Fire Prevention Week.

Councillor Small presented a Proclamation to James Lee and declared October 5 thru October 11, 2014 as Mental Illness Awareness Week.

Councillor Small presented a Proclamation to Karim Martinez and declared October 5 thru October 11, 2014 as National 4-H Week.

Councillor Small presented a Proclamation to Wacinque Amistad Kaizen and declared October 31, 2014 as Las Cruces World Saving Day.

DRAFT

Krysten Aguilar, La Semilla gave a presentation regarding the Urban Agriculture Event.

Zetdi Runyan and Christine Logan gave a presentation regarding Startup Weekend Las Cruces.

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.

Mayor Miyagishima asked if anyone had any conflicts with anything on the agenda?

There were no conflicts mentioned.

III. PUBLIC PARTICIPATION

Richard King, Member of the Public said I am here to state my opposition of the new women's clinic that is opening up in Las Cruces and will perform abortions on demand.

George Pearson, Member of the Public said there has been some discussion about doing a road diet on Idaho and I hope safety is the primary criteria used on making that decision. Please don't sacrifice safety for someone else's convenience.

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

Mayor Miyagishima said Items 14 and 15 need to be pulled from the agenda and Item 8 needs to be removed from the Consent Agenda for discussion.

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

DRAFT

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

V. CITY COUNCIL MINUTES

*(1) Regular City Council Meeting of September 2, 2014
*(2) Special City Council Meeting of September 8, 2014

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

*(3) Resolution No. 15-049: A Resolution Authorizing the City of Las Cruces, on Behalf of its Keep Las Cruces Beautiful (KLCB) Program; to Accept a Grant Award from Lowes/Keep America Beautiful for the Community Tree Planting Program in the Amount of $5,000.00, to Authorize the City Manager's Signature on the Grant Agreement, and to Amend the City's Adopted FY 2015 Budget.

*(4) Resolution No. 15-050: A Resolution Approving a Reimbursement Agreement With Sierra Norte Development Inc., for Construction of Two Neighborhood Parks Within Metro Verde South Subdivision Phase II and Amending the FY 2015 Capital Improvement Program (CIP).

*(5) Resolution No. 15-051: A Resolution Approving the Transfer of Deed for Use of Property Purchased Through the City of Las Cruces Neighborhood Stabilization Program (NSP) and to Meet Other Administrative Requirements of the NSP Program.

*(6) Resolution No. 14-15-063: A Resolution Awarding the Bid for the 2014-2015 Manhole and Valve Adjustments Project to G. Sandoval Construction, Inc., of Las Cruces, New Mexico in the Amount of $116,385.04 Plus $9,238.06 for New Mexico Gross Receipt Tax, for a Project Authorization in the Amount of $125,623.10.1

*(7) Resolution No. 14-15-066: A Resolution for the Purchase of Four Defibrillator/Heart Monitors for Use by the Las Cruces Fire Department in Support of Emergency Medical Services Duties, in the Amount of $122,254.60.

DRAFT

VII. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

*(8) Council Bill No. 15-007; Ordinance No. 2727: An Ordinance Approving a Zone Change From C-2, Commercial Medium Intensity District, to PUD (PUD-14-01) for Properties Located at 3731 Del Rey Blvd. (Parcels 02-25264 and 02-25265). Submitted by the Arbors at Del Rey Assisted Living Facility on Behalf of Granite Circle Investors/North Haven Group, Property Owners.

Councillor Silva Moved to Approve Council Bill No. 15-007; Ordinance No. 2727 and Councillor Sorg Seconded the motion.

Councillor Silva asked why are they doing a PUD; it seems to me that a kennel license would have sufficed.

Susana Montana said because the C2 designation does not allow the care of animals so this PUD would allow for the care of animals and also bring the property into compliance with the 2001 Zoning Code.

Councillor Sorg said it is my experience in the past that the City requires some kind of infrastructure that would normally not be necessary in a development; is that not true?

Susana Montana said there can be conditions made for approval that mitigate a potential impact of the development.

Councillor Sorg said there is an arroyo that goes through the property and there is a lot of erosion in it so could we ask the property owner to do something about it?

Mayor Miyagishima said we're getting off focus here and we need to stay focused on this particular zone change.

Councillor Sorg asked aren't we allowed to put conditions on a PUD?

Mayor Miyagishima said not in this situation.

Councillor Sorg asked can I get a ruling from Legal?

Harry (Pete) Connelly, City Attorney said in my opinion, it was advertised to be adopted as is, without conditions.

Councillor Smith said this is an opportunity to make therapeutic animals available for use with these folks so I look forward to hopefully seeing this move forward.

DRAFT

Mayor Miyagishima called for the roll on the Motion to Approve Council Bill No. 15-007; Ordinance No. 2727 and it was Unanimously Approved. 7-0

---

(9) Resolution No. 15-052: A Resolution Approving the Issuance of a Waiver of the Church/School Distance Restriction to Bosque Brewing Co. For the Public Celebration Permit Application Submitted for the 5th Annual Zombie Walk to be Held on October 25, 2014.

Councillor Silva Moved to Approve Resolution No. 15-052 and Councillor Small Seconded the motion.

Mayor Miyagishima asked were there any types of correspondence either for or against this item?

Harry (Pete) Connelly said no, we have not received any comments either for or against this item.

Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 15-052 and it was Unanimously Approved. 7-0

---

(10) Resolution No. 15-053: A Resolution Authorizing Bosque Brewing Co. To Continue with the Permitting Process to Allow for the Sale and Consumption of Beer Within a Restricted and Secured Area at the 5th Annual Zombie Walk to be Held on Main Street on October 25, 2014.

Councillor Silva Moved to Approve Resolution No. 15-053 and Councillor Small Seconded the motion.

DRAFT

Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 15-053 and it was Unanimously Approved. 7-0

---

(11) **BEFORE CONSIDERATION OF THE FOLLOWING RESOLUTION NO. 15-054; A PUBLIC HEARING MUST BE HELD:**

Mayor Miyagishima said the Public Hearing for Resolution No. 15-054 is now open. Is there anyone who wishes to speak for or against this item?

No one spoke.

Mayor Miyagishima said the Public Hearing for Resolution No. 15-054 is now closed.

Resolution No. 15-054: A Resolution Approving the Transfer of Ownership of Liquor License No. 2690, With on Premise Consumption Only, From GMRI, Inc. To Red Lobster Restaurants D/B/A Red Lobster #0574, Located at 575 South Telshor Boulevard, Las Cruces, New Mexico.

Councillor Silva Moved to Approve Resolution No. 15-054 and Councillor Small Seconded the motion.

Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 15-054 and it was Approved. 6-0 Councillor Pedroza was absent.

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.

DRAFT

(12) Resolution No. 15-055: A Resolution Reversing the Decision of Conditional Approval by the Planning and Zoning Commission on July 22, 2014 for the Park Ridge Medical Center Infill Subdivision Final Plat Application (IDP-14-04) Located at 2700 N. Main Street, Parcel 02-03647. Appealed by Members of the Country Club Neighborhood Association.

Councillor Small Moved to Approve Resolution No. 15-055 and Councillor Silva Seconded the motion.

Mayor Miyagishima said now we are going to have an appeal process, which is Resolution 15-055, item number 12. So, I entertain a motion for approval.

Councillor Small said move to approve.

Mayor Miyagishima asked is there a second?

Councillor Silva said second.

Mayor Miyagishima said motion made by Councillor Small, second by Councillor Silva on Resolution 15-055. Now, this is going to be a little bit different. This is going to be an appeal of a decision that was made earlier in the year by the Planning and Zoning Commission. So, how we're going to work it and do it is this way. I have a list of the City staff, the applicants, and the public that were there that made comments. Only they are allowed to make comments today. We can't take

anyone else outside of this list. So, I'm going to call your name. If you would please come forward and then you're going to have to be sworn in by Esther Martinez, our City Clerk, and then after that we're going to have....also, no new material can be presented. Only the material that was presented earlier at the initial date of the Planning and Zoning Commission on July 22nd. So, then after that we'll have the staff make a presentation. We'll have the appellant and then we'll have questions from Council and then questions from those who were sworn in and then we'll have final comments. So with that I'm going to call. Could you please come forward Susana Montana, Bob Pofohl, Ed Martinez, Connie Potter, Eva Booker, John Stevens, Richard King, Robert Caldwell, James Boyd, Carlos Colon, Billy Haney, Phil Larson, Angelica Aguilar, Claudia Jensen, Rick Jensen, Nell Rose, Becky Nichner, Jay Rob, Tammy Smith, Hector Maese, Sylvia Boudreaux, Jason Rociaga, and Ray Jaramillo? And now Esther, if you would be swearing these people in, please?

Esther Martinez-Carrillo, City Clerk said please raise your right hand and I will read this and then you will say "I do" and then just come up to the podium and state your name so that we can have that on the record for the people who did agree to the oath.

DRAFT

Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law? Okay, if you would one at a time come up and state your name.

The following were sworn in and stated their names:
Susana Montana.
Eva Booker.
Connie Potter.
James Boyd.
Robert Caldwell.
Becky Michner.
Edward Martinez.
Bob Pofohl.

Esther Martinez-Carrillo said thank you. Mayor.

Mayor Miyagishima said thank you, Esther. Okay with that I'm going to ask that Susana would make.....yes, Pete?

Harry (Pete) Connelly, City Attorney said Mr. Mayor, when you mentioned comments, I wanted the Council to know that all the people who have just been sworn in may testify here at this hearing. If they testify, they will be under oath and are subject to cross examination and only the documentation and the evidence that was presented below can be presented here and along that line at eleven o'clock this morning there were five documents submitted to the City staff and of the five documents I would recommend that the Council deny the presentation of....and I will call them 14 slides CP,

14 slides JTB, and 14 slides EV and it is an attempt to present evidence that was not presented to the Planning and Zoning Commission in a different form and also one has to do with the battershell matter, which is not a subject of the appeal but is a procedural matter that they can preserve whatever argument they want by preserving it by making it before the Council. The appeal concerns three matters and this concern is contained in your packet and those are the matters that are subject to appeal under our Ordinance 38-18 and only those items are subject to testimony, information that was presented below. I just made that for clarification so that you'll be comprised of the situation.

Mayor Miyagishima said thanks, Pete. Okay with that Susana?

Susana Montana, Planner said thank you, Mr. Mayor, Councillors. I'd like to clarify when our City Attorney suggests that only information that was presented below, I believe he's referring to the July 22nd Planning and Zoning Commission Meeting. And my presentation today will sort of share with you the steps that were taken to get information to the Planning and Zoning Commission on July 22nd and the decision that they made at that date. That's the only information that I'm presenting today. After my presentation then happy to answer any questions you may have for then turn it over to the appellants.

DRAFT

For the record, my name is Susana Montana. I'm with the Community Development Department. The property that is the subject of this hearing today is located at 2700 North Main Street. It's parcel 02-03647. It's approximately 110 acres. On August 19, 2013, the City Council re-zoned about 30 acres of this 110 acres to R-4C and C-3C. The C after the zoning districts designation indicates that there were conditions. One of the conditions of approval was that a traffic study, a TIA, Traffic Impact Analysis, be approved by the City's traffic engineer prior to the issuance of the first building permit or subdivision application. The property is the largest parcel within the City's infill development overlay district. Properties that are within this overlay district qualify for a special subdivision review process called the infill subdivision method in which a concept plan is prepared by the applicant, submitted to City agencies for review and approved by the City's Development Review Committee. It was reviewed by the DRC on June 4th. It was conditionally approved, the condition being that the TIA for the project for this subdivision would be approved by the City's traffic engineer. The TIA was conditionally approved by the City's traffic engineer on July 22nd prior to the meeting of the Planning and Zoning Commission prior to their consideration of the final plat.

I'm showing this slide because it's a little clearer. It's the concept plan. It's a little clearer than the next slide, which is the final plat. The final plat has much more detail so it's hard to see the properties. There are nine parcels within the re-zoned area, the R-4 area here and the C-3 area here. In addition to the nine parcels, which are part of the final plat, there are also tracts. These are tracts that are roads or open space areas or undeveloped areas that would lead to facilities that would serve as the nine lot subdivision. This concept plan again was approved by the DRC on June 4th.

This is the final plat that was approved by the Planning and Zoning Commission July 22nd. There are three phases within the final plat. The first phase would be residential care facility, hospital, and doctor's offices. The applicant has committed to the mitigation measures that were identified in the traffic analysis. City agency reviewers approved the final plat condition on the City's traffic engineer approving the TIA and the applicants commitment to implement those mitigation measures. All of the mitigation measures would be implemented in the Phase I development, so the development of those three parcels. NMDOT was a partner in scoping, identifying what should be in the TIA, and they reviewed the TIA, first, second, and third submittal and by the third submittal they had no further comment, which is their way of saying they approved the TIA.

On July 9th, the DRC recommended to the Planning and Zoning Commission conditional approval of final plat with the condition that the TIA be approved by the City's traffic engineer, which was approved July 22nd by the City's traffic engineer prior to the meeting of the Planning and Zoning Commission. At the Planning and Zoning Commission meeting, sworn testimony from staff, from the Country Club Neighborhood Association members, board members, and other residents of that neighborhood and other adjacent parties were taken.

DRAFT

After reading the staff report, reviewing the staff's PowerPoint presentation, two Country Club Neighborhood Association PowerPoint presentations, and the applicants slide show, after reviewing the written comments presented to the commission, listening to the sworn testimony from members of the public both in favor and against the proposed subdivision, after reviewing the City traffic engineer's email, which states his conditional approval of the TIA, and reviewing the amended proposed mitigation measures identified by the TIA and accepted by the traffic engineer, the commission voted to conditionally approve the requested final plat by a unanimous vote of 4 to 0. At the time, there was a vacancy and one commissioner recused herself and one commissioner was absent.

The condition of approval is as follows. The applicant, developer and/or any subsequent developer shall satisfy the mitigation measures listed in the July 22nd, 2014 amended attachment seven as well as any on or offsite mitigation measures deemed by the City to be necessary to mitigate potential adverse impacts of the development to the site and the surroundings that may be identified during the review of the public improvement construction drawings.

This is a slide and then the next slide showing the mitigation measures in the amended attachment seven. It totals $939,938 at this point, however, if during the construction drawing phase new measures are deemed by the City to be necessary then of course that dollar amount would increase. With that, that completes my presentation and I'm happy to answer any questions you may have.

Mayor Miyagishima said thank you, Susana. Questions from the Council?

Councillor Silva said Mayor, just one quick question for clarity. Ms. Montana, you said that condition upon the final plat and I believe you said three phases of the final plat. So, when you use the phrase final plat, you're only talking about the 39....this part only, not the 110 acres.

Susana Montana said Mr. Mayor, Councillor Silva, the final plat includes the whole 110 acres but only the re-zoned area has developable lots. The other areas within that 110 acre tracts that would support infrastructure, drainage, open space, and those sorts of things but the re-zoned areas, the area really for the development of the final plat. And phase I includes three parcels, the parcels that are indicated in red on this slide.

Councillor Silva said okay, because the final plat has to deal with the entire 110 acres.

Susana Montana said it does because of the infrastructure needed to support the nine lots.

Councillor Silva said okay. As long as we're clear that when you say final plat we're talking about the entire 110 acres. Is there a however or is it in addition to or.....I mean how do we move forward from there because I think that where to me as I'm reading it and part of this appeal was that I can't remember exactly how it was phrased and I'm sure when the persons that are appealing, the appellants are going to move forward, they gave us three conditions, which I think you're aware but one of them is that the entire 110 needs to be developed if I'm reading that right. Am I correct on that?

Susana Montana said Mr. Mayor, Councillor Silva, at this point the final plat is for the 110 acres but only the three acres noted in red here this slide are subject to the Traffic Impact Analysis and could move forward with development on those lots after the public improvement such as the roads, drainage would be developed.

Councillor Silva said okay. I'm sure we're going to come back and visit the same question throughout the entire discussion.

Susana Montana said I apologize if I'm not clear.

Councillor Silva said no, and I think that's sort of what has been confusing throughout this entire discussion is we use the word final plat and just as I heard your presentation I was thinking okay, are we talking final plats for the 37 acres? Or are we talking final plat for the entire 110 acres? And I think that that's part of the discussion of the appeal is one of the contentions so I think we need to be really clear on that part. So, why don't we let this.....why don't we let the hearing continue and maybe more clarity will be brought to that part of the discussion. Thank you, Mr. Mayor.

Mayor Miyagishima said thank you, Councillor. Any other comments? Councillor Sorg?

Councillor Sorg said Mr. Mayor, I just would like to ask if it's appropriate at this time to ask a question about the TIA mitigation measure? Okay. In the table you presented here, at the intersection of North Main, Elks Drive, and Triviz Avenue, there are re-timing signal improvements in the mitigation effort recommended. Could you describe what that would involve? Could you?

Susana Montana said Mr. Mayor, Councillor Sorg, from what I recall from the traffic engineer this involves small physical improvements to allow the improving of timing, the timing of flow, the different turning movements at that intersection. The signal timing.

Councillor Sorg said the signal timing. In other words, some lights would be longer and some would be shorter. Is that what you're saying?

Susana Montana said I couldn't tell you. I apologize.

Councillor Sorg said well, that's alright. I'm just curious about that. Thank you, Mr. Mayor.

DRAFT

Mayor Miyagishima said Robert, did you want to comment? Okay, not sworn in.

Councillor Pedroza said Mr. Mayor?

Mayor Miyagishima said yes, Councillor?

Councillor Pedroza said thank you. Excuse me, but I think I recall that NMDOT was going to also be doing some work on that particular intersection. Is that correct?

Susana Montana said Mr. Mayor, Councillor Pedroza, NMDOT is in the final design stage I believe in seeking funding for improvements to the Spitz, Solano, North Main portion of that road and that improvement doesn't get up to the El Camino Real, Main, Camino Del Rex portion.

Councillor Pedroza said okay. So, they would not interfere with each other.

Susana Montana said no, they would not. Under the scope of the TIA analysis, our traffic engineer did have the applicant's engineer look at those improvements to see how they would effect future development of the site and the intersection of North Main at Camino Del Rex.

Councillor Pedroza said and what did he conclude?

Susana Montana said they concluded that the intersection at North Main and the extension of Camino Del Real into the development and Camino Del Rex did need to be altered, the design did need to be altered, and they did do that by the closure of Camino Del Rex and the diversion of traffic into the development before it gets to North Main intersection.

Councillor Pedroza said I'm sorry. I didn't get that last part that you said.

Susana Montana said there was a diversion of traffic that today goes onto Camino Del Rex to the intersection, it will divert into the development to get to.....

Councillor Pedroza said kind of like back south a little bit and to the west.

Susana Montana said back into the signal.

Councillor Pedroza said okay, thank you and that was in keeping with the design as the City's traffic engineer proposed.

DRAFT

Susana Montana said yes, and NMDOT as well.

Councillor Pedroza said okay. Alright. Thank you very much.

Mayor Miyagishima said thank you, Councillor. Okay. I think that concludes this portion from Council. I'm going to ask the appellant if they'd like to come forward and make the presentation, please.

Eva Booker, Country Club Neighborhood Association said okay. My name is Eva Booker and I'm the President of the Country Club Neighborhood Association and I'm also an appellant as an individual. I'm slightly hearing impaired and don't wear my hearing aids so I would like to be clarified as to what the City Attorney has said regarding the use of our slides. Did he say that we can't use any of our slides? Is that what I heard?

Mayor Miyagishima said basically, ma'am the slides that you can use and the slides you probably used in the presentation back on July 22nd during the planning and zoning meeting, any new items specifically 14CP, 14 JTB, and 14 EV will not be allowed.

Eva Booker said I really don't know what that means.

Mayor Miyagishima said okay well basically whatever information or slides or information that was used during the initial planning and zoning meeting on July 22nd is the only thing that can be referenced or presented.

Eva Booker said so, even the grounds of our appeal, any slides that relate to the grounds of our appeal cannot be used either? Is that what you're saying?

Mayor Miyagishima said if it was used on July 22nd. What today's process is is to see whether or not the information that was presented on July 22nd, if there was an error, if there was something that was presented perhaps the Planning and Zoning Commission overlooked and you want to bring it to our attention, that's primarily what today is all about. We're not here to basically retry the whole situation because that was done at the planning and zoning initial meeting. What we are here today is to hear what you feel planning and zoning did wrong based on the information that was presented on that day and that's really all we're here for today. So, nothing new can be presented. That's why no one other than on this list can speak regarding today's appeal.

Eva Booker said well, some of my slides are related to error in the Planning and Zoning Commission hearing so that's why I'm trying to clarify are even those slides being precluded by the City Attorney for the record.

DRAFT

Mayor Miyagishima said yes, ma'am. You don't have to use the slides. You're welcome to use whatever portion in the minutes, let's say if you feel that there was something there that wasn't said right or was improper, you can bring that to our attention and we'll understand that but to introduce new slides or new information that wasn't presented at the planning and zoning meeting is something that is precluded.

Eva Booker said okay. I just want to clarify that for the record.

Mayor Miyagishima said for the record.

Eva Booker said okay. Also for the record because of based on the legal advice that you have been given, which I strongly disagree with and there's ample legal authority for, my position for the record I would just like to say that this is a public hearing. This should be a de novo hearing, which does allow new evidence, that we should be allowed to present witnesses that did not appear before the planning and zoning hearing on July 22nd, that we should be allowed to present evidence, in particular evidence received through the public records request that I made, and that no parties that are not parties to this appeal including people that testified at the July 22nd hearing that were just sworn in should be allowed to appear and that's in battershell. So, that's for the record for the appeal that I'm pretty sure we'll have to make to district court. Thank you.

So, now onto the grounds for our appeal. Our first ground is that the Planning and Zoning Commission failed to comply with the zoning code, that's section 32-407, subsection 1, subsection C that requires traffic impact analysis to include future traffic volume based on a 10 year forecast.

The traffic volume that was covered in this TIA, which let"s see what's called. The title of the TIA is Traffic Impact Analysis, Park Ridge Medical Center, Subdivision Phase I only covers 17.035 acres and Connie Potter will address that in her presentation.

The second ground for the appeal is that the planning and zoning decision was based on significant misrepresentations by people that testified on behalf of Park Ridge and also some confusion in something that the staff said at the July 22nd hearing. And I will be calling because we were not advised at the July 22nd hearing of our right to cross examine any of those witnesses so I would like to question Susana Montana and Bob Pofohl as part of this hearing as the opportunity to cross examine them on statements that they made at the hearing.

Next, the commission was assured that the approved TIA covered the re-zoned 30.745 acres that was re-zoned by City Council on August 19, 2013, and again I repeat the TIA only covered 17.035 acres and the TIA actually acknowledges in its text "that the two proposed access points" do not provide sufficient capacity to convey the traffic generated by full build out of the medical center's subdivision, which is the 30.745 acres. Another misrepresentation was that the commissioners were told that the planned unit development is in process, a planned unit development application was submitted on March 4, 2013. It was not approved by the City. As a matter of fact, it was returned on March 18th and no planned unit development application has been re-filed or the original application has not been amended. Another misrepresentation was the commissioners were told that the secondary access at Solano and Madrid is being worked on with the City and the State and the design of that is again in process. Based on evidence obtained through the public records request, no conversion application has been prepared by Park Ridge representatives or the City of Las Cruces through October 1st or Friday, whatever date that was. Another misrepresentation, commissioners were told that approval of the Secretary of Interior was not required to convert portions of Apodaca Park for the Park Ridge development, section 6, subsection F, subsection 3 of the land/water conservation fund X states "no property acquired or developed with assistance under this section shall without the approval of the Secretary of the Interior be converted to other than public outdoor recreation uses."

The third ground for the appeal is that the Planning and Zoning Commission gave undeserved way to testimony of parties with a financial interest. Twenty people testified at that hearing. Ten of them, which is a 50/50 split, all ten of them who testified in favor of the final plat have a financial interest in the approval of that financial plat and they're here again today as they will be until this property is sold I'm sure. Five are members of the Las Cruces Country Club who own the property, still own the property, and the sale is continued upon the approval of this final plat so I hope you're aware of that. Six are owners of town homes that have been promised disconnection from septic systems and connections to City sewer at Park Ridge's expense. Again, there are some overlap because a number of those town home owners are also members of the Las Cruces Country Club. And finally two people that testified represent parties that are part of the Park Ridge Development

including representative of the Heritage Assisted Living, which is developing one of the three lots in Phase I and Alpha School, which has been promised the donation of property to expand their facility on Park Ridge.

So, now I would like to call Susana Montana to cross examine her on her testimony at the July 22nd hearing.

Mayor Miyagishima said Susana, do you want to maybe sit on this side over here?

Eva Booker said hello, Ms. Montana. Okay, Ms. Montana. The first question relates to the TIA, which I think you have kind of addressed earlier but I just want to spell it out for the record. Was one of the conditions for the City Council's approval of Park Ridge's application to re-zone 30.745 acres of the Las Cruces Country Club property an approved traffic impact analysis?

Susana Montana said yes. Approved by the City's traffic engineer.

DRAFT

Eva Booker said and does the TIA entitle traffic impact analysis Park Ridge Medical Center subdivision Phase I, which was approved July 22nd, 2014, address the traffic impact of development beyond the Phase I development of 17.035 acres?

Susana Montana said I couldn't tell you that. I do defer to the City's traffic engineer Mr. Willie Roman who approved the TIA and so I have to defer to him.

Eva Booker said okay. Thank you. The next questions relate to the planned unit development application. When did Park Ridge file it's planned unit development concept plan?

Susana Montana said the planned unit development. I don't remember the date that they filed their initial application. I apologize.

Eva Booker said okay. I believe that was in early March 2013. When did the City respond to the Park Ridge planned unit development concept plan? Just approximate. It doesn't have to be exact.

Susana Montana said a couple of months later. It was a 27 page set of comments to the initial submittal.

Eva Booker said okay. And what was the City's response to the Park Ridge planned unit development concept plan?

Susana Montana said there were numerous responses. Different City agencies had their own comments. The Community Development Department submitted about five pages of comments

relative to how it addressed comprehensive plan policies. Traffic engineer had their own, utilities, etc. I don't recall each agencies comments.

Eva Booker said I'm just trying to figure out that the ultimate result of the comments. In other words, once the City's comments were provided to the Park Ridge representatives, what was the next step to be taken?

Susana Montana said the next step would be for the applicant to either redesign the project or submit document responding to the City's comments. Typically it would explain how they've redesigned the project to address those initial comments.

Eva Booker said and was that done? Has Park Ridge amended or resubmitted its planned unit development concept plan in response to the City's comments or should I say by July 22nd, 2014, the date of the planning and zoning commission hearing? Was that done?

Susana Montana said no. It was not done. The subdivision is a separate application irrespective of the planned unit development.

DRAFT

Eva Booker said thank you. So, what would you say is the current status of the Park Ridge planned unit development concept plan?

Susana Montana said I'd call it on hold.

Eva Booker said okay and a final question. Has the City received or produced any of the documentation required to submit a conversion application to New Mexico State Parks and National Park Service?

Susana Montana said I would not have any information about that.

Eva Booker said did you receive a July 31st, 2014 memorandum from Bill Hamm addressed to you that states no conversion documents have been prepared?

Susana Montana said I don't believe that was raised during the July 22nd planning and zoning commission meeting.

Mayor Miyagishima said excuse me, Ms. Booker? You're submitting information that wasn't previously discussed in the planning and zoning meeting on July 22nd, so I'm going to ask that you please discontinue doing so.

Eva Booker said I understand that but a misstatement was made at the planning and zoning commission that the process of conversion was in process at the New Mexico State Parks and

National Parks Service. I'm trying to ascertain whether that statement was accurate and actually the record shows it was not but okay. I'll give you that one.

Mayor Miyagishima said you're able to state your own comment but to cross examine Susana on what you're trying to find out is improper.

Eva Booker said okay. Thank you. Thank you, Susana. Okay, now I'd like to call Mr. Bob Pofohl.

Pete Connelly said Mr. Mayor, point of procedure, please. If the appellants are through cross examining Ms. Montana, the appellee would have the right to cross examine the witness at this time if the appellee so chose to do and that would be the procedure throughout the hearing that if one gets to examine, the other gets to cross examine.

Mayor Miyagishima said okay. So that's back. So basically Susana's back on the hot seat and it looks like the attorney for the applicant.....

DRAFT

Pete Connelly said pardon me, sir. Just so the record will be straight. Mr. Pofohl was called but he's not the attorney for...and I assume you're the attorney for the appellee.

Casey Stevenson, Attorney said that's correct. Casey Stevenson, the attorney for Park Ridge Properties, the appellee in this matter.

Pete Connelly said and if I may, your honor, the mere fact that the attorney asks questions doesn't mean that the attorney is testifying. The person testifying is Ms. Montana right over there.

Mayor Miyagishima said thanks, Pete. Thank you for that clarification.

Casey Stevenson said thank you, Mayor and Councillors. Ms. Montana, just so we can be clear. The hearing before the Planning and Zoning Commission was simply for approval of the final plat submitted by Park Ridge Properties, is that correct?

Susana Montana said that is correct.

Casey Stevenson said okay. And it's my understanding that the zoning of these properties was completed in August of 2013 and approved by this Council in August of 2013. Is that correct?

Susana Montana: said that is correct.

Casey Stevenson said as part of the subdivision process, the application for subdivision process, was a traffic impact analysis required?

Susana Montana said it was required as a condition of the earlier re-zoning.

Casey Stevenson said but it was not conditional of approval of the final plat, correct?

Susana Montana said it carried forward by the Development Review Committee as a condition of approval of the final plat.

Casey Stevenson said let me make sure I understand then. So, if the traffic analysis was performed with respect to the zoning application and the zoning happened as you testified, then it just carried forward to the subdivision, correct?

Susana Montana said it did in this case because the development review committee conditionally approved or recommended conditional approval provided that the City's traffic engineer approved the TIA.

DRAFT

Casey Stevenson said and I think you've already testified that he approved it on July 22nd right before the hearing?

Susana Montana said that is correct.

Casey Stevenson said no further questions at this time.

Mayor Miyagishima said thank you. Okay, thank you, Susana. Okay, Ms. Booker and I believe you wanted to question Bob Pofohl.

Eva Booker said yes. Hello Mr. Pofohl.

Bob Pofohl said hi.

Eva Booker said okay. Again, I will begin with a question related to the Traffic Impact Analysis. Does the TIA entitled Traffic Impact Analysis Park Ridge Medical Center Subdivision Phase I, which was approved July 22nd, 2014, address the traffic impact of development beyond the Phase I development of the 17.035 acres?

Bob Pofohl said my name is Bob Pofohl just for the record and the details of that I'd rather my traffic engineer answer but it addressed the 100 acres, the entire property but the detailed analysis was for the 31 acres.

Eva Booker said was with the what?

Bob Pofohl said was for the 31 acres that was covered by this subdivision plat.

Eva Booker said so, why was it titled for phase I and why also did it state....I have it in front of me now....where you said.....I just read it. I know I just read it. Then why does the TIA acknowledge that the two proposed access points, both on Camino Del Rex, do not provide sufficient capacity to convey the traffic generated by full build out of the medical center subdivision, which is the 30 acres. So, the Traffic Impact Analysis itself says it only applies to 17 acres.

Bob Pofohl said I would leave a detailed answer to Eddie Martinez from Zia Engineering. He worked with the City engineer and staff through that process and went through several reviews and I think it....I'm not a professional traffic engineer and I would rather have him answer that question.

Eva Booker said okay. I'll leave that one alone for now. I would like to read a question by Commissioner Stowe on page 43 of the draft transcript from the July 22nd hearing. Commissioner Stowe asked the following question of Mr. Pofohl. What conditions do you think will need to be enforced for the development of tract C, the bulk of the land, so which we still have the photo up there. I don't know if it shows tract C but anyway it's most of the land that is outside of the re-zoned area. And Mr. Pofohl stated right now that PUD is in process and I think secondary access is being worked on with the City and the State and the design of that is in process at this time. So, I'll ask a few questions related to that. When did you submit the Park Ridge Boulevard alignment and property transaction to the City?

Bob Pofohl said I believe that was some time in 2013, probably June or July.

Eva Booker said and did you meet with Judy Koloski of the New Mexico State Parks and if so, when?

Bob Pofohl said I did meet with her around that time, the July/August of 2013.

Eva Booker said and do you recall what Ms. Koloski told you about the submission of a conversion application?

Bob Pofohl said yes. I was to work through the City with that. There's a standard conversion document. They're very common. They've been done many times here in Las Cruces. It's a common transaction and she gave me kind of the process that was provided by her as well as the City's land manager, a copy of the conversion document and the process, and we've begun going through those steps.

Eva Booker said did Bill Hamm forward copies of the comments of the City staff on your realignment and conversion proposal?

Harry (Pete) Connelly said pardon me, Ms. Potter.

Mayor Miyagishima said excuse me, Ms. Booker.

Pete Connelly said pardon me, pardon me just a minute. Are you referring to a document that is in the packet that came to the City Council as a transcript of proceeding that was done by Jones Reporting?

Eva Booker said how am I supposed to....is the truth matter here to you, Mr. Connelly? Is it relevant at all whether something somebody says is true or not? Or am I just spinning my wheels here?

Pete Connelly said I'm sorry, ma'am. The transcript consists of 32 pages.

Eva Booker said and misstatements were made in the transcript and I'm trying to prove that they were not accurate.

DRAFT

Pete Connelly said pardon me, ma'am. You refer to page 42 in the transcript.....

Eva Booker said no, I said page 43.

Pete Connelly said page 43. The transcript only goes to page 32.

Eva Booker said the transcript of the hearing? Well, I don't know. This is the transcript I got from the City when I first prepared this appeal. Right here it says page 43. I don't know what to tell you about that.

Pete Connelly said right here the one I'm looking at starts on page 499 of the record that was submitted by the clerk to Council and it's a transcript of the proceeding of the early meeting. Is that what you're on?

Eva Booker said I just copied this one page. I'd have to go pull my papers, but when I first prepared this appeal I asked for a transcript of the hearing. This is a copy of the page from the transcript I received from the City.

Mayor Miyagishima said Ms. Booker, I believe the copy of the entire transcript is right in front of you in that big white booklet.

Pete Connelly said if I may, just to make sure we're correct so we're talking about the same thing, at the top of your page is it the numbered 632?

Eva Booker said no. It doesn't have anything on the top of the page. Oh, you're talking about what was attached with the agenda. No, I'm going by a transcript before that. It was toward the beginning when they first testified.

Pete Connelly said if the Mayor and Council would refer to.....

Susana Montana said for the record, she is referring to the July 22nd planning and zoning commission minutes. So, we'll try to correlate that to your packet.

Mayor Miyagishima said okay, so the minutes of the planning and zoning meeting then.

Pete Connelly said it begins at page 590 and the record that was submitted to the Council and it's Planning and Zoning Commission attachment.....

Eva Booker said that was page 361 in your agenda packet.

DRAFT

Pete Connelly said it's attachment F submitted by the Community Development Department and it would be official record number page 632 and would be I think about line.....Do you have a line number there?

Eva Booker said yes. Line 17, 18 and 19.

Pete Connelly said lines 17, 18 and 19. So, if Council were to look at it we'd be referring to the same document. I'm sorry, Ms. Booker. I just wanted to make sure because you talked about an official transcript and it is not an official transcript. It is the minutes and it's attachment F. Pardon me for interrupting. And yes ma'am, the truth matters to me.

Eva Booker said okay. I will try to do this in a way that you find acceptable.

Mayor Miyagishima said Councillor Sorg, did you have a quick comment?

Councillor Sorg said yeah, could we repeat the page you're going to be on here again?

Mayor Miyagishima said page 632.

Councillor Sorg said thank you.

Eva Booker said can I proceed?

Mayor Miyagishima said yes please.

Eva Booker said sorry Mr. Pofohl. Okay. I'm just trying to find out what the communications were and what you're understanding is of this process. So, did you receive comments from the City about the realignment and conversion proposal?

Bob Pofohl said yes we did and we were requested to meet with various departments, the MPO Technical Committee, the MPO Sidewalk, and I think....I forget what the name of the other committee. There are two MPO committees as well as the Park and Recreation. Those were publically advertised meetings. We went through those meetings and to submit that plan and get their comments back and as recently as this July 19th we met again with Parks and Recreation to get their final review of that at their request. So, we again did that so we can move this conversion document and properly draft it forward. So, that's probably more information than you needed but that's the process we're going through on the PUD. Obviously our focus has been on the 31 acres.

Eva Booker said so in the comments that you received or the feedback that you received from Ms. Koloski and City staff were you aware that the conversion application documents must come from the City of Las Cruces as sponsor of a land and water conservation fund project?

DRAFT

Bob Pofohl said yes I am.

Eva Booker said do you know that the National Park Service has final approval of a conversion application?

Bob Pofohl said yes, I do.

Eva Booker said and just because you brought it up as far as the meeting with Parks and Recreation in June was that meeting for the purpose of updating Parks and Recreation on the status or was it more substantive than that?

Bob Pofohl said it was to, one more time, have them review the proposed secondary access so that they were aware what we were proposing to do a secondary access for the PUD.

Eva Booker said okay. For the record, I would just like to say I do have a document from the public records request that reflects that was only an update that since I can't....anyway that's just for the record. Final question. Has the conversion application been prepared by Park Ridge for the City of Las Cruces and if so was it submitted to New Mexico State Parks before July 22nd, 2014?

Bob Pofohl said no, it has not been completed or submitted yet.

Eva Booker said thank you, Mr. Pofohl. Okay, well that pretty much concludes what I'm allowed to say here today so I will turn it over to Connie Potter.

Mayor Miyagishima said well, ma'am.....

Eva Booker said oh, that's right. He gets to cross examine. Sorry.

Casey Stevenson said thank you. Mr. Pofohl, have you been told by anyone at the planning and zoning commission or any City agency that you have not provided the requisite documentation, analyses or any other requirement to obtain your final plat and subdivision on behalf of Park Ridge?

Bob Pofohl said no. We have not been told that. We submitted everything according to the request and all of the plans and reports necessary for the subdivision and plat of 31 acres.

Casey Stevenson said and on behalf of Park Ridge, you have also made a commitment to the mitigation measures, correct?

Bob Pofohl said yes, we have.

DRAFT

Casey Stevenson: And just for clarification, the mitigation measures and amendment seven to the approval of the Planning and Zoning Commission. Is that correct?

Bob Pofohl said yes, that is correct.

Casey Stevenson said and I believe if you look at those numbers and you may present this slide in a little bit, it is almost double the required commitment by the City of Las Cruces. Is that correct?

Bob Pofohl said according to what would be required by ordinance, there was about $450,000 of mitigation improvements and we're providing about 950,000 of improvements.

Casey Stevenson said and that number could potentially go up as the development is started, correct?

Bob Pofohl said yes it could.

Casey Stevenson said no further questions at this time.

Mayor Miyagishima said thank you, Mr. Stevenson. Okay, I believe Connie Potter will be next.

Connie Potter, Country Club Neighborhood Association said Mayor, Councillors, members of the public, staff. My name is Connie Potter and at times it seemed like Ms. Booker was being called Ms. Potter. I'd like to clarify. This is Eva Booker, president, and I am Connie Potter. I have a cold. I will do everything in my power to stay within the parameters set by the City Attorney. Not having you listen to my slides all over again from P&Z a month ago, two months ago, I'm going to go over

the issues that were brought up. First of all, the zoning change for Park Ridge, the re-zoning change, was contingent on an approved Traffic Impact Analysis. We're going to call it a TIA from now on. That was contingent both June 25, 2013, and August 19, 2013, and that contingency has been attached to this conditional re-zoning ever since. Now CCNA did testify about traffic throughout that process. The traffic studies approved are only part of the re-zoned 30 acres. They are for 17 acres if you look at the TIA for 17 acres. The traffic engineer approved the third version on July 22nd, 2014, about an hour before the meeting. It was virtually impossible to change slides that had been submitted on time by ten o'clock that morning to reflect something we had never seen but it was approved on the word of the traffic engineer we do respect.

The TIA didn't forecast or mitigate new traffic in all areas of the neighborhood that have been requested repeatedly at community meetings. For example, Mariposa, Madrid, Solano, those areas had no traffic flow studies, no mitigation efforts addressed to them. There also were complaints repeatedly about the impact of the upcoming construction on US 70, a Federal Highway. This upcoming construction is underway right now. Today it was backed up from past Apodaca Park to Mulberry Street completely and it was going one way at noon, okay? So, you have talked about this. This is an encouragement for people to cut through our neighborhood. This has been an issue that we have addressed for years since this project has been discussed. We have attempted in every way to work with the developer and the City engineer to mitigate this traffic and to eliminate cut through traffic. What is important about the cut through traffic is the new road that has been assigned to phase I of this development. As you know it comes out at Main here, Main and Elks or excuse me Main and Camino Real and now in the future all of the traffic emanating north and west of the Country Club will have to come out this new road and it's got a new name, Park Ridge Trail?

Mayor Miyagishima said excuse me, Ms. Potter.

Connie Potter said what?

Mayor Miyagishima said I'm sorry but can I direct you to the three questions or the three statements that was presented as why you want to seek the appeal. I can't quite follow if it's one of the three, which is you're alleging that P&Z failed to comply with the development code that was based on misrepresentation of competent evidence or gave undeserved weight to the parties with financial interest. If you could zero in at least and tell us which of the three you're focusing on that would help us and then I will share with you that Mr. Roman is here although he may not be on the list but because he did participate during that meeting and provided commentary, he's allowed to....you can question him if you like because you made a comment on the TIA. Of course, he would have to be sworn in. So, I just wanted to make that available to you.

Connie Potter said I am basically addressing the first component, which is compliance with zoning and the zoning requires that a TIA, that a Traffic Impact Analysis be done for the full re-zoned area, which is not done.

Mayor Miyagishima said would you like to ask Mr. Roman questions? I mean it just makes it a little bit easier. You can.....

Connie Potter said would Mr. Roman like to come up here?

Mayor Miyagishima said sure. I'll ask him to come forward. He has to give.....he has to be sworn in and then you can ask him questions specifically on what it is you're.....

Connie Potter said okay. I didn't know we could ask him questions.

Mayor Miyagishima said well, he did participate in the initial meeting and did provide commentary so he is allowed to.

Pete Connelly said Mr. Roman, if you would be sworn there and then move to your right to the seat after you're sworn in please.

DRAFT

Esther Martinez-Carrillo said please state your full name.

Willie Roman said Willie Roman.

Esther Martinez-Carrillo said please raise your right hand. Mr. Roman, do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Willie Roman said yes, ma'am.

Esther Martinez-Carrillo said thank you. Go ahead.

Pete Connelly said just one preliminary question, Mr. Roman. Did you testify at the preliminary...pardon me, the planning and zoning meeting of July 22nd?

Willie Roman said no. I don't remember testifying.

Pete Connelly said were you sworn?

Willie Roman said no. I don't remember being sworn. I don't think they had any questions for me that day.

Pete Connelly said well, if Mr. Roman didn't testify below, he can't testify here.

Mayor Miyagishima said thank you, Pete. I was of the impression you provided some commentary in the minutes. Maybe I was mistaken. If I did, I apologize. So, you had no commentary, there was no....you stated nothing at all during that meeting.

Willie Roman said I don't recall on that P&Z meeting saying anything in front of the P&Z but I was sitting right over there so I would be happy to look at the minutes just to verify.

Pete Connelly said just a minute. Ms. Montana, did Mr. Roman testify if you know?

Susana Montana said Mr. Mayor, Mr. Connelly, City Attorney, I went through the minutes of the Planning and Zoning Commission meeting on July 22nd and Mr. Roman did not testify.

Pete Connelly said then he may not testify here, Mr. Mayor. I'm sorry.

Mayor Miyagishima said I agree. I apologize for my mistake. I was....like I said, I was under the impression that you had and I wanted to afford that to the appellant so my apologies to both of you.

DRAFT

Connie Potter said as to the first component, zoning, the re-zoning requirements require that there be consideration, deliberation, community involvement to.....

Mayor Miyagishima said excuse me, Connie. I apologize for interrupting. I understand Kathryn Rogers is here and she's available. She can be sworn in and you can ask her questions on the TIA if you'd like.

Connie Potter said that would probably be a good idea.

Mayor Miyagishima said oh, she didn't either. Well, according to the minutes that Mayor Pro-Tem is showing me that she had some testimony during that but again that's just something that I want to afford to you. I want to give you every opportunity that you have that is within these parameters.

Connie Potter said thank you, Mayor. What I would like to address again is that the re-zoning has to consider its impact on the adjacent neighborhood. Country Club neighborhood is an established 700 person neighborhood with a identified neighborhood association whom we represent as a number of areas. We have been active since 2007. This is not, you know, all that we do. What I want to say is that the traffic emanating from Park Ridge as we've repeatedly said has not been adequately addressed. This new road, which has been repeatedly shown in meetings prior to July 22nd and again on July 22nd, this new road coming out here goes into Camino Del Rex, about 150 feet from the end of Desert Drive. It is a great gateway to traverse the Country Club neighborhood streets to reach Madrid, to reach Triviz over surface local streets that have right now very few mitigation efforts going on. In fact, some were removed with re-paving. Some aren't even posted with the speed limit. They are not regularly patrolled so enforcement really isn't a good alternative to

impeding people making a quick and dirty right turn right here and heading up Camino Del Rex or blowing through Santa Cascio or burning down Desert Drive and blowing the stop sign where our children are....three school bus stops are right here. We have elderly senior retirement community pretty much. We have seniors walking pets. We have people crossing streets. We have skateboarders. There's kids, you know, and this has not been adequately addressed in any of the mitigation or planning efforts. There's discussions going on. The first one was just last week and that's a little late. Cut through traffic is a very strong consideration for why this engineering and this TIA....this is inadequate. They said it's inadequate for 30 acres. The TIA said that and yet the approval was for the whole 30 acres contingent on traffic when the only traffic impact analysis was for phase I. We don't understand. We don't understand how that could have slipped through except it came up an hour before the meeting and no one saw it. We certainly didn't see it. We weren't allowed to respond to it. I think that that is a breach of the community's ability to work with the City and I think it's a shame because we've tried desperately to work with the City. Now who else can I talk to?

Mayor Miyagishima said you can talk to anyone who is on this list that is here. You can talk to Susana. You can talk to Mr.....

DRAFT

Connie Potter said I'd like to talk to Susana again. Susana is always so responsive to some questions. If you don't mind Susana.

Susana Montana said may I interject one thing? The appellants have asked if we could put up the slides from the planning commission meeting that they presented.

Mayor Miyagishima said sure. If it was presented during the July 22nd meeting, it can be shown.

Connie Potter said shall I do mine?

Susana Montana said would you like to speak with me first before I do that?

Connie Potter said yeah I would. I would. Ms. Montana, you know, your position we already heard today but would you repeat your position with planning and development?

Susana Montana said I am a planner in the building and services, building development services division. I am the project manager for the Park Ridge final plat application.

Connie Potter said okay. On July 22nd of this year we were holding or we were all invited to a planning and zoning final decision on the re-zoning. You....not on the re-zoning, the....excuse me, on the subdivision, the infill subdivision. This gets complicated after awhile. On that date, what was the time sequence for the commission and the members of the Council that attended staff to receive the traffic impact analysis number three. What was the timing of that?

Susana Montana said the planning and zoning commission did not receive the traffic impact analysis, the planning commission doesn't normally review those things. However, the City's traffic engineer reviewed it and about noon on July 22nd, 2014, he did send me an email in which he stated he conditionally approved the TIA with the mitigation measures proposed in the TIA, which were incorporated as attachment seven to the planning commission packet.

Connie Potter said did you see the TIA at that time? Was it as an attachment?

Susana Montana said No. The TIA would not have been an attachment. The TIA, traffic analysis, is not something the planning and zoning commission normally reviews. They don't have the expertise to evaluate it so they rely on the City's traffic engineer.

Connie Potter said okay, that's very fair. That's a lot of information. My last question Susana is then therefore.....

Mayor Miyagishima said you need to speak directly into the mike, Connie.

DRAFT

Connie Potter said oh, I thought I was. Sorry. Was that...you could not have known that what Mr. Roman approved was for phase I. Did you know that at that time?

Susana Montana said I was aware that....it was my understanding that it was for the development, which is nine lots.

Connie Potter said it was for nine lots. Okay. And since I can't ask Mr. Roman that, it wasn't specified in his email how many lots that approval was for?

Susana Montana said no. He simply said that the TIA was conditionally approved.

Connie Potter said okay. Thank you, Ms. Montana. I guess.....

Mayor Miyagishima said Mr. Stevenson may have a question.

Connie Potter said Oh, I'm sorry.

Casey Stevenson said Ms. Montana, was....Mr. Roman was at the P&Z hearing on July 22nd, correct?

Susana Montana said yes. He was present.

Casey Stevenson said and if there were any questions and if there were any perceived problems with his approval of the TIA, he could have been questioned at that time.

Susana Montana said I believe so.

Casey Stevenson said and was there an engineer questioned at the P&Z hearing?

Susana Montana said there was an engineer who was part of the applicant's presentation.

Casey Stevenson said and is that applicant Mr. Eddie Martinez or Edward Martinez?

Susana Montana said Mr. Edward Martinez was a representative of the applicant.

Casey Stevenson said and is he the only engineer that testified that day?

Susana Montana said I believe so.

Casey Stevenson said thank you.

Mayor Miyagishima said thank you.

DRAFT

Connie Potter said thank you, Ms. Montana. I think that if Susana would help me out I would like to briefly go through my slides from the July 22nd.....I mean I'll skip over the ones that aren't relevant if we can call them up.

Susana Montana said infrastructure. Do you want to do that first?

Connie Potter said yeah.

Pete Connelly said may I, Ms. Montana? Is that part of attachment E, which was support and information that was submitted to the City Council by the Council Action Form?

Susana Montana said yes, it is. Attachment E contained the staff PowerPoint presentation, two PowerPoint presentations, from CCNA and one from the applicant.

Pete Connelly said right. And this is that one.

Susana Montana said this is one from the CCNA infrastructure committee.

Pete Connelly said okay.

Connie Potter said that's me and a couple of other people. Okay. Here you see again our issues with the traffic and the lack of a thorough and approved TIA. It was approved but in our opinion thorough was questioned. The car trips were a problem. The timing of studies was a problem

because they used retail timing. They used a.m./p.m. timing, which healthcare is not retail. We're also concerned about emergency vehicles traversing our streets 24 hours a day, 7 days a week, license iron code three. We were not happy about that. US 70 volume is huge. Traffic is already blocked and the avoidance route is through our neighborhood. Park Ridge adds 22% volume to the surrounding roadways without serious changes. US 70, you already know about US 70, but the problem with construction going on on US 70 is going to make that traffic go like water going downhill. It's going to take the path of least resistance, which is through our neighborhood, which is a quiet, serene, peaceful, tree lined neighborhood, I would love to have you all come take a tour. It's beautiful. In the 1950s and 1960s, it was the Picacho Hills of Las Cruces.

The second entrance within the country club as I saw it is unsafe. It ends around nonresidential traffic and dangers are walkers, kids, seniors and pets. We already have significant nonresidents using our streets to bypass US 70. The emergency vehicles will use our surface streets and in fact part of the reason for removing the traffic bumps on Desert Drive was because of emergency vehicles, because of the damage it does to those structures and Mr. Roman was very educational on what those devices do and some alternatives to that. The problem with the street capacity is that some of our streets are already near capacity and this mitigation, you know, timing of lights, of putting a cul-de-sac on Camino Del Rex so everybody has to pour into our neighborhood and guessing at the number that can come into our neighborhood and I'm not going to address that because it's in a document that we didn't see. We've seen it now but the numbers are unrealistic. They're too low for what's going to be coming there. We're the most adversely affected by the development. Traffic and noise, home values, safety and inconvenience. Again the mitigation on key streets, the planning for mitigation. Madrid, we asked repeatedly to look at Madrid. South Madrid is a problem. There's no counts. There's no impact. No nothing on Madrid and others.

So, the second road placement we were opposed to. A lot of people were concerned about that. We will be forced to traverse entirely through the Park Ridge development to get out to points north to go to Albertson's, to go north and west. We will have to take that loop and fight with visitors, patients, service vehicles, trucks going and delivering supplies, ambulances, fire trucks, to get to the store. These are people that a trip to the store and some of my neighbors is a pretty big deal. There's no second entrance. That's really an arterial. When a development gets that large, actually codes calls for arterials, not surface streets and you can look it up. We can't limit the EMS and fire traffic to the hospital and to arterials. We can't tell a medic how to drive. And then we had the helipad and I can't deal with that now, and we had protected wildlife and people know about that. There's wildlife out there and no studies have been done. So I say again please complete studies including TIA's, complete them, and give them to the public before approving massive projects that are going to impact neighborhoods and people and homes.

Mayor Miyagishima said okay. So is there going to be someone else who would want to ask questions other than you and Ms. Booker.

Connie Potter said we have another presenter. James Tyler Boyd is a community activist. He has been sworn in. He testified at the last meeting and he's going to talk about another aspect of this that we have issues with.

Mayor Miyagishima said okay. And then I will just say that I haven't afforded the opportunity to Mr. Stevenson but after Mr. Boyd is finished, if Mr. Stevenson wishes to cross examine either you, Ms. Booker, and Mr. Boyd will be available.

Connie Potter said fine. Thank you.

Mayor Miyagishima said okay. Great.

James Boyd said my name is James Boyd. I am an appellant speaking before the Las Cruces City Councillors. So, Mr. Mayor, City Council, and members of City staff, thank you for hearing me today. I want to start by addressing my concerns. I want on the record that I disagree with the battershell agreement. I disagree with the interpretation of the exclusion of some of my slides based on the idea that they're new evidence. Rather it is not new evidence. It's an explanation of evidence that was presented at the P&Z commission meeting on July 22nd and the reason for that is on July 22nd the TIA was done by 1 p.m. for City management. There was no opportunity to review it for the community and also for some of the appellants who are involved in this case and the meeting was limited to about a five to six minute period comment from the public due to the large amount of input from the community. So, in that five minute time there was no time to address more than a few simple concerns that make up the whole presentation. At this time I'd like permission to pull up my presentation and to skip through slides that are not accurate to the presentation, which I am addressing the third part of the appeal, which deals with land, water, and water conservation trust fund. The secondary access road that was brought up in Bob Pofohl's testimony, I want to elaborate on what that second access road involved, national park service testimony, and also the impact the community will have because of the proposed mitigation through Apodaca Park that was brought up in a few plans submitted by Bob Pofohl to the City. May I have that permission?

Mayor Miyagishima said so.....

Pete Connelly said Mr. Mayor and members of the council, Mr. Boyd's testimony is at page 642 on the attachment F. Mr. Boyd did not testify to anything he proposes to testify today, which would be on the scope of his testimony below, which should not be allowed. You should be able to explain your testimony below and present what you know concerning the testimony because anything additional to that was not presented by you to the planning and zoning commission. So, if you would like to look at the book there and look at attachment.....

James Boyd said I think I recall that my testimony was I was in agreement with Ava Booker and Connie Potter to what they had stated earlier. Is that correct?

Pete Connelly said I think you could read it at page 642 at line....

Mayor Miyagishima said page 642, line four zero.

Pete Connelly said I think it's line 31. You are James Boyd, right?

James Boyd said that is correct.

Pete Connelly said your testimony begins at page 642.

James Boyd said line 40.

Pete Connelly said how about.....

James Boyd said in this one right here that I'm looking at.

Pete Connelly said how about 31?

James Boyd said there's a page 370, line 40.

Mayor Miyagishima said well, line 31 is where you state your name and your address.

James Boyd said that's correct.

Mayor Miyagishima said so, your actual testimony I believe.....

Pete Connelly said if you continue over to page 643 to line two.

James Boyd said oh, that's correct. So then in that regards then I do again agree with the presentation that was submitted today by Connie Potter and Ava Booker that this is the largest infill project in Las Cruces or so I read in the Las Cruces Sun News and I would assume. As I stated, the TIA only covered approximately one fifth of the total amount of the acres that was presented and to clarify what the appellant said today 17 acres of the 30 acres were included in the TIA and I don't believe that that precludes or goes to the terms of the agreement that the City Council made in order to approve the re-zoning. I don't think that meets the condition that was met. I talked about the burrow owl, which is part of Apodaca Park, which Connie had a slide on actually. The burrow owl is a protected species and as someone who is an environmental activist in the community, having volunteered and worked for the Southwest Environmental Center. That was of great concern to me.

Mayor Miyagishima said excuse me. Mr. Boyd, can you share with us what page that you talked about?

DRAFT

James Boyd said I see on my page 54 in line one on the top of page 3072. My comments state "and in addition to that the protected species of the burrowed owl is considered in that report as well. Thank you for your time."

Mayor Miyagishima said oh, I got you. It's just a real quick blip. Okay.

James Boyd said yeah, right there at the end. Yeah, so like I said on July 22nd there was a large influx of public comments. Towards the end of it, I believe the commissioner said that a lot of it did not have to do with the planning and zoning commission meeting. A lot of it was bulk and a lot of it was not what we are here to talk about but like I said on July 22nd, appellants and members of the community did not have time to review that very large traffic impact analysis for public comment and if they did five minutes would not have been an appropriate amount of time to address all the concerns in it. So, my comments, which go for about four or five lines is about as much as I could get in in my short time. I look forward to though addressing some of my large concerns though if it needs to go to the district court, which can look at the full scope of the issues at play. And I guess with that I will conclude my testimony. So, thank you for your time, Mr. Mayor and members of the City Council and City staff. Thank you.

Mayor Miyagishima said thank you, Mr. Boyd. Okay. So, Ms. Booker, is that...that ends the three? Okay. So, I'm going to ask if Mr. Stevenson would care to ask any questions or either yourself, Ms. Potter or Mr. Boyd.

Casey Stevenson said yes, Mayor. I'd like to ask a few questions of Mr. or Ms. Potter. Excuse me and then I'd like to call Eddie Martinez, the engineer that testified at the P&Z hearing after that time. Hello Ms. Potter. You've just gone through these slides. Are these the same slides that you presented at the P&Z hearing on July 22nd?

Mayor Miyagishima said Connie, I need you to hold on to the....sorry about that. There you go. No, hold on to it.

Connie Potter said yes they are.

Casey Stevenson said and did you prepare these slides for that particular hearing?

Connie Potter said I did.

Casey Stevenson said it has a lot of information that's referencing a TIA and different traffic impacts and things of that nature. Where did you get that information?

Connie Potter said prior to that preparation of the slides, there were two TIA's, TIA one and TIA two. The data was basically carried forward from Zia Engineering through. TIA two was the only one I had access to but referencing back, the data is the same.

Casey Stevenson said and do you have a background, and I mean this with respect, do you have a background as an engineer?

Connie Potter said my background is in trauma systems management. I have been trauma systems manager for the State of Oregon. I've managed two level I trauma centers. One of trauma's key areas is injury prevention. Because of that, I have worked with the State of Oregon Department of Transportation. I worked with Portland engineering, the City of Portland, to....I've got a cough drop in my mouth. I'm trying not to choke on it.

Casey Stevenson said that's okay. No problem.

Connie Potter said what I did in that capacity and since then is work with the three key components of injury prevention, which is education, engineering, and enforcement. Education is not going to stop these problems. Enforcement, we don't have enough police now. So, we go to the third component, which is engineering and I learned a lot about it. I was responsible, for example, Orange County, the Stop on Red Orange County Program, which put camera enforcement throughout the county including 19 cameras in Santa Ana around Disneyland and stuff like that. So, no I'm not an engineer. I'm a trauma nurse and a manager.

Casey Stevenson said well, it sounds like you have a varied background. The data that you provided in these slides, did you have an engineer review that data?

Connie Potter said before that meeting?

Casey Stevenson said yes, ma'am.

Connie Potter said yeah, I did send it to someone.

Casey Stevenson said and who did you send it to?

Connie Potter said I would prefer not to name that person. He's a consultant in the City. He's not associated with the City of Las Cruces but yes.

Casey Stevenson said so, you had an opportunity then to bring your own engineer to the hearing on July 22nd.

Connie Potter said this is a person who is in a private consulting business. He was not able...probably conflicts of interest. I don't know, you know? It was a cursory review but done by a person who had passed a high level position with New Mexico Department of Transportation.

Casey Stevenson said and you had an opportunity to cross examine Mr. Roman at the hearing. Is that correct?

Connie Potter said no. We did not know we had opportunity to cross examine anybody.

Casey Stevenson said well, then let me ask it a different way. Mr. Roman was at the hearing, correct?

Connie Potter said I don't recall.

Casey Stevenson said if the minutes reflect that he was there, you don't disagree with the minutes, do you?

DRAFT

Connie Potter said no I don't.

Casey Stevenson said no further questions.

Mayor Miyagishima said Mr. Stevenson, did you have.....

Casey Stevenson said excuse me, Mayor. I apologize. I think Ms. Potter would arguably have an opportunity to cross examine herself or Ms. Booker to cross examine her and then I wanted to call Mr. Martinez if that's okay.

Mayor Miyagishima said okay. Ms. Booker, did you have anything you'd like to ask Connie? Okay. Ms. Boyd....Mr. Boyd? Okay.

Casey Stevenson said Mr. Martinez, can you tell us your position? Well, what do you do? Let me ask it that way.

Eddie Martinez said I'm President of Zia Engineering and Environmental Consultants.

Casey Stevenson said and are you familiar with the traffic impact analysis that was submitted on July 22nd at the P&Z hearing?

Eddie Martinez said yes, I am. I was one of the technical reviewers for a company on it.

Casey Stevenson said and did that TIA as it's been called cover the entire 110 acres including the question?

Eddie Martinez said the TIA in terms of analysis of the volume of traffic from various proposed parcels cover the anticipated traffic from the 110 acres. If I may. The modeling that was conducted, the detailed modeling, was related to the 17 acres but the overall analysis in regards to a generation of traffic, etc. was for the 110 acres.

Casey Stevenson said and would it be accurate to say that the modeling was only done for the 17 acres because that was the first phase of the project?

Eddie Martinez said that is correct.

Casey Stevenson said and as the project goes along there's certain mitigation measures that must be undertaken and there could be supplemental TIA's. Is that correct?

DRAFT

Eddie Martinez said correct. We actually identified and intended that this being the first phase. Additionally we specified that additional supplemental TIA's would need to be submitted with future phases with future projects.

Casey Stevenson said so, Park Ridge agreed to those mitigation measures going forward. Is that correct?

Eddie Martinez said yes, they did and it's fairly standard practice within projects this magnitude. You can't anticipate what the infrastructure is going to be eight years, ten years into the future that could significantly modify the modeling. So, therefore, often times you phase the detailed modeling to address what's known and then as subsequent projects are developed you then update that modeling and that's basically what we did.

Casey Stevenson said one of the things that the appellants are complaining about is the fact that the study wasn't for 10 years. What was the length of the proposed study for this TIA?

Eddie Martinez said actually it was. We did detailed modeling and detailed analysis for both the 2015 and 2025 time frames.

Casey Stevenson said and were you the only engineer that testified at the P&Z hearing?

Eddie Martinez said to my knowledge, yes.

Casey Stevenson said do you recall Mr. Roman being at the hearing?

Eddie Martinez said yes, he was at the hearing.

Casey Stevenson said but he did not testify, is that correct?

Eddie Martinez said no, he didn't.

Casey Stevenson said and Mr. Roman prior to the hearing approved the TIA. Is that correct?

Eddie Martinez said yes, he did. We met with the planning department and Mr. Roman at approximately 11 o'clock or so that morning to address Mr. Roman's final concerns and based on that then he provided the conditional approval that was specified at the planning and zoning.

Casey Stevenson said and I think that in one of Ms. Montana's slides she indicates that the New Mexico Department of Transportation kind of let it go, quit looking at it, and she made the comment that that means that they approved the TIA, the Department of Transportation. Do you agree with that assessment from Ms. Montana?

DRAFT

Eddie Martinez said basically the State Highway Department through that process we met with them numerous times over many, many months to both define the scope of the analysis as well as what their concerns were and then as they had specific comments we addressed those and I want to say it was approximately three weeks earlier, maybe two weeks earlier, that we had the final meeting with them where they indicated that they were satisfied with the traffic impact analysis as was presented and therefore they would have no further comments.

Casey Stevenson said excuse me. Were there any other engineers or professional engineers that approved the TIA?

Eddie Martinez said regarding approved it, I'm not sure but I do understand the City did hire an outside consultant to review the second version of the traffic impact analysis and they provided comments to Mr. Roman who subsequently passed those comments that we felt were relevant for us to address and those were some of the final outstanding issues that we worked with Mr. Roman on until the 22nd provided the final conditional of approval.

Casey Stevenson said has Park Ridge fulfilled all the criteria for obtaining a final plat from P&Z?

Eddie Martinez said as we understand it, yes. The planning and zoning, the only reason for the traffic impact analysis was essentially a condition on the zoning and the condition basically stated that a TIA will be submitted with the initial building permit or the first subdivision and that it be reviewed and approved by and that is essentially what we did. We submitted a TIA with the subdivision. The TIA was ultimately approved and so therefore as far as we understand we have met all the conditions.

Casey Stevenson said thank you. No further questions.

Mayor Miyagishima said thank you. You want to cross examine Mr. Martinez, Ms. Booker?

Eva Booker said hello Mr. Martinez.

Eddie Martinez said hello Ms. Booker.

Eva Booker said when he was asking you about the modeling, the reason for the modeling. I don't know if he was asking or your response was related to why it was limited to the 17 acres, something about the modeling. Would that be related to the access that's available....the two accesses that were available in the TIA. Is that what limited the modeling? I don't know if I'm asking this right.

Eddie Martinez said to the extent I understand your question. The modeling was not limited to just the access points. The modeling actually analyzed, if I'm not mistaken, six primary interchanges as well as the overall traffic flow through the surrounding roadways all around the overall area. So, the modeling essentially was from three crosses up to Triviz. It encompassed El Camino intersection obviously. It encompassed the neighborhoods to the east of the proposed project. It encompassed the traffic all the way down along Solano.

Eva Booker said but you mentioned that the modeling was based on the development of the 17 acres so the modeling included the two access points within the development and then the other, I guess it's called intersections of influence or something like that that you just mentioned now in your response. Is that correct?

Eddie Martinez said I think so.

Eva Booker said sorry if I'm not being too articulate with that and do you recall in the TIA where it stated....my notes are over there.....that development beyond the 17 acres would require additional access?

Eddie Martinez said that is correct. We specified, as our analysis showed, that the phase I can be addressed by the access that is being proposed at this stage beyond this phase I being the 17 acres additional access point would need to be developed, yes.

Eva Booker said and to your knowledge where is the additional access being considered at this point.

Eddie Martinez said the primary additional access being considered at this point would be to tie the proposed collector road to the Solano/Madrid intersection.

Eva Booker said and you are aware that that access is on Apodaca Park is City owned property that is funded by land and water conservation funds.

Eddie Martinez said yes we are.

Eva Booker said and if that is not approved, what would be the options for developing beyond the 17 acres.

Eddie Martinez said that would be up to the developer to decide.

Eva Booker said okay. I think that's it. Now he did mention something about the New Mexico Department of Transportation approval. I'm not sure he can answer my question. Would it be possible to call Susana back up to respond to that?

Mayor Miyagishima said sorry, Ms. Booker. You had your opportunity to ask Ms. Montana all the questions that you had.

DRAFT

Eva Booker said no, this is in cross examining based on his response about the New Mexico Department of Transportation approval.

Mayor Miyagishima said I don't believe so. Let me refer to Pete.

Pete Connelly said Mr. Mayor and members of the Council, when the witness testifies, the witness testifies as to all questions and normally the witness is no longer required to testify or rebut what other witnesses say. They had the opportunity to question the witness totally. So, I would say Ms. Montana is not at liberty to testify.

Mayor Miyagishima said thank you, Pete.

Eva Booker said okay. Well let me try to ask you since you are a traffic expert hopefully you'll know the answer. Is the New Mexico Department of Transportation able to approve a Traffic Impact Analysis at this point or I believe that was also related to the infill final plat subdivision as well?

Eddie Martinez said to the extent I understand it, their role is not to approve. Their role is to review as part of one of the reviewing entities and to provide comments and make sure that their comments are addressed.

Eva Booker said okay. Thank you. That's what I was trying to get at so you clarified that for me. Okay. Thank you.

Mayor Miyagishima said okay. Thank you. If nothing further? Okay. I think we're pretty much ready to conclude this. I do have one quick question of Ms. Potter, if I may ask you, Connie because I can't seem to find it in the minutes. You mentioned that you were only given about an hour or something, about an hour for the TIA that was presented before the planning and zoning. Is that correct?

Connie Potter said actually no one ever saw the TIA number three until after the July 22nd meeting. All the record that exists of that approval appears to be an email from Mr. Roman to Susana Montana that was according to her testimony received at somewhere about an hour prior to P&Z's meeting.

Mayor Miyagishima said okay.

Connie Potter said so there was nothing to review.

Mayor Miyagishima said okay. So, did you....and this is what I wanted to find out in the minutes. Did you even ask to review any type of traffic impact analysis?

Connie Potter said at the time I just did my presentation and the ability to ask questions wasn't really elaborated on. We were not told we could ask or call witnesses. We were not told that we could question anybody. We were told we could present and we had X minutes to present and we were timed.

Mayor Miyagishima said okay, but....so you didn't ask anything about...to see that particular TIA?

Connie Potter said I asked for it immediately after.

Mayor Miyagishima said okay. I couldn't find it in the minutes. That's why. I was just trying to clarify. Okay. That's all I had.

Connie Potter said thank you.

Mayor Miyagishima said okay. Well, this pretty much concludes our presentations unless anyone else has any other information to ask any of the witnesses. Attorneys, do you have any closing.....

Casey Stevenson said I think it would be Ms. Potter and Ms. Booker's turn to go first but I would if they have no closing remarks I'd like to make a few based upon what we heard today.

Mayor Miyagishima said Ms. Booker, Ms. Potter? While they're making their way up here just as a point of clarification to members of the Council, of course you're acting in a quasi judicial mode so you theoretically are acting in a judicial capacity. If you think about it, most judges don't ask

1 questions because staff can't answer your questions. So if there was something really striking about
2 anything you may have heard, please just do that but....and I know we're so used to just asking all
3 kinds of questions and so we're not here to reopen. This is merely if you just spotted something that
4 you felt wasn't appropriate in this appeal if I may just have you zero in on that one item. If not, what
5 I'm trying to say is you don't have to ask questions if you don't want to. Okay.
6
7 Connie Potter said first of all, my name's Connie Potter. I've been working around and on this
8 development issue for a couple of years now with three developers, with Mr. Philippou, with Mr.
9 Moscato and now with Mr. Pofohl. Our working relationship has really been difficult and rocky.
10 The issues that we tried to address with the City have been hamstrung by what we have called gag
11 rules. Our slides have been pulled. My ability to testify remote as a disabled person was pulled.
12 And various other actions have limited what is essential to due process, which means the ability for
13 the public to speak and exercise our first amendment rights, to look at the rules that govern our
14 society, our City, and object if they're not being complied with. I feel like my time is never wasted
15 before this body. I feel like there is always someone listening even if we can't agree. However,
16 these processes have not been even handed. These processes have not allowed the community that
17 is most effected to speak its peace. The slides have been pulled. Rules have been given at the last
18 minute. Our slides came in at 10:00 in the morning as asked. We get here and we're told you can't
19 say that. How is that supposed to work in a democratic society? It doesn't work and I think that
20 you'll find that it isn't working. And it won't work in the future. Right now that's about all I have
21 to say. I thank you for your time and your attention. I thank the staff of the City of Las Cruces for
22 going through this process and the community for engaging in it.
23
24 Mayor Miyagishima said thank you, Connie, and let me just make one point and I think you
25 referenced it as maybe someone else did about the possibility district court. I have to agree with
26 what you're saying in that in the past probably 99.9% of the time when you come to Council
27 meetings, you do have the opportunity to ask questions and do various commentary. Unfortunately
28 because the next path, if this is chosen, could end up at district court, we have to follow these rules.
29 It's very strict and this is no different than if you had taken this if this had been a different type of
30 civil matter the rules that are being followed here are going to be the same procedures as followed
31 in other courts of law and so just like any other appeal it is just based on the information that was
32 presented at that earlier meeting, based on the information that was there, based on people who spoke
33 and nothing else. So, I can understand where you're coming from and I can understand your
34 frustration but I just wanted to point that out, also to members of my colleagues who may not have
35 been involved in too many of these type of appeals. So, that was merely my commentary. Really
36 not necessarily a response from you but I wanted to share that with you.
37
38 Connie Potter said thank you, Ken.
39
40 Mayor Miyagishima said okay, thank you. Mr. Stevenson, did you want to comment on to.....
41

Casey Stevenson said I just have some closing comments.

Mayor Miyagishima said oh, I'm sorry. I apologize. I thought Ms. Booker...let me let Ms. Booker go first and then you're closing comments. I apologize, Ms. Booker.

Eva Booker said I would like to thank Connie for saying a lot of things I would have just said. The main reason we will be going to district court is because of the denial of due process of the proceedings that you're saying we're required to follow, which are totally against due process and like she said we've been hit this way every time we show up. Every time we show up we're told we can't say this, we can't say that, you can only do this, you can only do that. We can't even be....and we're never told the actual basis. You were sent battershell. You can read it for yourself. It doesn't say what he's saying it says or put the limits on. As a matter of fact, the whole purpose of battershell is to provide due process and we are being denied due process at this point. I have nothing against Mr. Pofohl. I have nothing against the Las Cruces Country Club. I hope one day to work with them to develop that property in a way that will be suitable for the neighborhood as well as the City. That's not our issue but our substantive issues are constantly being like she said thwarted as far as our ability to present them. When I was here on August 19th last year, I asked you guys please don't be hoodwinked and bamboozled. Well so far you've allowed yourself to be done exactly that. I plead with you once more. Don't let yourself continue to be hoodwinked and bamboozled. This is 110 acre property with one entrance in and out and they're trying to do wall to wall infill. They're trying to take two pieces of Apodaca Park, not just the corner that the parking lot is on now but another corner as well. They're trying to run roads all through. There's all kinds of things wrong. The red flags are all over. This red should be a sea of red for all the red flags, you know. I don't even know what else to say because it's probably not allowed but I just beg this Council to look at the circumstances of we're dealing with here. Right now we have a final plat and yes it does cover 110 acres and there's a lot behind that and we have a TIA for 17 acres and we have a re-zoning for 30. Piecemeal. No PUD. No conversion application applied any...you know. Like I said, I could go on for days and years but I just ask this Council to really seriously consider this. A quick decision now versus, you know, some thought and making this plan done the right way for the benefit of the City and the community. I'm not saying that the whole thing can never been done I'm saying it needs cooperation from both sides and not a one sided effort here. Thank you.

Mayor Miyagishima said thank you, Ms. Booker. Mr. Stevenson?

Casey Stevenson said thank you, Mayor and Council members. Let me thank you at the onset for allowing us to speak to you and being able to present our side of the case and I agree that it is limited but that is the procedures and I agree with the Mayor. I think as point of note, Ms. Booker, Ms. Potter, Mr. Boyd, the appellants in this case invoked the battershell procedures. There was another procedure they could have taken. They invoked those so that's what we have to follow. It wasn't our choice if the appellees didn't do that so we're where we're at. With regard to the traffic impact analysis, you heard a lot of testimony about that and the traffic impact analysis had to be performed

for zoning. You heard that. And then it had to be submitted for the final plat but it was performed and it was a condition of zoning and you heard Ms. Montana testify to you that zoning was completed and approved by this Council in August of 2013. The traffic impact analysis was then submitted and Ms. Potter complains that she didn't get to review the traffic impact analysis but at the same time she tells us when she testified that all the data was continued to be carried over and she didn't change that. So, even in the third version the data was continued to be carried over so there was no other information that she could have received or could have examined by receiving the third traffic impact analysis that was approved by the City traffic engineer, that was approved by New Mexico Department of Transportation, that was approved based on Mr. Martinez' testimony by a third party engineer hired by the City, that was approved by Mr. Martinez himself. And we're getting up there in professional engineers here that have all approved this traffic impact analysis but again, was not a requirement of the final plat. It had to be submitted with the final plat but it had already been done with respect of the zoning and it was submitted and it was approved and it was for the 110 acres. That's the only testimony that was before the P&Z at the time. Mr. Martinez re-testified today that the TIA was for the 110 acres. Ms. Potter and Ms. Booker and Mr. Boyd, they all had an opportunity to bring in their engineer. Ms. Potter testified that they had hired an engineer and she chose not to bring that engineer to the P&Z hearing. I believe her testimony was because he was just a consultant but she had that opportunity. She had plenty of opportunity to say that the TIA was wrong. It wasn't. It was approved. It was submitted and ultimately the P&Z voted unanimously in favor of the final plat. I think it's important to notice as you look and consider this particular case that Mr.....look at Mr. Martinez's testimony. Look at it from the transcript of the proceedings. Think about what he said today. This isn't even a final TIA. Ms. Potter and Ms. Booker would have you believe that but Mr. Martinez was very clear that although it covers the 110 acres, it covers the 10 year period, it is going to have to be reexamined periodically as you go through all phases of the project. So these concerns, purported concerns that Ms. Booker and Ms. Potter bring up may not come to fruition but arguably if they do they're going to have to be dealt with in the phases as you move along. They will have to be updated to deal with secondary access so there isn't just one entryway into this property. There will be others. There must be. 110 acres are being developed ultimately. At the end of the day, the thing, the item that was on the agenda at the P&Z hearing was plat and subdivision, a final plat and subdivision. You heard from Ms. Montana. You heard from Mr. Martinez and you heard from Mr. Pofohl that all conditions with regard to obtaining that final plat and subdivision were met and essentially when you look at the ordinances for the final plat and subdivision, if you meet the requirements that are imposed upon an applicant by the City it is then a matter of right. Subdivision and platting is a matter of right so that parcels can be sold. If you look at.....and I'm like Ms. Booker. I only had the copy of the transcript minutes. I did not have the record but if you look on page 64 of the transcript, Commissioner Clifton goes into great detail about that, that the only thing that we were here for at the P&Z hearing was platting and subdivision and the applicant had a right to that as long as he met or as long as the entity met the requirements imposed by the City. Those requirements were met. That's the only testimony that you heard today. That was the only testimony at the P&Z hearing and therefore we ask that you affirm the decision of the P&Z commission and approve the final plat.

Mayor Miyagishima said okay. Thank you, Mr. Stevenson. And so that we have.....I'm going to ask that if you feel first off on this particular issue a no vote would basically be confirming the planning and zoning's approval and we're moving forward. A yes vote would reverse the planning and zoning approval thereby stopping it. So, if you feel that any of the three items that was brought by the appellant, one was that the planning and zoning failed to comply with the City of Las Cruces development code, two that the planning and zoning decision was based on misrepresentations and not competent evidence or three, planning and zoning gave undeserved weight to parties with financial interest in the approval of the final plat. With that, we're going to....Mayor Pro-Tem?

Mayor Pro-Tem Smith said Mr. Mayor, I thought you indicated that we might be able to ask some questions.

Mayor Miyagishima said it would be very limited. Who would you ask questions of?

Mayor Pro-Tem Smith said I guess our legal staff or.....you know in some of the accusations that have been made and how they reference to the three questions that you just mentioned, I would like a little clarification. If they don't work, then they don't work but basically....

DRAFT

Mayor Miyagishima said why don't you ask the question to Pete?

Mayor Pro-Tem Smith said sure. One I suspect we can't address at this time but it was mentioned that the Secretary of Interior is required to okay the changes to Apodaca Park and my understanding is that is something that is in the works but would be decided upon later. Is that in any way something that hampers our or the planning and zoning commission's ability to make a decision at this time or when they made their decision.

Pete Connelly said no sir.

Mayor Pro-Tem Smith said thank you. My second question was regarding the testimony that was given previously and it was intimated that the town home, some of the folks were going to be getting connections to the sewers and so that would be a material gain for some of them. Does that impugn their testimony or is that in any way something that we have to consider?

Pete Connelly said Mr. Mayor and Councillor Smith, no.

Mayor Pro-Tem Smith said thank you. My third question is Mr. Martinez mentioned the phased modeling regarding how the TIA would be addressed over time. Is that in any way a concern for us if it is a, at least the way he was representing it, it sounded like it was a fairly standard procedure. Is that something that we should be concerned about?

Pete Connelly said Mr. Mayor, Councillor Smith, no.

Mayor Pro-Tem Smith said thank you, Mr. Connelly. Thank you, Mr. Mayor.

Mayor Miyagishima said thank you, Mayor Pro-Tem. Thank you, Pete. I believe Councillor Sorg has a couple questions.

Councillor Sorg said Mr. Mayor, thank you. I just have a disclosure to make. I did not realize that Mr. Martinez was going to be testifying here today when you asked at the beginning of the meeting if there was any conflict of interest. I just want to say that I have been in the employee of Mr. Martinez but not since 2009 nor have I ever gotten any financial gain from him since then and I don't expect to get any more. So, I just wanted to say that.

Mayor Miyagishima said okay. Well, thank you. I don't believe that was any conflict so...okay. Well with that....

Councillor Silva said Mr. Mayor?

DRAFT

Mayor Miyagishima said yes, Councillor Silva?

Councillor Silva said excuse me. I have a couple of questions for staff.

Mayor Miyagishima said well, specifically for Pete.

Councillor Silva said or for Pete? Sure.

Mayor Miyagishima said yeah, to see if they can move forward with your questions.

Councillor Silva said okay. Pete, I want to go back to the original question about how the development code is read when it says the traffic volume has to be based for the entire project. I don't know if I'm reading this correctly because it talks about again we circle back to the 110 acres, a final plat for the final 110 acres and again we're only receiving plats or we're only receiving a TIA for this particular section. So, how does that translate to a TIA for the entire 110?

Pete Connelly said Mr. Mayor, Councillor Silva, it would translate on the basis of the phasing. If it is a....just for an example, if you have let's say 30 acres of C-3C and R-4C that is zoned, let us say you re-zoned the 70 acres into heavy duty industrial, that would be a total difference that you would need access for all these places. Here you're looking at a subdivision which stands by itself and the subdivision is part of 110 acres but you're only looking at phases I and II. That's how the traffic impact analysis, I think, as Mr. Martinez is relating that it relates to the subdivision and those phases.

Councillor Silva said so, then....and I'm going to refer to page 444. So, when we look at the entire phased program, you know the approach from phase I to phase IV, once we reach phase IV, we're talking about the entire 110 acres is what we're looking at.

Pete Connelly said if it stayed this way, yes sir. You would.

Councillor Silva said okay. Alright. Thank you, Mr. Mayor.

Mayor Miyagishima said okay. Thank you very much and with that as I mentioned to you no vote would confirm or affirm the P&Z's approval thus moving forward. A yes vote reverses the planning and zoning's approval thus stopping the project. So, Esther?

Esther Martinez-Carrillo said this is for approval of resolution 15-055. Councillor Silva?

Councillor Silva said No.

DRAFT

Esther Martinez-Carrillo said Councillor Pedroza?

Councillor Pedroza said Um, the....a no vote would affirm the P&Z? Okay, I believe that based on the inequality of the resources possibly that we could say of the parties and the.....

Mayor Miyagishima said excuse me, Councillor. I just need your vote yes or no.

Councillor Pedroza said I've listened to Oscar Vasquez Butler. He has a couple of paragraphs and then he says not withstanding I vote such and such.

Mayor Miyagishima said yeah. He's not supposed to do that.

Councillor Pedroza said okay. My vote is yes.

Esther Martinez-Carrillo said Councillor Small?

Councillor Small said no.

Esther Martinez-Carrillo said Councillor Sorg?

Councillor Sorg said no.

Esther Martinez-Carrillo said Councillor Levatino?

Councillor Levatino said I have some serious concerns about this but I am going to trust and Mayor Pro-Tem asked most of the questions that I had. I'm going to trust Mr. Connelly's responses on this and vote no.

Esther Martinez-Carrillo said Councillor Smith?

Mayor Pro-Tem Smith said no.

Esther Martinez-Carrillo said Mayor?

Mayor Miyagishima said no.

Esther Martinez-Carrillo said motion fails.

Mayor Miyagishima said okay. So that takes care of that. Next we'll go to board appointments.

DRAFT

Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 15-055 and it Failed. 1-6 Councillor Pedroza voted Aye. Councillor Silva, Councillor Small, Councillor Sorg, Councillor Levatino, Councillor Smith and Mayor Miyagishima voted Nay.

IX. BOARD APPOINTMENTS

There were no board appointments.

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

(13) Council Bill No. 15-009; Ordinance No. 2728: An Ordinance Repealing Las Cruces Municipal Code 1997, Chapter 7, Animals, Article I Through Article V, in Its Entirety and Enacting New Las Cruces Municipal Code 1997, Chapter 7, Animals, Article I Through Article IV and Repealing Las Cruces Municipal Code 1997, Section 19-127.

Mayor Miyagishima and Council agreed to bring this item back.

(14) Council Bill No. 15-010; Ordinance No. 2729: An Ordinance Amending LCMC 1997, Chapter 24, Procurement Code, Sections 24-3, 24-4, 24-32, 24-62, 24-64, 24-66, 24-91, 24-94, 24-99 and 24-228. ***(PACKET IS NOT AVAILABLE.)***

Removed from the agenda.

(15) Council Bill No. 15-011; Ordinance No. 2730: An Ordinance to Authorize the Sale, at below Appraised Value, of City Owned Property (Lot 5 & Lot 9) at the West Mesa Industrial Park for an Economic Development Project. ***(PACKET IS NOT AVAILABLE.)***

Removed from the agenda.

XI. CITY COUNCIL MEMBER BOARD REPORTS

DRAFT

Councillor Small said I'd like to postpone my presentation regarding the Outdoor Industry Trade Show.

XII. GENERAL DISCUSSION

b.) City Council

Councillor Silva said there have been a lot of discussions regarding the choking of lanes on El Paseo Road; what is the present status of El Paseo?

Robert Garza said there is no proposed changes to the layout of El Paseo Road.

Councillor Silva said regarding the South Central Regional Transportation tax, we have received emails and it was in the paper that the City is supporting it. As I understand it, we have not taken a formal position on it even though we do support it financially. I think it is very different to support an entity and supporting this tax so I think it would be appropriate for the City to come out and make some sort of statement stating that we are neutral on this GRT vote.

I want to compliment the City Manager on taking the lead with the minimum wage issue which I feel is appropriate, and I know you've already met with Café leaders and you will be meeting with businesses leaders as well. I think it is time to move forward with this discussion and I look forward to what you and staff will be presenting and what the result will be from all your conversations.

Councillor Pedroza said I think we need to look at the word "reconciliation" and at the minimum wage issue and we need to look at the legality and the morality. This reconciliation has not been well thought out and there are probably some members of council that are still confused about whether or not this "reconciliation" is needed or even possible. The minutes of August 18th show that Councillor Smith asked about what happens to the previous ordinance that passed and Mr. Connelly stated that then we would have two ordinances and there wouldn't be a conflict with them until 2016 and prior to that time, he would recommend that Council reconcile any conflicts. I don't believe that was as thought out as it should have been because there is State Law and the Uniform Rules of Construction for state statutes to look at. On September 16th, Mr. Connelly wrote me an email that stated that the two minimum wage ordinances appear to be in conflict with one another and if these conflicts cannot be reconciled then the later enacted ordinance prevails. I have received several emails from people who are expressing their confusion with this issue as well. If that ordinance did not contain the necessary wording to repeal the prior ordinance, it was not expressed to the Council or to the proponents that it was flawed and I would like an explanation for that.

DRAFT

Mayor Miyagishima said Robert sent out an email stating that the first ordinance is no longer in play so the second one is the latter one and the one that is on the books. We are going to have a work session later on this month but that is to discuss if there are going to be any possible amendments.

Councillor Pedroza said another item is that I believe that the Mayor Pro-tem's participation in that discussion and the vote is not legal. I don't know if he took part in the original drafting of the June ordinance but I understand that Councillor Levatino did and I do not know if he violated a conflict of interest rule but there is an appearance of impropriety because he continued to participate in an ordinance that directly impacted his wife's work. New Mexico is a community property state so the income of each, the husband and wife, is the property of both. Therefore, he receives income from the Restaurant Association and votes on passage or non-passage of minimum wage so that might fit under legality or morality. I would ask that the Mayor Pro-tem recuse himself for any further discussions.

There is a question regarding the motivation of the majority that voted for this initiative on September 8th and as I recall, these same individuals voted for the June ordinance which was for less money. (Councillor Pedroza read a letter to the editor which she wrote but did not send in.) I would think that if there was an amendment brought forward that it would have to be brought forward by the majority of the council or possibly by staff but I don't think that we should rush to a work session.

Councillor Small said I was very proud to bring the Manufacturing Day tour to the Council and there was a great turnout at today's meeting of business owners and leaders in the manufacturing industry.

Regarding the South Central Regional Transit District, I was in a meeting last week and someone said the ability to expand transit in our community and our region would expand that person's workers pool. There is a resounding vote of support for the Transit District and it's mission.

I would like to thank Fire Chief Rusty Smith for attending my neighborhood meeting and giving a very in depth discussion regarding fire safety and fire prevention.

Regarding the October 27th work session, I think there is some clarity that there will be a recommendation to repeal the June ordinance and any changes would be very un-beneficial.

Councillor Sorg said regarding the gross receipts tax for transportation, I don't think we need to comment on it at all and we should just stay mute from here on out.

DRAFT

I would like to thank Councillor Pedroza for pointing out several legal aspects of the minimum wage ordinance and I'm glad these things are brought out in the open. Regarding the conflict of interest, I have all the respect in the world for Mayor Pro-tem Smith and I understand he is very fair in all his decisions; however, in the past, whenever we had anything come before us regarding El Paso Electric, Councillor Connor always recused herself from any of those discussions because her husband worked for El Paso Electric. So I think this is a very similar situation and I regret not speaking up earlier but I do think there is a conflict of interest in this case.

Mayor Miyagishima said just keep in mind that the Mayor Pro-tem's wife represents only one portion of that industry and there were other people from other sections of that industry that spoke.

Councillor Levatino said I think it is important to address the appearance of impropriety on several levels, including the involvement of some of the councillors with Café and collecting signatures, signing petitions, and going to our Legal Department and asking them to do work for Café which was totally inappropriate. So I think if we are going to talk about improprieties then we have to be very careful about where we go with that and consider all of the improprieties that may have occurred. The motivation of the four of us is constantly being subjected to question and I think it is also appropriate to question the motivation of the three who were for it but then voted against it.

This month is Breast Cancer Awareness Month and the community as a whole has done an amazing job in bringing this to the public's attention.

I just learned of a national organization called "Final Salute" that works to help homeless female veterans. I am ashamed to admit that I never thought about homeless female veterans and what they have to go through so I am going to be doing more research on this organization and may be bringing something forward to Council to address this issue.

Councillor Smith said I would like to point out that the Supreme Court made a decision regarding marriage equality and I think that what they did was very appropriate to the time, appropriate to the country, and appropriate to marriage equality.

Next week at our TIDD meeting, we will be talking about the Plaza and I'm look forward to the update. I think this is going to be an important addition to our city.

The work session that will follow the TIDD meeting next week, we will be talking about the housing opportunities for the lots on Missouri and I think that will be an opportunity to demonstrate that we are looking forward in this community. The other item at the work session is affordable housing and I believe the last number I heard was about 6,000 units that we are behind the curve so we need to move forward in that way.

I appreciate the affection and the respect that has been expressed; my feelings toward my fellow councillors and my colleagues here has not changed; however, the issue that they refer to is something that we will continue to address as this and other topics come forward. I will say that I disagree with some of the conclusions that have been made.

---

a.) Mayor

Mayor Miyagishima said earlier, during the Mental Illness Week Proclamation, a member of the public stated that the mental ward at MMC had been closed down but it was told to me that as of September 24th the MMC Board of Directors was advised of a new contract that went into effect on October 1st.

---

c.) City Manager

Robert Garza, City Manager said there are some televised forums here at City Hall for the General Election; the League of Women Voters will hold forums on October 7th from 6:00 to 8:00 p.m. for the courts and county offices; October 17th from 6:00 to 8:00 p.m. for the NM House of

Representatives; and on October 23rd a forum by the NAACP.

On Saturday, October 25th, Memorial Medical Center will be giving free flu shots from 8:00 to 3:00 p.m.

Monday is a holiday so there will be no City Council meeting on Monday but on Tuesday we will have a TIDD meeting and a work session.

Councillor Sorg Moved to Adjourn and Councillor Smith Seconded the motion.

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

Council said "Aye."

Meeting Adjourned at 5:52 p.m.

DRAFT