City Council
of the
City of Las Cruces

Regular Meeting

July 27, 2009
5:00 P.M.
Council Chambers, City Hall

MEMBERS PRESENT:	**STAFF:**
Mayor Ken Miyagishima	Terrence Moore, City Manager
Councillor Miguel Silva, District 1	Fermin Rubio, City Attorney
Councillor Dolores Connor, District 2	Esther Martinez, City Clerk
Councillor Dolores C. Archuleta, District 3	
Councillor Nathan Small, District 4	
Councillor Gil Jones, District 5	
Councillor Sharon Thomas, District 6	

I. OPENING CEREMONIES

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

Presentation of Certificates of Appreciation/Proclamations.

Mayor Miyagishima and Laura Loos presented the Pet of the Week.

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?

None given.

III. PUBLIC PARTICIPATION

None given.

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 Item 2 needs to be removed from the consent agenda for discussion.

Councillor Connor Moved to approve the Agenda as Amended and Councillor Archuleta Seconded the motion.

Mayor Miyagishima read a closed meeting statement and said the Las Cruces City Council met in a closed session at 4:05 p.m. on July 27, 2009. The following were in attendance: Mayor Miyagishima, Councillor Silva, Councillor Connor, Councillor Archuleta, Councillor Small, Councillor Jones, Councillor Thomas, Assistant City Manager Robert Garza, City Attorney Fermin Rubio, Deputy City Attorney Harry (Pete) Connelly, Public Works Director Mike Johnson, Utilities Director Jorge Garcia and Community Development Director David Weir. The meeting adjourned at 5:00 p.m. and only the items listed on the posted notice were discussed which was to discuss threatened or pending litigation in City of Las Cruces, a New Mexico Municipal Corporation, plaintiff, vs. Philippos T. Philippou; Philippou, LLC; Katerina Inc.; Logos Development, Inc.; Greco Enterprises, Inc.; Tex-Mex Land Inc.; John Does 1-5; and John Doe Corporations 1-5, Defendants, Third Judicial District Cause No. D-307-CV-200901738.

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

V. CITY COUNCIL MINUTES

*(1) Regular Meeting of June 22, 2009

VI. RESOLUTIONS AND/OR ORDINANCES FOR CONSENT AGENDA

*(2) Council Bill No. 09-066; Ordinance No. 2529: An Ordinance Approving a Zone Change From R-3 (Multi-Dwelling Medium Density) to R-4 (Multi-Dwelling High Density & Limited Retail and Office) for 2.73 +/- Acres Located at 1500 E. Madrid Avenue. The Zone Change Request Will Bring the Property Into Compliance With the 2001 Zoning Code, as Amended. The Subject Property Exceeds the Maximum Allowable Density of Twenty (20) Dwelling Units Per Acre. Submitted by Yes Housing, Inc. For Alta Tierra Apartments Limited Partnership (Z2787).

Councillor Connor Moved to Adopt Council Bill No. 09-066; Ordinance No. 2529 and Councillor Archuleta Seconded the motion.

Councillor Archuleta said I need to make a correction on page 26; the official name of the cemetery is the Memorial Community Cemetery and it is located at 1400 Hernandez Road. It is run by representatives from the black churches and it is surrounded by a rock wall. They are looking into the possibility of getting it designated as a historical site.

Councillor Archuleta Moved to Amend Council Bill No. 09-066; Ordinance No. 2529 to amend the exhibit and CAES form to change the name of the cemetery to the Memorial Community Cemetery and it is located at 1400 Hernandez Road and Councillor Connor Seconded the motion.

Mayor Miyagishima called for the roll on the Motion to Amend Council Bill No. 09-066; Ordinance No. 2529 and it was Unanimously APPROVED. 7-0

Mayor Miyagishima called for the roll on the Motion to Adopt Council Bill No. 09-066; Ordinance No. 2529 as Amended and it was Unanimously APPROVED. 7-0

VII. 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 may follow the appellate procedures mandated by the State ex rel. *Battershell v. Albuquerque*. These procedures are intended to protect the due process rights of all parties to the appeal. However, the *Battershell* procedure will only be followed when any party in the appeal wishes to use this procedure.

Persons wishing to give testimony on any item shall wait to be recognized, then go to the lectern, give their name and address, be sworn in (if using the *Battershell* procedure), and limit their comments to three minutes. If there is a properly identified neighborhood spokesperson, attorney or real estate agent for one of the parties, the time limit shall be ten (10) minutes. You may speak more than once provided you avoid being repetitious. Proponents shall speak first, followed by opponents.

***BATTERSHELL* PROCEDURES FOR APPEALS PRESENTED TO THE CITY COUNCIL**

A. PRE-APPEAL HEARING REQUIREMENTS:

a. Any party to be represented by an attorney, at the appeal hearing, shall present to the City Attorney's Office, at least 5 business days before the hearing, a memorandum with citations of authority substantiating the party's position. This memorandum is different from the appeal summary submitted 15 days after the public hearing by the Board of Adjustment or the Planning and Zoning Commission.

b. All parties in the appeal that desire to have a specific City staff person present at the appeal, need to present to the City Planning Department, at least 5 business days before the appeal hearing, a letter requesting that the specific staff person be present at the appeal hearing. This allows ample opportunity to notify the staff person to assure attendance.

B. AT THE BEGINNING OF THE *BATTERSHELL* APPEAL HEARING, THE COUNCIL WILL:

a. Identify all parties to the appeal, including all witnesses that wish to give testimony.

b. All persons who give testimony, including City staff, will be sworn-in by the clerk or person authorized to administer oaths.

c. All persons giving testimony will be subject to cross-examination by other parties within the appeal, including City staff.

d. All items presented in the appeal, whether in *Battershell* or not, will be limited to the relevant matter being appealed and the City Council may place a reasonable limit on the number of persons to be heard and their amount of testimony.

PROCEDURES FOR PRESENTATION OF ALL APPEALS

The following procedures will be used whether an appellant chooses to utilize the *Battershell* procedure or not.

A. ORDER OF ALL PRESENTATIONS:

a. City Staff Presentation
b. Appellant Presentation
c. Other parties' presentation

B. APPLICABLE STEPS FOR ALL PRESENTATIONS:

a. Opening statements about the case by the party.
b. City Council may question the presenter/party.
c. Cross-examination by other parties, which must be done in the form of questions to be answered by the presenter(s).
d. City Council may question the presenter/witness.
e. Continue to other witnesses for the party until complete.
f. Once all parties are through with giving testimony, closing statements can be made by each party, in same order as above (A).

C. CITY COUNCIL ACTION:

a. A City Council member makes a motion, followed by a second.
b. There may be discussion of the motion.
c. The Council is prepared to vote. In the vote, the City Council may reverse, modify, affirm, or change any decision or determination of the Official, Board, or Commission from which the case was appealed.
d. The City Clerk takes roll call of the City Council; the decision is announced.

VIII. APPEAL(S)

(3) Resolution No. 10-042: A Resolution to Appeal the Denial Decision of the Planning and Zoning Commission on a Request for an Eighteen (18) Foot Variance From the Maximum Allowed Height of Twelve (12) Feet for a Freestanding Sign for Property Located at 4820 Mesa Grande Avenue. Submitted by Property Owner O'Reilly Automotive, Inc. (A1694).

Councillor Jones Moved to Adopt Resolution No. 10-042 and Councillor Connor Seconded the motion.

Cheryl Rodriguez, Development Services Administrator gave a presentation and said this is an appeal of a variance request for a freestanding sign. The applicant is asking for a variance to allow him to install a 30 foot illuminated freestanding sign because of the location of his business and the limited visibility to it due to the overpass on Highway 70. Staff recommended denial of this request to the Planning and Zoning Commission because there was no valid physical hardship existing for the subject property and the Commission voted 1 to 4 for denial of this variance request.

Councillor Silva asked what is the height of the McDonald's sign in that area?

Cheryl Rodriguez said I believe it is 30 feet.

Councillor Silva said there are many other signs in that area, do you know what the height is of those signs?

Cheryl Rodriguez said I don't know those heights off the top of my head.

Diego Santana, Applicant - O'Reilly Automotive gave a presentation and said we would like a 30 foot sign so it could be seen from the overpass but at this point, we would be willing to settle for a standard 26 foot sign. The sign wouldn't affect the residential homes in that area because of the location of it and our shop closes at 9:00 p.m. The lighting is monitored electronically through our corporate office to limit our light usage expenses.

Councillor Connor said this sign is not digital, correct?

Diego Santana said that is correct.

Councillor Thomas asked how far would your sign be from the McDonald's sign?

Diego Santana said it would be 96 yards from it.

Cynthia Squire, Member of the Public gave a presentation and said I am speaking against this variance request. My property is adjacent to Mesa Grande and all the surrounding areas of this business are residential areas. His business is clearly seen from Highway 70. I have pictures that were taken from my backyard at 10:00 p.m. and it shows his lights are still on. It is difficult to sit and enjoy my backyard at night because his lights are very bright and it adds to the light pollution in this area. I am requesting that you deny this variance request.

Mayor Miyagishima asked were you aware that this area was zoned commercial when you bought your property?

Cynthia Squire said yes, it was zoned C2 which has a twelve foot limit on signage.

Mayor Miyagishima said I don't think there is an ordinance that requires all their lights be turned off.

Cynthia Squire said I could understand them having their internal lights on and lower their light intensity but currently, they keep their lights fully on all night and day which is very annoying.

Steve Northrop, Member of the Public said I live adjacent to Cynthia and the lighting in the back lot has been a big problem. Our bedroom window faces this property and we have to sleep with our blinds and curtains closed because of the lights.

Bob Bower, Member of the Public said I live in this area and we had issues when McDonald's moved in but we were able to work it out with them and they dimmed their lights for us. We don't need any more light pollution and allowing a 30 foot sign would add to the lighting problems.

Rose Camacho, Member of the Public said we live further down from O'Reilly's and we still get a lot of light pollution from their business. It will also obstruct our view of the mountains if they are allowed to put up a 30 foot sign. I would ask that you vote against this variance request.

Mayor Miyagishima said regarding their current lights, do they meet our current standards?

Cheryl Rodriguez said I would have to say that they are in compliance because all of the outdoor lighting is reviewed during the planning process before they are given permits.

Mayor Miyagishima asked are they allowed to keep their lights on 24 hours a day?

Cheryl Rodriguez said I'm not aware of any ordinance that limits the amount of time you can have your lights on.

Councillor Connor asked in that area, what is the maximum height for a building?

Cheryl Rodriguez said I believe it is 45 feet.

Diego Santana said I want to mention that it is very costly to keep flood lights on and the corporate office doesn't allow us to keep them on all the time. The corporate office controls our lighting system; however, we were having some satellite issues which is why the lights were on so late but we are addressing that problem to get it corrected.

Mayor Miyagishima asked is the light for the sign going to stay on throughout the night?

Diego Santana said no, it will be turned off.

Councillor Archuleta said I'm not going to support this because I haven't heard anything different from what was presented to the P & Z and I know the residents value their view of the mountains.

Councillor Thomas asked can you put a sign along the frontage road that could give directions to your business?

Diego Santana said I'm not sure if I could do that because I believe that property belongs to either the City or McDonalds.

Cheryl Rodriguez said any signs that aren't put on their property are off-site signs which are prohibited but the applicant could use New Mexico State highway signs on Highway 70 to give directions to their location.

Councillor Connor said the sign isn't digital and it is difficult to see it until you are right up on the exit off of the interstate. This won't be the last time we are asked to address this type of issue because as that area is developed, there will be more signing issues. I would ask that you be a good neighbor and turn your lights off at night.

Councillor Jones said it does make it hard to support this issue when there apparently has been a lack of cooperation. We do need more businesses in the East Mesa area and I would like to see a compromise between the neighbors and the business owner.

Mayor Miyagishima said I was in that area and I have to admit that it is difficult to find this business. I can understand why you would want a 30 foot sign but I think a 20 foot sign would probably work as well.

Bob Bower said right now, this is more of a neighbor issue and we wouldn't be willing to allow any type of signs until the lights are turned off.

Councillor Silva said I would have a hard time supporting this item as it is right now. I agree with leaving their signage the way it is now and I don't think the sign advertisement would make or break them.

Councillor Small said I think it would be in the best interest of everyone to allow the owner and the neighbors the opportunity to meet and discuss their issues.

Councillor Jones said there is a neighborhood problem here and I would recommend that we either table or postpone this issue to allow them some time to get together and talk about these issues.

Diego Santana said we have only been in business for about a week and a half and we don't believe we should be labeled as bad neighbors. We are a family operated company and we do have community pride. I would have no problem with having the opportunity to meet with the neighbors to discuss these issues.

Councillor Jones Moved to Table Resolution No. 10-042 until August 24, 2009 and Councillor Connor Seconded the motion.

Mayor Miyagishima called for the roll on the Motion to Table Resolution No. 10-042 until August 24, 2009 and it was Unanimously APPROVED. 7-0

RESOLUTIONS AND/OR ORDINANCES FOR DISCUSSION

(4) **Resolution No. 10-043**: A Resolution Authorizing an Addendum to the Memorandum of Understanding Between the City of Las Cruces and Las Cruces Downtown for Planning Services Related to Downtown Revitalization as Authorized by Resolution 08-298.

Councillor Archuleta Moved to Adopt Resolution No. 10-043 and Councillor Thomas Seconded the motion.

Christine Logan, Economic Development Administrator gave a presentation and said this is for an addendum to an existing Memorandum of Understanding between the City and the Downtown Las Cruces Partnership for planning services. This addendum would advance the funding that was authorized by the three party agreement which was passed last week by Council. There needs to be an amendment to this resolution to substitute the exhibit to clarify that this is funding and not compensation.

Councillor Connor Moved to Amend Resolution No. 10-043 to include the substitute exhibit and Councillor Archuleta Seconded the motion.

Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 10-043 to include the substitute exhibit and it was APPROVED. 6-0 Councillor Jones was Absent.

Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-043 as Amended and it was APPROVED. 6-0 Councillor Jones was Absent.

X. BOARD APPOINTMENTS

None.

XI. REVIEW OF PROPOSED ORDINANCE(S)

(5) Council Bill No. 10-002; Ordinance No. 2531: An Ordinance Approving a Zone Change From M1/M2 (Industrial Standard) to R-4C (Multi-Dwelling High Density & Limited Retail and Office-Conditional) for 3.42 +/- Acres Located at 1089 W. Amador Avenue. The Zone Change Will Facilitate the Placement of a Transitional Living Facility for at Risk Youth. Submitted by Southwest Engineering, Inc. For Resources for Children & Youth, Inc (Z2790).

Mayor Miyagishima and Council agreed to bring this item back.

XII. STATUS/UPDATES ON CURRENT PROJECT LIST

1. **Strategic Plan** - *(Meetings held with Elected Officials and executive staff. Draft report should be submitted by 6/22/09)*
2. **Sustainability Officer** - *(Recruitment is in process. Preliminary phases of selection process have been undertaken, interviews to be scheduled shortly.)*
3. **Las Cruces Center** - *(Status report provided monthly on second, Regular City Council Meeting)*
4. **Downtown** - *(The project design is ongoing with Bohann-Huston, Inc. Work session with City Council regarding Farmer's Market Representatives - Downtown Design Process was held on July 13, 2009.)*
5. **Impact Fees** - *(A change order to revise the draft impact fee capital improvements plan (IFCIP) document, to add additional consultant trips, and to add a time and expense budget to cover the cost for implementation assistance was approved by City Council on June 15, 2009. We anticipate that the new draft of the IFCIP will be submitted to the City the first week of August 2009.)*
6. **Aquatics Center** - *(Status report provided monthly on first, Regular City Council Meeting)*
7. **Vision 2040** - *(The consultants have completed preliminary drafts of the CLC Comprehensive Plan and DAC Comprehensive Plan. Both preliminary drafts are*

being reviewed by city and county staff. The consultants are working to complete the preliminary draft of the Vision 2040 Regional Plan.)

8. **Grants/ARRA Status** - *(Matrix.)*

Councillor Thomas said regarding the Strategic Plan; it states that the draft report should be submitted by 6/22/09 but we have had meetings this past week and I would ask that you update this list.

I do have a question about the Sustainability Officer; where are we with the interviews, are they completed yet?

David Weir, Community Development Director said we are in the final stages of the selection process.

Councillor Thomas said regarding the Vision 2040; have we seen any sign of the regional plan yet?

David Weir said yes, staff has received a preliminary draft of the regional plan and there was a meeting with the consultants last week to narrow down the time line to bring this forward. Staff is reviewing the regional plan this week to get it back to them and the consultants have committed to getting a draft ready for public review by the end of August.

Councillor Thomas said at the New Mexico Municipal League meeting on Saturday, they mentioned that there is some one time funding available from the Governor and there may be some possible funding available for library broadband services.

Robert Garza, Assistant City Manager said we are working on the application process and looking into what projects we have available that would qualify for these funds.

XIII. GENERAL DISCUSSION

1. Mayor

Mayor Miyagishima passed.

2. City Council

Councillor Archuleta said I would like to remind my constituents that I am having a meeting on Tuesday, August 18th from 6:00 to 8:00 p.m. in the Sierra Middle School cafeteria.

Councillor Thomas said the City of Taos is planning on working with the Municipal League to bring

forward a resolution in support of bringing the rail runner to Taos and I would suggest that we also bring a resolution forward.

Councillor Connor said we have already discussed that with staff.

Councillor Thomas asked what do we need to do to get the resolution ready?

Councillor Connor said I think we already have the resolution ready.

Robert Garza, Assistant City Manager said we did one for the Transit District.

Councillor Connor asked can't that one be prepared in our format for the Municipal League?

Mayor Miyagishima said we already have a consensus to move forward with a resolution for the rail runner.

Councillor Thomas said there is another issue that is going to be brought up concerning the transportation plan discussions in Washington, D.C. Our MPO staff is concerned that the discussions seem to focus on the preference with rural areas and urban areas with a population over one million which that could hinder our changes of receiving this funding.

We did talk about the energy investment districts at our joint City and County meeting and I would ask that we move forward with some kind of supporting resolution.

Councillor Jones said there is a greater demand for transportation between here and El Paso rather than between here and Albuquerque. I think we need to make the NMDOT aware of our actions because I don't want to risk jeopardizing the commitment that has been made to fund the bus to and from Las Cruces to El Paso.

Robert Garza said we will include something in reference that we are still supporting the bus system but would like to be part of the rail runner system as well.

Councillor Jones said I would like to thank Mr. Johnson for all the work done on Del Rey. I met with some of my constituents regarding a street named Leaping Lizard that is off of Peachtree and there is some electrical infrastructure on the corner of a lot which the boxes are getting corroded; they want to know who is responsible for that infrastructure? I would appreciate it if you could look into that and let me know that information.

Councillor Small said we have a serious mosquito problem in some parts of District 4 which staff is currently working on.

Our community must address our issues with parks and open spaces. I have some representatives here from the Trust for Public Lands who would like to give us a presentation regarding these issues.

Councillor Connor said this presentation wasn't on the agenda and the public wasn't informed that we would be talking about this issue.

Mayor Miyagishima said I will let the rest of the Council finish their comments then I will allow this presentation.

Councillor Connor passed.

Councillor Silva said Terrence Moore gave a response in his information letter to a comment that I made last week; however, I think he was a little off base. I wanted to request that a presentation be done regarding Premier Park, Sonoma Road and the new Country Club.

Robert Garza said we can add that to the City Manager's comments for either the next meeting or the meeting after that one.

Councillor Silva said I met with Representative Joni Gutierrez and Senator Mary Kay Pappen to discuss how to go about preserving historical districts and buildings and I think it was a very productive meeting.

On July 31st and August 1st, we are going to have a community clean up and if anyone needs their yards or house cleaned up, they can contact me to be put on the list.

Mayor Miyagishima said now that the Councillor's comments are over, I am going to allow the presentation but since it wasn't advertised, this will only be a presentation and there will be no questions or comments.

Jeannie Parks, NM Director for the Trust of Public Land and Dee Frankfort, National Western Director for Conservation Finance gave a presentation on land preservation and conservation.

3. City Manager

A. Other Items - Information Only

None given.

Meeting Adjourned at 7:10 p.m.