City of Las Cruces
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 11 **Ordinance/Resolution#** 2749

For Meeting of March 2, 2015 (Ordinance First Reading Date)

For Meeting of March 16, 2015 (Adoption Date)

Please check box that applies to this item:

☒ QUASI JUDICIAL ☐ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE APPROVING A ZONE CHANGE FROM M1/M2 (INDUSTRIAL STANDARD) TO M1/M2/C-2C (INDUSTRIAL STANDARD AND COMMERCIAL MEDIUM INTENSITY-CONDITIONAL) FOR A 0.45 ACRE PARCEL 02-37626 LOCATED AT 340 SOUTHGATE COURT. SUBMITTED BY THE LIVING WORD FAMILY CHURCH FOR THE PROPERTY OWNER, PICACHO VALLEY GROUP, LLC. (Z2882)

PURPOSE(S) OF ACTION:

Zone change.

COUNCIL DISTRICT: 4		
Drafter/Staff Contact: Katherine Harrison-Rogers, Senior Planner	**Department/Section:** Community Development/Building & Development Services	**Phone:** 528-3049
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The applicant seeks a zone change to add a C-2c, Commercial Medium Intensity-conditional, zoning designation, limiting the allowed C-2 uses to only a church, to the current M1/M2, Industrial Standard, zoning designation. The applicant is operating a church on the subject property without securing the appropriate zoning or the proper permits. The warehouse building does not meet the building and fire code occupancy requirements for a public assembly use nor does the current M1/M2, Industrial Standard, zoning allow a religious institution (church) land use. With the M1/M2/C-2c designation and with the adequate completion of any improvements required by the building and fire codes for the occupancy type, the church could continue at this location in addition to a proposed food bank, an already allowed use in the M1/M2 zoning district.

On January 27, 2015, the Planning and Zoning Commission (P&Z) considered the rezoning application at a duly noticed public hearing and voted 6 to 0 (one Commissioner absent) to recommend denial of the rezoning request to the City Council based on the findings found in the staff report. In addition to inquiring about the church's ability to relocate, the P&Z voiced

concerns regarding incongruent uses, parishioner safety in an industrial area, and impacts to other established and/or approved area uses. No public comment, outside of the church members, was provided.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Property map.
3. Exhibit "B", Findings.
4. Attachment "A", Staff report to the Planning and Zoning Commission for Case Z2882.
5. Attachment "B", Draft minutes from the January 27, 2015 Planning and Zoning Commission meeting.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the ___Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: ____ in the amount of $_____for FY__.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will reverse the Planning and Zoning Commission's recommendation for denial of the rezoning Ordinance and will establish the requested M1/M2/C-2c zoning

designation on the property, allowing the church to continue its use at this location after the site is brought into compliance with all building and fire code occupancy requirements.

2. Vote "No"; this will affirm the Planning and Zoning Commission's recommendation for denial of the rezoning Ordinance and the property will retain the M1/M2 zoning designation, requiring the church to relocate to an appropriately zoned property.
3. Vote to "Amend"; this would modify the Ordinance as deemed necessary by the City Council.
4. Vote to "Table"; this could allow City Council to direct staff or the applicant to provide additional information or develop alternate solutions to be presented at a future City Council.

REFERENCE INFORMATION:

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

1. N/A

COUNCIL BILL NO. 15-030
ORDINANCE NO. 2749

AN ORDINANCE APPROVING A ZONE CHANGE FROM M1/M2 (INDUSTRIAL STANDARD) TO M1/M2/C-2C (INDUSTRIAL STANDARD AND COMMERCIAL MEDIUM INTENSITY-CONDITIONAL) FOR A 0.45 ACRE PARCEL 02-37626 LOCATED AT 340 SOUTHGATE COURT. SUBMITTED BY THE LIVING WORD FAMILY CHURCH FOR THE PROPERTY OWNER, PICACHO VALLEY GROUP, LLC. (Z2882)

The City Council is informed that:

WHEREAS, the property owner seeks to rezone the 0.45 acre subject property, Parcel 02-37626, located at 340 Southgate Court from the M1/M2 (Industrial Standard) designation to an M1/M2/C-2c (Industrial Standard & Commercial Medium Intensity-Conditional) designation for the purpose of allowing a church to operate in a warehouse; and

WHEREAS, the Planning and Zoning Commission, after conducting a duly-noticed public hearing on January 27, 2015, recommended that said zone change request be denied by a 6 to 0 vote (one Commissioner absent).

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

(I)

THAT the 0.45 acre Parcel 02-37626, shown in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned M1/M2/C-2c with the following condition:

- The only C-2 use permitted is a religious institution.

(II)

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

(III)

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

(IV)

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

DONE AND APPROVED this _____ day of _____20__.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

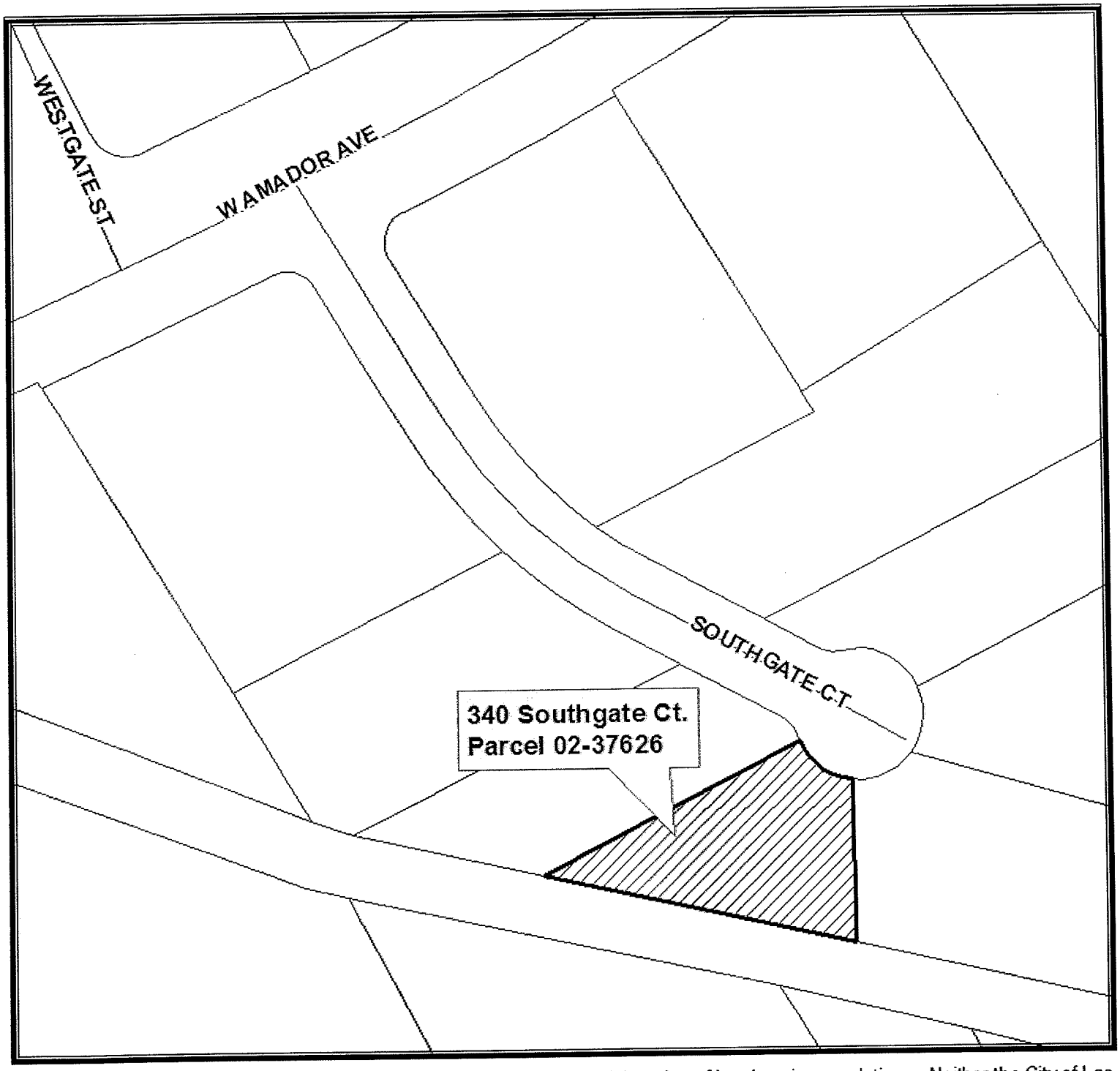
Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"

Property Map



This map was created by Community Development to assist in the administration of local zoning regulations. Neither the City of Las Cruces or the Community Development Department assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the City (575) 528-3043.

Location: 340 Southgate Ct.

Case Number: Z2882

0 0.004 0.009 0.018 0.027 0.036 Miles

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

Exhibit "B"

Case No. Z2882 Findings for Approval

1. Based upon a review of the proposal by City staff and the Planning and Zoning Commission, a public assembly use, such as a church, is not an appropriate or compatible land use to be located within a cul-de-sac of an industrial subdivision within a standard industrial (M1/M2) zoning district due to safety concerns associated with potential traffic volume, parking congestion impacts, and incongruent adjacent industrial uses.
2. The proposal would cause existing and approved uses to become non-conforming due to the proximity of existing adult entertainment establishments to the church (less than 1000 feet) and would further limit available areas for these types of uses to become legally established within the City.
3. Based upon a review of the proposal by City staff, the proposed rezoning would negatively address relevant Comprehensive Plan policies, Planning Commission decision criteria, and the Zoning Code purpose and intent statements.

Attachment "A"

City of Las Cruces®
PEOPLE HELPING PEOPLE

Planning & Zoning Commission Staff Report

Meeting Date: January 27, 2015

Drafted by: Susan Montana/ Katherine Harrison-Rogers

CASE #	Z2882	**PROJECT NAME:**	340 Southgate Court
APPLICANT/ REPRESENTATIVE:	Living Word Family Church/ Pastor Jeff Sutton, representative	**PROPERTY OWNER:**	Picacho Valley Group, LLC.
LOCATION:	340 Southgate Ct. Parcel 02-37626	**COUNCIL DISTRICT:**	4 (Small)
SIZE:	0.452 acre (19,686 sf)	**EXISTING ZONING/ OVERLAY:**	M1/M2, Industrial Standard

REQUEST/ APPLICATION TYPE: A request to rezone the property from M1/M2 (Industrial Standard) to M1/M2/C-2c (Industrial Standard/ Commercial Medium Intensity-conditional). The condition would limit the C-2 uses to only the church (religious institution) land use.

EXISTING USE(S): A church operating without the proper building permit, fire safety permit or business registration. A food bank operates within the warehouse and is an allowable use within the M1/M2 District.

PROPOSED USE(S): A church and a food bank operation

STAFF RECOMMENDATION: Denial based on findings noted below in Section 3.

TABLE 1: CASE CHRONOLOGY

Date	Action
10/31/2014	Application submitted to Development Services
11/3/2014	Case sent out for review to all reviewing departments
11/10/2014	All comments returned by all reviewing departments
11/13/2014	Staff reviews and recommends denial of the zone change
1/11/2015	Newspaper advertisement
1/21/2015	Public notice letter mailed to neighboring property owners
1/12/2015	Sign posted on property
1/27/2015	Planning and Zoning Commission public hearing

SECTION 1: SYNOPSIS OF PROPOSAL

The Applicant, Pastor Jeff Sutton with the Living Word Family Church, is proposing to rezone a 0.452 ac property located at 340 Southgate Ct., Parcel No. 02-37626, from M1/M2 (Industrial Standard) to M1/M2/C-2c (Industrial Standard/ Commercial Medium Intensity- conditional) in order to allow a church to operate at this location. The property is being used as both a church and food bank. The M1/M2 zoning district does not allow religious institutions, but it does allow a food bank operation as a warehouse/distribution land use. The property consists of a 6,000 square foot metal warehouse building, a drainage pond, landscaping, and a parking lot.

Background

In 2012, a building permit application was submitted by the property owner for a church to operate within a warehouse building. The Building & Development Services Division of the Community Development Department denied the permit because the M1/M2 zoning of the property does not allow a religious institution (church) land use. After the permit was denied by staff, members of the church met with staff to inquire how the church could use the warehouse for religious services. Planning staff told the church members that the current zoning would not allow the church use and a rezoning to a commercial zoning designation would be required. Subsequently, the property owner submitted a building permit application for construction of a warehouse for an industrial use. The property was developed and the warehouse was inspected and permitted for an industrial occupancy with a Certificate of Occupancy.

The Applicant soon thereafter began operating the church in the warehouse without the appropriate zoning designation or building occupancy. The warehouse use does not meet the fire safety standards, among other building code requirements, for a public assembly occupancy. The City's zoning enforcement division of the Police Department (CODES) issued a zoning violation warning to the Applicant in April 2014 and, when the Applicant did not move forward to remedy this violation, CODES issued a violation citation in October 2014. The Applicant, again, did not comply with the violation notice and the zoning violation case went before a Magistrate Judge in October 2014. The Applicant was instructed by the judge to move forward with a violation remedy and, on November 3rd, the Applicant submitted this application for a rezoning to allow the church activity at the Site.

The Proposal

The Applicant provides church services at the Site on Wednesday evenings and Sunday mornings and evenings. Approximately 40 to 50 people attend each of the Sunday services and approximately 25 people attend the Wednesday services.

Section 38-33D, Institutional Land Uses of the City's 2001 Zoning Code, as amended, allows religious institutions in certain zoning districts as a conditional use. Section 38-53 states the condition for allowing a church that serves more than 10 persons at a time. This condition requires the church to be located on a major local road or a higher classification road. A major local road has a 60 foot right-of-way (ROW) which provides 40 feet of paved travel way. The Southgate Court vehicle paved travelway is 42 feet wide which provides one lane in each direction, on-street parking, sidewalks, and curb and gutter on each side. Because Southgate Court has the 60 foot ROW and 42 feet of paved vehicle travel way, it has been determined by staff to satisfy the major local road condition for a church use should the rezoning be approved.

The church accommodates from 40 to 50 persons on each of the Sunday services and the parking requirement would be a minimum of 10 on-site spaces; the warehouse Site provides 7 spaces. The Applicant states that he has verbal agreements with the abutting Holguin's electric contractor property owner, located at 330 Southgate Ct., and with the Loaves & Fishes food bank property owner, at 320 Southgate Ct., to use their parking lots during church services. Church services take place after hours of those two establishments. If the rezoning is approved, the Applicant would be required to secure a

signed shared parking agreement with the owners of those properties to allow church patrons to park in their lots. The shared parking agreement must meet the requirements of Section 38-58.G.1 of the City's Zoning Code, as amended.

TABLE 2: DEVELOPMENT STANDARDS & SITE CHARACTERISTICS

Standard	Existing Site Characteristics	Existing M1/M2 Zoning Requirements and the proposed P1/M2/C-2c
Max # of DU/parcel	None	N/A
Max Density (DU/ac.)	None	N/A
Minimum Required Lot Area	19,000 sf	15,000 sf
Maximum Allowed Lot Area	N/A	N/A
Lot Width	Varies from 245' at the west end of the triangularly-shaped parcel to 50' at the cul-de-sac entrance	60'
Lot Depth	Varies from 221' at the north end of the triangularly-shaped parcel to 125' at the southern end	70'
Structure Height	1 story	60'
Setbacks		
Front	Varies from 22' to 50'	15'
South Side	Varies from 25 to 40'	20' (or 0' per Sec. 38-62.B of the Zoning Code)
North Side	Varies from 30' to 100'	
Rear	Zero, as the abutting property is undeveloped	15' or 0'
Parking		
Vehicular	7, based on warehouse use	1 per 3 (maximum) to 1 per 5 seats (minimum) within the assembly room. Assuming 50 people, the minimum parking required is 10 spaces and the maximum is 17 spaces.
Bicycle	2	1 per 40 seats within the assembly room. Assuming 50 people, 2 bike racks are required.
Screening & Landscaping		
Total square feet of landscaping	2,053 sf	15% required minus 6,000 sf of the building footprint=2,053 sf required landscaping.
Bufferyard	N/A	Not required as this parcel is surrounding by industrial or agricultural lands
Road width	60' ROW with 42' paved travelway.	For a church use, a 60' ROW with a 40' paved travelway (major local road).

TABLE 3: SPECIAL CHARACTERISTICS

Characteristic	Applies to Project?	Explanation
EBID facilities	Yes	The parcel abutting the property to the west is a private access road and a drainage canal belonging to EBID. The rear of the church, with no openings in the building, faces the EBID property.
Medians/ parkways landscaping	No	N/A

TABLE 4: ADJACENT ZONING AND LAND USE INFORMATION

Location	Existing Use	Overlay District	Zoning Designation
Subject Property	Warehouse	None	M1/M2
North	Warehouse	None	M1/M2
South	Vacant land	None	M1/M2
East	Vacant lots; one being developed with a warehouse	None	M1/M2
West	Drainage ditch; vehicle repair shop; outdoor storage of vehicles; manufactured home	None	M1/M2

TABLE 5: PARCEL LAND USE HISTORY

Number	Status
Permit	Various building permits for construction of the warehouse and site in 2012
[illegible]	[illegible]
Subdivisions	Westgate Business Park Master Plan and Subdivision

SECTION 2: REVIEWING DEPARTMENT/AGENCY RECOMMENDATIONS

Department Name	Approval (Yes/ No)	Conditions (Yes/No)
CLC Development Services	No	No
CLC Long-Range Planning	Yes	No
Metropolitan Planning Organization (MPO)	Yes	No
CLC CD Engineering Services	Yes	Yes. Approval conditioned on Traffic Engineering being satisfied that the traffic generated by the church will not overburden the street capacity and parking.
CLC Traffic	No	No. Concern with existing traffic conflicts

		during construction of adjacent lots; concern with parking within the cul-de-sac where there are clear sight triangle obstructions at existing driveways (rock walls) and concern with parking on both sides of the "neck" of the cul-de-sac which could obstruct access to lots by emergency vehicles or larger vehicles.
CLC Land Management	Yes	No
CLC Facilities/Parks	Conditional Approval	Yes. Approval conditioned on other City Agencies being satisfied with the on- and off-site parking provided.
CLC Fire & Emergency Services	No	Building was designed for primarily storage use and a small office space. The building needs to be upgraded to Assembly occupancy prior to approval of a church land use.
CLC Utilities	Conditional Approval	Approval conditioned on the support of other City Agencies.

SECTION 3: STAFF ANALYSIS AND CONCLUSIONS

Decision Criteria

Planning and Zoning Commission Decision Criteria

The Planning and Zoning Commission shall review each request in relation to the goals, objectives and policies of the comprehensive plan, plan elements, other applicable plans, and the purpose and intent of this Code, Section 38-2 and 36-1 of the Sign Code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria.

The Las Cruces Municipal Code Section 2-382 specifies the Planning and Zoning Commission shall determine whether a proposal will:

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

Relevant Zoning Code Purpose and Intent Statements [Article I, Section 38-2.]

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

- Ensure that all development is in accordance with this Code and the Las Cruces Comprehensive Plan and its elements, which are designed to:
  - Mitigate congestion in the streets and public ways.
  - Prevent overcrowding of land.
  - Avoid undue concentration of population.
  - Control and abate the unsightly use of buildings or land.
- Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- Ensure that development proposals are sensitive to the character of existing neighborhoods.
- Conserve the value of buildings and land.
- Mitigate conflicts among neighbors.

New Mexico Case Law Rezoning Criteria Considerations

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

1. There was an error when the existing zone map pattern was created; or
2. Changed neighborhood or community conditions justify the change; or
3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other City master plan, even though (1) or (2) above do not apply, because
   a. there is a public need for a change of the kind in question, and
   b. that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

Applicable Comprehensive Plan Elements & Policies:

HEALTHY COMMUNITIES Element
BALANCED DEVELOPMENT Section

GOAL 1: Encourage mixed use development.

Policy 1.2: Development-related requests, such as, site plans, master plans, zoning, and planned unit developments shall adhere to the City's mixed use development concept of this Comprehensive Plan where such adherence lends to the support and enhancement of the character of the Planning Area in which the development takes place.

Goal 7:Provide a balance of community, social and cultural services that meet the needs of all segments of the community.

Community Character Element

Goal 17: Design, construct, and maintain public rights-of-way to provide transportation options that are safe, functional, convenient, and visually appealing.

Goal 19: Encourage development that is context-sensitive and compatible to the surrounding area.

Policy 19.7: Design parking to fit the context and needs of the area.

a. Provide adequate on-site parking designed to prevent the stacking of vehicles onto the street, with shared or reduced parking options available on a case-by-case basis.

b. Where appropriate and at the discretion of the City, if a site is located along an existing or planned transit route, allow for a 10% reduction in the number of spaces to encourage the use of alternate modes, provided a minimum of two automobile parking spaces (one regular and one accessible space) and two bicycle parking spaces remain after the reduction.

c. Evaluate parking requirements for each change in a site's land use.

Policy 19.8: Plant trees within all parking areas for visual relief as well as to provide shade in parking areas.

Policy 19.16: The City shall encourage focusing development of light, standard, and heavy industrial uses in areas with existing compatible industrial zoning where these areas comply with industrial land use policies.

Economic Prosperity Element

Goal 24: Create incentives, opportunities, partnerships, and policies that build a diversified business community.

Policy 24.5: Eliminate administrative barriers that impede the creation or expansion of office, commercial and industrial developments.

Goal 30: Continue efforts to develop industrial areas and uses within the City.

Goal 32: Establish land use policy for commercial and public/quasi-public uses.

Policy 32.2: Community commercial uses shall be defined as those medium intensity commercial uses which provide an array of goods and services geared toward the daily and occasional needs of the community and associated neighborhoods. Community commercial uses generally serve the needs of between 2,000 to 8,000 households within a service radius of one to four miles and should be established according to the following criteria:

a. Generally speaking, individual community uses contain between 3,000 to 30,000 gross square feet. Centers style arrangements, ranging from 45,000 to 200,000 gross square feet may also be considered community commercial.
b. A single community commercial business may apply for a special use when said business is greater than 30,000 gross square feet, but may not exceed 75,000 square feet total.
c. Single community commercial uses shall be located on collector or higher designated streets or at intersections of streets with the same or higher classification and may further be situated at the entrance of two or more neighborhoods. Centers should be located at the intersection of streets with at least one such street equal to an arterial designation and the other classified as a collector at minimum. Mid-block locations for single uses should be considered on a case-by-case basis: criteria should include street capacity, distance from an intersection where appropriate, multi-modal accessibility and shared vehicular access with other uses where appropriate, consideration of traffic and environmental impacts.
d. An unlimited number of single neighborhood or community commercial uses may be located adjacent to one another (non-center) as long as the combined total of the uses does not exceed 75,000 gross square feet.
e. With the exception of neighborhood commercial businesses, community commercial uses shall not be located within one (1) mile of another community commercial area.
f. The City shall pursue multi-modal access standards of auto, bicycle, pedestrian, and transit for community commercial uses and centers.

g. Community commercial development shall address the following urban design criteria of compatibility to adjacent development in terms of architectural design, height/density and a provision of landscaping for site screening, parking and loading area.
h. Adequate space for functional circulation shall be provided for parking and service areas.
i. The City shall encourage the development of community commercial centers to allow for maximum shopping convenience with minimal traffic and encroachment related conflicts to adjacent uses.
j. Neighborhood commercial uses are permitted in community commercial areas.

Goal 34: Establish land use policy for industrial uses.

Policy 34.1: Light industrial uses shall be defined as those industrial uses which generate research, development, warehousing and manufacturing activities with minimal impact to the surrounding environment. Light industrial uses and parks shall be established according to the following criteria:

a. Uses shall be located on, or have direct access to, collector and arterial streets.
b. The City shall pursue multi-modal access standards of auto, bicycle, pedestrian, and transit where available for light industrial uses and centers.
c. Light industrial use and park development shall address the following urban design criteria of compatibility to adjacent uses in terms of architectural design, height/density, and provision of landscaping for site screening, parking and loading areas.
d. Adequate space for functional circulation shall be provided for loading areas.
e. The City shall encourage the development of light industrial parks to allow for minimal traffic and encroachment-related conflicts to adjacent uses.
f. The City shall encourage the development of light industrial uses and parks in the West Mesa Industrial Park and East Mesa areas.

Policy 34.2: Standard industrial uses shall be defined as those industrial uses which generate fabricating, manufacturing, packaging, and processing activities, provided such uses can be operated in a relatively clean, quiet and safe manner with minimal impacts to the surrounding environment. Standard industrial uses and parks shall be established according to the following criteria:

a. Standard industrial uses shall have direct access to, or shall be located on, collector and arterial streets.
b. The City shall pursue multi-modal access standards of auto, bicycle, pedestrian, and transit where available for standard industrial uses and centers.
c. Standard industrial development shall address the following urban design criteria of compatibility in terms of architectural design, height/density, and the provision of landscaping for site screening, parking and loading areas.
d. The City shall encourage the development of standard industrial parks to allow for minimal traffic and encroachment-related conflicts to adjacent uses.
e. The City shall encourage the development of standard industrial uses and parks in the 17th Street, West Mesa Industrial Park, and East Mesa areas.

Goal 49: Establish procedural and development requirements.

Policy 49.7: Require zoning actions to be in general conformance with this Comprehensive Plan.

Policy 49.12: Have the applicant clearly justify any deviations from required zoning and development standards.

a. Deviations shall not decrease level-of-service, increase tax burden or maintenance burden beyond typical development.
b. Justification for deviations shall be in the form of traffic analysis, land use assumptions, or any

other source which clearly demonstrates that such variations would not adversely impact the health, safety, and welfare of residents.

c. Impacts resulting from code deviations must be thoroughly addressed and mitigation strategies provided before the City may grant any waivers.

Policy 49.15: Apply conditions, if necessary, to zone change and special use permit requests to meet the provisions of this comprehensive plan.

Policy 49.21: Require a traffic impact study as outlined in applicable codes in order to evaluate the traffic impacts of any development project, with mitigation for traffic impacts such as turn, acceleration, and deceleration lanes provided by the developer.

Analysis:

The proposed conditional rezoning request would allow a church to operate at this location by changing to zoning to M1/M2/C-2c. The condition would limit the C-2 uses to religious institutions only.

It is noted that the proposed church site lies within 650 feet of an existing adult entertainment establishment (EROS video store) and within that same distance to another adult entertainment establishment (The Bronx nightclub) that has an approved Special Use Permit and is undergoing the building permit process. Adult entertainment uses are permitted as Special Uses only in M1/M2 and M3 zoning districts and furthermore, pursuant to Section 38-54.B. of the City's 2001 Zoning Code, as amended, adult entertainment uses must be located a minimum of 1,000 feet from a church. Should the proposed church be allowed through this rezoning request, those two adult entertainment establishments would automatically become legal non-conforming uses and neither business could expand in intensity of use or more than 10% in square footage. Since adult entertainment establishments are only allowed as a Special Use in industrial districts, allowing the Applicant's church to operate within the subject industrial district would further limit the locations such establishments could operate in the City.

Five businesses are located on Southgate Court, one of which fronts on W. Amador Avenue. Those businesses are light industrial businesses and warehouses which operate during week-day, daytime hours. The proposed church would provide religious services on Wednesday evenings and Sunday mornings. The proposed food bank would operate week-days, daytime hours. The existing food bank located within a warehouse at 320 Southgate Court operates weekdays, from 9 AM to 1 PM from the 1st to the 15th of the month.

Conclusion

This is a request for "pancake" zoning, in which more than one zoning designation exists on the same lot. In this case, the owner of an industrial site would like a limited C-2 designation added to the M1/M2 zoning designation to accommodate the existing illegal church on the property. The church has been operating illegally at this site for about 2.5 years. A proper church permit would require the Applicant to change the building occupancy from a warehouse use to a public assembly use and associated fire prevention and suppression improvements would be required to be installed to assure patrons' safety.

Although the City's Comprehensive Plan (Comp Plan) does not specifically address religious institutions or this type of multiple-zoning on one property, a church increases the variety of uses in the area that Comp Plan mixed use policies support. However, a church also generates a volume of traffic, and demand for parking, that was not anticipated when the Westgate Business Park Subdivision was designed and built in 1996. There is concern that traffic generated by the church cannot be accommodated by the cul-de-sac. There is also concern that church patrons' parking on the cul-de-sac would obstruct access to the Site and to adjacent lots on the cul-de-sac by emergency vehicles. This impact violates the Las Cruces Municipal Code Section 2-382 Planning and Zoning Commission criteria that states that the Commission shall determine whether a proposal will:

- Unreasonably increase the traffic in public streets;
- Increase the danger of fire or endanger the public safety;
- Unreasonably impair established property values within the surrounding area; or
- Constitute a spot zone and, therefore, adversely affect adjacent property values. The term "spot zoning" means the singling out of a lot or small area for a zoning change which is out of harmony with the Comprehensive Plan and surrounding land uses to secure special benefits for a particular property owner without regard for the rights of adjacent landowners.

The rezoning to allow a church within this industrial subdivision would also negatively address Section 38.2 of the City of Las Cruces 2001 Zoning Code, as amended, which identifies the Purposes and Intent of the Zoning regulations which should be utilized as part of the decision criteria. In particular, the church use would negatively address the following purpose and intent statements:

- Ensure that all development is in accordance with this Code and the Las Cruces Comprehensive Plan and its elements, which are designed to:
    - Mitigate congestion in the streets and public ways.
    - Prevent overcrowding of land.
    - Avoid undue concentration of population.
- Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- Ensure that development proposals are sensitive to the character of existing neighborhoods.
- Conserve the value of buildings and land.
- Mitigate conflicts among neighbors.

Adopting the M1/M2/C-2c zoning designation for the subject property would allow a church activity for the following 2.5 years and during this time, the adult-oriented establishments located within 1,000 feet of the church would be deemed legal non-conforming and would be limited in how they could expand. Other adult-oriented establishments would be severely limited in the industrial zones where the Zoning Code allows them to locate. This would prove a hardship for those businesses and would negatively affect property values of industrial lands in the area.

STAFF RECOMMENDATION

Staff recommends **DENIAL** of the project based on the findings listed below.

FINDINGS FOR DENIAL

1. Based upon a review of the proposal by City staff, a public assembly use, such as a church, is not an appropriate or compatible land use to be located within a cul-de-sac of an industrial subdivision within a standard industrial (M1/M2) zoning district due safety concerns associated with potential traffic volume, parking congestion impacts, and incongruent adjacent industrial uses.
2. The proposal would cause existing and approved uses to become non-conforming due to the proximity of existing adult entertainment establishments to the church (less than 1000 feet) and would further limit available areas for these types of uses to become legally established within the City.

3. Based upon a review of the proposal by City staff, the proposed rezoning would negatively address relevant Comprehensive Plan policies, Planning Commission decision criteria, Zoning Code purpose and intent statements, and New Mexico case law.

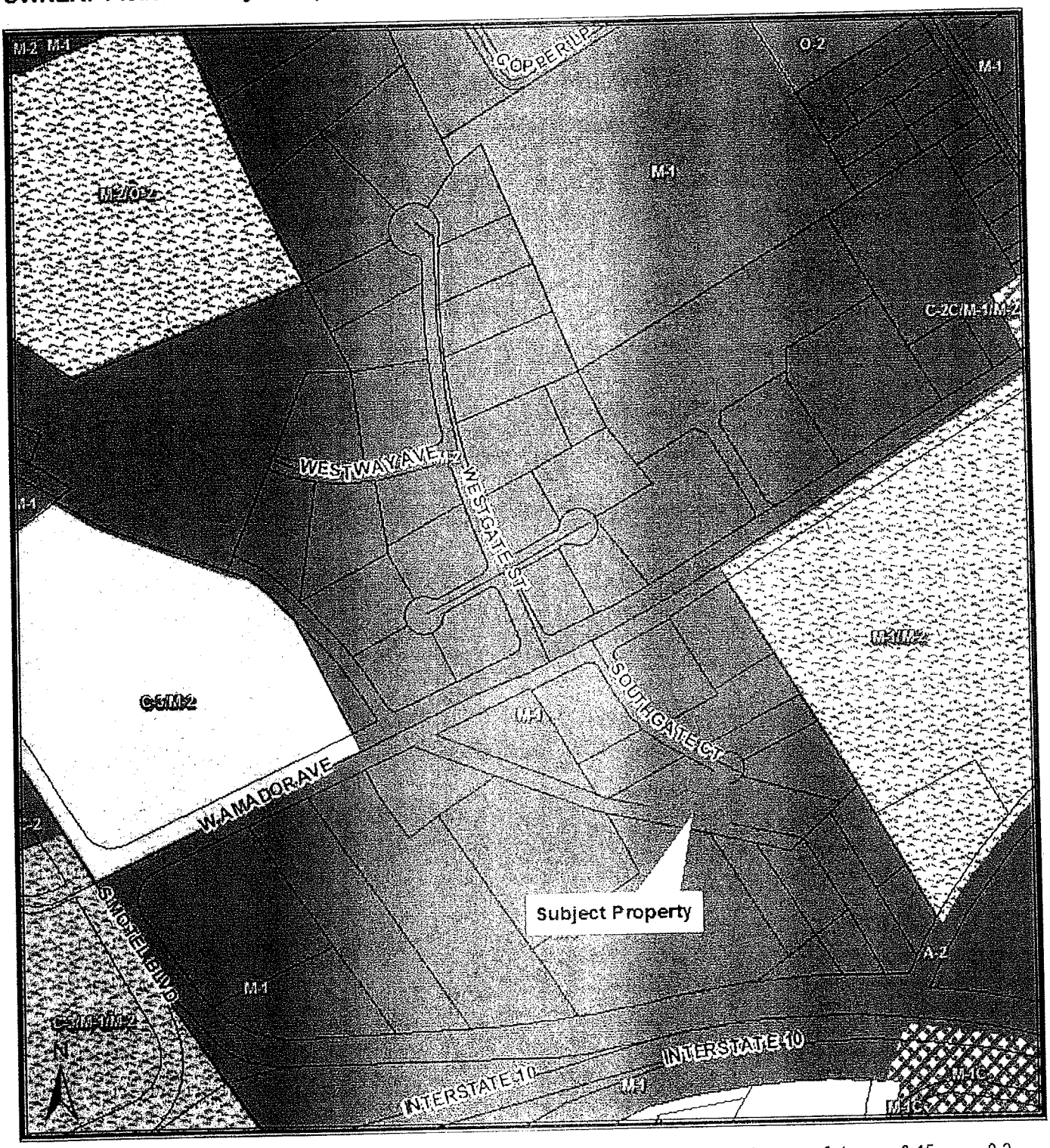
ATTACHMENTS

1. Vicinity and Zoning Map
2. Site & Landscape Plan
3. Application/Development Statement

Location and Zoning Map

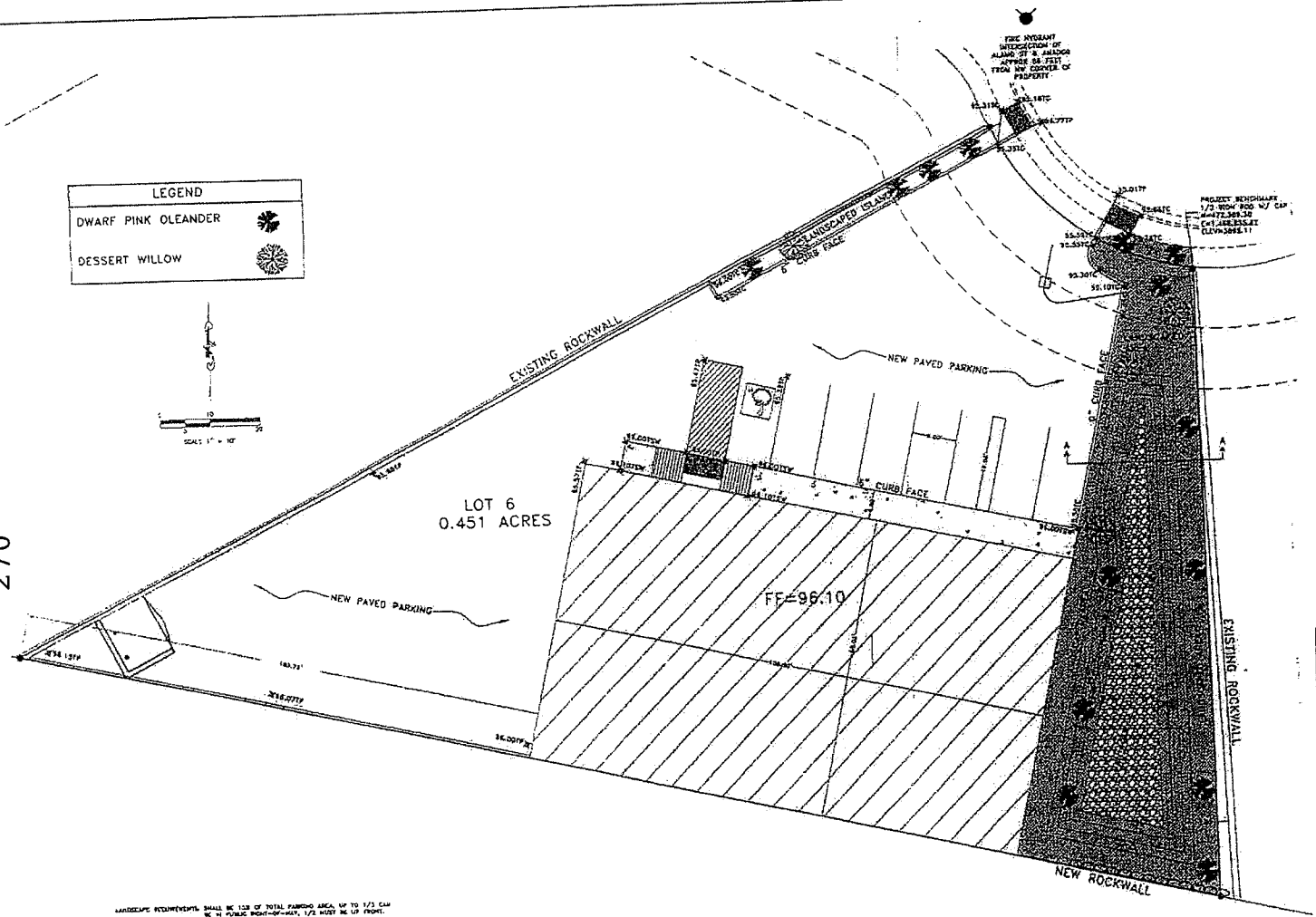
ZONING: M1
OWNER: Picacho Valley Group

PARCEL: 02-37626
DATE: 1/20/2015



0 0.025 0.05 0.1 0.15 0.2 Miles

Z2882: 340 Southgate Court
Rezone from M1 to M1/M2/C-2c



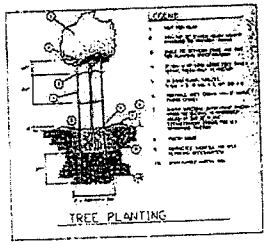
LANDSCAPE PLAN

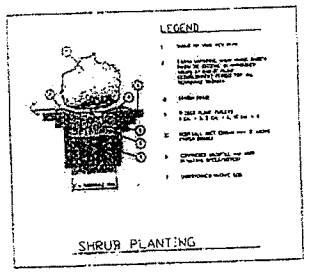
SCALE: 1"=10'

LANDSCAPE REQUIREMENTS: SHALL BE 15% OF TOTAL PARKING AREA, UP TO 1/3 CAN BE IN PUBLIC RIGHT-OF-WAY, 1/3 MUST BE UP FRONT.
TOTAL REQUIRED LANDSCAPING=770 SF
TOTAL PROPOSED LANDSCAPING=2186 SF

FIRE SUPPRESSION SYSTEM NOT REQUIRED FOR BUILDING.

LESS THAN 400,000 BTU REQUIRED FOR GAS USAGE





LEGEND

	3/4" Desert Tan Rock Surfacing	3" thick layer, w/ underlayment.
	2"x 4" Hickutt Rock Surfacing	Solid layer, w/ underlayment

GENERAL NOTES

A. The contractor shall verify the exact location of all existing and proposed utilities, and all site conditions prior to beginning construction.

B. The finish grade of all planting areas shall be smooth, even and consistent, free of any humps, depressions or other grading irregularities.

C. The contractor shall not impede drainage in any way. The contractor shall always maintain positive drainage away from the buildings/pads, etc.

D. Trees shall be located equidistant from all surrounding plant material. Shrubs shall be triangular and equally spaced.

E. The contractor shall maintain all work until all work is complete and accepted by owner.

F. The contractor shall not install trees within 10 feet of gas lines.

SUMMIT ENGINEERING

LANDSCAPE PLAN
340 SOUTH GATE COURT
LAS CRUCES, NEW MEXICO

SEPTEMBER 2011

SHEET: L1
OF: 13

270

City of Las Cruces®

PEOPLE HELPING PEOPLE

CITY OF LAS CRUCES DEVELOPMENT APPLICATION

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

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

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

Jeff

(Case # Z 22882)

SUBJECT PROPERTY ADDRESS: 340 SOUTH GATE CT.

PROPERTY TAX ID# ~~880483542~~ 02-37626 **PARCEL ID#** 340 SOUTH GATE

PROPERTY OWNER(S) of record: PICACHO VALLEY GROUP - GLEN PORTER

Address: 2365 TUCSON Hills City LAS CRUCES State NM Zip 88011

Phone: Home (575) 621-4320 Work( ) Mobile (575) 621-4320 Fax( )

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

Name: JEFF SUTTON - PRES. Title/Company: LIVING WORD FAMILY CHURCH

Address: 2967 McPOWELL Rd. City LAS CRUCES State NM Zip 88005

Phone: Home (575) 640-6695 Work( ) SAME Mobile( ) SAME Fax( ) NONE

email address: hebrews114@gmail.com

4-005-136-451-147

Check and complete all boxes that apply:

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

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

Owner(s):

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

Property Owner Please Initial: Yes ✓ GP No _____

GP Glen Porter Picacho Valley Group Date 10/20/14

Property Owner 1

Glen Porter Date 10/20/14

Property Owner 2

Date _____

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

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

ADDITIONAL APPLICANTS / CONTACT PERSONS, if different from owner:

Property Owner 1:

Name: Glen Porter Title/Company: SWAT

Address: 2365 Tuscan Hills City LC NM State NM Zip 88011

Phone-Home (575) 621-4320 Work(Same) Mobile(Same) Fax( )

Property Owner 2:

Name: _____ Title/Company: _____

Address: _____ City _____ State ____ Zip _____

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

Applicant/Representative:

Name: JEFF SUTTON PRES. Title/Company: Living Word Family Church

Address: 2967 McDowell Rd City L.C. State NM Zip 88005

Phone-Home (575) 644-6695 Work( ) _____ Mobile( ) _____ Fax( ) _____

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

Accepted by:	W	Fee Paid:	$ 600.-	Date Fee Paid	11/3/14
Receipt No.	# 74522402	Check Number	# 1416	Case Number	Z 2882
Submittal Date	11/3/14	Submittal Complete		Assigned to:	SM

Statement of Hardship for Variance Requests

If you are applying for any variances, please provide a brief explanation as to whether or not your request lends support to the following questions. If you have no variance requests, please disregard this form.

1. Is there a physical hardship relative to the property (i.e. topographic constrains or right-of-way takes resulting reduced development flexibility, etc.) in question?

N/A

2. Is there a potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted?

NONE

3. Are there monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions?

Living Word Family Church is Requesting An added pancake zone to be ~~Aproved to complete~~ added to the present M1 zone. This would allow us to complete the 5 year lease. We are in the third year of the Lease.

5-yr

G-2C-M1-M2

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

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

Applicant Information

Name of Applicant: LIVING WORD FAMILY CHURCH

Contact Person: JEFF SATTON

Contact Phone Number: (575) 644-6695

Contact e-mail Address: hebrews114@gmail.com

Web site address (if applicable): –

Proposal Information

Name of Proposal: LIVING WORD FAMILY CHURCH

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

COMMERCIAL/INDUSTRIAL C-2C-M1-M2

Location of Subject Property 340 SOUTH GATE Ct.

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

Acreage of Subject Property: _____

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

Single METAL Bldg. 6,000 ☒ Used for CHURCH SERVICES

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

SAME

Zoning of Subject Property: M1

Proposed Zoning (If applicable): C-2 - pancake ZONE

Proposed number of lots N/A, to be developed in _____ phase (s).

Proposed square footage range of homes to be built from N/A to _____

Living Word Family Church

Dear Planning and Zoning Commission

Please accept my apologies

The reason for the delay in submitting the application for the location at 340 South Gate was due to very difficult circumstances in an affiliated church in Deming New Mexico, which the Pastor oversees. There was no intention to defy the commission's requests at any point in time. The circumstances simply required a great deal of time and energy. The applicant sincerely apologizes that the delay caused the zoning enforcement divisions involvement. For us to move the church would create a difficulty economically for the church before the lease expires.

Also we are preparing for a future location for the church which would meet all the requirements of the zoning commission. I guess we are just asking for a little more mercy and patience as we move past current circumstances.

Thank you for your sincere consideration

Sincerely Rev. Jeff Sutton

Rev. Jeff Sutton

Living Word Family Church

RECEIVED

NOV 12 2014

CITY OF LAS CRUCES
DEVELOPMENT SERVICES

277 RECEIVED
NOV 12 2014
CITY OF LAS CRUCES
DEVELOPMENT SERVICES

Living Word Family Church

November 10, 2014

Attention: Planning and Zoning Commission:

From: Rev. Jeff Sutton

Re: Request for a variance from Living Word Family Church

Dear Commissioners,

Living Word Family Church requests a variance for its location at 340 South Gate in Las Cruces New Mexico.

The Church has occupied the location since October 2012 without any incident or difficulty to any other business in the area. We have also been an asset by freely providing extra parking space during the weekdays for other businesses. There are no known hardships to other businesses in the area concerning right of way or development. Development that has taken place in the area has benefited by having access to our utilities during their construction stages.

We typically occupy the facility four times during the week Sunday mornings 10:30 AM, Sunday evenings 5:00 PM, Wednesday evenings 7:00 PM and Saturday evenings Usually during this time all other businesses are not operating. Currently our typical attendance is less than 50 people.

It would create an economic hardship if we were to be forced to move at this time. We have approximately 2 ½ years left on the lease agreement.

We greatly appreciate your consideration toward this request for this location.

Respectfully,

Rev. Jeff Sutton

Reverend Jeff Sutton
Living Word Family Church

Attachment "B"

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
January 27, 2015 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Godfrey Crane, Chairman
William Stowe, Vice-Chair
Charles Beard, Secretary
Joanne Ferrary, Member
Kirk Clifton, Member
Harvey Gordon, Member

BOARD MEMBERS ABSENT:

Ruben Alvarado, Member

STAFF PRESENT:

Katherine Harrison- Rogers, Senior Planner, CLC
Adam Ochoa, Planner, CLC
Mark Dubbin, CLC Fire Department
Pete Connelly, CLC Deputy City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

I. CALL TO ORDER (6:00 p.m.)

Crane: Good evening ladies and gentlemen. Welcome to the January 27th, 2015 meeting of the City Planning and Zoning Commission. I'll start as we usually do by introducing the Commissioners present, on my far right is Commissioner Clifton, he represents District ... I have notes I just have to look at the them ... 6. Next to him is Commissioner Gordon, district, he's the Mayor's appointee. Commissioner Stowe is District 1. Commissioner Ferrary is District 5. Commissioner Beard is District 2. And I'm Godfrey Crane the Chairman and I'm representative of District 4.

II. CONFLICT OF INTEREST

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

Crane: We go on to ask if any member of the Commission or any City person present has any conflict of interest regarding any item on tonight's agenda. No body so indicates so we'll proceed.

DRAFT

III. APPROVAL OF MINUTES

1. November 18, 2014 - Regular Meeting

Crane: Next item on the agenda is the approval of the minutes of our meeting of November 18. Does any Commissioner have any fixes for the, those minutes? Okay I have a couple; page 22, line 24, "Texan's" take out the apostrophe please. And second and last, page 23, line 19 you have inaudible in there and I think the word I used was "louvres". That's all I have. Anybody else? Commissioner Beard.

Beard: I don't know what the correct word is but you had, there's another inaudible on page three that you made, line 19 and I don't know what it was.

Crane: Yeah, I saw that, neither do I at this point. "Finally when all the," let's say just put in the word "work." I think that would make sense. I'm sure I used some fancier word. Okay, any other Commissioner? Then I'll entertain a motion minutes be accepted as modified.

Stowe: So moved.

Crane: Moved by Commissioner Stowe.

Beard: Second.

Crane: Seconded by Commissioner Beard. All in favor "Aye."

ALL: Aye (Commissioner Ferrary abstains).

Crane: Opposed. And abstaining.

Ferrary: And I abstain, yes.

Crane: Commissioner Ferrary. Thank you.

IV. CONSENT AGENDA - NONE

Crane: We have no consent agenda items.

V. OLD BUSINESS - NONE

Crane: We have no old business.

DRAFT

VI. NEW BUSINESS

1. **Adoption of Statement of Reasonable Notice** as required by Section 10-15-1(B) of the Open Meetings Act, Section 10-15-1 to 10-15-4, New Mexico Statutes Annotated (1978), as amended.

Crane: And the first item of new business is that we shall read into the record the Statement of Reasonable Notice for Meetings. This is going to be mind-numbingly boring for all concerned, particularly the members of the public. And to prevent the Commissioners from walking out we divide this up into little sections and each Commissioner reads some of this into the record. And it's something we're required by law to do every year, so please be patient and don't try to understand it, we don't. I'll start off with reading the first three paragraphs of the first page and then I'll ask Commissioner Beard to read the next three.

City of Las Cruces Planning and Zoning Commission Statement of Reasonable Notice for Meetings. The Planning and Zoning Commission is informed that:

Whereas, the Planning and Zoning Commissioner of the City of Las Cruces meet in a public hearing at 6:00 p.m. on January 27, 2015.

Whereas, Section 10-15-1 (D) of the Open Meetings Act, Section 10-15-1 to 10-15-4, New Mexico Statutes Annotated (1978), as amended, states that, except as may be otherwise provided in the Constitution or the provision of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission, administrative adjudicatory body or other policy making body of a local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and ... Commissioner Beard.

Beard: Whereas, any meetings subject to Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

Whereas, section 10-15-1(D) of the Open Meetings Act, as amended, requires the Planning and Zoning Commission of the City of Las Cruces to determine annually what constitutes reasonable notice of its public meetings.

Now therefore, the Planning and Zoning Commission of the City Las Cruces of New Mexico states:

Crane: Commissioner Ferrary.

Ferrary: That for regular public hearings and special meetings, the Planning and Zoning Commission of the City of Las Cruces generally meets the fourth

Tuesday of every month at 6:00 p.m. for the regular public hearing, and the issuance of an agenda in accordance with this statement shall be issued and circulated to the press, radio, and other public information media and posted on bulletin boards of the City of Las Cruces City Hall.

That a public hearing is required for requests for Zoning Code amendments, Sign Code amendments, zone changes, annexations, initial zonings, Planned Unit Developments, infill development proposals, special use permits (as defined in Section 38-10 of the 2001 Zoning Code, as amended). Notice of public hearing shall be sent by regular mail to all property owners, as shown by the records of the County Assessor, within at least five hundred (500) feet of the proposed case. Notice shall be mailed at least fifteen (15) days prior to the required hearing. Notice of the time and place of the public hearing shall be published at least fifteen (15) days prior to the hearing in a newspaper of general circulation in the City.

Crane: Thank you. Commissioner Stowe would you take three and four please.

Stowe: Yes. Three. That a public hearing is required for requests for Subdivision Code amendments, master plans, preliminary plats, and final plats (as defined in Chapter 37 of the Las Cruces Municipal Code). Notice of the public hearing shall be sent by regular mail to all property owners, as shown by the records of the County Assessor, within at least five hundred (500) feet of the proposed case. Notice shall be mailed at least fifteen (15) days prior to the required hearing. Notice of the time and place of the public hearing shall be published at least fifteen (15) days prior to the hearing in a newspaper of general circulation in the City.

Number four. That a public hearing is required for all appeals to the Zoning Code, Design Standards interpretations, and Subdivision Code interpretations. Notice of the time and place of the meeting shall be published at least fifteen (15) days prior to the hearing in a newspaper of general circulation in the City.

Crane: Thank you. Commissioner Gordon, five and six please.

Gordon: Number five. That the Planning and Zoning Commission determines that, reasonable notice shall include the issuance and posting of an agenda for regular meetings at least fifteen (15) days prior to the required hearing. That reasonable notice for special meetings shall require the issuance and posting of an agenda within 24 hours of the time of the special meeting. All other meetings which may be called for informational purposes at which no action is to be taken shall be held only after written notice issued to the news media no later than 12:00 noon of the day of such meeting, or four (4) hours prior to such meeting, whichever is greater.

Number six. That in an emergency, wherein it is necessary for the public peace, health, safety, and welfare, a meeting may be called with as much notice as may be possible under the conditions.

Crane: Thank you and Mr. Clifton would you do seven, eight, and says the back of eight, should be nine. Thank you.

Clifton: Seven. That substantial compliance with any one of the appropriate foregoing methods of giving notice shall constitute compliance with this statement and Section 10-15-1 to 10-15-4, N.M.S.A. (1978), as amended. Nothing herein shall prevent the use of additional means or methods giving notice of regular or special meetings. Nothing herein shall require new notice of any public meeting for which notice has been given and which is recessed or adjourned. However, in recessing the meeting, the presiding officer shall announce the meeting, the time and place of the meeting shall resume.

Eight. That all such meetings are and shall be open to the public as set forth in Section 10-15-1 to 10-15-4, N.M.S.A. (1978), as amended.

Nine. That if any section, paragraph, clause, or provision of this statement shall be for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph or clause or provision shall not affect any of the remaining provisions of this statement or its application to other situations.

Crane: Thank you Mr. Clifton. The Chair and the Secretary will sign this and we will proceed to the next item.

2. Election of Officers.

Crane: And the next item is election of officers. For the benefit of the public this will not take very long. We have only three elected officers; the Chairman, the Vice-Chairman who currently is Mr. Stowe, and the Secretary who's currently Mr. Beard. Let's take it with, let's take the secretary first and I'm relying on our legal associate over there to tell me when I do something wrong, because we all want to be able to go home tonight. Do I hear a nomination for Vice-Chairman, pardon me, for Secretary of the Commission for the next calendar year?

Stowe: I nominate Commissioner Beard.

Crane: Thank you. I'm not sure if that requires a second?

Gordon: Second.

Crane: We'll second anyway. Okay. All in ... Mr. Beard will you run? I don't think you have any alternative.

Beard: Yes.

Crane: Yeah. Never speak to you again. All in favor of Mr. Beard as Secretary for another year.

ALL: Aye. (Mr. Beard abstains)

Crane: Opposed. Abstentions. Okay. Mr. Beard abstains. So Mr. Beard is voted in as Secretary by vote of five to one, five for, one abstention. And for Vice Chairman, do I have a nomination? Mr. Beard's about to say something I know.

Beard: Yes, I nominate Mr. Stowe as Vice Chair.

Ferrary: I second it.

Crane: Nominated by Mr. Beard, seconded by Ms. Ferrary. All in favor of Mr. Stowe being Vice Chairman for another year.

ALL: Aye (Mr. Stowe abstains).

Crane: Opposed. Okay is that six to one Mr. Stowe, or does modesty forbid you to vote for yourself? Modestly clearly forbids. Okay. And finally for Chairman for the year. Do I have a nomination?

Beard: I nominate Mr. Crane, Dr. Crane as Chairman.

Crane: Seconded by Ms. Ferrary?

Ferrary: Yes, I second it.

Crane: Okay. All in favor ... any other nominations? All in favor of Crane as Chairman for another year.

ALL: Aye (Mr. Crane abstains).

Crane: And I'll abstain. Thank you I take that's five to one, five, zero, one. Thank you.

3. **Case Z2882:** A request by Living Word Family Church/ Pastor Jeff Sutton to rezone a 0.452 acre property located at 340 Southgate CT., Parcel No. 02-37626, from M1 (Industrial Standard) to M1/M2/C-2c (Industrial Standards/ Commercial Medium Intensity-conditional). Proposed use: Church and Food Bank Warehouse and Distribution Center. (Council District 4: Small).

Crane: And now we get to the matter for which most of the members of the public here have arrived. Let me explain since you may not have been to the Planning and Zoning Commission meeting before how we handle these

DRAFT

matters. Your case is Z2882, in regards to the request for a zoning change that has been put in on behalf of the Living Word Family Church. The way we do this is first there will be a presenter from the City, in this case Ms. Harrison-Rogers. After she has made a presentation the Commissioners may have questions of her. When those questions are over we ask the applicant or the applicant's representative to address the Commission if that person so wishes. And we may have questions of that person. And then finally we invite members of the public to step up to the podium there and speak into the mike and give us their opinions briefly. We normally limit addresses by the public to three minutes and it's quite all right for members of the public to say they completely agree with the last speaker rather than repeating everything that that last speaker said. At the end of the time when everybody in the public has said their say, we will close the matter to further debate and the Commission will discuss it among themselves and take a vote. So Ms. Harrison-Rogers, Case Z2882 is yours I think.

H-Rogers: Mr. Chair, Members of the Commission. Yes, again this is Z2882. This is essentially a request to rezone approximately less than half an acre parcel from M1/M2 which is our industrial standard to M1/M2, C-2c to allow a church to operate at this site with the appropriate permits and zoning designation.

Here is just an overview. This is the location and zoning map. You can see that it's located along Southgate Court, that's the subject property, that little triangle right there. Currently the property contains a 6,000 square foot warehouse and has approximately seven parking spaces. Relatively new, it was built in 2012. The church is operating without the appropriate zoning and without the correct building and fire code improvements for the type of occupancy at that location. Churches are not typically an allowed us in industrial zones, however they are generally allowed in all other zones throughout the City. The applicant is seeking to rezone this property again to add the church as the only additional use at that location.

Here's the existing site, you can see the warehouse building right here and of course the aerial showing a little better view. These aerials aren't particularly new so you don't see the buildings that are actually present in that cul-de-sac.

Church services currently are accommodating about up to 50 people, it fluctuates as churches do. Parking lot again has only seven spaces. If this were to be rezoned those seven spaces are deficient, for the number of people associated with this church we would need anywhere between 10 and 17 spaces on site, however there is an opportunity to have some leeway in terms of some off-site parking or some shared parking agreements with some adjacent properties. Church services are typically in the evenings and on Sundays when the adjacent businesses are closed. Parking does occur along the cul-de-sac and it

can, there were some concerns from some of the reviewing agencies that it could impair emergency vehicle access to those properties. Also, the church is in a location that is of course in the industrial zone. There are several businesses nearby that are of adult, not several, there's one business in operation, one that's been approved, on Westgate Court which is nearby which is adult oriented in nature. There is a provision in our code that requires that those businesses be 1,000 feet away from churches, schools, parks, and some other types of uses. If the church were allowed at this location ultimately what that would mean, it would make these adult oriented businesses nonconforming and it would limit their ability to expand. It would also drastically reduce the number of parcels available within the City for those types of businesses and I have some maps to, to show you that.

So basically staff, when we were looking at this, here's a map of basically where in the City, at least in this part of the City where those type of businesses can be located. And of course when you add the church and take out that 1,000-foot buffer you can see that those lands are drastically reduced and is again going to make those adult oriented businesses nonconforming in nature. Ultimately if a church moves in, you know the church doesn't have any, there aren't any provisions in regard to the church not moving closer. But again it will make those, those adult businesses nonconforming.

Staff is recommending denial of this zone change for several reasons. A church or an assembly use at this location we did not feel was, was a compatible land use based on adjacent industrial uses, based on concerns regarding potential traffic volume at that location, and parking congestion. Additionally we feel as though this particular use will create those nonconformities that I discussed regarding those adult themed uses that are within the 1,000 feet. Also we feel as though this proposed rezoning would negatively address the relevant Comprehensive Plan policies, Planning Commission decision criteria, and Zoning Code purpose and intent statements, and New Mexico case law as was outlined in your staff report.

Your options this evening are to vote "yes" to recommend approval to City Council; to vote "no", to recommend "no" to City Council; vote to modify what's been proposed this evening; or to table or postpone what has been presented to you for additional information as directed. Now I stand for any questions if you might have those.

Crane: Commissioners? Commissioner Stowe.

Stowe: Somewhere in the staff report I seem to remember that the request by the applicant was for about two years to fulfill a lease that's currently enforce at the existing site at which time either they plan to move to a site that would meet more of the code details, to vacate the present site that is to

say. Does that help staff set up a temporary, two-year time certain finish of the approval or are you allowed to do that or not?

H-Rogers: Mr. Chair, Members of the Commission, Commissioner Stowe. Unfortunately staff cannot recommend approval of a temporary zone change. A zone change is a zone change and we don't have the ability legally to, to say "Oh it would only last two years," or "only lasts five years." Once it's zoned, it's zoned in so long as it's meeting the provisions of the code and the conditions that may be applied to it.

Stowe: I was trying to find a way that would suit the laws in place and bend to the wishes of the applicant. Anybody can help me on that?

Clifton: Mr. Chair, Members of the Commission.

Crane: Commissioner Clifton.

Clifton: It sounds like kind of wanting to go down the path of contract zoning which we cannot do. We can't even entertain, I mean it, it seems that the staff's recommendation is the staff's recommendation, either we accept it, reject it, or condition it is really the choices that we have. And quite frankly I mean we're, essentially we, if this were to be approved or recommended for approval we are creating a worse situation for businesses that are existing, making then nonconforming and it's, you know it's, I think it starts bringing up a, a bigger legal question. But one question I do have for staff. I found it interesting that the New Mexico case law was referenced and I believe the, specifically the Miller Criteria and the zone change. And being a home rule municipality, my understanding of the provisions of the home rule municipality is that in order for the state law to supersede the home rule law it would have to have a statewide impact which this doesn't but conversely as part of the provision within that law, change neighborhood or community conditions justify the change. Well that neighborhood changed years ago and by allowing this type of use you're then changing the neighborhood correct?

H-Rogers: Mr. Chair, Members of the Commission, Commissioner Clifton. I would agree that yes by allowing this use you would, you would change, you would be changing the character of that neighborhood. It is industrial and, and industrial neighborhoods again weren't meant for simple uses such as this, generally because of health, safety, and welfare reasons.

Clifton: Thank you.

H-Rogers: You're welcome.

Crane: Commissioner Beard.

Beard: When I inspected the property I noticed that it is operating as a church. And I'm wondering how long it has been operating as a church and especially if it was before we approved that last adult place across the street. So that didn't happen too long ago, year and a half ago or so. How long has this facility been operating as a church?

H-Rogers: Members, Mr. Chair, Members of the Commission, Commissioner Beard. Our understanding is it, they began operating as a church around the same time that the proposal for the adult entertainment came before you for a special use permit. Because they were not zoned appropriately and they were residing and operating at that location essentially illegally, the church, they were not, they were not looked at as part of the 1,000 foot criteria because of course they weren't zoned to be there, nor did they have a, the appropriate occupancy in terms of building and fire code at that location. But essentially from, since 2012 I believe, but I will let the Pastor speak to that.

Beard: So the, one of the criteria is that you have to be zoned correctly in order to be a church?

H-Rogers: Members of the Commission, Chairman, Commissioner Beard. To operate as a church at that location, yes you would have to be zoned appropriately. That particular location is not zoned for a church use. They were violating the law in terms of operating without that.

Beard: Okay. The reason I'm on this particular subject is that we made that approval of the, of the, was it called the Bronx.

H-Rogers: Correct, it was.

Beard: The Bronx. And so you say it, these, this, these two things happened about the same time but we were completely unaware that this church was starting to operate while we were approving the Bronx.

H-Rogers: No sir, we were aware that they ... they had come to us in terms of, from what I recall about what occurred during that time, they had come to us with some concerns that they had just begun operating at the location, the Bronx was going through. But because they were not operating legitimately and they were operating without the appropriate permits they were not considered in terms of that 1,000-foot radius from the Bronx.

Beard: Thank you.

H-Rogers: You're welcome.

DRAFT

Crane: Commissioner Ferrary.

Ferrary: I have a question about the fire and emergency services saying that the building needs to be upgraded to assembly occupancy prior to our approval or the church land use. And what does that entail and?

H-Rogers: Absolutely. Members of the Commission, Commissioner Ferrary. I will refer to Mark Dubbin with our Fire Department and he can answer any of those questions.

Ferrary: Thank you.

Dubbin: Thank you. Mr. Chairman, Members of the Commission. The, the building as we've described it is an industrial use, so it's not really designed for assembly, it's designed for storage and possibly a small office. The fire code requires that for assembly uses there are certain safety provisions that are in place depending on, on the number of persons there. And it's based on the building size, not so much how many people are there but how many could occupy the building. A rough estimate of, of the occupancy for this building is close to 400 people. The requirements for that would be at the very least a sprinkler system and an alarm system. Currently the, the exiting that the building has isn't really suitable for even 50 people and these are things that during our initial inspection we made them aware of and let them know that basically the building is not designed for an assembly use.

Ferrary: Thank you.

Crane: May I follow-up on your statement Mr. Dubbin? What's it take to fix this building to bring it to satisfactory condition from the view of the Fire Department? More doors? More sprinklers? What?

Dubbin: Strictly speaking from the fire code if you have a, an A3 occupancy which is what a, a church is, a religious gathering, if you have more than 300 people in the building then you need a sprinkler system. Exiting would have to be updated, panic hardware, and the exits have to be a certain distance apart. Currently there, there are two exits that are too close together to be utilized. I think we spoke with them about adding a door until they could upgrade to a sprinkler system or something like that. So a sprinkler and alarm and some exiting, emergency lighting, basic safety features.

Crane: Thank you. Mr. Beard.

Beard: How many parking spots were required for the church?

H-Rogers: Members of the Commission, Commissioner Beard. Currently there are seven parking spaces which was associated with, with the warehouse use that it was, the building was constructed for. And the church depending upon again the number, the occupancy, based on the 50 occupancy not what building code or fire code is requiring, based on 50 people in the assembly they would be required to have a range from anywhere from 10 to 17 spaces. Now I would like to provide a, a word of caution in terms of those spaces. Churches tend to grow and so just from a planning prospective it would behoove them to consider maybe building on the high side of that range as opposed to the low side of that range. If they were going to develop additional spaces if the zone change were to go through, just because of the growth that, that churches generally have.

Beard: To me that number would seem, deemed to start off with would seem small. There's a lot of chairs in that, in the church so I can see where they might have 50. I counted the number of locations including the seven at the building to be 28, if you go around the street and don't park in any driveway, a total of 28. I would still think that that would be a small number. If the church, well when we talk to the church maybe they have made arrangements with other people in the area for parking on their property. I certainly would like to hear that.

Crane: Mr. Clifton.

Clifton: Mr. Chair, Members of the Commission. Nonetheless the parking looking at the area would be unpaved parking correct on the adjacent properties?

H-Rogers: Mr. Clifton, Members of the Commission. Some of them yes would be unpaved. A couple of those properties of course have been developed since those aerials that I showed you were taken, but yes there are several unpaved or vacant properties.

Clifton: Nonetheless though it's still clearly inadequate parking that could put the adjacent properties at risk of not meeting their property parking requirements down the road with proposed uses. And essentially we're trying to fit a square peg into a round hole here and try to, trying to back into how do we make this work when really the zoning district that it was designed for it's not supposed to work. It's incompatible. It's a manufacturing, and it's a heavy industrial zone; an M2 zone is heavy industrial and I mean right next door an acid producing plant could locate. And so I mean there's, there's a reason for zoning and I think that's why we're here this evening and staff clearly has articulated their recommendation. And I, again I don't particularly want to sit here all night and try to fit that square peg into the round hole. Thank you.

Crane: I have a couple of questions. There's a Loaves and Fishes Food Bank two doors away at 320. This may not be the right question for you, but does that have, does that belong to this church?

H-Rogers: Chairman Crane, Members of the Commission. That is a, that's a separate entity, but they also have a, a food bank and distribution center associated with this church. The food banks are an allowed use in this zone because it's a warehousing and distribution, therefore those are allowed. But, yes.

Crane: But that one is not associated with this particular church, Living Word Family Church?

H-Rogers: Not that I'm aware of. They too have, have their own distribution center.

Crane: So it'll be all right if Living Word Family Church had food distribution in 340 Southgate.

H-Rogers: That's correct.

Crane: Okay. Would you put up your three reasons, the City's three reasons for objection? It seems to me the most critical one is one that doesn't appear there and that is that this is an unsafe use for this building to have an assemblage of people in it when it doesn't meet fire code. And that one item supersedes all these others. I'm inclined to think that if a church is not uncomfortable being in an industrial area then so be it, but it would have to be safe there for me to feel comfortable about it. So we can ask some questions of the Pastor. Commissioners, anybody else have any questions for Ms. Harrison-Rogers? Then thank you. Is the applicant or representative here please? Please come up, speak in the mike, say who you are and I have an oath here. Where's my oath madam secretary? Thank you. Because there are oaths and there are oaths and I want to get it right. Do you swear … tell us who you are first.

M. Sutton: Maria Sylva Sutton and I am the Pastors' wife, sort of the co-Pastor. And also I'm the Executive Director of Loaves and Fishes which is the food bank at 320 Southgate Court. And good evening Commissioners. It's nice to be here this evening.

Crane: Evening. Sir.

J. Sutton: I am Pastor Jeff Sutton. The Pastor of Living Word Family Church.

Crane: And we'll swear you in together. 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?

M. Sutton: So help me God I do.

J. Sutton: Yes.

Crane: Go ahead please. The mike is yours. What would you like to tell us? You've heard the City's objections and you've heard some questions from the Commissioners. You can make a statement if you wish or just rebut what you've heard. And you don't have to say anything. It might be in your interest to do so.

J. Sutton: Right.

Crane: Go ahead.

J. Sutton: Commissioners regarding the main question that you just had about safety, we have a total of four doors and one of them is a roll-up door that is, I don't know, it's huge. It's the typical roll-up door that goes in a warehouse that it's, I don't know, 12 feet across maybe. And we leave that there and then on the far end there's another door. We had a, one fire department individual come, I wasn't there, my wife was there. We did the things that they told us to do.

M. Sutton: With the ...

J. Sutton: Except for one door. And we were waiting to find out what was going to happen before we put a $12,000 door in, another door, which is right next to the big roll-up door. But if that's what code requires, we don't mind doing what code requires. We don't ever plan on having 300 people, 400 people in that, that facility. Operating at about where we are now is fine. If we needed to go to multiple services we would do that. That'd be easy for us. We have had no issues with any of our neighbors in any capacity from the beginning. We were not aware of this club that was coming in. We were aware of the Eros that was there already and had no problem or we wouldn't have been there. And we know there was a bunch of people that came and had a big problem with it, some of them Pastors, we're not a part of that group, never would've been a part of that group. I went to that group specifically and had a conversation with some of them that it wasn't ethical, some of the things that they, that I heard were said because one of my members was in the meeting and was the only one that spoke up for those people.

M. Sutton: For the club.

J. Sutton: Because they were the ones in zoning cause we found out after we were already there that there was a zoning issue with us. So if we would've

been aware of that in the beginning we wouldn't have signed a lease, we would've you know proceeded, but this all came up some weeks after we were already in there.

M. Sutton: Well months really.

J. Sutton: But anyway, it was a big hullabaloo you know and we just didn't know what to do, and so we just waited it out. And then the, the fire department came and we, you know make the requirements you know except for that one door that they asked us to do. And we've just slowly been waiting it out to see what happens and to get to this point. And met with Susana Montana and then I've spoken with, recently with Katherine Rogers and, I understand where they're coming from. The parking issues, we have agreements here with all of the other facilities that are there which are several, there's a lot of empty parking spots. One building that's not used at all. Loaves and Fishes is never used on Sundays. Morrison is not even there any more. I mean there is more than sufficient parking.

We, again we have no issues with any of those adult facilities whatsoever. We do plan on, when we're done with our, our lease, moving out of there, but we do desire to keep it for food distribution because the Loaves and Fishes has very specified food distribution, it's for seniors from 60 years and older and they serve a very large group of people, seniors in the, in the area but there's a lot of them that are 59 and they don't qualify. And we would like to keep that building for that purpose. And not to have it as a church but for that, but we ended up there. We ended up in this lease and we've been there over two years, we've got a little over two years left and all we want to do is finish the lease. And, and then move on, but keep that facility, hopefully buy both of those buildings at that time and have that for food distribution and other community outreaches, you know to be, to come from that area. So that's our main goal and our main desire which we've expressed already you know to the Planning and Zoning. And then I'll let my wife say whatever she wants to say.

M. Sutton: I just compliment Planning and Zoning. Of course they have, you know they've done their research and unfortunately when we did move into that building we did not realize that there was this zoning issue, because we were under the impression that a church could go into any industrial or really any zone because it was a business. It's considered a business. And we didn't realize that a church was, fell into a different category and we had already been at that location probably about 6 months before the other business applied for their application. And we had started the process but just slowly waiting on the process to be completed. And we had no idea that that other business was going to, to apply and it sort of, it just really kind of happened all at the same time which was to our surprise,

not to God's surprise, but it was to our surprise that it all happened at the same time.

But like my husband said taking care of the issues of the parking, we have, do have shared parking agreements from the, all four businesses that are in that cul-de-sac and all of them have agreed, they have no problem with sharing their parking spaces provided nobody blocks the entrance and the exits. So that you know worked out. They're happy that we're there because they use our parking lot during the week for all of their employees. So that's one of the issues.

The other issue that was pointed out was the fire code issues. Like my husband said there is a large 20-foot roll-up door that we have an usher assigned to that if anything were to happen they immediately go to that door and would roll up that door. And frankly if you were in a fire situation would you rather go through one single door or run out the, the large roll-up door? So it just seemed to us at that point we didn't want to put in another door on the same wall maybe you know 10 feet away from the huge roll up door and go to that expense when we really didn't know what was going to happen with the building. And the other thing was the parking issue, and then we just, we do understand about the adult entertainment industry, but we are also *(inaudible)* adult entertainment and like I say it's not a problem for us to have them there or if that issue came up again I think that we would stand in defense of them being able to operate in that location. They're, they've you know met the requirements.

J. Sutton: We understand what the requirements are and that there's specified zones for that and they've met those requirements, so what right would we have even if we are a church to say "We don't want you here cause you're less than 1,000 feet away." When we already knew there was, when we went there we knew when you go down the street to turn on Amador I mean you're going to see the Eros sign if that offended us or something, but it does in no way offend us.

M. Sutton: It's kind of like a landmark. Turn at the Eros, go left instead of right. It's there.

J. Sutton: *(inaudible)* we prefer but it is …

M. Sutton: But it is a landmark.

Crane: That's very liberal of you if I may use a dirty word.

M. Sutton: I mean even for the foot bank, when you get to that point don't turn right, turn left, so …

Crane: There is an erotic element to food but I think you've perhaps carried that too far. Never mind.

M. Sutton: So anyway we're basically, we know we're at your mercy. So would recommend or ask that you rule in favor of us and recommend that we get the pancakes ...

J. Sutton: Just let us finish our lease and be done with it.

M. Sutton: So ...

J. Sutton: Cause there's been no issue and there won't be an issue. We, this site plan here, the building contractor brought to us and we can put I think four more spaces. He just said we didn't put them, he said but we can put those.

M. Sutton: Four more parking spaces if we needed to do that.

J. Sutton: Yeah, on the, on the far side of the building.

M. Sutton: Yeah, so.

Crane: I ... please don't ...

M. Sutton: There are, some of our congregation members are here just to speak in our behalf. I don't know if they'll want to come forth or not.

Crane: We'll get to them.

M. Sutton: Okay.

Crane: Don't go away for a minute. Mr. Dubbin what's the official view of a roll-up door as an emergency exit?

Dubbin: Mr. Chairman. As we discussed earlier a roll-up door is more suitable in an industrial application. A roll-up door is not recognized as a proper exit in the fire code.

Crane: It would basically take too long for one person to roll it up in, in an imaginable emergency.

Dubbin: That, that's part of it. It's, the, the roll-up door is not considered an accessible exit for a person with a disability. The, I mean a good example of an exit door is what we have here in the, in the Council Chambers, that has a large panic bar that anybody can open easily and quickly.

M. Sutton: We do have an usher assigned to that so that they would go immediately and roll up that. I mean it's, it would take seconds to open that.

DRAFT

Crane: We understand.

J. Sutton: And we would *(inaudible)* door if they want. You know we'll put the other door.

Crane: How did you come about selecting this building? It was already built?

M. Sutton: It, it was being built when we were looking for another building and our lease had expired at our other location which was in a commercial zoning and it was the same owner that owned the other building. And he had sold the building that we were in when our lease came up and he was, gave us a very very fair price.

Crane: In your other premises, did you apply for a permit to operate the church?

M. Sutton: Yes we had a business permit but it, it was no question that you know they knew we were a church, that we applied under Living Word Family church and we had the permit for that.

Crane: But when you went to the new building.

M. Sutton: We just changed the address and, and applied for it and then began to wait for the process. And I don't think they ever told us that we couldn't have, have the church there. When I applied, when I put it, you know put in the application for the address change.

Crane: So when did it come about that you heard that you were in violation?

M. Sutton: When, when the other business began to apply. When they had their ...

J. Sutton: When *(inaudible)* with the ...

M. Sutton: When they had their public hearings. When they had their public hearing then somebody at that meeting, we don't know who because it wasn't any of us, said "Well there's a church within 1,000 feet." And we had no idea that they were going to ever bring that up or if that was going to come up. And then it was like oh no you, there's not one on the books and I was like well we're here. We, you know, so.

Crane: So the City at that point ...

M. Sutton: Then at that point the City began to investigate and then I got, then we got a, a note from Codes Enforcement that we were in the wrong.

DRAFT

J. Sutton: And we sent one of our, one of our maintenance guys over to find out you know what was going on.

Crane: Okay. Thank you. Commissioners anybody else have any questions for the applicants? Commissioner Gordon.

Gordon: Can you tell me are there any provisions in your lease which would allow you to vacate?

J. Sutton: Well there's nothing written in the lease that allows us to vacate.

Gordon: Have you discussed this with the, the owner of the building who's given you the lease as to whether or not there would be a problem if because you were being denied the right to be there if you could break your lease and leave? Cause that seems to be the problem is that you want to be able to stay there through the extent of your lease which is another two years. If it were possible for you to leave without any penalty would you be able to do that with the grace of the landlord and go to another location and that would solve your problem also?

M. Sutton: Your key words are without a penalty. And the price that we're paying at the moment is a very good, it's, it's very reasonable for the size of our congregation.

J. Sutton: It's economic for us.

Gordon: Well it may also be possible for you to find the same type of accommodations in another location for the same price. I'm not saying that that's not possible. My concern is, is if you are being denied and it goes to City Council and they deny, you're not going to have much choice. You're going to have to leave. And hopefully if that's the case, I don't know what the Commission here is going to recommend to City Council, that's to be decided, but if it happens hopefully that you would, is that a provision in the lease. Here you're being forced to move, it's not that you want to move.

J. Sutton: Right.

Gordon: And I'm not saying if there's a penalty I use that only because usually in terms of a lease the landlord will usually stipulate well there's a two-month penalty of rent and something like that if you have to leave. Not necessarily making you pay for the full term of the lease that you haven't used.

M. Sutton: We discussed that with the landlord.

DRAFT

Crane: I'm sorry we missed the beginning of your sentence.

M. Sutton: I said we can just certainly discuss that with the landlord. He realizes that we're going through this because he had to sign off on getting it rezoned as well. He had to sign some of the paperwork.

J. Sutton: Sign off on the, the potential pancake zone, rainbow zone.

M. Sutton: The zone change.

Crane: Mr. Clifton.

Clifton: Mr. Chair. Before you entered the lease obviously the building was under construction. I would assume the building owner would know what could and could not be utilized in that facility. Had you discussed with him the use that you were proposing?

J. Sutton: Well yeah because we had leased with him for 13 years prior in another facility.

M. Sutton: And he assured us that we were fine because it was like a commercial zoning industrial and you can put just about anything in an industrial zone. And we didn't continue ...

J. Sutton: He thought it was fine too.

Clifton: Okay, well I think a lot of these are probably civil matters that we don't really need to discuss in this case, but just for my understanding and maybe the benefit of the Commission; it, it appears in the staff report that in 2012 a building permit application was submitted by the property owner for a church to operate within the warehouse building. There was some issue with that at the time. It was denied and eventually codes got involved. But the question I have is, you, you mentioned an address change but in the business permit, business application, business permit application process it's not simply a change of address. You have to reapply for a new business registration. And so was there a business registration for the church?

H-Rogers: Katherine Harrison-Rogers for staff. Just for clarification there is a typo in my staff report. On page two, building permit application should read, business permit application. That's what was denied.

Clifton: That is, that's, okay that's what I was getting at. That's a good piece of information. So in essence in 2012 you had applied for the actual business registration to locate the congregation activities at this location. It was subsequently denied. Then it appears based on the report that the

DRAFT

activity continued for an additional two years when Codes Enforcement cited the business in April, October 2014. Went before the magistrate judge in October 2014 and the remedy was given by the judge per the judge's instructions and that's why we're here tonight based on the application of the zoning change. And the, the judge's decision was in no way guaranteeing a zone change just strictly an option for a possible remedy. Is that fairly accurate?

J. Sutton: Yeah we're, well, yeah.

M. Sutton: Yes.

J. Sutton: I mean all this is new to us. I mean all the process, all of it. I mean we still have to meet with the court again for I guess its codes, is that right Ms. Rogers? For codes. We were scheduled to meet the 22nd and because of the snow they cancelled it, so it's been moved to the 18th of February, or 19th of February with Melissa Burns-Myers in her courtroom at two o'clock, Judge Myers. So that's still, all that is, is still pending.

M. Sutton: Pending.

J. Sutton: And we had discussed with the judge that we're going through this process and so she said okay do this and go through, and then come back, you know we have to reschedule this for a trial or something I mean.

M. Sutton: Hearing.

J. Sutton: Hearing. And I think that was the second, that's what was supposed to happen on the 22nd with I believe it's codes which is different than Planning and Zoning. And you know so we, we just continued all this while we're waiting on that. But now it's been postponed until.

Crane: Mr. Beard.

Beard: Presently how many people are consistent in the congregation?

M. Sutton: We average about 50.

Beard: Oh you do have 50.

M. Sutton: Yeah.

Beard: Okay.

Crane: I'd like to just put it on record that this is not the first time that applicants have been misled by people who were trying to sell them real estate or

DRAFT

rent real estate to them as to what the coding, the zoning regulations were. What was possible for that particular property? It's happened to people who have built illegally onto their houses and said that the realtor said it was fine. And you were told by your, the person who owns your building that you could have a church in that property. I don't have a solution for it but I sure hope the City could come up with what I believe at one point we encouraged the City as a body several years ago to get together with the realtors at intervals and emphasize to them what the, the essence of zoning was so that they wouldn't make commitments which were going to get the households into trouble. I don't know quite how you do that for rental people. I mean if the owner of this building rented directly to you without the use of an agent I don't know quite how the City could educate them, but you have to some extent been misled. Nevertheless we have some hard issues here which we can't wave our hands at. Any other Commissioner have questions for the applicant? Commissioner Clifton.

Clifton: Thank you Mr. Chair. Real quick though just for the record just so we get it in, essentially you operated without a business registration for two years knowing that it had been denied by the City of Las Cruces in 2012?

M. Sutton: Sir when I placed the application we did not hear back from the City and I don't think that we ever actually received an official letter that it had been denied, as far as I can recall.

Crane: Does the City have any record on that Ms. Harrison-Rogers?

H-Rogers: Mr. Chair, Members of the Commission. I would have to go work with our, our folks that deal with business registrations to pull that information. But I do know that I had met with, I believe it was Ms. Sutton in my office at one point in time and some other members of the congregation in regards to how to fix the problem and that was not, that was around the same time that the Bronx was occurring.

Crane: Thank you.

M. Sutton: And I believe that fixing the problem was coming, going through this process. So that's what we proceeded to do.

J. Sutton: We're not trying to be rebellious you know to the City or the Planning and Zoning or anybody. We're just, you know we're trying to be compliant is what we're trying to do and ...

Crane: Mr. Dubbin of the Fire Department has a word for us.

DRAFT

Dubbin: Mr. Chairman I remember in 2012 when the business application came in, I went there with one of the inspectors because it was an assembly use in a, in an industrial area. And we informed them of some basic measures, I mean the Fire Department, there wasn't an immediate threat to life safety at the time and we're not in the habit of, of condemning a place and evicting the, the occupants but certainly not a church that's trying to move. But we did inform them that the building was not suitable for an assembly and they were in the process of moving in at that time. The door was mentioned, but they, they were aware that, that there was issues. After that the, the Fire Department did deny the business application and we were informed that they were in nonconforming zoning and, and there was traffic, parking issues, other, other zoning and building code issues and that it was more of a Community Development matter because of the, the number of nonconforming issues.

Crane: Thank you. Commissioners any other questions for the applicants? Thank you both very much. On the mike please.

J. Sutton: Every other thing that the Fire Department asked we, we did that, but that door, all the other stuff we did. We built that, if you were there we had to build the thing that goes up for the cords and all that kind of stuff and went across the ceiling and down. And we, we did all, all those things and with the fire ...

M. Sutton: Extinguishers.

J. Sutton: Extinguishers and, and all that. We, we did all, all of those other things.

Crane: Thank you.

M. Sutton: Excuse me.

Crane: Yes, you have.

Dubbin: Well it was my belief at the time that we, that the church was going to find a suitable location in a short period of time and ... if, if my memory serves I remember that it wasn't to be a permanent location.

Crane: About how long ago was that again?

Dubbin: 2012, I mean right when they, right when the, the business application came in.

Crane: Thank you. Commissioner Ferrary.

DRAFT

Ferrary: My understanding is that there is supposed to be a sprinkler system as well as an alarm for that sized building and that was not complied with, is that right?

Dubbin: That's correct.

J. Sutton: If there's 300 people you said.

Dubbin: If the building can house 300 people and basically the, the, the available space, the area of, of the gathering like in this room with chairs that are non, not attached, just chairs only movable kind of in your configuration, that square footage divided by seven is how the occupant load is derived.

J. Sutton: I understand what you're saying now.

Dubbin: It's not based on someone saying "Well I'm not going to have that many." It's what can the building support.

J. Sutton: Oh okay. I understand. I thought it was number of people. Okay.

Crane: Thank you. Commissioner Clifton.

Clifton: Last question for the applicant. Has, I'm presuming the, the landlord is not new to this business. I mean has he offered you any alternatives in terms of other properties to relocate?

J. Sutton: We're working on that.

M. Sutton: He would like ...

J. Sutton: I mean he has all those properties right there. It's all in the same spot so right now but. We've, you know we've discussed it but you know there'd have to be some other land you know worked out somewhere else that's you know works better.

Crane: You mentioned that you ...

J. Sutton: And we want to do that. You know we want to do that and he wants to do that too.

Crane: You were in a commercial location before?

M. Sutton: Yes.

Crane: What, what part of the City was that?

DRAFT

J. Sutton: It was on Picacho and Motel, right on the corner.

Crane: Thank you.

J. Sutton: Strip center. And the same owner had built, had built that facility.

Crane: Thank you. Anyone else? Well thank you both and now we'll hear from your flock.

M. Sutton: Thank you.

Crane: That's not to imply they're sheep. On the other hand you are a Pastor.

M. Sutton: And you're all invited to our services on Sunday mornings at 10:30 and Wednesdays at six and seven.

J. Sutton: Let me say this too. I know you guys went through some things or maybe it was you guys that went through them because I wasn't in the meeting. I didn't find out about it until afterwards and, and I did get upset about it. And went down to the evangelical minister fellowship and told him it was inappropriate.

Crane: Excuse me. Back up and tell us what meeting you're talking about. The one regarding the Bronx strip club?

J. Sutton: The one.

M. Sutton: Yes.

J. Sutton: Yes.

Crane: Okay.

J. Sutton: My understanding was there was a lot of church members from across the, the City that came and really ripped the Planning and Zoning people and said, said some pretty rough things.

Crane: I'm here to be able to tell you that there were 95 against and five for and the five for has basically drifted into the Council Chambers by accident and thought they'd make a first amendment presentation. I was, yeah we were actually I believe acid rain was called down upon us at one point, but that was only one person.

J. Sutton: That was offensive to me when I heard that and that's why I went to the EMF meetings and told them, I said "You guys, this is, this is inappropriate. This is totally wrong you know, you know to take this" ...

DRAFT

when you're trying to reach people in the community you go and do things. We need to be compliant. We were just finding out there were all these zoning issues with us. And we're the ones in the wrong. They're not in the wrong. And they have a right you know, I mean if, if we start making these kinds of stands it can work against us in the future. Somebody could make a stand against us and it's just, it's just, it's unethical, it's wrong. And ...

Crane: We understand.

J. Sutton: I haven't been to very many of the EMF meetings since but, and I've never been the most popular person in those meetings, but I don't care. I'm not here for a popularity contest you know period in this City. You know I'm here to build a church. And we don't want that to be a permanent location where we're at, we want to grow from there. That was never intended to be our permanent, this is our church forever and ever, no we're growing from there. We're in a transitional period. The Loaves and Fishes was right next it and you know it just seemed convenient. It just seemed this will all work together then we can use this for another warehouse and then move it, build a church church. And so that's how it all you know started and then it turned into this whole deal. And, but I apologize for the church community. I've never done that. I've never really believed in things like that but now I find myself doing it, because I've, you know I've heard people apologize to the Indians for being run off the land and it's like, well you know that's the way wars are. People lose, people win, and you know I've never thought much like that but standing in front of you and, and hearing what I heard and especially one of the members that told me how bad it was, which is what really instigated me to go to the EMF meeting and have a talk with them about what they did. And of course you know I mean no body said anything to me, they just heard me out. But that's inappropriate. I apologize the church community did that and I don't agree with them whatsoever and never will.

Crane: Again a very liberal view if I may say so and I'm not being ironic. Well thank you again. You're at the right place to get this fixed. And Commissioner Beard wants to say something.

Beard: Yeah I want to make a comment. I don't think you need to apologize. When I brought up the issue here tonight I just wanted to make sure that I understood what the record was. I didn't clearly understand what it was. I don't think that it would've changed our decisions at, during that meeting. It was a wild meeting. And there were people that stood up for the Bronx. So tonight I don't think it's going to change anything on our, as far as my decision goes, but at least we got, got the process in the record so that other people understand what did happen. The, the City was very concerned about what happened when we made those decisions. And

I'm, I'm sure they're still very interested in what happened and, and now it's on the record.

Crane: Any other questions for the applicants? Thank you again. And now we'll hear from your parishioners. Can I see a show of hands how many people would like to speak? Is there just one? Well three minutes sir and I'll ask our secretary, newly minted, to time you. And we may have some questions of you.

Ramirez: Of course.

Crane: Tell me who you are and I've got to swear you in.

Ramirez: My name is William Ramirez, Jr. I am here on behalf of Living Word Family Church. I am one of the members of the church.

Crane: Do you swear or affirm Mr. Ramirez that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Ramirez: Yes I do.

Crane: Go ahead please.

Ramirez: You'll have to, members of the council please forgive me. I was not prepared to speak but I felt compelled to. My wife and I moved here about a year and a half ago. And one of the things we absolutely loved about Las Cruces was the sense of community. My wife entrenched herself in, she became part of the Chamber of Commerce, part of the Conquistadors. I have been involved in many different, as many different things as I can but this is the second time that my wife and I have had our hand into a zoning issue, and unfortunately both times it tends to work against community effort. We're a church. We're part of the community. Our efforts are simply to improve our little slice of the community and I understand that there are laws. I understand that there are guidelines. But when we have people such as your selves that are human with emotions, cognitive reasoning, there can be ways to assist communities. We're not asking for major development changes. We're not asking for major blocks to be broken down. Just a simple ... we have made many arrangements with the businesses around. My wife and I have been attending this church for over a year and we thought it was a little strange too when we first pulled up and noticed where it was. But very quickly it became normal for us. And I was born and raised in Los Angeles so that shows you how it was a little strange for even me. We're, we understand that you have jobs to do, but my stress is just to try to keep the human element of it apparent cause that's all we are. We just want to keep our

spiritual ability and find a way to, to, to continue that. So I appreciate your time.

Crane: Thank you. Anyone else? Ma'am in the green shirt. Three, three minutes please. Tell us who you are and I'll swear you in.

Sordame: My name is Carol Sordame.

Crane: Ms. Sordame 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?

Sordame: Yes I do.

Crane: Go ahead please.

Sordame: Well I've been a, a sheep under Pastor Jeff for almost 30 years and can testify of the validity of the work that our church does and the effectiveness of the outreach that we have in the community of Las Cruces. Because I've been commuting from El Paso to go to church here for the last 17 years. And I agree with BJ and I agree with all the things that Pastor Jeff said. And just that you realize that we are just a group of people and we do have an impact and reach a, a very diverse community, very diffuse communities in our church; from the men of the Jericho house, the Gospel Rescue Mission, have a large functioning youth group. And so I, you know we are at your mercy. I just would like to see us be able to stay there to finish our, the term of our lease. It always has been the plan of the church to go to a different facility, and this is just a step in between. And so I don't know that there's a way to work it out but I believe that with God all things are possible. So thank you for letting us speak to you.

Crane: Thank you. Thank you ma'am. Anyone else? In that case I'll close this to further discussion and the Commission will discuss the matter. Commissioners, Commissioner Beard.

Beard: I'm kind, I'm kind of in sympathy with the church and I'm in, inclined to approve this case with the, with the condition that they meet all of the codes, especially the fire codes and the condition that the, that this is a temporary two year, an extension to what they've been doing. I'm anxious to hear what other people might be thinking along these lines too.

Crane: Commissioner Ferrary. No you have it.

Ferrary: My concerns are that if we make this exception or the change of the zone that then it can be used for a church even past this time by another group. And if the sprinkler system and the doors were put in that you would also

then have this 1,000 foot border or zoning that would not allow other you know like the …

Beard: Adult.

Ferrary: Yes. And so my concern is that once we do this or make the exceptions that they are permanent.

Crane: Commissioner Gordon.

Gordon: I'd just like to ask a question of staff. How long would this take before this matter would go, after we make a decision to go to City Council?

H-Rogers: Members of the Commission, Commissioner Gordon. Generally about six weeks. There, there's some time frames in, in terms of how it gets noticed and ultimately a zone change goes on to what we call the first read which is the agenda setting schedule and then two weeks after that would, would be for decision. So we're looking at a month to six weeks depending upon how the, the schedule falls.

Gordon: My thinking then is, it's, it's going to be our recommendation one-way or the other to approve to staff or, or give them what they're looking for. And then the, the official decision and final decision has to go before City Council, we do not make that choice. If it's a matter of six weeks it might be possible for the petitioner to resolve some of the matters about perhaps getting out of his lease and, without any problem and, and moving to another location and thereby withdrawing this petition and it would just solve the problem since he would have a period of time in which to do this. It wouldn't have to be done tonight. He would have that much time before City Council would make the final decision to perhaps resolve the problem themselves and then withdraw this matter. Is that correct?

H-Rogers: Members of the Commission, Commissioner Gordon. Yes that, that's correct. They, they would have that, that time, little buffer built in just because of when City Council falls.

Crane: Commissioner Beard.

Beard: I hate to make a decision based on somebody else maybe making a decision. I think that we should make a decision and forward it to the, the Council. Trying to guess what other people are going to do in the future is not, I don't, part of our decision-making.

Gordon: That's not, that's not my point. My point is there is a period of time regardless of what we do. I'm not making my decision based on upon what they're going to decide. I'm just saying that there is a period of time

here where the petitioner may be able to resolve this problem himself so that he could withdraw this petition and no harm done.

Crane: Commissioner Beard.

Beard: Well we, we could table it then if that, if that's what you're looking for. If you're looking for time.

Gordon: I'm not looking for time. I'm ready to make a decision I think, but I still think there is a period of time for them in which to act. It's going to take four to six weeks before this gets to City Council and if they can resolve this problem. Because no matter what we decide, yes or no, if City Council decides they'll go along with staff recommendation and to deny this, no matter what we do doesn't make any difference. It's just our recommendation and then based upon everything that we've heard, read, seen, going to the site, listen to the petitioner, it's that period of time which I think they may need to try to resolve this problem. The problem is they want to, they're looking really just to stay the term, the term of their lease. If they can get out of that lease then they have no problem. They're willing to go some place else. They were willing to go some place else even when the lease was terminated at the end of the two years.

Crane: Mr. Gordon do you, what do you think of Mr. Beard's idea that this be tabled and these avenues be explored of, in the breaking the lease or of getting the landlord who contributed to perhaps getting them into this position, to get them out?

Gordon: How, how long of a, of an extension or a period of time can they get on that basis?

H-Rogers: Members of the Commission, Commissioner Gordon. Ultimately that could be up to you. You could state that there's an indefinite hold on this or you could state next month or two months from now or three months from now. Ultimately it, it's up to the pleasure of this Commission.

Crane: Would you like to make a motion to that effect?

Gordon: I'd like to think about this for a second.

Crane: Okay. Commissioner Clifton.

Clifton: Mr. Chair, Members of the Commission. You know we are human but unfortunately we have to operate under the rule of law. And what, what's before us tonight, you know we can't act out of emotion and by delaying a proposed case they could, could change the outcome. I mean what, we have to ask ourselves what sort of precedent are we setting. I mean we,

DRAFT

unfortunately you know we, we can't, it's not our right to speculate what the landlord may have done or may not have done, we don't have all the facts, we're not the judge, we're not the jury, that shouldn't even be discussed quite frankly. The, the discussion is what staff has presented, what's in the code, and what's allowed, and what is their recommendation and I, I can certainly sympathize. I mean this is just a bad situation. It's, I, you know in my past life I've represented clients that we were on the receiving end much like yourself and, but it is, it's just the way it goes unfortunately. And unfortunately for us we have to make a decision based on the law, based on the codes in front of us, and, and quite frankly I, you know what, how much accommodation are we going to do that makes it inequitable for other applicants that can come before us in the future, other applicants that have been before us in the past. I mean we're really going down a slippery slope and I'm, I'm not comfortable with that. I, I'm not comfortable with a postponement to accommodate that. This is a pending case before the magistrate judge. She's going to want to know what the outcome was before it gets to City Council because they'll, they'll be back there again in front of Judge Burns. And it's, you know we're pulling the rug out of her as well, and she needs to know where this is at so she can continue to you know allow a continuance in the case to see what happens with City Council. You know we need to make a recommendation, I mean if a postponement's the Commissions will, so be it, personally I'm, I'm not favorable to that and further more if we do get into a recommendation based on findings, I, I will request that the New Mexico case law be removed out of the findings because it's, it's not appropriate for a homeroom municipality to have that in findings and it sets an extremely dangerous precedent for future zoning cases. Thank you.

Crane: Yes the consequences of approving this request for a variance are rather serious. I'm with Ms. Ferrary that if we say okay fix up the place and we'll let you stay there for two years until the lease is up, we now have a, a building which is still not, which is set up for meetings but it's still not in the area that's zoned for meetings. I rather think that we should address the issue firmly tonight rather than let it drag on. Ms. Ferrary did you want the floor?

Ferrary: Thank you Commissioner. I commend the church and your fellowship for all the good work that you're doing. I am concerned about the safety that already has, could have been you know, we, we have an obligation to make sure everyone is safe. And right now there is, even though you have maybe up to 50 people, there's nothing to prevent you from bringing in bus loads of people that could go over the 300 capacity and at this point you haven't had the sprinkler systems or the alarms or maybe the handicapped accessible doors to you know leave, so I am in favor of

DRAFT

making a decision for what could be right now as a possible safety violation.

Crane: I think we've probably are ready to take a vote. Does anybody have anything else to say? Mr. Clifton.

Clifton: Mr. Chair one, one last point, again I touched on this earlier, by approving this zone change we automatically put two businesses that have been existing into legal nonconforming status. And, and having been a lifelong resident of Las Cruces you know Eros book store used to be right across the stress on Amador and I can remember the, the fight 25, 30 years ago trying to co-locate these businesses into one part of town and I think staff's slide was excellent in representing you know where these businesses can go. We're not here to judge the morality of a business. The fact remains it is a bona fide licensed business and I'm a little surprised that neither one are here this evening because they're, they're staring legal nonconforming status right in the face you know in the matter of the next six, eight weeks. And that in my mind also brings up a lot of legalities for those businesses and what the City could be allowing that to happen to those existing businesses and that, that's another problem. And zoning is in place for a purpose. You know zoning has, dates back 100 years and there is a purpose for zoning and it's to, you know one of the main purposes is protect the health, safety, and general welfare of the public. And this is an M2 heavy industrial zone. Thank you.

Crane: Would you like to move that this variance be approved with the recommend, realization that everybody can vote against it if they choose. We must have positively phrased motion.

Clifton: Mr. Chair, sure I'll, I'll take a crack at it.

Crane: Just say that Case Z2882 a variance application be approved.

Clifton: Yes Mr. Chair, Members of the Commission, I'd like to make a motion that Case Z2882, a zone change request, be approved based on the findings as presented in the staff packet and I may read them into the record; 1) based upon review of the proposal by City staff a public assembly use such as a church is not an appropriate or compatible land use to be located within a cul-de-sac of an industrial subdivision within a standard industrial M1/M2 zoning district due to safety concerns associated with potential traffic volume, parking congestion impacts, and incongruent adjacent industrial uses. 2) the proposal would cause existing and approved uses to become nonconforming due to the proximity of existing adult entertainment establishments to the church less than 1,000 feet and would further limit available areas for these types of uses to become legally established within the City. 3) based upon a review of the proposal

by City staff the proposed rezoning would negatively address relevant Comprehensive Plan policies, planning commission decision criteria, and zoning code purpose and intents statements.

Crane: Thank you. Is there a second for the motion? Seconded by Mr. Stowe.

Stowe: Point of order.

Crane: Yes sir.

Stowe: I think what the Commissioner read, the findings were for denial. You're looking for a positive statement right?

Crane: Yes, but I let that go because I felt it was appropriate to have them read into the record. And when the time comes for him to specify why he voted he will omit findings.

Stowe: Okay.

Crane: Or actually no, let me correct myself. If Mr. Clifton chooses to vote against then he can site the findings, because they support that. Anybody of the Commissioners wishes to vote for then don't cite the findings. But you can also bring up the discussions and the site visit if you make one. So that was not a second for, by Mr. Stowe. That was a point of order.

Stowe: Second.

Crane: Now Mr. Stowe is seconding. Let's do a roll call vote starting with Mr. Clifton.

Clifton: I vote no based on findings, staff report, and issues discussed tonight at the public hearing.

Crane: Mr. Gordon.

Gordon: I vote no based on findings, staff recommendation, or discussions and a site visit.

Crane: Mr. Stowe.

Stowe: I vote no based on site visit, findings, and discussion this evening.

Crane: Ms. Ferrary.

Ferrary: I vote no based on site visit, discussion, staff recommendations, and discussion.

DRAFT

Crane: Mr. Beard.

Beard: I'm voting no based on site visit and discussions, however with the proper, proper requirements I think we could vote yes and I would vote yes if we could, if we had those conditions in there, but it, I will vote no as it is stated.

Crane: And the Chair votes no based on findings, discussion, and site visit. So the motion fails zero to six. Thank you all.

4. **Case A1730:** A request by Golden Corral Corporation on behalf of the property owner, Mesilla Valley Business Park, LLC, for a variance of 32 feet to the maximum height of 18 feet for a freestanding sign, resulting in a proposed 50-foot sign. The property is located at 1651 Hickory Loop, Parcel No. 02-42083. Proposed use: Freestanding sign associated with a proposed restaurant. (Council District 4: Small)

Crane: Our next item on the agenda is Case A1730, request by Golden Corral Corporation for a variance as to the height of a sign from maximum of 18 feet to proposed 50 feet at a proposed location for restaurant. Mr. Beard.

Beard: Excuse me, before we start this. Ms. Rogers, when I went to visit this last, the first site I did not see that yellow sign until I pulled into the parking lot. I thought it was not properly displayed tell you the truth.

H-Rogers: Members of the Commission, Commissioner Beard. Thank you for letting us know that you felt that it was, it was not highly visible and we will be sure to correct that. The applicant of course will assist in that when it goes to City Council.

Beard: Thank you.

Crane: So Mr. Ochoa you have the floor.

Ochoa: Thank you sir. Adam Ochoa Development Services for the record. Final case tonight gentlemen is Case A1730. It is a request for a variance from the maximum permitted height for a freestanding sign for a property located at 1651 Hickory Loop. Shown here on the location and vicinity map, highlighted in the blue. See the property here off of Hickory Loop north of Interstate 10, east of what is the existing Burn Lake area in the City. Closest intersection of course being here, Interstates 10 and Avenida de Mesilla.

The code requirements that we're looking at tonight is Chapter 36 sign code, specifically the development standards under appendix one which states that maximum permitted height for signs in certain zoning

districts. What we are looking at today of course as you saw on the previous zoning map, the property is on PUD with the underlying zone of C-2. That C-2 property would be limited to a maximum, sign at the maximum height of 18 feet.

The subject property as I stated before located on the southwest corner of Hickory Loop, north of Interstate 10. The proposed lot will encompass approximately 2.85 acres and it is currently undeveloped or vacant. Like I stated before the underlying zoning is PUD C-2 which is planning and development with the underlying zoning of commercial medium intensity. The property as we typically take, take in sign, sign height requirements has frontage and access along Hickory Loop which is typically what we require or we, we look at for what we establish what is allowed for a freestanding sign. That Hickory Loop is a local roadway just for the record. The applicant is seeking to vary 32-feet from the maximum permitted height of 18-feet. Again the property being on C-2 and located on a minor local roadway they are limited to an 18-foot tall sign. The proposed variance would permit for the applicant to install a 50-foot tall freestanding sign on the property. This sign is for proposed restaurant as, as you heard, the Golden Corral Corporation who's looking at developing a new development there. Staff did send this out for review to several departments in the City. Staff and other reviewing departments *(inaudible)* noticed significant health, safety, or welfare issues with the proposed variance. The only real I guess concerns that were brought up, were brought up by NMDOT just stating that the sign would have to follow all federal and state requirements for, for signs being located off of Interstate 10.

This here is a preliminary site plan of the property. As you can see here the access off of Hickory Loop, proposed building here. The proposed sign is, will be going relatively here next to that existing parking lot which serves the call center to the north of it, across the street on Hickory Loop shown here. You could also see from here there is a, an existing 30-foot tall billboard there along Interstate 10 for, for reference. Shown here the aerial again. The aerial is dated of course cause there's under construction new apartment, I'm sorry, hotel site here and then there is that existing commercial parking lot adjacent to the subject property as well. The applicant's justification is that basically the proposed new restaurant is not visible from Interstate 10 or the nearby intersection of Avenida de Mesilla. And the proposed 50-foot tall sign, it would make the site a lot easier to locate and for people to be able to find it, therefore making more, making it more economically viable for the new restaurant. The applicant is also stating that an existing 30-foot tall billboard adjacent to the property as you saw on the previous site plan would hinder the visibility of a shorter sign on the subject property along Interstate 10 and the proposed 50-foot tall sign would be visible from eastbound and westbound traffic for that property.

Shown here is the proposed sign. As you can see it would be 50-

feet tall. And showing here just kind of an artist's rendition as to what that sign would look like along Interstate 10, of course this is westbound here. You can see it there right before the exit of Avenida de Mesilla and Interstate 10. And of course the eastbound traffic here, that sign here being able to, like it stated, like the applicant has stated high enough to be over the existing billboard there that's adjacent to the lot.

Tonight the P&Z must review this request for, for this variance in relation to the goals and objectives and policies of the comprehensive plan elements, and other applicable plans. Must review it as the purpose and intent of the code and also consider the following criteria for hardships when, when making your decision; 1) being a physical hardship relative to the property; 2) being a potential for economic, for spurring economic developments in a neighborhood or citywide level; and 3) monetary considerations as a whole for this variance. Staff, with that staff recommends denial for the proposed variance simply because staff does see other options for, first and foremost see other options for the applicant to gain notice or to be able to attract people to the site; 1) being as potentially working with NMDOT and getting the, those blue information signs located right near the exits of their Avenida de Mesilla and interstate exit to let people know that exit here for Golden Corral; 2) being you know the potential use of you know a whole bunch of billboards along Interstate 10 to gain peoples attention for that. Just kind of as a, just to let you, for your information if you will, other nearby properties to the subject property currently do have freestanding signs that are taller than what is permitted by the sign code. All these signs are, most, the majority, the grand majority of these signs did seek or require to seek and did receive approval for the taller freestanding, freestanding signs through the variance process, most citing the grade change from their, their property and the overpass of Interstate 10 hindering their, the view of their sign from, for people along the interstate and so forth like that. The average height of these freestanding signs is roughly about 45-feet, so relatively close to what the applicant is stating. But as stated before although staff sees no significant issues with the proposed variance, the variance does not meet, staff feels the variance does not meet the specific criteria specified for a hardship under the 2001 Zoning Code. And staff has reviewed the request variance and can find no basis for granting the variance. And again we do recommend denial based on the findings found in the staff report.

With that gentlemen your options tonight is: 1) to vote "yes" and approve Case A1730; 2) to vote "yes" and approve Case 1730 with conditions deemed appropriate by the P&Z; 3) to vote "no" and deny Case A1730 as recommended by staff; or 4) table and postpone the proposed variance and direct staff accordingly. Just another for information, the P&Z is the final, does take final action on variances. With that I conclude my presentation. The applicant is here and has a presentation as well for you, but I stand for questions if you have any for me.

Crane: Thank you Mr. Ochoa. Mr. Beard and then Mr. Stowe.

Stowe: So instead of one tall sign …

Crane: Mr. Stowe and then Mr. Beard evidently. Thank you. Go ahead Mr. Stowe.

Stowe: So instead of one tall sign, a variance for that, visible from, by drivers on Interstate 10, we will have dozens and dozens of smaller signs at high level of *(inaudible)*? It seems to be what you're offering as a solution.

Ochoa: Mr. Chairman, Commissioner Stowe. The, the solutions we brought up to the applicant as stated in the staff report was using the billboards that are existing along Interstate 10, possibly even the one that's right adjacent to their property, and second being working with NMDOT for utilizing their information signs at the exit points of Interstate 10 which would be the best access for this property which is the Avenida de Mesilla exit. We do not believe more additional signs would be required if you will since by code the, the City of Las Cruces sign code you're only allowed one freestanding sign per property technically unless you meet, you know you have 600-feet of frontage along the, frontage and access along the public right-of-way, then you can have two free standing signs. So additional freestanding signs on properties are not what we're, what we're looking for since by code they're only allowed one freestanding sign.

Stowe: Thank you.

Crane: Commissioner Beard.

Beard: Thank you. That was a good presentation and a lot of data here that was good also. However, the Springhill and the Drury motels signs, how tall are those?

Ochoa: Mr. Chairman, Commissioner Beard. The, I did write that down, excuse me. The Drury Inn did get approved for a 45-foot tall sign and the Spring, the one adjustment to it is about a 47-foot tall freestanding sign.

Beard: Forty-one?

Ochoa: Forty-seven.

Beard: Forty-seven. Okay I know you're not going to know the answer for this one. At the other exit on down, at the truck stop, there's the TA sign, probably it's in the County I don't know, but how tall is that sign?

DRAFT

Ochoa: Mr. Chairman, Commissioner Beard. That's actually is in the City as well but they also sought and received approval for a variance for their sign. The, I don't know the actual size of the sign but it does exceed the maximum height permitted for that property sir.

Beard: It's got to be over 50-feet, right?

Ochoa: I'm pretty sure it is sir. From what I recall when I was a sign code administrator when we redid, they did some face changes on the property it was roughly about 60-feet in height.

Beard: Okay there's a, I guess that's a new motel that's being built next to this, the applicant's property?

Ochoa: Mr. Chairman, Commissioner Beard. Correct, about one property away that is a new hotel that is being built.

Beard: Right. And they're going to put up a sign and how high is that sign being asked for?

Ochoa: Mr. Chair, Commissioner Beard. They have not come in yet for a sign permit but they would be limited to the 18-foot tall freestanding sign as well.

Beard: Okay. So you have, the City has said that you can increase it by another eight feet which gives them 26-feet.

Ochoa: Yes sir. Mr. Chairman, Commissioner Beard. This was discussed by staff, all planning staff in a, a meeting where we were, we felt comfortable allowing the applicant to put, possibly kind of meet the same grade as the adjacent Interstate 10 after staff thinking that this would help the applicant get him to that desired height. But unfortunately after checking the topography of the area the Interstate 10 is only roughly about eight-feet taller or higher than the subject property itself, so staff felt, felt they could have an additional eight-feet which would essentially allow them a 24-foot tall freestanding sign. But the applicant as, as I stated has stated that their desire for a 50-foot tall freestanding sign since the smaller sign would be blocked by the billboard.

Beard: Okay. I was thinking about going I guess it's westbound on I-10, I wouldn't think the way the City thinks as far as the elevation difference, I, I'm thinking about looking over the off-ramp as you're coming towards the off-ramp going towards Burn Lake and not being able to see that sign. But you can see the Drury and the Springhill signs pretty well because they're up there. You can see over, over that clump of interchange. I'm looking at it in that view as opposed to the, not the, not the height variance of the

DRAFT

freeway that's next to their property. So that's, I'm, I'm looking at it completely differently than you are.

Ochoa: Sure and Mr. Chairman, Commissioner Beard, staff has like I said in the past worked with sign applicants to allow for them to match the grade of the adjacent right-of-way but its adjacent right-of-way. In other words, directly across the street which would be kind of a flat level area of Interstate 10, so the eight feet is what staff was comfortable with sir.

Beard: To me the property level is the same for the Drury/Springhill property as the sign would be for this applicant. So that's the way I'm looking at it. It's pretty hard to me to say no to somebody when there's, their next door neighbor's signs are sticking up there at 40 and 45-feet tall.

I disagree with some of this wording too. On page four the potential for spurring economic development at a citywide level if requested allowances are granted. Then you come down here on number two again and you almost contradict yourself you say that it will actually help the business and spur economic development.

Crane: I believe it says may help. If you're looking at paragraph two.

Beard: Yeah.

Crane: Reason two.

Beard: Yeah both of those.

Crane: Freestanding sign may help the new business.

Beard: Yes may help, yes.

Crane: Also since we're talking about that paragraph US Highway 70 is incorrect, right?

Ochoa: Oh, yes sir, I apologize about that.

Beard: Oh it is? Is that incorrect?

Ochoa: Yes sir it's adjacent to Interstate 10 not US Highway 70.

Beard: Okay.

Crane: Now I understand what you've been talking about. Totally disoriented.

Beard: Yeah, Interstate 70 would be Picacho, wouldn't it?

DRAFT

Ochoa: Essentially yes sir.

Crane: It's not an interstate it's US, it's different.

Beard: Yeah I mean Highway 70.

Crane: Yeah.

Beard: Okay. That was one of my questions also. That's all I have right now.

Crane: I have trouble seeing how we could possibly refuse the 50-foot sign, at least a 48 or 45-footer if the neighboring properties have been granted that variance. Fifty-feet may be not permissible but I can't see how we can require these people to limit themselves to 18 or 26 given that they're on the same topographical level as their, their neighbors. And also that existing Days Inn billboard does certainly obscure, I think they've got a good point. Did I see somebody ... Mr. Gordon?

Gordon: Adam is, is, is the designation of red neon just a color or is it actually going to be illuminated on the border? Is this an illuminated sign?

Ochoa: Mr. Chairman, Commissioner Gordon. I believe it's an illuminated sign, but I'll allow the applicant to explain a little bit more of what the sign they're proposing for the site sir.

Gordon: And, and the height of 50-feet then you would be able to see this sign, I guess it would be north of the restaurant? In other words it would, you would be able to see it like if you were going down towards Wal-Mart and that area you would be able to see the sign from there as well as certainly from, from I-10 would be no problem. It's just a question of being able to show this location to, to area residents or somebody driving who wants to go there to know that there is a Golden Corral.

Ochoa: Mr. Chair, Commissioner Gordon. Correct, that is what the applicant has stated why they want the 50-foot tall.

Gordon: Is this a, not this important, is this a relocation or is a second restaurant do you know?

Ochoa: Mr. Chairman, Commissioner Gordon. I'll, I'll let the applicant answer that as well. We're not 100% sure sir.

Gordon: Okay. Thank you.

Crane: Mr. Clifton.

DRAFT

Clifton: Mr. Chair, Adam. Quick question, this, this seems awfully similar to the Church's fried chicken case we had a while back. And, and I think it could easily be argued that there are topographical constraints with the elevated highway over Avenida de Mesilla, with sight distance. I don't think the picture that was provided in the packet that the applicant sign company took, I don't think it really does it justice in terms of what it truly looks like from the westbound lanes of I-10. Clearly the grade separation does present topographical challenges just like the Church's case we had a few months ago and you know there's even an off-premise sign that's probably exceeds 50-feet at the southeast corner of I-10 and Avenida de Mesilla. I think it's for the, I don't, I don't think it's for Cracker Barrel, but there is an off-premise sign kind of in that out parcel as well. So I mean it's not like we're setting a new precedent and I think it could be argued that there are topographical challenges here for this variance.

Crane: Commissioner Ferrary. No, okay. Anyone else have questions for Mr. Ochoa? Okay, thank you. Commissioner Ferrary.

Ferrary: I had one part of it, what I was going to ask answered. But I am wondering Mr. Ochoa if there were any neighbors or any complaints, you know there is a neighborhood, it's kind of far off you know, further east, but I was wondering if any thing, anyone had made any complaints?

Ochoa: Mr. Chairman, Commissioner Ferrary. Staff did not receive any notice of any complaints, no letters, no phone calls, or e-mails for the proposed variance. Essentially nobody's brought up any issues.

Ferrary: And were letters sent out?

Ochoa: Mr. Chairman, Commissioner Ferrary. That is correct, they, the required standard first class mail and the certified mailings were sent out and met the time requirement and so forth like that, yes ma'am.

Ferrary: Thank you.

Ochoa: Thank you.

Crane: Mr. Clifton.

Clifton: Quick question Mr. Chair, Adam what's the, what's the maximum allowable building height in this PUD C-2c zoning district?

Ochoa: Mr. Chairman, Commissioner Clifton. The maximum height for a building permitted in the, excuse me, let me look that up right quick. Give me one second.

DRAFT

Clifton: Thank you. And, and just for the Commission's benefit, where I'm going with this is you know you could actually have buildings a lot taller than the 18-foot allowed sign and my guess would be Springhill Suites is a three story hotel is probably about 45 to 50-feet at the peak of the roof, that's really why I'm curious what the building height is.

Ochoa: Mr. Chairman, Commissioner Clifton. The maximum permitted height for a building in the C-2 zoning district is 45 feet.

Clifton: Thank you.

Crane: Any other questions for Mr. Ochoa? Thank you Mr. Ochoa. Would the applicant care to come up? Are you gentlemen co-applicants?

Charland: Yes. I'll introduce myself first. I'm Peter Charland. I'm the Vice President of Golden Corral Corporation. And this is Chris Pearce who represents the sign company using that throughout the country for different speciality signs.

Crane: Okay Mr. Charland and Mr. Pearce, gentlemen 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?

Charland: I do.

Pearce: I do.

Crane: Okay carry on please. Well you've heard the, you heard the questions. Maybe you'd like to pitch in on that first and then we may have some other questions.

Charland: I, I sure did, I think the first question I heard was, was this going to be a relocation of our existing property or is it a new facility, and it is a relocation. Well our lease is about to end at that property. We've been there since June or July of 1991. We've loved being here in the community. I remember going to the grand opening when it first opened back that summer of '91. We've just really enjoyed being here. It's a great community. We want to continue, but we can't continue in the same location basically cause the building's so old and we want to provide the community with a much better facility. And going to an interstate location requires different signage for you know sales and marketing reasons and the location we have now if you're familiar with it, so we really do need a high-rise sign to generate the customers that we'll need to support this new big investment. The slides that I have are very similar to what Mr. Ochoa had. I don't know that I need to run through all of the same slides over again, but we are concerned very much with the lines of sight,

DRAFT

especially heading eastbound on I-10 with a blockage of that billboard at, you know at the lower sites that the City would have granted us. So we are requesting a variance due to lines of sight from both, both ways on the interstate, but most importantly heading eastbound because that billboard clearly blocks us. And we really need to be at a similar height to the motels that are there because if they were lower than the motel signs then we'd have blockage from those as well. So in an interstate location it's really very very important for us to have as much visibility to that sign which draws you know almost 40, 50% of the people into the location from a directional standpoint. So, I don't know Chris if you had anything else to add, but is there any more detail or technical questions that you might have that Chris would be, I'm just a restaurant guy, Chris is, knows the sign business, but that's our position. We need to draw customers into that new location and we want to serve the community again for another 21 years, 25 years, and this is going to get us there.

Crane: Thank you.

Charland: Also I just might mention that we, you know we employ 150 people in our restaurants and they, they love their jobs. They're professional servers and cooks and we want to keep it going.

Crane: Thank you. Yes there was a question about the color of the sign or the nature of the lighting. Is it a neon sign?

Charland: It is illuminated. Yes. And it has a, a neon wrap to it and neon letters in, in the middle of it.

Crane: Neon in color or is, you mean you have a tube with neon in it?

Charland: It's a tube neon sign, yeah.

Crane: Okay.

Charland: I think the picture that Adam had and I think I might have it too if I can see it.

Crane: I think we need your help Mr. Ochoa.

Charland: There we go. I think we've got it here. Well this isn't a very good shot of it but that would be a, the yellow lettering that you see on the Golden Corral sign would be, would be highlighted with neon, each letter.

Crane: Thank you. Commissioners, any other questions for the applicant? Seems not. Thank you gentlemen.

DRAFT

Charland: Okay. Thank you very much.

Crane: And we have one member of the public. Does that person wish to speak? Oh, okay. You wish to speak Ms. Ferrary. He's entitled to speak nevertheless. Okay we'll close this to further discussion and Commissioners would somebody like to move that this be approved so that we can discuss it? Commissioner Clifton.

Clifton: I would move that we approve Case A1730, a request for a 50-foot tall freestanding sign for the proposed Golden Corral restaurant.

Crane: Is there a second?

Stowe: Second.

Beard: I would ...

Crane: Seconded by Mr. Stowe. Mr. Beard.

Beard: Well I was going to interject to see if we didn't want to put a condition on that. The total 50-feet or maybe 45 or whatever. I was wondering if we wanted to discuss that.

Crane: Would you take that as a friendly amendment so to speak? I, I mean I see a difficulty if they get 50-feet and the nearest guy is 48 and then there is a 45. It seems to me we ought to limit it to no bigger than the largest existing.

Stowe: How would ...

Clifton: Mr. Chair, Mr. Beard's a pretty friendly guy so I would entertain a friendly amendment but five feet. I don't know if it really makes a difference but I'll certainly entertain it.

Crane: So would you care to rephrase your, your motion.

Clifton: Mr. Chair I'd like to retract my initial motion and rephrase it accordingly.

Crane: Let me make quite sure I'm being preliminarily correct. We have to deal with the motion, with the recommendation of the City as it stands, do we not? I'm asking legal counsel here or Ms. Harrison-Rogers.

H-Rogers: Chairman Crane, Members of the Commission. You, you could entertain a, a motion. I don't believe that this is substantially different that would require perhaps a reposting or re-advertising of this.

DRAFT

Crane: So Mr. Clifton can make a motion to, for a height of sign other than 50-feet, is that correct? You may do that? Okay. Mr. Clifton would you like to, with the assistance of Mr. Beard pick a number?

Beard: May I recommend the average of 45-feet.

Gordon: Can I make a comment before we change it?

Crane: Okay Mr. Gordon.

Gordon: I think that they decided that 50-feet has been predetermined by some type of knowledge of the sign company which says this will be effective at this height based on the surrounding area. The five feet with 45-feet, 50-feet really doesn't make much difference. If you're talking 25-feet to 50-feet I would say okay I'll go along with that. But I'm sure they picked 50-feet for a reason and perhaps if there is such a reason I'd like to hear that other than just an arbitrary number.

Crane: Does it have to be 50-feet Mr. Charland, Mr. Pearce?

Pearce: Can, can we get our presentation back up or is right behind this one? Okay, Mr. Chairman, Commissioners. The, the left picture is, is a 40-foot rendition and the right picture is a 50-foot. So it does clearly get over the top of that billboard. So I mean if, if, would 47 and a half get us by, it probably would but 45 or 44 is going to, is going to take the tag line out of play coming from the, coming from the east, coming from the west.

Gordon: That, that answers my questions. There was a reason why you picked 50.

Crane: Is ...

Pearce: Yes sir.

Crane: Fifty, you picked 50 because ...

Pearce: Yes.

Crane: It's clearly going to be there. Mr. Ochoa did you say somebody has a 48-footer?

Gordon: I'm sorry. What'd he say?

Crane: Did Mr. Ochoa say that one of the people, the businesses there have a 48-foot sign as a result of granting a variance?

Ochoa: Mr. Chairman, Commission, Mr. Chairman. There are various signs in

DRAFT

that location that are actually taller than 45-feet. Forty-five feet is just the average. If you look directly across the street there's actually a 60-foot tall freestanding sign there. The McDonalds sign is about 45-feet. The blue sign, excuse me the one right next to the Drury Inn, that one is taller than the Drury Inn sign. The Drury Inn sign being about 45 and the other one being about 47, so that was just the average cause there are other signs over there, in the area at 40-feet in height. The Days Inn is at 40-feet in height as well as the Barnett Harley-Davidson I believe they're at 40-feet as well. So that's just the average of 45.

Crane: Okay, would it not fellow Commissioners be appropriately generous to Golden Corral and not miff the other businesses too much if we gave Golden Corral 48-feet and so he would still be peaking up over that Days Inn billboard there? How do you feel about that Mr. Gordon?

Gordon: I'm not in agreement with that. I'd like to make a motion for 50-feet.

Clifton: Second.

Crane: Okay we'll vote on that. Any further comment before we vote? All right we will go from this end just to be fair. Ms. Harrison-Rogers.

H-Rogers: Mr. Chair this is, this is just a suggestion. In terms of findings, if the Commission so chooses to approve the request, if you would refer to attachment number five of your staff report. Those are the statements of hardships listed by the applicant and those could be referenced.

Crane: Okay. Thank you. So we have it moved and seconded that the request be approved without any conditions. And we'll start voting with the Chair. I vote aye based on discussions, site visit, and the statement of hardship for variance request constituted in attachment number five provided by planning, Community Planning. Mr. Beard.

Beard: If we vote yes we have to do this quote thing? What she just said?

Crane: Ms. Harrison-Rogers said we may choose to site the applicant's points in our favor, but I don't believe we have to.

Beard: Okay. I vote aye based on discussions and site visit.

Crane: Ms. Ferrary.

Ferrary: I vote aye based on site visit and discussion.

Crane: Mr. Stowe.

Stowe: I vote aye based on site visit and discussions.

Crane: Mr. Gordon.

Gordon: I vote aye based on site visit and discussions and the attachment submitted by the petitioner.

Crane: Mr. Clifton.

Clifton: I vote aye based on existing topographical challenges in the field, staff presentation, applicant presentation, and attachment five found within tonight's packet.

Crane: Thank you. The matter passes seven, correction six to nothing. Thank you all.

VII. OTHER BUSINESS - NONE

Crane: And finally, any other business Mr. Ochoa?

Ochoa: No sir, no other business tonight.

VIII. PUBLIC PARTICIPATION

Crane: And we have no public other than Ms. Ferrary's husband who's been basically discounted. I couldn't get away with that.

IX. STAFF ANNOUNCEMENTS

Crane: Staff announcements?

Ochoa: None tonight sir.

Crane: Okay. Thank you.

X. ADJOURNMENT

Crane: So in that case we are adjourned at 8:07 p.m. Thank you.

_____

Chairperson

DRAFT