



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

Regular Meeting

**September 8, 2009
1:00 P.M.**

Council Chambers, City Hall

MEMBERS PRESENT:

STAFF:

Mayor Ken Miyagishima
Councillor Miguel Silva, District 1
Councillor Dolores Connor, District 2 **by Phone**
Councillor Dolores C. Archuleta, District 3
Councillor Nathan Small, District 4
Councillor Gil Jones, District 5
Councillor Sharon Thomas, District 6

Terrence Moore, City Manager
Fermin Rubio, City Attorney
Esther Martinez, City Clerk

I. OPENING CEREMONIES

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

Stephanie Robinson, NMSU sang the National Anthem.

Presentation of Certificates of Appreciation/Proclamations.

Mayor Miyagishima and Jordan Simons presented the Pet of the Week.

Mayor Miyagishima presented the Mayor's Distinguished Service Award to Patsy Duran.

Mayor Miyagishima presented a Proclamation and declared September 11, 2009 as Patriot Day.

Councillor Thomas presented a Medal of Appreciation to WWII Veteran Lewis Hagerman

Councillor Thomas presented a Proclamation to Margaret Markham and declared September 8, 2009 as Margaret Markham Day.

Regular Meeting
September 8, 2009

Page 2

1 Councillor Thomas presented a Proclamation to Stephen DeGiulio and Paula Leighton and declared
2 September 8, 2009 as International Literacy Day and declared September 2009 as International
3 Literacy Awareness Month.

4

5 Councillor Connor presented a Proclamation to Chuck Olson, Lynn Gould, Connie Hettinga and
6 Teresa Ramos and declared September 6th thru September 12, 2009 as Las Cruces Association of
7 Realtors Week.

8

9 Stephen Chavira and John Christopher presented a Comcast Cares check to the Las Cruces Public
10 Schools.

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14 Councillor Jones Moved to allow Councillor Connor to attend the meeting by telephone and
15 Councillor Archuleta Seconded the motion.

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19 Mayor Miyagishima called for the roll on the Motion to allow Councillor Connor to attend the
20 meeting by telephone and it was Unanimously APPROVED.

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

28

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

30

31 Councillor Archuleta said regarding Items 18 and 19, I am an alumna of Holy Cross School but I am
32 not a member of the church. I don't believe this should keep me from voting on these items.

33

34 Councillor Thomas said regarding Items 18 and 19, I used to own property in that neighborhood,
35 my daughter lived in that neighborhood and a lot of her friends still live in that neighborhood. I will
36 be recusing myself from these items.

37

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40 **III. PUBLIC PARTICIPATION**

41

1 Russ Warner, Member of the Public said I would like to thank the City Manager and staff for
2 suspending the construction on Telshor and Lohman from November until the first of the year.

3

4 Margaret Markham, Member of the Public said officials have finally made daily transportation
5 available between El Paso and Las Cruces but they still don't have transportation available from the
6 University to the Farm and Ranch Museum.

7

8 CSPAN televised a two hour Senate Health and Human Services sub-committee on appropriations
9 devoted entirely to current and future efforts to deal with the cost associated with the increasing
10 incidents of autism in both children and adults. There were task forces in several states but there was
11 no official body for New Mexico.

12

13 CSPAN also did a two day conference sponsored by the National Academy of Scientist with experts
14 from here and abroad. The forum was devoted entirely to genetic testing, research and the regulation
15 of laboratories that do that type of testing.

16

17 The recent front page news about the management role of Memorial Medical Center and the Cancer
18 treatment field made it clear that now we will benefit from three separate Cancer Treatment facilities
19 but I have been unable to find one medical genetic testing facility in this City.

20

21 Jean Williams, Member of the Public said I am a vendor at the Farmers Market and we still have
22 concerns with the shading and with the number and quality of the restrooms at the market. We
23 brought up the question regarding who will be liable when our shades start flying around due to our
24 high winds and we still haven't received a response from anyone. I need to know if we need to
25 purchase liability insurance.

26

27 Fermin Rubio, City Attorney said I have given you an answer to that question about three times now;
28 the City isn't responsible, it is up to the individual whether or not to purchase insurance.

29

30 Jean Williams said it would cost a vendor individually about \$500 a year to purchase this type of
31 insurance.

32

33 We think that Main Street, between Las Cruces Avenue and Griggs Avenue, should be closed during
34 market hours on Wednesdays.

35

36 There are a lot of vagrants that are in the south end of the Downtown Mall; they sleep in the
37 doorways and relieve themselves everywhere. The City should relocate them to homeless shelters.

38

39 Tamie Smith, Member of the Public said I went to the Farmers Market on Saturday and it was very
40 colorful with all the tents. It was overcast that day but by 10:30 a.m. you could feel the heat from the
41 sun. The Farmers Market has made a huge financial contribution to this City and they need to be
42 appreciated. I agree with the revitalization of the Downtown but I don't agree with the way the City
43 is going about it.

1
2 Initially, the budget for the new City Hall was \$26 million and now it is at about \$33 million. There
3 is no mention in my newspaper clippings about \$1 million for furniture. Are you going to let the
4 public know what furniture you are going to get rid of and how you are disposing of it?

5
6 Terrence Moore, City Manager said the disposal of the furniture will be going through the
7 auctioning process.

8
9 Mayor Miyagishima said we are going to be taking a lot of the furniture that we currently have but
10 some of our furniture is extremely old and needs to be replaced.

11
12 Councillor Silva said I would suggest that the cost and how the furniture was purchased be included
13 in the report that is done by the City Manager in his information letter.

14
15 Terrence Moore said we would be happy to include a break down of line items to that effect in the
16 upcoming weeks or so.

17
18 Nancy Gonzales, Member of the Public said I have been a vendor at the Farmers Market for eight
19 years and there is a piece of the old furniture store wall that is ready to fall down. We do help down
20 there with the restrooms and the vagrants.

21
22 Ron Camunez, Member of the Public asked what does the Anti-Donation Clause do for wanting to
23 get structures for profit and non-profit organizations; like the vendors of the Farmers Market are
24 trying to get for shade structures?

25
26 Mayor Miyagishima said the issue is how the City is going to build the Downtown Mall. The only
27 way we can provide shade structures is if it is connected with City property. We are not allowed to
28 buy the vendors individual shades.

29

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

35

36 Mayor Miyagishima said Items 3, 7 and 11 need to be removed from the consent agenda for
37 discussion.

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41 Councillor Silva Moved to approve the Agenda as Amended and Councillor Thomas Seconded the
42 motion.

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3 Mayor Miyagishima called for the roll on the Motion to accept the Agenda as Amended and it was
4 Unanimously APPROVED.

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8 **V. CITY COUNCIL MINUTES**

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10 *(1) Regular Meeting of July 27, 2009

11 *(2) Regular Meeting of August 3, 2009

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15 **VI. RESOLUTIONS AND/OR ORDINANCES FOR CONSENT AGENDA**

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17 *(4) Resolution No. 10-071: A Resolution Amending Resolution No. 10-044 to Include
18 Additional Precincts for the November 3, 2009 Election Which Were Omitted.

19
20 *(5) Resolution No. 10-072: A Resolution Authorizing the City of Las Cruces Police
21 Department to Accept \$1,518,784.00 in Grant Funding from the U.S. Department of
22 Justice, Community Oriented Policing Services (Cops) For the Recovery Act: FY
23 2009.Cops Hiring Recover Program (CHRP) Grant And to Adjust the City FY 2010
24 Budget.

25
26 *(6) Resolution No. 10-073: A Resolution Authorizing the Las Cruces Parks and
27 Recreation Department to Apply for the New Mexico Department of Health: Healthy
28 Kids, Healthy New Mexico Grant, and to Ratify the City Manager's Approval.

29
30 *(8) Resolution No. 10-075: A Resolution Amending the Adopted FY2010 City Budget
31 for HUD Fund 2000 and Fund 2010 to Correct the Initial Budget to Reflect Actual
32 Starting Fund Balances for the Fiscal Year.

33
34 *(9) Resolution No. 10-076: A Resolution Amending the Funding Request Under
35 Resolution No. 10-029 for a Home Rehabilitation Project on a Residence Located
36 at 1400 Paxton.

37
38 *(10) Resolution No. 10-077: A Resolution Authorizing the City of Las Cruces to Accept
39 Equipment Valued at \$38,827.14 Purchased for the Police Department by the New
40 Mexico Department of Public Safety, Office of Emergency Management as Sub-
41 Grantee of the 2005 New Mexico Department of Homeland Security Funding.

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1 *(12) Resolution No. 09-10-366: A Resolution Awarding a Contract for the Fiscal Year
 2 2009/2010 Micro-Surfacing Maintenance Project to Ballou Construction Company,
 3 Inc. Of Salina, Kansas in the Amount of \$234,082.51 Plus \$17,409.89 for New
 4 Mexico Gross Receipt Tax. The City Manager is Authorized to Approve Change
 5 Orders in an Amount Not to Exceed \$11,704.13 for a Total Project Authorization
 6 in the Amount of \$263,196.54 and to Amend the Fiscal Year 2009/2010 Budget.

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10 **VII. RESOLUTIONS AND/OR ORDINANCES FOR DISCUSSION**

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12 *(3) Resolution No. 10-070: A Resolution Authorizing the Destruction of Records Which
 13 Have Been Damaged and Not Met Their Legal Retention Period.

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15 Councillor Connor Moved to Adopt Resolution No. 10-070 and Councillor Jones Seconded the
 16 motion.

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19
20 Councillor Thomas said I wanted to know if there was any back up documentation for these records
 21 that are being destroyed?

22
23 Robert Kyle said the records that we are seeking to destroy prior to their legal retention period are
 24 permit plan sets which have been infected by mold or exposed to mold spores and it constitutes a
 25 safety health hazzard to the City. Some of the plans are simply not usable now because they are
 26 covered with mold. In regards to the subdivision plans, once a subdivision is built and accepted by
 27 the City, the City gets a set of "as built plans" of the subdivision and those plans are more accurate
 28 than the original plans. Those plans are not among the records that were infected by the mold so they
 29 aren't being destroyed. The construction plans that are being destroyed are from about the years 2000
 30 thru 2006 and some of them are scheduled to be destroyed in 2010 so they have almost met their
 31 destruction retention. We still have the permit files for those construction plans and we can always
 32 get a copy of the plans from the original design professionals if it is needed.

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36 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-070 and it was
 37 Unanimously APPROVED. 7-0

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41 *(7) Resolution No. 10-074: A Resolution Rescinding Resolution 09-291, and
 42 Establishing the 2010 Census Complete Count Committee for Las Cruces.

43

1 Councillor Archuleta Moved to Adopt Resolution No. 10-074 and Councillor Silva Seconded the
2 motion.

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6 Carol McCall, Planner said there is an administrative error within this resolution that needs to be
7 corrected. It states that the committee can have up to 10 members but we asking that it be changed
8 to allow up to 15 members.

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12 Councillor Archuleta Moved to Amend Resolution No. 10-074 to have up to 15 members and
13 Councillor Small Seconded the motion.

14

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17 Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 10-074 and it was
18 Unanimously APPROVED. 7-0

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22 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-074 as Amended
23 and it was Unanimously APPROVED. 7-0

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27 *(11) Resolution No. 08-09-547: A Resolution Authorizing the City to Enter Into a
28 Contract for Museum Planning for the Museum of Nature and Science, RFP Number
29 08-09-547, With Reich + Petch Design International of Toronto, Canada for a Fee
30 Amount of \$179,971.00 Plus Gross Receipts Tax of \$1,552.00; and Authorizing the
31 City Manager to Approve Contract Amendments in an Amount Not to Exceed
32 \$6,000.00, for a Total Authorization of \$187,523.00.

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34 Councillor Archuleta Moved to Adopt Resolution No. 08-09-547 and Councillor Jones Seconded
35 the motion.

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39 Councillor Connor said I figured a different amount for the gross receipt taxes, is that amount
40 correct?

41

42 William Ticknor, Museums Director said that amount is derived from the amount of work that is
43 being done in Las Cruces. The work is being done in Albuquerque so we go by their tax rate.

1 Councillor Connor said it states within the documents that Bohannon Huston plays a key role in this
2 but I don't understand that because it also states that they have only seven days of involvement with
3 this six month process. The main company which is not a local company, needed a local registered
4 business on an advisory basis in order to meet the requirements. My argument is that this isn't a local
5 company, they aren't even in the State of New Mexico or this Country. It is ridiculous that we keep
6 going to companies that aren't local companies. That GRT isn't even going to our State. I don't have
7 a problem with the dollars spent but I do have a problem with staff saying seven days qualifies as
8 substantial work by a local company. I don't see why we had to find a company all the way in
9 Canada for this designing project and I have a problem with a lot of the GRT going to Albuquerque.

10

11 William Ticknor said during the selection process, where a company is from isn't a consideration.
12 We simply check to see that they meet all the requirements.

13

14 Mayor Miyagishima asked can we stop a bid and request only Las Cruces bidders?

15

16 Bob Telles, Purchasing Director said consultants like this one are selected by the SAC process that
17 utilizes an evaluation criteria model. To deviate from that model could subject the City to a protest
18 by the selected firm. We must be careful and if Council would like to table this item and give it back
19 to SAC for a re-evaluation then that would certainly be fair. The local issue is addressed in the SAC
20 process, there is a 5% total point advantage given to local companies.

21

22 Mayor Miyagishima asked were there any local companies or companies within this State that bid
23 on this project?

24

25 Bob Telles said yes.

26

27 Councillor Connor asked has anyone within our Museum system ever worked with this firm before?

28

29 William Ticknor said no.

30

31 Councillor Connor said I can't support this and we need to find a way to give preference to local
32 companies during the RFP process.

33

34 Robert Garza, Assistant City Manager said we are using federal funds for this particular bid, can we
35 use a preference when using federal grant funding?

36

37 Bob Telles said there are three instances where preferences can not be applied and that is for
38 construction jobs, federal funds and I can't recall the third. In this case, the funding is federal so we
39 can't apply any preferences.

40

41 Mayor Miyagishima said so, it wouldn't do us any good to table it.

42

1 Councillor Connor said I think it is misleading for staff to state that Bohannon Huston is a key factor
2 for this project. It is important for us to spend our money in Las Cruces.

3

4 Mayor Miyagishima said I would like to have a future work session and have staff present some
5 examples of the pricing difference if we go to local companies.

6

7 Fermin Rubio said we do need to make sure that this company is registered to be able to do business
8 in this State.

9

10 William Ticknor said we will do that.

11

12 Councillor Connor said it states on page 130 that they aren't registered to do business in this State
13 which is one of the things that concerns me. They are using Bohannon Huston and Site Works as
14 their New Mexico registered companies.

15

16 William Ticknor said this company has offices in Washington, D.C. and in Maryland so they are
17 partially an American company.

18

19 Councillor Connor said they aren't registered to work in New Mexico which is why they are using
20 Bohannon Huston and I'm not comfortable with it.

21

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23

24 Councillor Connor Moved to Table Resolution No. 08-09-547 until the next meeting and Councillor
25 Jones Seconded the motion.

26

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29 Mayor Miyagishima called for the roll on the Motion to Table Resolution No. 08-09-547 and it
30 FAILED. 3-4 Councillor Silva, Councillor Connor and Councillor Jones voted Aye. Councillor
31 Small, Councillor Thomas, Councillor Archuleta and Mayor Miyagishima voted Nay.

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35 Councillor Small said we are working on how to give preference to our local companies and we have
36 to be careful not to step over any lines. There are local firms that are going to be working with this
37 firm and I can see some positives coming from this project. Is the matter of being registered in New
38 Mexico satisfied by working with local companies?

39

40 Fermin Rubio said I don't know, it's not real clear to me if we have this contract with Bohannon
41 Huston or this company. We do need to make sure they are legally compliant with the business
42 requirements of this State.

43

1 Councillor Thomas said I agree with supporting local businesses as much as possible. I am
2 concerned with the legalities of this issue. I trust that staff will make sure that there aren't any legal
3 issues before moving forward with this project.

4

5 Mayor Miyagishima asked would there be any issues with tabling this for a couple weeks?

6

7 William Ticknor said yes there would be some fallouts with that; the consultants plan to be here next
8 week. We have already lost two of the top three responders because of the length of time it takes us
9 to go through the RFP process. At this point, any delay would delay the project and there might be
10 some additional cost acquired if we don't accept this contract. None of the responders for this project
11 were local contractors.

12

13 Bob Telles said we will check out all the registration requirements before we sign a contract with
14 them.

15

16 Councillor Silva said I am also concerned with using an out of state vendor but I guess we had to go
17 out of state for this type of expertise.

18

19 Mayor Miyagishima said I think we should just post pone this item for about two weeks and by that
20 time, we will know if they are registered to do business here.

21

22 Councillor Small said Bob Telles is going to make sure they are able to do business here before they
23 sign a contract with them so I think we should just move forward with this item. The contract won't
24 be signed if they aren't legally able to do business in New Mexico.

25

26 Councillor Silva said federal funding is being used for this project. Is there a time line for it?

27

28 Auguie Henry, Grant Writer said I think we need to move forward with this because this is all
29 stimulus funding which means the clock starts now and if we keep post-poning it, we stand to lose
30 all the funding. You only have 30 days to begin construction and the clock started today.

31

32 Russ Warner, Member of the Public asked did staff research all the companies that applied for this
33 project?

34

35 Terrence Moore said yes.

36

37 Russ Warner said staff takes the time to do their job and Council needs to support them.

38

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41 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 08-09-547 and it was
42 APPROVED. 6-1 Councillor Silva, Councillor Small, Councillor Jones, Councillor Thomas,
43 Councillor Archuleta and Mayor Miyagishima voted Aye. Councillor Connor voted Nay.

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3 BEFORE CONSIDERATION OF THE FOLLOWING RESOLUTION NO. 10-078, A PUBLIC
4 HEARING MUST BE HELD.

5
6 Mayor Miyagishima said this item is now open for a public hearing. Is there anyone who wants to
7 speak against this item?

8
9 None given.

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11

12 (13) Resolution No. 10-078: A Resolution Approving the Issuance of a Wine Wholesaler
13 Liquor License (Wine Wholesaling of Winegrower's Product) to Amaro Winery,
14 LLC D/B/A Amaro Winery, to be Located at 601 West Amador, Las Cruces, New
15 Mexico.

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17 Councillor Archuleta Moved to Adopt Resolution No. 10-078 and Councillor Thomas Seconded
18 the motion.

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22 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-078 and it was
23 Unanimously APPROVED. 7-0

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27 BEFORE CONSIDERATION OF THE FOLLOWING RESOLUTION NO. 10-079, A
28 PUBLIC HEARING MUST BE HELD.

29
30 Mayor Miyagishima said this item is now open for a public hearing. Is there anyone who wants to
31 speak against this item?

32
33 None given.

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35

36 (14) Resolution No. 10-079: A Resolution Approving the Issuance of a Wholesaler
37 Liquor License to Premier Distributing Company, to be Located at 380 Alliance
38 Drive, Las Cruces, New Mexico.

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40 Councillor Archuleta Moved to Adopt Resolution No. 10-079 and Councillor Connor Seconded the
41 motion.

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2 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-079 and it was
3 Unanimously APPROVED. 7-0

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7 (15) Resolution No. 10-080: A Resolution Authorizing the Whole Enchilada Fiesta,
8 Incorporated, to Continue With the Permitting Process to Allow For the Sale and
9 Consumption of Beer and Wine Only Within the Beer Garden, a Restricted and
10 Secured Area, at the 29th Annual Whole Enchilada Fiesta to be Held September 25,
11 26, and 27, 2009 at 1600 East Hadley Avenue, Las Cruces, New Mexico.

12

13 Councillor Connor Moved to Adopt Resolution No. 10-080 and Councillor Jones Seconded the
14 motion.

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18 Fermin Rubio, City Attorney said this is for the allowance to sell liquor at the Whole Enchilada
19 Fiesta and this is brought to you because liquor isn't allowed to be sold on City property without the
20 permission of Council.

21

22 Councillor Archuleta said this is nothing new, we do this every year.

23

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26 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-080 and it was
27 Unanimously APPROVED. 7-0

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31 (16) Resolution No. 10-081: A Resolution Authorizing the Doña Ana Arts Council, Inc.
32 To Continue With the Permitting Process to Allow for the Sale and Consumption of
33 Wine Within a Restricted and Secured Area at the Renaissance Artsfaire 2009 to be
34 Held November 7 and 8, 2009 at Young Park, Las Cruces, New Mexico.

35

36 Councillor Archuleta Moved to Adopt Resolution No. 10-081 and Councillor Connor Seconded the
37 motion.

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41 Fermin Rubio, City Attorney said this is just like the previous item except it is for the Renaissance
42 Fair and it will be held at Young Park.

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Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-081 and it was Unanimously APPROVED. 7-0

Councillor Connor left the meeting at 3:38 p.m.

(17) Resolution No. 10-082: A Resolution to Rescind City of Las Cruces Resolution 85-005 and Authorize the Las Cruces Utilities Board to Establish Utility Deposit Amounts and the Rate of Interest to Pay on Utility Deposits.

Councillor Archuleta Moved to Adopt Resolution No. 10-082 and Councillor Jones Seconded the motion.

Robert Scaling, Treasure gave a presentation and said there was a resolution that passed twenty five years ago that increased the amount of the required deposits of the utility customers and it established a six percent rate of interest to be paid on those deposits. Only the interest rate portion of this resolution needs to be rescinded. I would like to have this resolution amended to rescind the interest rate and to authorize the Las Cruces Utility Board to establish the interest rate on the utility customer's deposits.

Councillor Jones said I do support this change but we need to make sure that the by-laws of the Utility Board gives them this authority.

Marcy Driggers, Assistant Attorney said it doesn't specifically state in the by-laws but they would simply be following the State statute and Council is just giving the board the authority instead of Council being the ones that set the rate.

Councillor Jones Moved to Amend Resolution No. 10-082 to rescind only the interest rates portion of exhibit B of Resolution 85-005; II is deleted and III remains that the Las Cruces Utilities Board is authorized to approve the payment of interest and Councillor Archuleta Seconded the motion.

1 Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 10-082 to rescind
2 only the interest rates portion of exhibit B of Resolution 85-005; II is deleted and III remains that the
3 Las Cruces Utilities Board is authorized to approve the payment of interest and it was APPROVED.
4 6-0 Councillor Connor was absent.

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8 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-082 as Amended
9 and it was APPROVED. 6-0 Councillor Connor was absent.

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13 **VIII.** **APPEAL PROCESS**

14

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

18

19 Appeals to be presented before the Las Cruces City Council may follow the appellate
20 procedures mandated by the State ex rel. *Battershell v. Albuquerque*. These procedures
21 are intended to protect the due process rights of all parties to the appeal. However, the
22 *Battershell* procedure will only be followed when any party in the appeal wishes to use this
23 procedure.

24

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

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

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35 **1. PRE-APPEAL HEARING REQUIREMENTS:**

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- a. Any party to be represented by an attorney, at the appeal hearing, shall present to the City Attorney's Office, at least 5 business days before the hearing, a memorandum with citations of authority substantiating the party's position. This memorandum is different from the appeal summary submitted 15 days after the public hearing by the Board of Adjustment or the Planning and Zoning Commission.
- b. All parties in the appeal that desire to have a specific City staff person present at the appeal, need to present to the City Planning Department, at least 5 business days before the appeal hearing, a letter requesting that the specific staff person be present

1 at the appeal hearing. This allows ample opportunity to notify the staff person to
2 assure attendance.
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4 **2. AT THE BEGINNING OF THE *BATTERSHELL* APPEAL HEARING, THE**
5 **COUNCIL WILL:**

- 6 a. Identify all parties to the appeal, including all witnesses that wish to give testimony.
7 b. All persons who give testimony, including City staff, will be sworn-in by the clerk
8 or person authorized to administer oaths.
9 c. All persons giving testimony will be subject to cross-examination by other parties
10 within the appeal, including City staff.
11 d. All items presented in the appeal, whether in *Battershell* or not, will be limited to the
12 relevant matter being appealed and the City Council may place a reasonable limit on
13 the number of persons to be heard and their amount of testimony.
14

15 **PROCEDURES FOR PRESENTATION OF ALL APPEALS**

16
17 The following procedures will be used whether an appellant chooses to utilize the *Battershell*
18 procedure or not.
19

20 **1. ORDER OF ALL PRESENTATIONS:**

- 21 a. City Staff Presentation
22 b. Appellant Presentation
23 c. Other parties' presentation
24

25 **2. APPLICABLE STEPS FOR ALL PRESENTATIONS:**

- 26 a. Opening statements about the case by the party.
27 b. City Council may question the presenter/party.
28 c. Cross-examination by other parties, which must be done in the form of questions to
29 be answered by the presenter(s).
30 d. City Council may question the presenter/witness.
31 e. Continue to other witnesses for the party until complete.
32 f. Once all parties are through with giving testimony, closing statements can be made
33 by each party, in same order as above (A).
34

35 **3. CITY COUNCIL ACTION:**

- 36 a. A City Council member makes a motion, followed by a second.
37 b. There may be discussion of the motion.
38 c. The Council is prepared to vote. In the vote, the City Council may reverse, modify,
39 affirm, or change any decision or determination of the Official, Board, or
40 Commission from which the case was appealed.
41 d. The City Clerk takes roll call of the City Council; the decision is announced.
42
43

1

2 **IX. APPEAL(S)**

3

4 (18) Resolution No. 10-083: A Resolution to Appeal the Approval Decision of the
 5 Planning and Zoning Commission for a Thirty-five (35) Foot Variance from the
 6 Eighty-five (85) Foot Right-of-Way Requirement Allowing for the Placement of
 7 Nine Portable Buildings at a Private School Located at 1321 N. Miranda Street. The
 8 Subject Property Consists of 11.07 +/- Acres, That Is Shared with Holy Cross
 9 Catholic Church and Las Cruces Catholic School. The Subject Property Is Zoned R-
 10 1a (Single-Family Medium Density). Submitted by an Ad Hoc Association of
 11 Neighbors Nearby to the Armijo Lateral and the Old Valencia Property (A1695 A-1).

12

13 Councillor Jones Moved to Adopt Resolution No. 10-083 and Councillor Small Seconded the
 14 motion.

15

16

17

18 Vincent Banegas, Planning & MPO Director gave a presentation and said I am serving as an
 19 understudy for this presentation. We do have Mike Johnson available to answer questions related
 20 to TIA matters and also the school's traffic engineer is here which they conducted the TIA so they
 21 can certainly speak on that issue. This case as indicated is an appeal for approval decision by the
 22 Planning and Zoning Commission for an approximate 35 foot variance to the 85 feet right of way
 23 requirement. It is basically to satisfy the location requirements necessary for school. The property
 24 is located at 1321 N. Miranda Street and the request would facilitate a proposed school expansion.
 25 The appeal has been submitted by an ad-hoc association of neighbors. The property itself is zoned
 26 R1A which represents single family medium density residential district and the property in question
 27 is about 11.07 acres. The property is owned by Holy Cross Inc and leases the property to the school.
 28 The school has been at this location since 1962 and is subject to the 1959 zoning which at that time,
 29 those uses were permitted by right. Since the utilization of the property for both a school and a
 30 church, there have been four expansions on that property. The location, there was a requirement for
 31 the location of the property of the church to be on a collector or higher designated roadway. The
 32 school didn't have an issue with non-conformity until the 1981 zoning code required not only a SUP
 33 but the location along similar designated roadway. The current request involves a variance to the
 34 collector roadway design with allowing Miranda Drive to serve basically as the qualifying roadway
 35 in question. This is for the anticipated proposed expansion of the school. Excluding the three
 36 portables that are permitted by the non-conforming use section of today's code, the request would
 37 allow an addition 8,400 square feet of expansion. To clarify, there were already, pursuant to those
 38 three portables, 3,360 square feet allowed. The permit for those is pending, I don't believe it's been
 39 issued but approval has been rendered and it's just a matter of finalizing some of the details of that
 40 issue. Under the 2001 zoning code, the school becomes a conditional use and requires a collector or
 41 higher designated roadway. There is also an additional requirement that stipulates a one acre
 42 minimum lot size, to be utilized for the use and a landscape buffer be used if parking and/or
 43 structures are within the 25 foot distance of any residential zoning. This item was approved by the

1 Planning and Zoning Commission on June 23, 2009 with a vote of 4-0-1 and there was a substantial
2 amount of debate and opposition regarding this case. There were concerns regarding traffic and
3 speeding in that area and TIA information wasn't provided in the packet as well as safety concerns
4 regarding emergency access to the area. Staff recommended approval of the packet with two
5 conditions; the expansion itself would be limited to the additional 8400 square feet which included
6 the remaining nine portables and any additional expansion beyond that would require a planned unit
7 development proposal submittal. The other condition was that the applicant would submit a
8 landscape plan that was to be approved administratively and was to be in compliance with the zoning
9 code. There was concern expressed by staff regarding commissioners participation on June 23rd,
10 primarily because of the number of commissioners present at the May 26th meeting and we were
11 trying to make sure that those not in attendance at the May 26th meeting, we indicated that those
12 individuals wouldn't be able to participate if the postponement did take place, as a continuance of
13 the hearing. Staff learned prior to the June 23rd meeting that a quorum was not going to be possible
14 so we had no choice but to cancel that meeting until June 30th and we did post notifications for that
15 meeting. The case was heard in its entirety on June 30th and the Planning and Zoning Commission
16 approved the variance request with three conditions; they took the two conditions regarding the
17 expansion and the landscape buffer that staff had originally provided and they added a cap on the
18 number of high school students to 50 students. On July 15, 2009, the neighborhood submitted an
19 appeal letter citing eight key findings. Those findings talked about due process concerns, postal
20 regulation interference, difficulty in articulating the variance request, failure to provide the adequate
21 site plan called for, failure to prove hardship, present alternatives and show that those are alternatives
22 that would minimize the impact to surrounding properties, failure to design and execute a TIA,
23 history of expansions approaching into the neighborhood and in general, bad behavior on the part
24 of the applicant in terms of compliance concerns.

25

26 Councillor Jones asked can you limit the number of people that can be accommodated in 8400
27 square feet?

28

29 Vincent Banegas said they do have specific uses for the 8400 square feet which in this case are
30 portable building. These are going to be used as classrooms so I'm sure they have some uses and
31 numbers to go along with that square footage expansion.

32

33 Councillor Jones asked did staff review those numbers to determine how many people can utilize
34 that space without inquiring any code issues?

35

36 Vincent Banegas said no, we have not looked into that specific issue.

37

38 Councillor Silva said regarding the special use permit, what were some of the conditions concerning
39 expansion?

40

41 Mayor Miyagishima said this was a non-conforming use in the very beginning, correct?

42

43 Vincent Banegas said the original use was for a church and school and it was a permitted use by

1 right. There was no non-conforming whatsoever.

2

3 Mayor Miyagishima said I read that it became a non-conforming use in 2001.

4

5 Vincent Banegas said portions of the use, in this case, the church, became a non-conforming use first
6 and foremost pursuant to the 1969 code. Shortly thereafter, under the 1981 code, the school became
7 non-conforming and certainly both are non-conforming now.

8

9 Mayor Miyagishima said basically, non-conforming means not conforming to the use of the City now
10 and prohibits any expansions.

11

12 Vincent Banegas said yes. Non-conforming uses are uses that were once legal under a previous code
13 and through time it has been rendered non-conforming.

14

15 Mayor Miyagishima said regarding Councillor Silva's question then, the special use had to be
16 approved by a previous Council.

17

18 Vincent Banegas said to answer Council Silva's question, I don't recall seeing any particular
19 conditions associated with that approval.

20

21 Glenn Hall, Attorney for the Neighbors said this legal non-conforming use has always been an
22 oxymoron in my eyes; to say it is legal but not conforming to the law, but that is what has happened
23 here. This property has been legally non-conforming for decades and now what is before you now
24 is a request for a variance which is really a product of the applicant's own success. They have been
25 able to expand and grow and the neighborhood has been happy that they are successful. The problem
26 is that there have been so many encroachments of the years that all the expansions have created a
27 problem. The issues here aren't legal but the answers are logical. This property is non-conforming
28 because primarily it is on a street that is too small for it. It is on a local roadway which is several
29 classifications under what is required; a collector, its non-conforming. The request is for an addition
30 8400 square feet, all those additional people, all those additional cars, all those additional uses, when
31 the one that has made this non-conforming is the size of the street, it isn't changing, its still a local
32 roadway. There are various solutions like don't expand, find somewhere else for the school but the
33 solution proposed by the variance is to ignore the zoning code and say that they don't have to live
34 up to it. The purpose of codes is compliance; therefore, the compliance being requested is to ignore
35 the law.

36

37 Jo Rupert, Neighbor gave a presentation and said I have lived in Las Cruces since 1985 and much
38 of that time I have lived in this neighborhood. We are asking that you reverse the approval of the
39 variance. This neighborhood is anchored around Alameda Elementary; not by Holy Cross. Most of
40 the homes in this neighborhood were already built prior to LCCS coming into the neighborhood.
41 Access to this area is limited and neither school has access for cars during the peak times of the day.
42 It is highly unusual for a school to have twelve portable buildings, usually schools only have three
43 or four portables in place. The 1962 plat shows the school as roughly 20,000 square feet and when

1 it was built, it did conform to the 1955 code and the school did also conform to the 1969 code. The
2 adoption of the 1981 code changed the standards for roadways and streets that were the width of
3 Miranda were seen as too narrow for the safe movement of traffic around a school or church. Based
4 on limited right of way, the property became non-conforming. Holy Cross applied for and received
5 a special permit in 1981 for a one time expansion for a non-conforming property. There was also a
6 special permit issued in 1984 but there is only a memo for the documentation of this permit because
7 the file was apparently lost or destroyed. The 1987 June plat which was done after the expansions
8 of the school and church, the property had been reduced from over 15 acres to just over 11 acres, as
9 it is now. There was a special permit in 1995 for the Columbarium and the middle school was
10 allowed by an amendment to the Columbarium permit. This was also a use expansion because prior
11 to this, the school was not running a middle school. The small expansion projects were done between
12 the 1995 and 1998 special use permits were done without requesting permission for the expansion
13 which violated at least the spirit of the 1995 special use permit conditions. These expansions created
14 about 1450 square feet of usable space. Our neighbor fell out of compliance with the applicable
15 zoning codes in 1981 but despite being out of compliance, by the end of the 1990's, they had used
16 special use permits, an amendment and at least 17 building permits to accomplish 8 expansions while
17 failing to medicate their non-conformity. In April 2009, LCCS was allowed another one time
18 expansion of a non-conforming property for the use of three portable buildings. The residents of this
19 neighborhood don't understand how the high school can be brought in as an acceptable use without
20 having to apply for conditional permitting. All together, the twelve portables would bring the campus
21 size to nearly 50,000 square feet while remaining non-conforming. Each time this property owner
22 is able to secure a new expansion, it seems to compound the problem in the future. This is the
23 reverse of what the zoning establishes as the City's goals for properties or uses that are non-
24 conforming. The owners are suppose to be finding ways to exist harmoniously within the
25 neighborhood but they are too busy expanding. We don't believe they have shown any hardship in
26 this case and they the applicant must show hardship for a variance, not make a plea on convenience
27 and financial gain. There are already plans for another expansion in the works and they are actively
28 seeking donations to fund it. LCCS has historically been non-compliant and this shows that they
29 have no real intent of conforming their growth or limiting their plans to show respect for their
30 neighbors. This neighborhood is generally safe and quiet and many of the residents have been there
31 for 30, 40 and 50 years. When we have raised questions during this process, the answer we've
32 received is that they are grand-fathered or that they as a church related enterprise, have rights but a
33 grand-fathered entity simply can't keep growing without losing their status by reaching beyond what
34 is reasonable. We have shared our home with our neighbor and over time we have accommodated
35 their growth but this time they have gone too far and done too much without even asking us.

36

37 Debra Dennis, Neighbor gave a presentation and said we appreciate Councillor Silva's attempting
38 at creating a dialog with us and Holy Cross; we met with Bishop Ramirez on May 28th which was
39 two days after the Planning and Zoning Commission meeting.

40

41 Councillor Jones asked can you summarize your conversation with Bishop Ramirez.

42

43 Debra Dennis said Bishop Ramirez asked me what we wanted and I told him that we wanted them

1 to move the 12 portables from LCCS to another property where the high school would have room
2 to grow. We discussed the fact that the Holy Cross High School was being operated illegally because
3 according to the zoning ordinances, it requires an additional use permit and Holy Cross has never
4 come before the City with an application for a conditional use to operate a high school, they simply
5 started doing it in the Fall of 2007. Bishop Ramirez said moving the portables would be a reasonable
6 thing to do.

7

8 Dan Schneider, President of the Las Cruces Catholic School Board gave a presentation and said the
9 main issue we are dealing with is the traffic and if this roadway can safely handle all the traffic. We
10 are willing to work with the neighbors and have met with them on several occasions. We have
11 slightly adjusted the school hours to offset it from the public schools schedule which has helped to
12 alleviate some of the traffic issues. We have hired security for large funerals and other large
13 engagements at the church. We are willing to reduce the amount of portables if we need to and we
14 have made these suggestions to the neighbors but so far we haven't received anything back from
15 them. We have tried to conform to the letter of the law and we have had 3 expansions in the last 47
16 years so I don't believe we've received any special treatment from the City whatsoever. LCCS is
17 building a high school on a non-collector which is illegal but it's not that we are building a school,
18 our students are being educated through the high school level. We aren't adding a special high
19 school and the portables would simply enhance our programs. We are adding a band room, a science
20 lab; we not adding classroom space. This would eliminate us from having to have band practice in
21 the church and have classes in rooms that were intended for storage areas. We are a private school
22 so we don't have funding for buses to pick up and drop off our students. It is standard procedure for
23 schools to purchase portables without getting permits from the City but we will definitely know to
24 do that in the future. It's not a true statement that all the residents are upset with us. Your staff's
25 findings and recommendation regarding fire and traffic report agreed that there could be 60 to 80
26 students for the high schools. The street could handle the traffic for that many students. We don't
27 plan on moving our church or school; we've been there since 1962, legally non-conforming and we
28 plan on staying there and educating our children. The traffic study done by the traffic engineer clearly
29 shows that even if the Holy Cross church and school grows significantly, we would still be in
30 compliance regarding the traffic. Regarding hardship, we are only asking you to grant us what is
31 normally given to public schools without question.

32

33 Councillor Archuleta said I visited this site and I counted the residential homes on Miranda and I
34 only counted seven homes. Most of the homes were north of Holy Cross and the school. Are you
35 getting complaints from these residents?

36

37 Karen Trujillo, Administrator for the Catholic School said the majority of the complaints are coming
38 from the residents on Palmer Street and Ethel Street.

39

40 Councillor Archuleta asked are any of the children walking to school?

41

42 Karen Trujillo said we have one family with three sons that live on Phillips and they are the only
43 ones that are walking to school at this time.

1 Councillor Archuleta said I found a number of incomplete streets while I was doing the site visit;
2 Palmer Street just dead ends at the ditch and then there is the railroad.

3

4 Karen Trujillo said there is a pecan orchard behind the school and then the railroad tracks. There is
5 about 4 acres behind the school that isn't developed.

6

7 Councillor Jones said I asked earlier about the amount of people in the classrooms and the buildings.

8

9 Karen Trujillo said we have an after care program where we serve students from our own school and
10 throughout the year from the City of Las Cruces. A band room which is currently being operated out
11 of the church, a chemistry/science lab for both middle and high school students, office and locker
12 space for students, a computer lab which is currently ran out of a side room off of the library and pre-
13 school classrooms that have already been approved; we are looking at a maximum load of 432
14 students. Currently, we serve approximately 295 students and our maximum projection is over the
15 next ten years which we have based upon our growth rate.

16

17 Dan Schneider said the reality is we will likely never get to our maximum amount, our enrollment
18 depends a lot on the economy. We will probably stay right around the 300 to 350 mark.

19

20 Karen Trujillo said once we meet that maximum amount with a sustainable amount of high school
21 students, they would be moved off campus. It has never been the attention to have the school above
22 the eighth grade level for eternity.

23

24 Dan Schneider said last year, we only kept 3 ninth graders out of 24 eighth graders so until we can
25 build a gymnasium to keep with the sports, we're not going to have a big expansion.

26

27 Mayor Miyagishima asked can all the portables be placed on the west side?

28

29 Dan Schneider said yes.

30

31 Mayor Miyagishima said is there a road back there?

32

33 Dan Schneider said yes, there is an access point and there will be a fire hydrant placed back there.

34

35 Mayor Miyagishima said this is a non-conforming use which basically means that you have that
36 building there and that's all you can do. You really shouldn't or can't be adding to it. I know you
37 have had special use permits in the past that have allowed you to do that but that's just what the other
38 Council did at that time. Personally, I think you were allowed to split that land and have it rezoned
39 for those portables, at which time, you would have to show access into it. That way it would
40 eliminate all the traffic on Palmer and Ethel. In my opinion, for us to keep allowing special use
41 permits on non-conforming uses is not the way to go. If you split that land and then get it zoned the
42 way it is suppose to be zoned to allow the buildings then you provide an access, which the City is
43 going to require, and then take it before the Planning and Zoning Commission for their approval.

1 Dan Schneider said there is no way to have a complete access point in that area because there are
2 apartments right there.

3

4 Mayor Miyagishima said you could make it into an access point off of Miranda and you would
5 probably be required to put up some kind of barrier for the apartments.

6

7 Vincent Banegas said the stipulation in the 2001 code calls for both a church and school to be
8 located on a major local or higher and you're talking about a small driving isle from Miranda to
9 provide access back to the portables.

10

11 Mayor Miyagishima asked they couldn't build that into an approved access?

12

13 Vincent Banegas said it wouldn't qualify because you are still located off of Miranda which is only
14 a minor local.

15

16 Mayor Miyagishima said so they can't get it rezoned.

17

18 Vincent Banegas said zoning doesn't solve the problem for this particular issue.

19

20 Councillor Jones said a quarter of what is going on here is a land issue and how it is used. Is it
21 standard industry acceptable practice in the world to look at uses and say that conditions have
22 changed or an additional use is suitable because of the impact; is it suitable to change those things?

23

24 Vincent Banegas said from my perspective, when we talk about uses on property, we do anticipate
25 those uses to stay around for a very long period of time. There are some exceptions, for example, a
26 rock quarry that sold raw materials like rock for the manufacturing of concrete, they were located in
27 a specific location and over time there were residential uses in that area and then they were pressured
28 into re-located, even though they were there first. In this particular case, schools are part of our
29 community and it really speaks to just how much expansion can take place before the road begins
30 to fail. I'm not an analysis expert but based upon what I have seen from the TIA, based upon the
31 projected growth, Miranda did not fall on the level of service. I do think this is a viable use of the
32 community and it has a purpose. It's just a matter of how much is too much in terms of growth.

33

34 Councillor Jones said I know the residents have felt like there have been numerous one time
35 extensions but with the commitment that no future changes would be allowed, in terms of capacity
36 or things of that nature. Has there been some kind of commitment that this is the last change and no
37 other changes will be permitted?

38

39 Dan Schneider said I think in my review and research of this case, I looked at things a little
40 differently, it wasn't so much as a commitment by the applicant so much as it was the uncertainly
41 by the staff who processed the case for the Planning and Zoning Commission; what should we call
42 this case, how should we present this case on appeal, that sort of thing. In terms of the 1981 code,
43 you had a non-conforming section that was basically broken up into two parts; you had an expansion

1 of properties non-conforming that were authorized when you were dealing with residential uses and
2 then you had strict limitations on expansion opportunities when you're talking about non-residential
3 uses or commercial. What would we call this; it's not residential and it's not commercial; it's
4 institutional. So, I can see from the perspective of the planner asking how can we process this and
5 then coming up with the one time expansion opportunity to try to limit the impact and control what
6 would take place, not only at that time but for future reference. Does that restrict the applicant from
7 coming back to the well and asking for further expansions; I would think not. Particularly, since our
8 codes change over time.

9

10 Councillor Jones said had planning staff had seen some impediment here that there was an earlier
11 commitment that nothing was ever going to change again, would they have checked that at the time
12 of the application.

13

14 Dan Schneider said I would imagine that had they seen a firm commitment to that extent that they
15 would have brought that up during subsequent meetings.

16

17 Councillor Jones said obviously, the residents are concerned about two things; one is that there
18 wasn't a string of commitments of "well we are going to let you go by this time but never again,"
19 basically, from what I'm hearing, is that one can view this and reasonably say that there is a dispute
20 about this; things change and an application was made to adapt to the change and an adoption was
21 granted but not necessarily the commitment that "don't ever come back here again because we let
22 you go this time" type of mind set. Some might feel like it was a one time permission and nothing
23 would ever come back again and that would be the fair expectation. Certainly, that's what we are
24 worried about with going forward. I wonder if that's what the recommendation of the PUD is; is it
25 the purpose of the PUD recommendation to say to look at some point, we're not going to keep
26 adding and adding.

27

28 Vincent Banegas said from the staff's perspective regarding the Planned Unit Development condition
29 and the acceptance of that condition by the Planning and Zoning Commission by their action, staff
30 is looking at not only the history, we recognize that there have been expansions on the property
31 through time and we recognize that there are significant concerns regarding traffic in the surrounding
32 area and the impact that these expansions are having on the surrounding neighborhood. Our thinking
33 was that if we go through a Planned Unit Development process, we identify the subject parcel in
34 question then we can at least have the applicant really think through what their future needs are going
35 to be. If it does meet with the approval of the appropriate body then at least that sets the stage for the
36 general action of what is expected to be seen on that property in the future. The neighborhood has
37 an understanding, the applicant has an understanding on what they can and cannot live with, what
38 they will be abiding by, that sort of thing. So, that in my mind is what is the use for the PUD.

39

40 Councillor Jones said that will go through the DRC, correct?

41

42 Vincent Banegas said yes, the Planned Unit process can be used for a very large area which would
43 subsequently be subdivided or it can be site specific which is what we are dealing with here. It

1 doesn't have to go through a development review committee but it would definitely go through
2 staff's review, not only Community Development but Fire, Police, Utilities, Public Works, etc.

3

4 Mayor Miyagishima said the type of zoning that would allow buildings to be used for schools are
5 of an institutional use; is that correct? If so, what type of zoning is needed for that?

6

7 Vincent Banegas said in terms of the 2001 zoning code, the code refers to all schools K-12 as a
8 conditional use. It doesn't list any specific zoning associated with that type of use but it establishes
9 some specific guidelines or criteria that have to be met. So, zoning doesn't necessarily play a part
10 in the placement of school facilities. It just requires that an arterial or higher designated roadway be
11 considered for certain aspects of commercial trade schools, technical schools but in terms of this use,
12 elementary, middle and high schools shall be located on a collector or higher designated roadway.

13

14 Mayor Miyagishima asked what type of street is Parker?

15

16 Vincent Banegas said Parker is a collector.

17

18 Mayor Miyagishima asked what type of street is Miranda?

19

20 Vincent Banegas said it is just a local roadway.

21

22 Mayor Miyagishima asked how wide is Miranda Street?

23

24 Vincent Banegas said it is about 50 to 55 feet.

25

26 Mayor Miyagishima said it needs to be about 85 feet; correct?

27

28 Vincent Banegas said that is correct. Hence, the request for a variance.

29

30 Mayor Miyagishima said you can't turn portions of Miranda into a collector.

31

32 Vincent Banegas said the code stipulates that it must be located on it. In my opinion, providing
33 access points to the property would qualify it and met that condition but in order to get Miranda to
34 that point, you're involved with a significant right of way take (interrupted by Mayor Miyagishima)

35

36 Mayor Miyagishima said exactly. It looks like the school owns a big portion of it and then the other
37 would be the apartments. To grant that to the City and then have the applicant make those
38 improvements; in my opinion that is the only way to do it. If you make Miranda into a collector and
39 make it that much wider, I don't know if we can make the conditions but they could buffer it up so
40 that the residents, you can put all the portables west of the schools.

41

42 Vincent Banegas said I can't say with any certainty but how far the structures are, the apartments
43 from Miranda but the buildings are rather close to the property line so you may be dealing with not

1 only property takes to get to the 85 feet but we may be encroaching on some of those buildings if that
2 applicant was going to try to do that.

3

4 Councillor Silva asked what happens to the barren land across the street if we make Miranda a
5 collector, can they come in put in a store?

6

7 Vincent Banegas said no, we are just changing the designation of the roadway, not the zoning of the
8 land. They would have to seek a zone change for that property.

9

10 Councillor Silva asked is this a hardship or is it this just complying with the code?

11

12 Vincent Banegas said it is a hardship in that the educational component can expand without us
13 interfering in any way shape or form and private schools get treated differently in that they do have
14 to comply with our code.

15

16 Councillor Silva said this is kinda confusing; once the right of way is expanded then they were
17 allowed to add the additional; that's why I was asking if this was a hardship. It's not so much the
18 school but the repellants that are arguing the hardship within the neighborhood.

19

20 Vincent Banegas said the repellants are arguing that there is no hardship, that the applicant has not
21 demonstrated a hardship pursuant to the code requirement.

22

23 Councillor Archuleta said if the 1981 zoning code had not changed then we wouldn't be here today.

24

25 Vincent Banegas said if the 1981 zoning code had remained in full force and in effect, we would be
26 back here in some form or fashion because you still had a condition that required location on a
27 certain designated roadway which Miranda is not and if they came in for a permit to expand, we
28 would have probably brought back the matter as a special use permit or some other aspect.

29

30 Councillor Archuleta said what the neighbors are requesting of this Council is for us to reverse the
31 P & Z decision.

32

33 Vincent Banegas said that is correct.

34

35 Mayor Miyagishima said I counted 15 immediate neighbors that would be affected by this, are any
36 of these neighbors here today? I would suggest that the school hold off or withdraw their application
37 and get the majority of the property owners to agree with this expansion.

38

39 Councillor Silva said we were provided some signed petitions in our packet.

40

41 Julie William, Member of the Public said I was one of the ones that went around and got petitions.

42

43 Councillor Silva said the petition was to table the action by the P & Z; what was the general reaction

1 of some of the neighbors?

2

3 Julie William said I live on the corner of Ethel and Miranda which is right across from the church
4 and I collected signatures from the residents on Ethel Street. About 75% of them that signed the
5 petition were very concerned about the expansion.

6

7 Councillor Silva said there is a difference between being concerned and not wanting it.

8

9 Julie William said they didn't like the expansion. When the 12 portables rolled down Ethel Street
10 last winter, there was a great concern among a number of people. They felt that the church had gotten
11 big enough and when we went around with the petition, we had several meetings and we learned
12 during that time that they had expanded to a high school, they were going to expand with about 30%
13 more church membership, students were going to be expanding by 50%, there was a proposed life
14 center of 14,000 square feet, a projected sports facility, the people are concerned, they don't want
15 the expansion.

16

17 Councillor Archuleta said when you first saw the portables, you thought they were expanding, but
18 they aren't expanding.

19

20 Julie William said during the February meeting, they told us that they were expanding the school by
21 50% and that they had a high school that we didn't even know existed at that point, the church was
22 expanding with a life center that was about 14,000 square feet and that they wanted to increase their
23 membership.

24

25 Councillor Archuleta said the portables are not to be used for classrooms.

26

27 Julie William said at that point, they labeled them as classrooms.

28

29 Councillor Archuleta said but now we know differently, do you still feel the same about the
30 portables?

31

32 Julie William said I do not want the high school there. The elementary and middle school is ok but
33 a high school is a very different matter.

34

35 Councillor Archuleta said my notes say that there is no intention of building a high school. The high
36 school students are only temporary until such time that the high school reaches 60 to 80 students then
37 they will relocate.

38

39 Julie William asked how long will that be?

40

41 Councillor Archuleta said I don't know.

42

43 Julie William said when they build a sports complex that will be 250 feet from my front door, how

1 long will that be there?

2

3 Councillor Archuleta said I don't know.

4

5 Julie William said I don't either. My feeling is that the school has been blessed with success and they
6 have grown to have more and more students but the high school doesn't belong in this area. Miranda
7 Street can't grow by 30 to 35 feet unless we take out apartment buildings and houses. The high
8 school is not for this area and the neighbors don't want it.

9

10 Councillor Jones said if this were to be successful and the P & Z decision is upheld; would those
11 additional amenities be subject to the outcome of the PUD process or would they be permitted in
12 some other fashion?

13

14 Vincent Banegas said if Council sustains the P & Z vote then any subsequent addition above and
15 beyond the 8400 square feet would be subject to the Planned Unit Development.

16

17 Councillor Jones said one of the ways to interpret this is that there was a permitted use and
18 subsequently there have been code changes that have rendered this a non-conforming situation.

19

20 Vincent Banegas said that is a fair representation.

21

22 Mayor Miyagishima said I would like to ask Ms. Rupert if there is any type of common ground that
23 you can see?

24

25 Ms. Rupert said I feel that Mr. Schneider misspoke, he said that they tried to talk with us; we only
26 met for coffee and I feel that the main purpose of that was to see what was the least that they could
27 offer us so that we wouldn't go through with an appeal. We are simply asking for compliance. In
28 terms of the present situation, in April they get a 10% one time expansion and in May they get 30%.

29

30 Mayor Miyagishima said so, in your opinion, there is really no, if they allow one portable then that
31 is one portable too many.

32

33 Ms. Rupert said we did discuss this among the neighbors and this is not a civil suit where we can
34 negotiate damages, this is a question of regulation.

35

36 Mayor Miyagishima said under the compliance end of it, I have to vote to overturn the P & Z
37 decision; however, I think if the majority of the homeowners that were directly impacted sign off and
38 say they support the church or the school and I'm going to go ahead and sign it. It would be up to
39 the Council to decide how many would need to support it. I don't believe we can just table this and
40 make these new rules and then bring this back. It needs to be either voted down or up and then you
41 would have to reapply again.

42

43 Ms. Rupert said we have tried to talk to LCCS and let them know that if they had been a little bit

1 more forthcoming with their ideas before they got to the formal plan stage, some of us who live in
2 the neighborhood might of had some creative suggestions on how to work this out.

3

4 Councillor Archuleta said there were three P & Z meetings before they came to this decision. My
5 concern is that if we vote no and accept the P & Z's decision then they won't be able to build a high
6 school. Right now we have such a high drop out rate that we need another school to get those kids
7 graduated.

8

9 Councillor Jones said I think that we had a permitted use at one time then the code changed which
10 made it non-conforming. Code changes are made to improve the quality of our community but in this
11 situation, one may view it as there was a use, code changes have occurred and someone has been left
12 out in the wind, in this case it's the school. The other issue is to have a high school or not; I don't
13 see it as our job today to measure the benefit of a high school. The main impact is the traffic issue
14 because it relates to the variance. We've had a report done by a traffic engineer that states that with
15 this expansion, it would still remain at a level A and B of a traffic impact or condition in this
16 situation. I don't see this as a free-bee or exception to the rules, this is a permitted use that got stuck
17 up in code changes. I feel compelled to deny this appeal and support the P & Z's decision. I think
18 by having a PUD for any future expansions is a protection for the residents in this area.

19

20 Councillor Silva said I don't think I can support this and reverse it. I can see this as a hardship
21 because the number of students is going up but I can also see the neighbors being affected by this.
22 I think we need more school to teach spirituality and values of all religions.

23

24 Dan Schneider said after speaking with Ms. Wooten, she would gladly entertain the possibility of
25 a postponement to have time to go over things with the neighbors and try to come to an agreement.

26

27 Mayor Miyagishima said I would have no problem with that.

28

29 Karen Wooten said I have spoken with the representatives of the school and they are willing to
30 accept a postponement and continue the discussions with the residents. The formal process of the
31 PUD is a very expensive process for them but we have spoken about ways to meet those same kinds
32 of concerns that process involves and address this with less formal proposals for conditions.

33

34 Councillor Jones asked would Mr. Hall who represents the neighbors would they agree to tabling
35 this date certain?

36

37 Glenn Hall said we are willing to get back to the table.

38

39 Councillor Jones asked how much time would be needed?

40

41 Glenn Hall said I think 30 days would be enough time.

42

43 Terrence Moore said we can hear this at the October 19th meeting.

1 Ms. Rupert said there are many people involved who have an 8 to 5 schedule.

2

3 Terrence Moore said every meeting begins at 1 o'clock. The October 26th meeting is a land use
4 meeting and it begins at 5 o'clock but it is already going to be a lengthy meeting. The October 19th
5 meeting would work for this issue.

6

7 Fermin Rubio said we need to hear from Ms. Wooten to make sure that they are in agreeance with
8 this tabling.

9

10 Karen Wooten said there was some confusion between myself and my client; they wish to go ahead
11 and put this to a vote.

12

13

14

15 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-083 and it
16 FAILED. 3-2-1 Councillor Silva, Councillor Small and Mayor Miyagishima voted Aye. Councillor
17 Jones and Councillor Archuleta voted Nay. Councillor Thomas Abstained. Councillor Connor was
18 Absent.

19

20

21

22 (19) Resolution No. 10-084: A Resolution to Appeal the Conditions Attached to the
23 Approval Decision of the Planning and Zoning Commission for a Thirty-five (35)
24 Foot Variance from the Eighty-five (85) Foot Right-of-Way Requirement
25 Allowing for the Placement of Nine Portable Buildings at a Private School
26 Located at 1321 N. Miranda Street. The Subject Property Consists of 11.07 +/-
27 Acres, That Is Shared with Holy Cross Catholic Church and Las Cruces Catholic
28 Schools. The Subject Property Is Zoned R-1a (Single-family Medium Density).
29 Submitted by Dan Schneider for the Las Cruces Catholic School (A1695 A).

30

31 Councillor Jones Moved to Adopt Resolution No. 10-084 and Councillor Small Seconded the
32 motion.

33

34

35

36 Terrence Moore, City Manager said regarding Items 18 and 19, much of the presentations were
37 consolidated in the previous item so it is just a matter of offering direction regarding the conditions.

38

39 Councillor Silva asked what was the turning point for looking for another facility?

40

41 Karen Trujillo, Administrator for the Catholic School said at about 450 students; that would be the
42 point where we would have a self-sustaining school.

43

1 Mayor Miyagishima said this is an appeal by the school; they are looking to reverse the conditions
2 that were placed by the Planning and Zoning.

3

4 Vincent Banegas said there were some conditions that were placed as previously indicated and two
5 of those conditions are set to be removed by the LCCS. I just spoke with the appellants in this case
6 and they are comfortable with two of the conditions and the only that they have an issue with is the
7 cap on the high school which limits it to 50 students. We are asking to amend this resolution and
8 modify the conditions; the condition associated with the expansion; requiring a PUD for an
9 expansion above and beyond the 8400 square feet and the landscaping condition, they feel they can
10 live with those conditions. The only one they want for consideration of removal is the limit of 50
11 students for the high school.

12

13 Karen Trujillo said the only thing we are seeking to change is to change the limit of 50 students to
14 a total cap of 450 students for the entire population.

15

16 Mayor Miyagishima asked how students do you currently have?

17

18 Karen Trujillo said we have 300 students right now.

19

20 Glenn Hall said this is all part of the variance process even though this is a separate appeal. Any
21 latitude that is given to the church in this case must be done under the same consideration that
22 hardship is not to be considered, especially monetary hardship. Typically, the hardships that they
23 look at for a variance are topic graphical, rights of way being taken; that sort of thing. The hardship
24 here was created by their own success. After hours and hours of presentations, the P & Z decided on
25 some kind of a middle ground and capped it at 50 students.

26

27 Julie Woody said the 50 came from their chart and they projected that amount within the next five
28 years, not ten years.

29

30 Ms. Rupert said that is correct, we were told that 50 was their turning point to have the high school
31 existing separately from this site. Without having that in place, we could end up with 200 students.
32 We need your help to protect our neighborhood. High school students are different, they drive on
33 their own, there are different standards as far as the parking for these students and there are different
34 standards for the sporting events and their types of activities that will be provided on that campus.

35

36 Cotty Gonzales said I live on Linda Vista and I collected all the signatures for that street. Nobody
37 that I talked to wanted to have a high school on that street. They told us that it would be viable for
38 them to move the high school once they had 50 students.

39

40 Councillor Silva asked how will we know when they've hit the 50 point?

41

42 Karen Trujillo said the State Department of Education requires us to do an annual report which
43 includes a break down of how many students we have in each grade level.

1 Councillor Silva asked would we be restricting the school if we put a time limit on it? What if they
2 get 51 students then in a few months 2 of them drop out?

3

4 Fermin Rubio said it would be a violation of the code which can be punishable by 90 days in jail so
5 that should be a deterrent not to go over the limit.

6

7 Karen Trujillo said the intention of the 50 student cap was for the overall traffic impact so the idea
8 behind it was that whether there were 432 students, 50 which were high school students or 60 of
9 which were high students verse any other grade level, the traffic impact would be the same at 450.

10

11 Councillor Silva said I was just looking at setting it for a certain date so at that date you're done.
12 Whether the portables get pulled or not, you're done with the high school. That's why I was
13 wondering if it would be appropriate to set a deadline for this versus a fixed number.

14

15 Karen Trujillo said I think during the P & Z this discussion did take place and they wanted to do a
16 five year limit and we discussed the limit on the amount of students being between 60 and 80. After
17 discussing the year deadline and finding that it wasn't feasible because we it may end up being 2015
18 with only 20 students. Then it's not viable which is why we ended up negotiating down to the 50
19 number.

20

21 Fermin Rubio said you already have one amendment that you need to do which is to reverse one of
22 the three conditions and when you add all these other things, it complicates the process but it is up
23 to you.

24

25 Karen Wooten said I don't think that particular condition has any rational basis to what the ordinance
26 is designed to protect against; setting a time period without any regard to the impact on the
27 neighborhood from what is going on the site. In my opinion, that would be unconstitutional.

28

29 Fermin Rubio said I think you should just vote this up or down.

30

31 Councillor Jones said Mr. Paz, would you mind committing on the traffic analysis?

32

33 Jerry Paz said I prepared the traffic impact analysis.

34

35 Councillor Jones said we are talking about the traffic impact at an A and B level. As the result of
36 your study, the neighboring streets, there is nothing below a C level, correct?

37

38 Jerry Paz said that is correct. The traffic impact analysis that we prepared did account for the 50%
39 growth which would be about a total of 450 students. In addition, because some of the concerns of
40 the neighborhood, we looked at the growth of the church based on its current ministries and we
41 factored that into the traffic impact analysis, even though that wasn't germane to this particular
42 application. We also grewthed up the background traffic which is the non-school traffic by a similar
43 percentage, even though the neighborhood is already built out. We looked at the worst of the worst

1 of the worst conditions and they all functioned under a level service A or better which the City has
2 a C minimum.

3

4 Councillor Jones said if the number of high school students goes from 50 to 100, if the total
5 enrollment amount stays at 450; would that change the outcome of your analysis?

6

7 Jerry Paz said not this particular analysis. The way it was done and the way it was conducted all in
8 accordance with the traffic engineering standards that has been adopted by the City of Las Cruces.
9 There are models available that take into consideration the age and aggressiveness of younger drivers
10 versus the temperament of older drivers and other various factors. This model wasn't that
11 complicated in its analysis. It was more of a City wide type of analysis that we used, for instance,
12 on the interstate 10 project.

13

14 Councillor Jones said if the number of high school students shifted from 50 to 100 students, it
15 wouldn't change the outcome, correct?

16

17 Jerry Paz said correct, not with this study.

18

19 Councillor Jones said Mr. Banegas, with respect to the high school students, if there was a desire to
20 build a gym or a shop to educate high school students in repairing cars or those types of things, that
21 would trigger the PUD process, correct?

22

23 Vincent Banegas said above and beyond the 8400 square feet would require a PUD.

24

25 Councillor Silva said I think we need to take in account that younger drivers are more aggressive
26 drivers.

27

28 Jerry Paz said I think there was some merit in looking at the objective of the school and our client
29 was the school. The objective of the school is not to build a high school, the objective of the school
30 was to start out with one grade at a time and then it grew into what it is today. This is not where they
31 want to have a high school but to start out with a core group until it grows to where it would
32 financially pay for itself at another campus.

33

34 Councillor Jones said this is a traffic issue and 450 students is the same whether they are driving or
35 their parents are driving them to school.

36

37

38

39 Councillor Jones Moved to Amend Resolution No. 10-084 to remove the condition of a total number
40 of 50 high school students and change it to no more than a total of 450 student and Councillor
41 Archuleta Seconded the motion.

42

43

1 -

2

3 Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 10-084 to remove
4 the condition of a total number of 50 high school students and change it to no more than a total of
5 450 student and it FAILED. 2-3-1 Councillor Jones, Councillor Archuleta voted Aye. Councillor
6 Silva, Councillor Small and Mayor Miyagishima voted Nay. Councillor Thomas Abstained.
7 Councillor Connor was Absent.

8

9

10

11 Fermin Rubio said I would ask that Council raise another motion to remove the other condition that
12 the appellants have requested to remove which was the first condition and leave the condition of
13 limiting the number of high school students to 50 as the only condition under appeal.

14

15 Glenn Hall said the applicant on this appeal is withdrawing the appeal regarding the PUD
16 requirement.

17

18 Fermin Rubio said that is correct. We would need to remove the first bullet of paragraph 2 on page
19 342 which starts the approval of this variance; remove that paragraph so that paragraph II only states
20 that the high school is limited to 50 students. Paragraph III, that the granting of this removal of the
21 variance condition is in accordance with Section 38-10. In other words, the resolution that you will
22 be voting on will only deal with the 50 students issue.

23

24 Councillor Jones said this would remove the first bullet under paragraph 2 because the school has
25 acknowledged that they will live with that; then if we vote no to the appeal the PUD requirement will
26 remain and the limitation of 50 students will remain.

27

28 Fermin Rubio said that is correct, the only item that is being appealed by the school is the 50 student
29 requirement and they are accepting the other two conditions that were placed by the P & Z.

30

31 Glenn Hall said the condition that was placed by the Planning and Zoning Commission regarding
32 any additions above the 8400 square feet would require a PUD, the school is willing to accept that
33 condition so because of that, we need to take that out of this resolution.

34

35

36

37 Councillor Jones Moved to Amend Resolution No. 10-084 to remove bullet 1 from paragraph 2
38 which states that the approval of this variance is limited to the expansion of the 9 portables buildings,
39 having a combined gross floor area of 8400 square feet. Any future expansions of the school or
40 church site shall require the submittal and approval of a zone change to a Planned Unit Development
41 (PUD) as outlined in the 2001 zoning code as amended and on paragraph 3, that granting the removal
42 of the variance condition is in accordance and Councillor Archuleta Seconded the motion.

43

1 -----
2
3
4 Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 10-084 to remove
5 bullet 1 from paragraph 2 which states that the approval of this variance is limited to the expansion
6 of the 9 portables buildings, having a combined gross floor area of 8400 square feet. Any future
7 expansions of the school or church site shall require the submittal and approval of a zone change to
8 a Planned Unit Development (PUD) as outlined in the 2001 zoning code as amended and on
9 paragraph 3, that granting the removal of the variance condition is in accordance and it was
10 APPROVED. 5-1 Councillor Silva, Councillor Small, Councillor Jones, Councillor Archuleta and
11 Mayor Miyagishima voted Aye. Councillor Thomas Abstained. Councillor Connor was Absent.

12
13 -----
14
15 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-084 as Amended
16 and it FAILED. 0-5-1 Councillor Silva, Councillor Small, Councillor Jones, Councillor Archuleta
17 and Mayor Miyagishima voted Nay. Councillor Thomas Abstained. Councillor Connor was Absent.

18
19 -----
20
21 **X. BOARD APPOINTMENTS**

22
23 None given.

24
25 -----
26
27 **XI. REVIEW OF PROPOSED ORDINANCE(S)**

28
29 (20) Council Bill No. 10-006; Ordinance No. 2535: An Ordinance Amending Las Cruces
30 Municipal Code, Section 1-11(a)(2), Court Cost - Collection; Purpose, to Increase the
31 Judicial Education Fee From \$2.00 to \$3.00, Pursuant to Amendments Made by the
32 49th Legislature of the State of New Mexico, 2009, to New Mexico Statutes
33 Annotated, Section 35-14-11, For All Cases Filed on or After July 1, 2009; and, to
34 Amend the Fiscal Year 2009/2010 Budget.

35
36 Mayor Miyagishima and Council agreed to bring this item back.

37
38 (21) Council Bill No. 10-007; Ordinance No. 2536: An Ordinance Repealing and
39 Replacing the Definition of "Persons of Low or Moderate Income" in Section 13-102
40 of the City of Las Cruces Municipal Code, 1997, as Amended. The Replacement
41 Definition Provides Expanded Eligibility to Qualified Persons and Families Under
42 the City's Affordable Housing General Oversight Ordinance and the State Affordable
43 Housing Act.

1 Mayor Miyagishima and Council agreed to bring this item back.
2
3
4

5 **XII. STATUS/UPDATES ON CURRENT PROJECT LIST**

- 6
7 1. **Strategic Plan** - *(Implementation documents being prepared, finalizing plan for council review and consideration.)*
8
9 2. **Las Cruces Convention Center** - *(Status report provided monthly on second, Regular City Council Meeting)*
10
11 3. **Downtown** - *(The project design is ongoing with Bohann-Huston, Inc. The city has completed the final details for the proposed cul de sac on Lucero Ave. Bohann-Huston is scheduled to submit a 95% complete plan set for the final review on September 25, 2009. The anticipated completion of the design for the north end portion is October 30, 2009.)*
12
13
14
15
16 4. **Impact Fees** - *(The project is on-going. Staff has been working with the Consultant on incorporating information to address the comments provided by the City Council during the Work Sessions held in March, April, and May of this year. Staff is currently reviewing the latest draft of the information. It is anticipated that a final draft will be available in the next few weeks.)*
17
18
19
20
21 5. **Aquatics Center** - *(Status report provided monthly on first, Regular City Council Meeting)*
22
23 6. **Vision 2040** - *(The consultants have completed preliminary drafts of the Regional Vision, and CLC and DAC Comprehensive Plans, and all documents have been reviewed by staff. The consultant is making revisions based on staff comments. When revisions to all three documents are complete, the preliminary drafts will be released for public comment, and public input meetings will follow.)*
24
25
26
27
28 7. **Grants/ARRA Status** - *(Matrix.)*
29

30
31
32 **XIII. GENERAL DISCUSSION**

- 33
34 1. Mayor
35

36 Mayor Miyagishima said I will be calling for a special meeting on September 29th at 1:00 to 4:00
37 p.m. to discuss an update on the Broadband Committee and discuss the Downtown Mall again. We
38 will have staff presentations regarding the Downtown Mall and get some clarification on some other
39 issues like how the money was spent. I would like to recommend that we hold off on removing the
40 awnings until after we have this work session.
41

42 Terrence Moore said the awning removal process is about a fourteen week endeavor and because of
43 the legislative funding requirements, we are somewhat pressed in that regard; however, since we are

1 looking to meet in the next three weeks or so, that will give us a little flexibility to address whatever
2 concerns exist.

3

4 Mike Johnson said we are scheduled to begin removing the awnings on Thursday and it is a twelve
5 to fourteen week process. It is being done in conjunction with the bidding of the project which
6 should be awarded by December. I would caution that we do have State legislative funds and the
7 sooner we can allocate them the better because if we wait then we can be in danger of losing those
8 funds.

9

10 Mayor Miyagishima said I understand that and I'm not asking that you totally stop it. There are some
11 issues that have come up that we need to discuss concerning this issue.

12

13 Councillor Jones said they will be done with that project by the time we have this meeting.

14

15 Mike Johnston said we would only be about three weeks into the project at that time.

16

17 Councillor Jones said you are asking them to halt the project but that would threaten the funding for
18 it. I'm not comfortable with risking losing these funds.

19

20 Mike Johnson said the longer we delay in waiting to allocate those funds, the higher the risk there
21 is in losing those funds.

22

23 Mayor Miyagishima said I might be able to make the meeting for September 18th.

24

25 Mike Johnson said am I understanding that we can't remove anything until after this meeting?

26

27 Mayor Miyagishima said we don't have that authority; it is up to the City Manager.

28

29 Councillor Archuleta said I have a New Mexico Parks meeting up north on that day so I won't be
30 here.

31

32 Terrence Moore said you can go ahead and set up a meeting for September 29th. There will be
33 enough time to make any adjustments if need be; otherwise, given the time frame the project won't
34 be completed at that time.

35

36 Mayor Miyagishima said I am going to call a meeting on September 18th and whoever can make it,
37 makes it.

38

39

40 2. City Council

41

42 Councillor Thomas said we took three resolutions to the Municipal League; one was to support
43 energy investment districts, the other was to ask the Municipal League to keep an eye on what is

1 going in Washington, D.C. regarding the new Federal Transportation Act and both of those passed
2 easily. The other resolution was to ask the Municipal League to lobby for us for funding to do a
3 study to extend the rail runner to here and then to El Paso but that one failed. We then brought a
4 modified resolution back to them that asked the Municipal League to lobby for a feasibility study
5 to determine where the rail runner express should go next.

6

7 Councillor Jones passed.

8

9 Councillor Small passed.

10

11 Councillor Silva said I was at the Farmers Market on Saturday morning and I spoke with vendors
12 and they were all happy. We received an email regarding the old furniture store building on the
13 corner that stated there were parts of it that were falling but it is a private building. There were
14 concerns regarding trash cans being placed out in the mall area and the third item was with the
15 restrooms and the fourth item was the issue of the placement of the vendors. For the most part, I
16 received really good reviews from the people I spoke with at the market.

17

18

19 3. City Manager

20 A. Status of Citywide Swimming Pool Enhancement Program.

21

22 Presentation given; LAABS and the East Mesa Pool will be open through this weekend. The weather
23 is getting cooler and the goal is to shut those down as soon as the work on the Frenger pool is
24 complete. We are finishing up the contract for the competitive pool and are currently putting
25 together a schedule for public input.

26

27

28 B. New City of Las Cruces Web 2.0 Site

29

30 Don Bustamante, IT Director gave a presentation and said this technology will enable us to do things
31 like create virtual cities. We want to be able to allow our customers to do any form of transaction
32 via our website as well as being able to do it in person. This system will be more user friendly and
33 in compliance with the Americans with Disability Act.

34

35 Sheetal Jain, IT Webmaster gave a presentation and said this will enhance our website.

36

37 Councillor Thomas said I am concerned that we didn't include the public's input on this issue.

38

39

40 C. Other Items – Information Only

41

42 None given.

43

Regular Meeting
September 8, 2009

Page 38

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2

3 **Meeting Adjourned at 7:50 p.m.**