City of Las Cruces®
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Council Action and Executive Summary

Item #_ 4 **Ordinance/Resolution#** 2534 **Council District:** N/A

For Meeting of November 16, 2009
(Adoption Date)

TITLE: AN ORDINANCE REPEALING AND REPLACING DIVISION 11, SECTION 30-491 (DEMOLITION: RESIDENTIAL AND COMMERCIAL/NONRESIDENTIAL, BUILDING PERMIT AND INSPECTION PROCESS – APPLICATION PROCEDURE) OF THE 2009 LAS CRUCES BUILDING CODE IN ORDER TO PROVIDE PROCEDURAL REQUIREMENTS CONSISTENT WITH 2001 LAS CRUCES ZONING CODE PROVISIONS WHEN DEMOLITION OF REGISTERED HISTORIC STRUCTURES IN WHOLE OR IN PART IS PROPOSED.

PURPOSE(S) OF ACTION: To amend the 2009 Las Cruces Building Code, as amended by providing a mandatory sixty-day demolition delay provision for registered historic structures during which alternatives to said demolition may be investigated. Structures not registered are unaffected by the proposed amendment and shall follow the standard provisions already in place.

Name of Drafter: Vincent M. Banegas		**Department:** Community Development		**Phone:** 528-3064	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Community Development		528-3064	Budget		541-2281
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: Earlier this year, the City Council held a work session on issues related to historic preservation. This issue stemmed from the previous demolition of structures thought to be of historical significance throughout the years, but was accentuated when the "pink" house, believed to be one designed by Mr. Henry Trost, was demolished. This structure was located along University Avenue.

During the work session, staff provided City Council with information regarding historic preservation and informed on the related regulations currently in ordinance form and those regulations that could be entertained through code amendment. In summary, the following options were provided:

1. **Investigate and prepare a local historic preservation ordinance.** As presented, this action would establish specific boundaries (i.e. existing State and/or Federal District boundaries or some semblance thereof) as local historic districts. The ordinance would provide language that establishes provisions regarding aesthetic controls or

(Continued on Page 2)

design guidelines when modifying structures and would include provisions regarding demolition review/delay and demolition by neglect to help diminish instances where relevant structures are eliminated, thus weakening the overall historic character of the neighborhood to which they pertain. The ordinance would also establish a type of historic preservation commission or design review board charged with the review of construction, remodel and alteration proposals within the districts themselves. The language may have even allowed for participation in the nomination and demolition review and delay process for structures that may not have been identified as contributing on any historic register yet potentially very relevant to the overall historic character of the district. Other program initiatives were addressed along with funding opportunities and incentives as a component of this option to aid and further encourage those owners whose properties are historically recognized to maintain and actively participate in related preservation endeavors.

2. **Investigate and prepare a demolition delay ordinance only.** This action examined provisions for establishing a set delay period prior to issuance of a demolition permit. The delay would aid in examining alternatives to outright demolition. Alternative uses of the subject building/property would be considered during the stated time period and may include reuse and adaptive reuse scenarios in addition to applying adopted ordinance flexibility to support the endeavor. Investigation of provisions would examine structures/buildings that are listed on a historic register and talk to those situations where the property is not listed, but might be through the nomination process.

3. **Current Process.** This option was presented as maintaining the provisions of the zoning code as presently written. The city does not have local historic districts, but does recognize the Alameda Depot and the Mesquite/Original Townsite State and Federal District boundaries. As you are aware, a plan has been generated for the Mesquite Neighborhood and overlays are in place for both North and South Mesquite. The Alameda Depot area recently had a plan approved by the City Council on April 27, 2009. An overlay for that neighborhood is being prepared as a means to implement the recently approved plan. Please keep in mind that both the plans and ordinances (existing and proposed) were not intended to generate or be Historic Preservation Ordinances. The two Mesquite overlays differ in application and focus and the proposed overlay for the Alameda neighborhood will follow a unique style all its own. A 60 day demolition delay exists in the South Mesquite overlay provisions and the same consideration is proposed for the Alameda district (established within the Plan). The North Mesquite has no such provision in place presently.

After considerable discussion during the work session, the decision made by City Council was to examine opportunities for a Demolition Delay Ordinance (Option #2). As such, a proposed ordinance under separate cover is intended to address this matter more thoroughly. That said however, the proposal pursuant to this ordinance serves to clarify the role of the Building Code in context to procedure that will be taken when demolition of registered historic structures are proposed. The provisions outlined in Exhibit "A" are very much in line with those proposed for the Zoning Code amendment. They are however more succinct in that the Building Code addresses required permitting processes only, not land use related matters as a whole. As such, the proposed amendment seeks to repeal and replace Division 11, Section 30-491 in order to implement the changes required. It is staff's recommendation that Council suspend the rules and hear this ordinance along with that proposed for the Zoning Code concurrently and then vote on each independently.

On June 30, 2009, the Planning and Zoning Commission at a Special Meeting was informed on how the proposed amendment factored into the overall demolition delay proposal. Inasmuch as the Building Code is not under the purview of the Planning and Zoning Commission, presentation of information was for reference purposes only. No recommendation regarding this matter was made. Please be advised that to date, no public input has been received on this matter beyond that provided at the Council work session. It should be noted that since that time, the issue was discussed/addressed at a Planning and Zoning Commission Work Session and at the Commission's regular June meeting. Announcement of the regular meeting and opportunity to provide commentary on historic preservation matters was made at a few smaller meeting venues that when combined, included representation from Las Esperanzas, New Mexico Chapter of the American Institute of Architects, Las Cruces Downtown and others interested in preservation efforts.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Ordinance
2. Exhibit "A," - Chapter 30, Division 11. Demolition: Residential and Commercial/Nonresidential, Building Permit and Inspection Process.
3. Exhibit "B," – Findings and Comprehensive Plan Analysis
3. Attachment "A," - Section 38-63. Demolition Delay, Reuse and Adaptive Reuse – Historic Structures. Reference only.
4. Attachment "B," - Planning and Zoning Commission Packet for Case ZCA-09-03.
5. Attachment "C," – Unapproved minutes from the June 30, 2009 Planning and Zoning Commission Special Meeting

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the Ordinance amending the 2009 Las Cruces Building Code. This action establishes a mandatory 60 day demolition delay provision for registered historic structures to allow time for investigation of alternatives to outright demolition consistent with the proposed amendment stipulated for the Zoning Code.

2. Vote NO and deny the Ordinance. This action does not approve the proposed demolition delay ordinance provision in the Building Code and will therefore allow the demolition of historic structures to follow current processes. Some structures within the South Mesquite Overlay and the proposed Alameda Depot Overlay (pending) will be under a delay period as currently addressed in the respective plans/ordinances regardless of Building Code provisions.

3. Modify the Ordinance and vote YES. This action will be based on Council's direction. Substantial changes may require postponement in order to ensure applicable provisions are in line with remaining ordinance language.

4. Table or Postpone action on the requested Ordinance and direct staff accordingly.

COUNCIL BILL NO. 10-005
ORDINANCE NO. 2534

AN ORDINANCE REPEALING AND REPLACING DIVISION 11, SECTION 30-491 (DEMOLITION: RESIDENTIAL AND COMMERCIAL/NONRESIDENTIAL, BUILDING PERMIT AND INSPECTION PROCESS – APPLICATION PROCEDURE) OF THE 2009 LAS CRUCES BUILDING CODE IN ORDER TO PROVIDE PROCEDURAL REQUIREMENTS CONSISTENT WITH 2001 LAS CRUCES ZONING CODE PROVISIONS WHEN DEMOLITION OF REGISTERED HISTORIC STRUCTURES IN WHOLE OR IN PART IS PROPOSED.

The City Council is informed that:

WHEREAS, the City of Las Cruces presently has a rather large inventory of registered historic resources within its corporate boundaries; and

WHEREAS, interest in protecting and preserving said resources to the extent possible has been deemed an important community-wide activity necessary to preserve our cultural, architectural and historical significance in the Las Cruces environs; and

WHEREAS, said efforts have many other tangible and intangible benefits such as maintaining the quality of life within the neighborhood and overall community, upgrading and preserving housing and commercial building stock, and promoting tourism; and

WHEREAS, the proposed amendment encourages greater participation from the community (grass roots effort) to help educate and identify additional resources worthy of nomination and registration to the respective State and/or National registers with property owner concurrence which would then cause said properties to be subject to the proposed ordinance.

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

(I)

THAT repealing and replacing of Division 11, Section 30-491 (Demolition: Residential and Commercial/Nonresidential, Building Permit and Inspection

Process – Applications Procedure) of the 2009 Las Cruces Building Code as shown in Exhibit "A," attached hereto and made part of this Ordinance, is hereby approved.

(II)

THAT approval is based on the findings contained in Exhibit "B" (Findings and Comprehensive Plan Analysis), attached hereto and made part of this Ordinance.

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

DONE and APPROVED this _____ day of _____, 2009.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Connor: ____
Councillor Archuleta: ____

Moved by: _____

Councillor Small: ____
Councillor Jones: ____
Councillor Thomas: ____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"

DIVISION 11.

DEMOLITION: RESIDENTIAL AND COMMERCIAL/NONRESIDENTIAL, BUILDING PERMIT AND INSPECTION PROCESS

Sec. 30-491. Application procedure.

(a) *Submittal process.* To obtain a demolition permit, an applicant shall submit an application, with supplemental material, to the Community Development Department any time during normal working hours. Upon receipt of the submittal, Community Development Department personnel shall review the submittal for completeness. When all the required items have been submitted, Community Development Department personnel shall issue a receipt for submittal.

Permit applications will be processed through applicable city departments for review, comments and recommendations. City reviewing departments include the community development, the utilities, and the fire and emergency services. City reviewing departments shall review the proposal within two business days and submit their findings to the community development department.

Community Development Department personnel shall forward any comments to the applicant for revision, if necessary. Permit applications that receive comments shall be resubmitted with revisions for review until the provisions of this code are met. Once all comments are addressed and the permit application is in accordance with this code and with other applicable city ordinances and regulations, a permit shall be issued authorizing demolition.

When the demolition involves structures listed on either the State of New Mexico Register of Cultural Properties and/or the National Historic Register, there shall be a mandatory sixty (60) calendar day delay prior to issuance of a permit authorizing said demolition. Said delay shall begin on the date of submittal of the application to demolish and shall cease at the end of the sixtieth calendar day. The purpose for said delay is to allow opportunities for the investigation into viable uses (reuse or adaptive reuse) of the structure/property. Said investigation shall be the responsibility of any and all interested parties along with the property owner of record for the property in question based on Doña Ana County Clerk records. In the event an alternative use is proposed and accepted by the property owner as a reasonable alternative to demolition, the property owner shall be required to submit a written request to the Building Official or designee indicating a need to withdraw the application. Upon receipt of the request, the Building Official or designee shall render the application null and void and may refund all or part of the application/permit fee as deemed appropriate pursuant to any policies/regulation governing this matter. It is strongly recommended that any alternative use(s) proposed for the property be verified through the Community Development Department to ensure full compliance with the 2001 Las Cruces Zoning Code, as amended (see Article IV. Special Provisions; Section 38-63 Demolition Delay Reuse and Adaptive Reuse – Historic Structures) and all other companion codes.

To ensure adequate notice of a pending application for demolition, the Community Development Department shall notify the neighborhood association to which the property pertains (if applicable), the Doña Ana County Historical Society and the New Mexico State Historic Preservation Office (SHPO). A sign shall also be placed on the subject property indicating submission of a demolition application and shall clearly state that the application is under the sixty (60) calendar day delay period. Said notice and sign shall be executed within 2 business days of application submittal.

No provision contained herein shall preclude the Building Official or designee from issuing a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to significant deteriorating conditions. Prior to doing so, the Building Official shall inspect the building and document, in writing and via photographs, the findings and reasons requiring an emergency demolition. A copy of said determination shall be placed in the appropriate demolition permit file as a matter of record.

(b) *Retention of plans.* After the permit has been issued, one set of approved plans, shall be retained by the Building Official in accordance with the Records Retention Act as filed with the City Clerk's office from the date of completion. One set of approved plans and specifications shall be returned to the applicant, said set to be kept at the site of the building or work at all times during the period of demolition.

(c) *Validity of building plans.* The issuance or granting of a permit in approving the plans shall not be construed to be a permit for, or an approval of, any violation of the provisions of this code or of any other city ordinance. Permits appearing to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based upon plans, specifications and other data shall not prevent the Building Official from thereafter requiring the correction of errors in said plans, specifications or other data, or from preventing building operations from being carried on thereunder when in violation of this code or of any other city ordinance.

(d) *Expiration.* Work under every permit issued by the Building Official under the provisions of this code shall commence within 180 days and be completed within one (1) from the date of permit issuance. In order to renew a permit that has exceeded one year, the permittee shall submit new plans for review and approval and shall pay a new permit fee.

Any permittee holding an unexpired permit may apply for an extension of time within which he/she may commence work under a permit. The Building Official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee, demonstrating that circumstances beyond his or her control have prevented action from being taken. No permit shall be extended more than once.

(e) *Suspension or revocation.* If incorrect information is supplied, or if a violation of any ordinance is discovered, the Building Official shall notify the permittee, in writing, that the permit shall be revoked or suspended.
(Ord. No. 1851, § II, 3-19-01; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 30-492. Submittal requirements.

When requesting a permit, the following materials will be required to be submitted for each type of permit application submitted under division 11.

(1) Complete application to include property owner's signature, contractor's name and license number;

(2) Plan review;

(3) Permit fee (required at time of permit issuance issued);

(4) Site plan. The demolition plan, to include the site plan, shall be on blueline or similar process paper no smaller than 8 inches × 11 inches. Copies provided shall be legible and at a scale that adequately represents the information.

a. Name, address, phone number and license number of builder/contractor/demolition firm, if applicable;

b. Date of preparation, north arrow, and written and graphic scale;

c. General legal description of subject property. If tract is not within an approved and filed subdivision, a vicinity map must be included showing exact location of property. Site plan shall include entire lot or tract, with lot, block and subdivision name on copy of legal description;

d. Boundary lines, including dimensions;

e. Graphical labeled presentation, showing work to be performed;

f. Temporary fencing and dust control plan.

Expiration of plan review. Plan review submittals will expire after 180 days if either no approval or issuance of a building permit has been attained.
(Ord. No. 1851, § II, 3-19-01)

Sec. 30-493. Inspections.

(a) *Pre-inspection requests.* It shall be the duty of the permittee doing the demolition, authorized by a permit, to notify and receive approval from the environmental division of the state regarding potentially hazardous material before the permit is approved.

(b) *Inspection requests.* It shall be the duty of the permittee doing the work authorized by a permit to notify the community development department that such work is ready for inspection. The community development department shall require that every request for inspection be filed at least one working day before such inspection is desired. Such request shall be in writing or by telephone, fax-at the option of the permittee.

The appropriate inspectors shall make their respective inspections and shall either approve that portion of the demolition as completed or shall notify the permittee of any city code/ordinance violations.

(c) *Required inspections.*

(1) State inspection and verification of hazardous materials;

(2) Final inspection.

(d) *Approval required.* The building inspector, upon notification, shall make the requested inspections and shall either indicate that portion of the demolition to be satisfactory as completed, or shall notify the permittee or his agent of any city code/ordinance violations. Any portions that do not comply shall be corrected then approved by the building inspector.

(e) *Inspection record card.* Work requiring a permit shall not be commenced until the permittee or his agent has posted, or otherwise made available an inspection record card that will conveniently allow the building inspector to make the required entries thereto regarding inspection of the work. The card shall be kept available by the permittee until final approval has been granted by the building inspector.

(f) *Reinspections.* A $30.00 reinspection fee may be assessed for each inspection or reinspection when such portion of work is not complete, when corrections called for are not made, or when the work site is not accessible.

This subsection is not to be interpreted as requiring reinspection fees for the first time a job is rejected for failure to comply with the requirements of this code, but for controlling the practice of calling for inspections before the job is ready for such inspection or reinspection.

Reinspection fees may be assessed whenever the permit card is not properly posted at on the work site, or for deviating from plans requiring the approval of the Building Official or the appropriate department.

To obtain a reinspection, the permittee shall pay the reinspection fee in accordance with the fee schedule adopted by the city.

In instances wherein reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.
(Ord. No. 1851, § II, 3-19-01; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 30-494. Certificate of completion.

(a) After inspectors inspects the demolition area and finds no violations of the provisions of this code or other laws enforced by the city, the Building Official shall issue a certificate of completion, which shall contain the following:

(1) The building permit number;

(2) The address of the building/structure;

(3) The name and address of the owner;

(4) Statement that the described demolition was inspected for compliance with the requirements of this code;

(5) Name and signature of the Building Official.

(6) The edition of the code which the permit was issued.

(b) Issuance of a certificate of completion shall not be construed as being an approval of a violation of the provision of this code or of other ordinances under this jurisdiction. Certificates appearing to give authority to violate or cancel the provisions of this code or of other ordinances of this jurisdiction shall not be valid.

(c) The Building Official may, in writing, suspend or revoke a certificate of completion issued under the provision of this code whenever it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.
(Ord. No. 1851, § II, 3-19-01)

Secs. 30-495--30-520. Reserved.

EXHIBIT "B" – FINDINGS & COMPREHENSIVE PLAN ANALYSIS

1. Past demolitions involving structures deemed important and worthy of preservation have stirred interest in examining ways of protecting said structures and thus elements of the City's history.

2. On 1/12/09, during a City Council Work session, options for handling the preservation of structures were examined and discussed. Based on that meeting, Council gave direction to investigate a demolition delay ordinance.

3. Upon further investigation of demolition delay options, City Legal staff at the request of Community Development staff opined that demolition delay provisions for all structures within the city limits would probably be interpreted as a temporary taking thus subjecting the City to possible legal challenges/liability. Provisions used on structures already identified as historic however, would fare much better under similar scrutiny.

4. The City of Las Cruces has a rich cultural history dating back to 1849 when it was established as a village in the area currently known as the Mesquite/Original Townsite Historic District. Later in 1881 entrepreneurs formed the New Mexico Town Company which bought farms for the purpose of attracting the Santa Fe Railroad to build rail lines and a depot near the village and dividing up the rest of the land for residential purposes. This area is now known as the Alameda Depot Historic District.

   The following findings Comprehensive Plan Goal, Objectives and Policies that speak to historic districts for the most part, talk to the planning related issues that are necessary to aid in maintaining the historic balance, status and characteristics of any area or structure and are thus listed in support of the recommendation.

   Land Use

5. Goal 1, Objective 4: Establish land use policy to preserve and enhance local historic areas.

6. Goal 1, Objective 4, Policy 4.2: Overlay zones shall be created in the historic districts as a means of providing flexible standards to address historical considerations.

7. Goal 1, Objective 4, Policy 4.3: Specific land use and urban design policy for local historic districts shall be established in fourth level planning documents. Issues addressed will include, but not be limited to: permitted land uses, setbacks, lot size, accessory buildings, and design issues. This policy shall be reflected in the Zoning code where appropriate.

8. Goal 1, Objective 4, Policy 4.4: The Land Use Element and historic district policy shall observe City infill policy for development standards within the historic districts.

Urban Design

9. Goal 1, Objective 2: Encourage the improvement and maintenance of existing commercial buildings as well as existing residential homes.

10. Goal 1, Objective 2, Policy 2.2c: The City should establish streamlined procedures for the demolition of structures which cannot be repaired/rehabilitated thus eliminating unsightly properties which pose safety concerns.

11. Goal 2: Preserve and enhance Las Cruces' natural, visual, and historical/cultural resources whil reinforcing an overall urban form and character that communicates sensitivity to its physical setting.

12. Goal 2, Objective 6: Encourage the preservation and/or renovation of historical buildings and places in Las Cruces.

13. Goal 2, Objective 6 Policy 6.2: Neighborhood/district overlay zones should be created for those areas that come under an historic district designation to establish specific guidelines concerning new development and redevelopment. Each overlay zone should be written in the form of a neighborhood/district plan and shall address such issues as permitted land uses and architectural requirements.

14. Goal 2, Objective 6, Policy 6.3: Development or redevelopment should be required to be compatible with the character of that historic district.

15. Goal 2, Objective 6, Policy 6.4: The City should provide incentives to those interested in restoring historic buildings. Incentives should include, but are not limited to: Property Tax Relief, Revolving Loan Fund, Low Interest Loans.

16. Goal 2, Objective 10, Policy 10.5: Support a policy of mixed land uses as discussed in the Land Use Element. Land Uses which are not traditionally considered compatible may be located next to one another depending upon design features and compatibility with the adjacent area as a result of a mixed land use policy. Those uses with lower intensities must be protected from any negative impacts from adjacent uses with higher intensities in order to protect a desirable quality of life within the City…

Housing

17. Goal 3, Objective 5, Policy 5.2: The City should establish an overlay district/zone or similar mechanism for the purpose of creating guidelines for the enhancement, development, or redevelopment of properties within exiting historic districts. Items which should be considered include, but may not be limited to:

    a. Determination of local district boundaries for respective districts and the mechanism for property selection allowing boundary expansion if appropriate.
    b. Consistency with Federal and State laws regarding historic district designation criteria.
    c. Establishment of various incentives for the preservation/maintenance of historically significant properties.
    d. Establishment of various incentives for the development or redevelopment of properties in a manner which closely relates to the historical significance of the district to which they pertain.
    e. Creation of regulation which offer flexibility in meeting applicable development standards, yet allow consistency and compatibility with historic district design criteria.

ATTACHMENT "A"

Sec. 38-63. Demolition Delay, Reuse and Adaptive Reuse – Historic Structures

A. Demolition Delay – All Zoning Districts

The following provisions shall apply to all demolition involving structures listed on the State of New Mexico Register of Cultural Properties and/or the National Register of Historic Places. For purposes herein stated, registered structures identified as contributing or significant (now considered contributing) within either the Alameda Depot or Mesquite/Original Townsite historic districts are subject to the following provisions unless exemptions are specifically provided elsewhere in this code.

1. Mandatory Delay.

a. Upon submittal of a demolition permit application involving structures identified on the above listed register(s), there shall be a mandatory sixty (60) calendar day delay prior to issuance of a permit authorizing said demolition. The delay shall begin on the date of submittal of the application to demolish and shall cease at the end of the sixtieth calendar day. The purpose of said delay is to allow opportunities to investigate viable uses (reuse or adaptive reuse) of the structure/property in lieu of outright demolition. This investigation effort shall be the responsibility of any and all interested parties along with the property owner of record for the property in question based on Doña Ana County Clerk records. In the event that a use in lieu of demolition of the structure/property is deemed acceptable by the property owner, the following steps shall be required:

1) The property owner shall submit a written request to the Building Official or designee indicating the need to withdraw the demolition application; and

2) The Building Official or designee upon receipt of said written request shall thereafter render the application null and void. Any and all fees paid for said application may be refunded as deemed appropriate by the Building Official or designee and pursuant to any policies/regulation governing this matter.

2. Notice.

a. To ensure adequate notice of a pending application for demolition, the Community Development Department shall notify in writing the neighborhood association to which the property pertains (if applicable), the Dona Ana County Historical Society and the New Mexico State Historic Preservation Office (SHPO) of said submittal. A sign shall also be placed on the subject property indicating submission of a demolition application and clearly stating that the application is under the sixty (60) calendar day delay period. Both written notice and sign placement shall be executed within 2 business days of application submittal.

b. The sign shall remain in place for the duration of the delay period or until such time that a request to withdraw said application is made in written form.

3. Emergency Demolitions.

a. Sec 38-63 A. shall not preclude the Building Official or designee to issue a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to significant deteriorating conditions. Prior to doing so, the Building Official shall inspect the building and document in writing and through photographic means the findings and reasons requiring an emergency demolition. A copy of said determination shall be placed in the appropriate demolition permit file as a matter of record.

B. Reuse and Adaptive Reuse – All Zoning Districts

The following provisions shall apply in all instances where the use (reuse or adaptive reuse) of structures/properties listed on the State of New Mexico Register of Cultural Properties and/or the National Register of Historic Places is proposed and accepted in lieu of outright demolition. Structures not facing demolition may utilize these provisions as a means to foster continued use and care of applicable structures and properties.

1. Reuse and Adaptive Reuse – Land Uses.

   a. To assist in the reuse or adaptive reuse of historic properties, any use proposal shall be subject to the same benefits outlined in Article V, Special Zoning Districts, Section 38-48 Infill Development Overlay and Article V – Infill Subdivision Process of the Las Cruces Municipal Code (LCMC) regardless of property location. It is recommended that a meeting with a representative from the Community Development Department be initiated in order to provide guidance with respect to the proposal, the applicability of associated infill provisions and the process a proposal must undertake for approval. When a proposal requires deviations to development requirements, the following rules apply:

      1. If the request requires no more than two deviations from applicable development standards (i.e. setback, number of parking stalls beyond what the zoning code otherwise authorizes, etc.), the deviations may be processed following the Flexible Standard provisions (deviation must qualify) outlined in Section 38-56 of this code and/or the variance process also outlined in Section 38-10 I. Applicable fee waiver, expedited review and approval processes are hereby authorized and with the exception of variances, the process shall be administrative.

      2. If three or more deviations to development standards are needed, the proposal shall be required to go before the Planning and Zoning Commission for approval consideration. Applicable fee waiver, and expedited review and approval processes are authorized.

      3. If the proposal involves land use considerations (use variance), this aspect along with all other applicable deviations shall be taken before the Planning and Zoning commission for approval consideration. Applicable fee waiver, and expedited review and approval processes are authorized.

   b. Reuse and adaptive reuse proposals, although trying to uphold the community interest in preserving historic property, shall be taken under consideration with as much flexibility as reasonable, but shall not be adverse to the health, safety and general welfare of the public. Additionally, proposals should be to the extent possible in keeping with the neighborhood in which it exists and mitigation strategies are hereby authorized to help reduce land use conflicts between properties particularly when mixed use arrangements will result.

c. Reuse and adaptive reuse proposals, particularly those involving land use or occupancy changes, will require partial or complete adherence to Americans with Disabilities Act provisions and all other building code (building, electrical, mechanical and plumbing) requirements as applicable. The extent of compliance will be determined by the Building Official or designee upon building permit review and/or business registration review.

d. The use of Article VI – Special Provisions, Section 38-58 G.2. (Off-Street Parking in the Historic District) may be used to assist in meeting development standards associated with parking requirements regardless of the zoning district involved. This provision as applied herein shall pertain regardless of a properties location inside or outside a recognized historic district.

2. Structural Modifications – Historic Structures.

a. In the event that reuse or adaptive reuse measures are requested and applied to qualifying structures/properties, there shall be no interior/exterior remodeling or interior/exterior alteration done to the structure that would compromise the structure's historic standing.

1. EXCEPTIONS: 1) Modifications involving Americans with Disabilities Act compliance (e.g. ramp/access); 2) In the event that remodeling and/or alteration is shown to be absolutely necessary to promote the reuse or adaptive reuse of the structure/property, said proposal shall be forwarded to the New Mexico State Historic Preservation Office for comment regarding the impact of such activity to the structure's historic standing and input on how best to integrate said improvements. Regardless, no portion of a façade, wall, roof, or other important architectural detail that is visible from the street(s) immediately adjacent to the subject property shall be covered or altered in a manner inconsistent with the documented significance of said feature(s).

Any remodeling, reconstruction or addition shall not destroy historic materials/features that significantly characterize the property and shall only be limited to those areas at the rear of the structure/property. Improvements may be attached to and made part of the historic structure as applicable. The architecture or construction styles used for said remodeling, reconstruction, or addition should be sensitive to and compatible with the historic structure in regards to massing, size, and scale in order to help protect the integrity of the property and its surroundings. The related construction shall be undertaken in a manner that allows the new elements to be easily identifiable as a contemporary modification or improvement to the otherwise historic structure. The reason for this is to ensure that clarity exists in terms of what was historically relevant on the structure(s) to what was added after registration efforts took place. This ultimately allows for an easier restoration effort to bring the structure to its former historic significance should their ever be an opportunity and desire to do so.

b. Reuse or adaptive reuses proposals, if approved administratively via flexible standard application or by the Planning and Zoning Commission, shall at minimum require that the historic structure be adequately preserved to avoid aesthetic or structural deterioration. Efforts may include, but not be limited to, re-stuccoing, re-painting, crack sealing walls and fenestrations, re-roofing and replacing broken windows.

2. Definitions.

a. For purposes of this section, the following definitions apply.

1. Adaptive Reuse. To bring a structure/property back to a usable state in a manner different from its original purpose (e.g. An office use in a structure originally used as a single-family residence in a R-1a zone).

2. Demolition. For purposes herein stated, this shall pertain to partial or total destruction of interior or exterior building components, typically structural in nature, or buildings in their entirety.

3. Preserve. To maintain a structure's existing form through careful maintenance and repair (National Trust For Historic Preservation).

4. Remodel. To change a building without regard to its distinctive features or style. Often involves changing the appearance of a structure by removing or covering original details and substituting new materials and forms (National Trust For Historic Preservation).

5. Restore. To return a building to its form and condition as represented by a specified period of time using materials that are as similar as possible to the original materials (National Trust For Historic Preservation).

6. Reuse. To bring a structure/property back to a usable state in the manner in which it was originally intended and consistent with the zoning district it falls within (e.g. single-family structure within an R-1a, R-2, or R-3 zoning district that is reused as a single-family residence).

7. Structure. Any primary building, subordinate building or ancillary feature such as a courtyard wall that either independently or in combination, lends or supports the historic significance of the property to which it pertains.

ATTACHMENT "B"

City of Las Cruces®

TO: Planning and Zoning Commission

FROM: Vincent M. Banegas, Planning and MPO Administrator

DATE: June 30, 2009

SUBJECT: ZCA-09-03

RECOMMENDATION: Approval

Case No. ZCA-09-03: A request to amend the 2001 Las Cruces Zoning Code, as amended by adding a new section entitled 38-63 Demolition Delay, Reuse and Adaptive Reuse – Historic Structures for the purpose of establishing a mandatory sixty day time period prior to demolition in which investigation of alternatives to the demolition of a historic structure either in part or in whole may take place and to grant greater flexibility toward the use of the subject property as a means to deter said demolition. Submitted by the City of Las Cruces.

BACKGROUND

Several months ago the City Council held a work session on issues related to historic preservation. This issue stemmed from previous demolition of structures thought to be of historical significance throughout the years, but was accentuated when the "pink" house, believed to be one designed by Mr. Henry Trost, was demolished. This structure was located along University Avenue.

During the work session, staff provided City Council an abundance of information regarding historic preservation and informed on the related regulations currently in ordinance form and those regulations that could be entertained through code amendment. In essence, the following options were provided:

1. **Investigate and prepare a local historic preservation ordinance.** The discussed action would establish either existing State and/or Federal District boundaries or some semblance thereof as local historic districts. The ordinance was to provide language that establishes provisions regarding aesthetic controls or design guidelines when modifying structures and would include provisions regarding demolition review/delay and demolition by neglect to help diminish instances where relevant structures are eliminated thus weakening the overall historic character of the neighborhood to which they pertain. The ordinance was to also establish a type of historical commission or design review board charged with the review of construction, remodel and alteration proposals within the

districts themselves. The language may have even allowed for participation in the demolition review and delay process when structures may not be identified as significant or contributing on any historic register yet potentially very relevant to the overall historic character of the district. Funding opportunities and incentives were also addressed as a component of this option to aid and further encourage those owners whose properties are historically recognized to maintain and actively participate in related preservation endeavors.

2. **Investigate and prepare a demolition delay ordinance only.** This action sought to examine provisions for establishing a set delay period prior to issuance of a demolition permit. The delay would aid in examining alternatives to outright demolition. Alternative uses of the subject building/property would be considered during the stated time period and may include reuse and adaptive reuse scenarios in addition to applying adopted ordinance flexibility to support the endeavor. Investigation of provisions would examine structures/buildings that are listed on a historic register and may include those that are unlisted as well.

3. **Status Quo.** This option was presented as maintaining the provisions of the zoning code as presently written. The city does not have local historic districts, but does recognize the Alameda Depot and the Mesquite/Original Townsite State and Federal District boundaries. As you are aware, a plan has been generated for the Mesquite Neighborhood and overlays are in place for both North and South Mesquite. The Alameda Depot area recently had a plan approved by the City Council on April 27, 2009. An overlay for that neighborhood is being prepared as a means to implement the recently approved plan. Please keep in mind that both the plans and ordinances (existing and proposed) were not intended to generate or be Historic Preservation Ordinances. The two Mesquite overlays differ in application and focus and the proposed overlay for the Alameda neighborhood will follow a unique style all its own. A 60 day demolition delay exists in the South Mesquite overlay provisions and the same consideration is proposed for the Alameda district (established within the Plan). The North Mesquite has no such provision in place presently.

After considerable discussion during the work session, the decision made by City Council was to examine opportunities for a Demolition Delay Ordinance (Option #2). As such, the attached information is intended to serve as proposed amendments to two separate codes already in place. The first impacts the 2001 Las Cruces Zoning Code, as amended and would specifically add Section 38-63 into the subject code. A companion amendment would be proposed for Section 30-491 of the Las Cruces Building Code. The Building Code isn't under the purview of the Planning and Zoning Commission however, it is being provided to show how the two documents lend support to one another in order to cover all relevant issues. It is anticipated that

both proposed amendments will be reviewed and submitted for approval by City Council concurrently.

FINDINGS

1. Past demolitions involving structures deemed important and worthy of preservation have stirred interest in examining ways of protecting said structures and thus elements of the City's history.

2. On 1/12/09, during a City Council work session, options for handling the preservation of structures were examined and discussed. Based on that meeting, Council gave direction to investigate a demolition delay ordinance.

3. Upon further investigation of demolition delay options, City Legal staff at the request of Community Development staff opined that demolition delay provisions for all structures within the city limits would probably be interpreted as a temporary taking thus subjecting the City to possible legal challenges/liability. Provisions used on structures already identified as historic however, would fare much better under similar scrutiny.

4. The City of Las Cruces has a rich cultural history dating back to 1849 when it was established as a village in the area currently known as the Mesquite/Original Townsite Historic District. Later in 1881 entrepreneurs formed the New Mexico Town Company which bought farms for the purpose of attracting the Santa Fe Railroad to build rail lines and a depot near the village and dividing up the rest of the land for residential purposes. This area is now known as the Alameda Depot Historic District.

   The following findings Comprehensive Plan Goal, Objectives and Policies that speak to historic districts for the most part, talk to the planning related issues that are necessary to aid in maintaining the historic balance, status and characteristics of any area or structure and are thus listed in support of the recommendation.

   Land Use

5. Goal 1, Objective 4: Establish land use policy to preserve and enhance local historic areas.

6. Goal 1, Objective 4, Policy 4.2: Overlay zones shall be created in the historic districts as a means of providing flexible standards to address historical considerations.

7. Goal 1, Objective 4, Policy 4.3: Specific land use and urban design policy for local historic districts shall be established in fourth level planning

documents. Issues addressed will include, but not be limited to: permitted land uses, setbacks, lot size, accessory buildings, and design issues. This policy shall be reflected in the Zoning code where appropriate.

8. Goal 1, Objective 4, Policy 4.4: The Land Use Element and historic district policy shall observe City infill policy for development standards within the historic districts.

Urban Design

9. Goal 1, Objective 2: Encourage the improvement and maintenance of existing commercial buildings as well as existing residential homes.

10. Goal 1, Objective 2, Policy 2.2c: The City should establish streamlined procedures for the demolition of structures which cannot be repaired/rehabilitated thus eliminating unsightly properties which pose safety concerns.

11. Goal 2: Preserve and enhance Las Cruces' natural, visual, and historical/cultural resources while reinforcing an overall urban form and character that communicates sensitivity to its physical setting.

12. Goal 2, Objective 6: Encourage the preservation and/or renovation of historical buildings and places in Las Cruces.

13. Goal 2, Objective 6 Policy 6.2: Neighborhood/district overlay zones should be created for those areas that come under an historic district designation to establish specific guidelines concerning new development and redevelopment. Each overlay zone should be written in the form of a neighborhood/district plan and shall address such issues as permitted land uses and architectural requirements.

14. Goal 2, Objective 6, Policy 6.3: Development or redevelopment should be required to be compatible with the character of that historic district.

15. Goal 2, Objective 6, Policy 6.4: The City should provide incentives to those interested in restoring historic buildings. Incentives should include, but are not limited to: Property Tax Relief, Revolving Loan Fund, Low Interest Loans.

16. Goal 2, Objective 10, Policy 10.5: Support a policy of mixed land uses as discussed in the Land Use Element. Land Uses which are not traditionally considered compatible may be located next to one another depending upon design features and compatibility with the adjacent area as a result of a mixed land use policy. Those uses with lower intensities must be

protected from any negative impacts from adjacent uses with higher intensities in order to protect a desirable quality of life within the City...

Housing

17. Goal 3, Objective 5, Policy 5.2: The City should establish an overlay district/zone or similar mechanism for the purpose of creating guidelines for the enhancement, development, or redevelopment of properties within exiting historic districts. Items which should be considered include, but may not be limited to:

    a. Determination of local district boundaries for respective districts and the mechanism for property selection allowing boundary expansion if appropriate.
    b. Consistency with Federal and State laws regarding historic district designation criteria.
    c. Establishment of various incentives for the preservation/maintenance of historically significant properties.
    d. Establishment of various incentives for the development or redevelopment of properties in a manner which closely relates to the historical significance of the district to which they pertain.
    e. Creation of regulation which offer flexibility in meeting applicable development standards, yet allow consistency and compatibility with historic district design criteria.
    f. Identification of financial resources which may be used to assist in the renovation and upkeep of qualifying properties.

RECOMMENDATION

Pursuant to the direction that the City Council has provided, staff has researched and prepared the proposed amendment and feels it is consistent with the vision of various elements contained within the 1999 Comprehensive Plan. Staff also feels that as proposed, it would withstand any potential legal challenge given the delay criteria in which alternatives to outright demolition are sought.

It should also be noted that the manner in which the amendment is proposed engages the community to not only seek said alternatives to outright demolition of a registered historic structure proposed for demolition, but also allows proactive engagement of the community and applicable property owners to have potential historic propert(y)ies considered for historic evaluation/nomination thus, subjecting said property to proposed provisions contained herein.

Given the findings, and issues identified, staff requests the Commission recommend approval of the proposed amendment to City Council. City Council will have final authority on this matter.

OPTIONS

1. Vote YES and recommend approval of the amendment. This action will seek to establish a new Section 38-63 Demolition Delay, Reuse and Adaptive Reuse – Historic Structures into the 2001 Las Cruces Zoning Code, as amended.

2. Vote NO and recommend denial of the amendment. This action proposes to Council that new Section 38-63 Demolition Delay, Reuse and Adaptive Reuse – Historic Structures not be incorporated into the 2001 Las Cruces Zoning Code, as amended.

3. Vote YES and amend the proposal. This action seeks to establish the new section with modification as determined by the Planning and Zoning Commission.

4. Vote to POSTPONE/TABLE the proposed amendment.

ATTACHMENTS

1. Exhibit A: Section 38.63. Demolition Delay, Reuse and Adaptive Reuse – Historic Structures.
2. Exhibit B: Proposed amendment to Division 11, Section 30-491 of the Las Cruces Building Code showing supportive language to the proposed zoning amendment. (This Exhibit is not under the purview of the Commission).
3. Legal Staff opinion on Response to staff.
4. Minutes from the April 21, 2009 Planning and Zoning Commission work session.

Ex H1681 A

Sec. 38-63. Demolition Delay, Reuse and Adaptive Reuse – Historic Structures

A. Demolition Delay – All Zoning Districts

The following provisions shall apply to all demolition involving structures listed on the State of New Mexico Register of Cultural Properties and/or the National Register of Historic Places.

1. Mandatory Delay.
   a. Upon submittal of a demolition permit application involving structures identified on the above listed register(s), there shall be a mandatory sixty (60) calendar day delay prior to issuance of a permit authorizing said demolition. The delay shall begin on the date of submittal of the application to demolish and shall cease at the end of the sixtieth calendar day. The purpose of said delay is to allow opportunities to investigate viable uses (reuse or adaptive reuse) of the structure/property in lieu of outright demolition. This investigation effort shall be the responsibility of any and all interested parties along with the property owner of record for the property in question based on Doña Ana County Clerk records. In the event that a use in lieu of demolition of the structure/property is deemed acceptable by the property owner, the following steps shall be required:
   1) The property owner shall submit a written request to the Building Official or designee indicating the need to withdraw the demolition application; and
   2) The Building Official or designee upon receipt of said written request shall thereafter render the application null and void. Any and all fees paid for said application may be refunded as deemed appropriate by the Building Official or designee and pursuant to any policies/regulation governing this matter.

2. Notice.
   a. To ensure adequate notice of a pending application for demolition, the Community Development Department shall notify in writing the neighborhood association to which the property pertains (if applicable), the Dona Ana County Historical Society and the New Mexico State Historic Preservation Office (SHPO) of said submittal. A sign shall also be placed on the subject property indicating submission of a demolition application and clearly stating that the application is under the sixty (60) calendar day delay period. Both written notice and sign placement shall be executed within 2 business days of application submittal.
   b. The sign shall remain in place for the duration of the delay period or until such time that a request to withdraw said application is made in written form.

3. Emergency Demolitions.
   a. Sec 38-63 A. shall not preclude the Building Official or designee to issue a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to significant deteriorating conditions. Prior to doing so, the Building Official shall inspect the building and document in writing and through photographic means the findings and reasons requiring an emergency demolition. A copy of said determination shall be placed in the appropriate demolition permit file as a matter of record.

B. Reuse and Adaptive Reuse – All Zoning Districts

The following provisions shall apply in all instances where the use (reuse or adaptive reuse) for structures/properties listed on the State of New Mexico Register of Cultural Properties and/or the National Register of Historic Places is proposed and accepted in lieu of outright demolition.

1. Reuse and Adaptive Reuse – Land Uses.
   a. To assist in the reuse or adaptive reuse of historic properties, any use proposal shall be subject to the same benefits outlined in Article V, Special Zoning Districts, Section 38-48 Infill Development Overlay and Article V – Infill Subdivision Process of the Las Cruces Municipal Code (LCMC) regardless of property location. It is recommended that a meeting with a representative from the Community Development Department be initiated in order to provide guidance with respect to the proposal, the applicability of associated infill provisions and the process a proposal must undertake for approval. When a proposal requires deviations to development requirements, the following rules apply:
      1. If the request requires no more than two deviations from applicable development standards (i.e. setback, number of parking stalls beyond what the zoning code otherwise authorizes, etc.), the deviations may be processed following the Flexible Standard provisions outlined in Section 38-56 of this code and/or the variance process also outlined in Section 38-10 I. Applicable fee waiver is authorized and the expedited review and approval process is administrative.
      2. If three or more deviations to development standards are needed, the proposal shall be required to go before the Planning and Zoning Commission for approval consideration.
      3. If the proposal involves land use consideration (use variance), this aspect along with all other deviations shall be taken before the Planning and Zoning commission for approval consideration.

b. Reuse and adaptive reuse proposals although trying to uphold the community interest in preserving historic property shall be taken under consideration with as much flexibility as reasonable, but shall not be adverse to the health, safety and general welfare of the public. Additionally, proposals should be to the extent possible in keeping with the neighborhood in which it exists and mitigation strategies are hereby authorized to help reduce land use conflicts between properties particularly when mixed use arrangements will result.
c. Reuse and adaptive reuse proposals particularly those involving land use or occupancy changes will require partial or complete adherence to Americans with Disabilities Act provisions and all other building code (building, electrical, mechanical and plumbing) requirements as applicable. The extent of compliance will be determined by the Building Official or designee upon building permit review and/or business registration review.
d. The use of Article VI – Special Provisions, Section 38-58 G.2. (Off-Street Parking in the Historic District) may be used to assist in meeting development standards associated with parking requirements regardless of the zoning district involved. This provision as applied herein shall pertain regardless of a properties location inside or outside a recognized historic district.

2. Structural Modifications – Historic Structures.
   a. In the event that reuse or adaptive reuse measures are requested and applied to qualifying structures/properties, there shall be no interior/exterior remodeling or interior/exterior alteration done to the structure that would compromise the structure's historic standing.
      1. EXCEPTIONS: 1) Modifications involving Americans with Disabilities Act compliance (e.g. ramp/access); 2) In the event that remodeling and/or alteration is shown to be absolutely necessary to promote the reuse or adaptive reuse of the structure/property, said proposal shall be forwarded to the New Mexico State Historic Preservation Office for comment regarding the impact of such activity to the structure's historic standing and input on how best to integrate said improvements. Regardless, no portion of a façade, wall, roof, or other important architectural detail that is visible from the street(s) immediately adjacent to the subject property shall be covered or altered in a manner inconsistent with the documented significance of said feature(s).

Any remodeling, reconstruction or addition shall not destroy historic materials/features that significantly characterize the property and shall only be limited to those areas at the rear of the structure/property. Improvements may be attached to and made part of the historic structure as applicable. The architecture or construction styles used for said remodeling, reconstruction, or addition should be sensitive to and compatible with the historic structure in regards to massing, size, and scale in order to help protect the integrity of the property and its surroundings. The related construction shall be undertaken in a manner that allows the new elements to be easily identifiable as a contemporary modification or improvement to the otherwise historic structure. The reason for this is to ensure that clarity exists in terms of what was historically relevant on the structure(s) to what was added after registration efforts took place. This ultimately allows for an easier restoration effort to bring the structure to its former historic significance should their ever be an opportunity and desire to do so.

b. Reuse or adaptive reuses proposals, if approved administratively via flexible standard application or by the Planning and Zoning Commission shall at minimum require that the historic structure be adequately preserved to avoid aesthetic or structural deterioration. Efforts may include, but not be limited to re-stuccoing, re-painting, crack sealing walls and fenestrations, re-roofing and replacing broken windows.

3. Definitions.
   a. For purposes of this section, the following definitions apply.
      1. Adaptive Reuse. To bring a structure/property back to a usable state in a manner different from its original purpose (e.g. An office use in a structure originally used as a single-family residence in a R-1a zone).
      2. Demolition. For purposes herein stated, this shall pertain to partial or total destruction of interior or exterior building components, typically structural in nature, or buildings in their entirety.
      3. Preserve. To maintain a structure's existing form through careful maintenance and repair (National Trust For Historic Preservation).
      4. Remodel. To change a building without regard to its distinctive features or style. Often involves changing the appearance of a structure by removing or covering original details and substituting new materials and forms (National Trust For Historic Preservation).
      5. Restore. To return a building to its form and condition as represented by a specified period of time using materials that are as similar as possible to the original materials (National Trust For Historic Preservation).

6. Reuse. To bring a structure/property back to a usable state in the manner in which it was originally intended and consistent with the zoning district it falls within (e.g. single-family structure within an R-1a, R-2, or R-3 zoning district that is reused as a single-family residence).
7. Structure. Any primary building, subordinate building or ancillary feature such as a courtyard wall that either independently or in combination, lends or supports the historic significance of the property to which it pertains.

DIVISION 11.

DEMOLITION: RESIDENTIAL AND COMMERCIAL/NONRESIDENTIAL, BUILDING PERMIT AND INSPECTION PROCESS

Sec. 30-491. Application procedure.

(a) *Submittal process.* To obtain a demolition permit, an applicant shall submit an application, with supplemental material, to the Community Development Department any time during normal working hours. Upon receipt of the submittal, Community Development Department personnel shall review the submittal for completeness. When all the required items have been submitted, Community Development Department personnel shall issue a receipt for submittal.

Permit applications will be processed through applicable city departments for review, comments and recommendations. City reviewing departments include the community development, the utilities, and the fire and emergency services. City reviewing departments shall review the proposal within two business days and submit their findings to the community development department.

Community Development Department personnel shall forward any comments to the applicant for revision, if necessary. Permit applications that receive comments shall be resubmitted with revisions for review until the provisions of this code are met. Once all comments are addressed and the permit application is in accordance with this code and with other applicable city ordinances and regulations, a permit shall be issued authorizing demolition.

When the demolition involves structures listed on either the State of New Mexico Register of Cultural Properties and/or the National Historic Register, there shall be a mandatory sixty (60) calendar day delay prior to issuance of a permit authorizing said demolition. Said delay shall begin on the date of submittal of the application to demolish and shall cease at the end of the sixtieth calendar day. The purpose for said delay is to allow opportunities for the investigation into viable uses (reuse or adaptive reuse) of the structure/property. Said investigation shall be the responsibility of any and all interested parties along with the property owner of record for the property in question based on Doña Ana County Clerk records. In the event an alternative use is proposed and accepted by the property owner as a reasonable alternative to demolition, the property owner shall be required to submit a written request to the Building Official or designee indicating a need to withdraw the application. Upon receipt of the request, the Building Official or designee shall render the application null and void and may refund all or part of the application/permit fee as deemed appropriate pursuant to any policies/regulation governing this matter. It is strongly recommended that any alternative use(s) proposed for the property be verified through the Community Development Department to ensure full compliance with the 2001 Las Cruces Zoning Code, as amended (see Article IV. Special Provisions; Section 38-63 Demolition Delay Reuse and Adaptive Reuse – Historic Structures) and all other companion codes.

To ensure adequate notice of a pending application for demolition, the Community Development Department shall notify the neighborhood association to which the property pertains (if applicable), the Doña Ana County Historical Society and the New Mexico State Historic Preservation Office (SHPO). A sign shall also be placed on the subject property indicating submission of a demolition application and shall clearly state that the application is under the sixty (60) calendar day delay period. Said notice and sign shall be executed within 2 business days of application submittal.

No provision contained herein shall preclude the Building Official or designee from issuing a demolition permit at any time in the event of imminent and substantial danger to the health or safety of the public due to significant deteriorating conditions. Prior to doing so, the Building Official shall inspect the building and document, in writing and via photographs, the findings and reasons requiring an emergency demolition. A copy of said determination shall be placed in the appropriate demolition permit file as a matter of record.

(b) *Retention of plans.* After the permit has been issued, one set of approved plans, shall be retained by the Building Official in accordance with the Records Retention Act as filed with the City Clerk's office from the date of completion. One set of approved plans and specifications shall be returned to the applicant, said set to be kept at the site of the building or work at all times during the period of demolition.

(c) *Validity of building plans.* The issuance or granting of a permit in approving the plans shall not be construed to be a permit for, or an approval of, any violation of the provisions of this code or of any other city ordinance. Permits appearing to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based upon plans, specifications and other data shall not prevent the Building Official from thereafter requiring the correction of errors in said plans, specifications or other data, or from preventing building operations from being carried on thereunder when in violation of this code or of any other city ordinance.

(d) *Expiration.* Work under every permit issued by the Building Official under the provisions of this code shall commence within 180 days and be completed within one (1) from the date of permit issuance. In order to renew a permit that has exceeded one year, the permittee shall submit new plans for review and approval and shall pay a new permit fee.

Any permittee holding an unexpired permit may apply for an extension of time within which he/she may commence work under a permit. The Building Official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee, demonstrating that circumstances beyond his or her control have prevented action from being taken. No permit shall be extended more than once.

(e) *Suspension or revocation.* If incorrect information is supplied, or if a violation of any ordinance is discovered, the Building Official shall notify the permittee, in writing, that the permit shall be revoked or suspended.
(Ord. No. 1851, § II, 3-19-01; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 30-492. Submittal requirements.

When requesting a permit, the following materials will be required to be submitted for each type of permit application submitted under division 11.

(1) Complete application to include property owner's signature, contractor's name and license number;

(2) Plan review;

(3) Permit fee (required at time of permit issuance issued);

(4) Site plan. The demolition plan, to include the site plan, shall be on blueline or similar process paper no smaller than 8 inches × 11 inches. Copies provided shall be legible and at a scale that adequately represents the information.

a. Name, address, phone number and license number of builder/contractor/demolition firm, if applicable;

b. Date of preparation, north arrow, and written and graphic scale;

c. General legal description of subject property. If tract is not within an approved and filed subdivision, a vicinity map must be included showing exact location of property. Site plan shall include entire lot or tract, with lot, block and subdivision name on copy of legal description;

d. Boundary lines, including dimensions;

e. Graphical labeled presentation, showing work to be performed;

f. Temporary fencing and dust control plan.

Expiration of plan review. Plan review submittals will expire after 180 days if either no approval or issuance of a building permit has been attained.
(Ord. No. 1851, § II, 3-19-01)

Sec. 30-493. Inspections.

(a) *Pre-inspection requests.* It shall be the duty of the permittee doing the demolition, authorized by a permit, to notify and receive approval from the environmental division of the state regarding potentially hazardous material before the permit is approved.

(b) *Inspection requests.* It shall be the duty of the permittee doing the work authorized by a permit to notify the community development department that such work is ready for inspection. The community development department shall require that every request for inspection be filed at least one working day before such inspection is desired. Such request shall be in writing or by telephone, fax-at the option of the permittee.

The appropriate inspectors shall make their respective inspections and shall either approve that portion of the demolition as completed or shall notify the permittee of any city code/ordinance violations.

(c) *Required inspections.*

(1) State inspection and verification of hazardous materials;

(2) Final inspection.

(d) *Approval required.* The building inspector, upon notification, shall make the requested inspections and shall either indicate that portion of the demolition to be satisfactory as completed, or shall notify the permittee or his agent of any city code/ordinance violations. Any portions that do not comply shall be corrected then approved by the building inspector.

(e) *Inspection record card.* Work requiring a permit shall not be commenced until the permittee or his agent has posted, or otherwise made available an inspection record card that will conveniently allow the building inspector to make the required entries thereto regarding inspection of the work. The card shall be kept available by the permittee until final approval has been granted by the building inspector.

(f) *Reinspections.* A $30.00 reinspection fee may be assessed for each inspection or reinspection when such portion of work is not complete, when corrections called for are not made, or when the work site is not accessible.

This subsection is not to be interpreted as requiring reinspection fees for the first time a job is rejected for failure to comply with the requirements of this code, but for controlling the practice of calling for inspections before the job is ready for such inspection or reinspection.

Reinspection fees may be assessed whenever the permit card is not properly posted at on the work site, or for deviating from plans requiring the approval of the Building Official or the appropriate department.

To obtain a reinspection, the permittee shall pay the reinspection fee in accordance with the fee schedule adopted by the city.

In instances wherein reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.
(Ord. No. 1851, § II, 3-19-01; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 30-494. Certificate of completion.

(a) After inspectors inspects the demolition area and finds no violations of the provisions of this code or other laws enforced by the city, the Building Official shall issue a certificate of completion, which shall contain the following:

(1) The building permit number;

(2) The address of the building/structure;

(3) The name and address of the owner;

(4) Statement that the described demolition was inspected for compliance with the requirements of this code;

(5) Name and signature of the Building Official.

(6) The edition of the code which the permit was issued.

(b) Issuance of a certificate of completion shall not be construed as being an approval of a violation of the provision of this code or of other ordinances under this jurisdiction. Certificates appearing to give authority to violate or cancel the provisions of this code or of other ordinances of this jurisdiction shall not be valid.

(c) The Building Official may, in writing, suspend or revoke a certificate of completion issued under the provision of this code whenever it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.
(Ord. No. 1851, § II, 3-19-01)

Secs. 30-495--30-520. Reserved.

City of Las Cruces

Community Development
Interoffice Memorandum

To: Harry S. Connelly, Deputy City Attorney

From: Vincent Banegas, Planning & MPO Administrator VB

Subject: Legal Opinion Regarding Historic Preservation Demolition Delay

Date: February 4, 2009 M-09-031

As you know, City Council has embarked on discussions regarding historic preservation options within the City. Following a work session earlier this month, staff was directed to investigate opportunities to apply demolition delay throughout the City. Said delay is believed to provide a necessary timeframe in which to evaluate a structure prior to its demolition in order to determine if said structure is worthy of preservation efforts, to provide opportunities to find alternatives to the structures demolition if it is of historic value and at minimum, to document the characteristics of the structure in context to possible historic features.

Presently, the City applies a demolition delay provision within the South Mesquite neighborhood via the South Mesquite Overlay District provisions. Said provisions allow for a sixty (60) day delay upon submittal of a demolition permit through the permitting process. A similar measure is proposed via the Alameda Depot Neighborhood Plan.

Since in fact the two areas wherein demolition delay is either used and/or proposed are tied to the City's two historic districts, the question then becomes can the City impose a similar mechanism (sixty day delay) for all others structures in all other areas within the City limits for the same purpose? In areas outside historic districts, if a structure has known historical significance and is placed on a historic register (state/federal), does that facilitate the City's ability to impose a delay for said structure?

If you could opine on the questions raised and provide your rationale as thoroughly as appropriate that would be appreciated. Following your efforts, I will prepare follow-up correspondence to Administration citing the status of this matter in order to receive further direction.

Should you have any questions regarding this matter, please advise.

Cc: David Weir
Carol McCall
Susan Lowell
Jared Abrams

Vincent Banegas

From: Jared Abrams

Sent: Thursday, February 05, 2009 9:24 AM

To: Vincent Banegas

Subject: demolition delay ordinance

To: Vincent Banegas, Planning & MPO Administrator

From: Jared Abrams, Senior Assistant City Attorney

Date: February 5, 2009

Re: Proposed Demolition Delay Ordinance

As a general rule, a demolition delay would give rise to a temporary taking, so it would be unconstitutional. By a temporary taking, I mean that the building owner would be deprived of use of the building during the period of the delay. An exception would probably occur if the delay were limited to a neighborhood which is undisputedly composed of historic buildings and the delay is reasonable in terms of time. I assume the delay would be reasonable because there are a variety of steps which must be completed to demolish a building in an historic district which do not exist in regular neighborhoods. Thus, you probably could justify the delay for Mesquite and Alameda.

The same would probably be true as to a discreet structure with historic significance and which is on a historic register. If there are a series of lengthy steps which must be accomplished to determine suitability for demolition one could probably apply a delay to all such structures.

A city wide delay, however, would likely be interpreted as a taking. Just because a building is old does not make it historic. Therefore classifying it as such is arbitrary. In addition, because one is not required to go through a lengthy procedure to determine its historic value, a demolition permit could presumably be issued in the City's usual three days. To make the owner wait 60 days when the permit is ready to go would be a delay for no good reason, hence a temporary taking.

In sum, delays for historic neighborhoods or for all structures which are historic and on a register would probably be constitutional. But a city wide delay would not be constitutional

The legal opinions on which this memorandum is based are available in the City Attorney's office.

WORK SESSION OF THE PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
April 21, 2009 at 6:00 p.m.

BOARD MEMBERS PRESENT:
Charles Scholz, Chairman
Godfrey Crane, Vice Chair
Donald Bustos, Secretary
Charles Beard, Member

BOARD MEMBERS ABSENT:
Shawn Evans, Member
Ray Shipley, Member
Clayton Iserman, Member

STAFF PRESENT:
Vincent Banegas, Planning and MPO Administrator
Gary Hembree, Planner
Becky Eich, Recording Secretary

I. CALL TO ORDER 6:01

Scholz: I'm going to call our Planning and Zoning Commission work session to order. This is April 21st as I recall, 2009 and its one minute after six p.m. We're in the City Council Chambers and see four of us here; Godfrey Crane, Don Bustos, Charles Beard, and myself, Charlie Scholz.

II. APPROVAL OF WORK SESSION MINUTES - February 17, 2009

Scholz: The first thing we need is the approval of the work session minutes of February 17th, any additions or corrections to those minutes? No, hearing none. Okay. I'll entertain a motion to accept.

Crane: So moved.

Scholz: And a second?

Bustos: Second.

Scholz: All those in favor say aye.

ALL COMMISSIONERS MEMBERS - AYE.

Scholz: Opposed same sign.

Beard: I abstain.

Scholz: And one abstention. Okay. Minutes are approved. Thank you.

III. PROPOSED DEMOLITION DELAY ORDINANCE - (ZCA-09-03)

Scholz: Okay, Mr. Banegas. Tell us what you want us to do today.

Banegas: Mr. Chairman, Commissioners. I am before you today to discuss your only other item on the agenda which is a Demolition Delay Ordinance, a proposed ordinance that came about in essence through much of the discussion, activity that surrounded the demolition of the pink house there on University Avenue, which was believed to be a structure, a house, designed by the late Henry Trost who was a noted architect, certainly in the region. There are various other buildings on campus and also in El Paso that has his stamp if you will, his brand tied to those structures. When that demolition took place, the developer of course had submitted a demolition permit application to the City. And under the review process, basically they check out and make sure that all utilities have been cut off to the property so that there is no danger involved from that prospective, but the process is pretty streamlined. They issued a permit and within a certain amount of time the structure came down. As that was taking place, of course, there was an outcry from members of the public as to what the City could do to help prevent that in the future. There was substantial discussion that was had on the topic, but on January 12th of this year, there was a work session held by the Las Cruces City Council, and Staff gave presentations as to what measures, what mechanisms could exist to help prevent that in the future, if the City so deemed it appropriate to take those steps.

During that work session we presented in essence a couple of scenarios, basically boiled down to a couple of scenarios, one of which was to propose a full historic preservation ordinance which is perhaps in the scheme of things the most intense effort that would take place. Generally speaking you define boundaries ... we currently have two historic district boundaries that are recognized both on the state level and also the federal level, but those are not local historic districts, those are just historic districts for the purpose of recognition and by the state and federal governments. When we start talking about local historic preservation districts, we are taking it to another level in essence, and imposing some significant restrictions, not on demolition but also when there's remodeling taking place, additions to structures, on historic registers or those structures that are on historic registers etc. We would then probably convene a design review committee if you will, historic preservation committee, that would take a look at any proposal for said remodeling or addition, rework of the property, structure, and they would

take note of what exists. They would take note of how the addition or the work that's being proposed would fit in with what exists, and render a recommendation, sometimes causing some changes to the proposed work, etc. But essentially trying to ensure that whatever is being proposed is in keeping with the historical significance of the structure, if it is deemed historical.

For those structures that have no significance, i.e. those that are not on either state or federal register of any sort, often times you can also implement what they call a demolition delay provision that causes a halt if you will to the process of demolition until such time as there is an investigative measure put in play wherein either Staff or historic preservation committee members or others who are certainly worthy of taking this effort on and go to the property and determine whether or not there is significance to the property. Whether or not there has been a significant event that is tied to the property, whether or not the structure was built by noted architect or someone of historical significance, those types of things. If it's deemed that there is a measure of historical significance tied to the property, then there can be another effort to get it registered and get it recognized properly, and then of course all that ... the clock's ticking etc., and then once it gets on a historic register, certainly it gets recognized at the local level and then it would be subject to a laundry list of regulations that would ultimately be imposed.

Those types of measures at least from the historical preservation ordinance, you know there are a lot of steps involved. There is a lot of time involved, and there is a lot of effort. There is significant constraints as to what you can do with the property from the prospective of design and I guess upkeep if you will, and/or improvements made to the property. But ultimately when all is said and done, if the City from a historical preservation prospective, if the City's interest is in preserving structures of this nature, the City needs to really put up. They need to try to encourage a historical preservation; they can't strictly impose it and demand it. It's been long held, certainly locally as well as nationally that from a historic preservation prospective you can write ordinance that tell how to do things and encourage those things to be taken into consideration in order to preserve structures, but ultimately it's the property owner; who owns the property, whether or not they want to comply. Our standards can be set, but if they say, no, we don't want to be on a register, we don't want to participate in this, we don't want to do any of that; ultimately it will be the City's responsibility if we go that direction to condemn property, in essence buy it out and then preserve it through those means. Apply the same standards we were encouraging the property owner to comply with, so you can see that there are a lot of bells and whistles and kind of pit falls that are tied to historic preservation ordinances and anything related to historic preservation. So that's one of the things that was talked about at that work session.

Another option to this was simply to talk to a demolition delay period. Create a demolition delay ordinance that simply stays the demolition process for a period of time and consider it kind of a cooling off period. Allow any and all interested parties to negotiate with the property owner and seek their participation in trying to do something other than demolish the structures at hand. Maybe they can reuse the property in a manner that is in keeping with the neighborhood. Maybe they could discuss adaptive reuse which is to use the property in a manner that originally wasn't intended for, but certainly could fit in with the character of the neighborhood. All these things could be considered, even outright purchase of the property by someone who is very interested in historic preservation. Maybe the current property owner is not, but if the price is right someone buys it from them, they then could take those steps, those measures, to ensure that the historic character is not damaged in any way through demolition.

So after presenting those two options and kind of discussing some of the historic preservation issues tied to them, the direction Staff received was to pursue a demolition delay ordinance. And that is what I'm here to discuss with you this evening, is our first crack at putting together some language in two codes that we currently have on the books. The demolition delay period that has been selected is in keeping with some language that already exists for the mesquite street overlay. That is a section in the 2001 Zoning Code as amended presently. Within that overlay there is a call for a 60 day demolition delay period when dealing with demolition of structures within the boundaries of that overlay. And again, the same purpose applied, an opportunity for someone to either suggest reuse, adaptive reuse, or outright purchase, something in lieu of demolition.

So in keeping with that pattern that has already existed, and in keeping with some of the intent and the input from our legal Staff, we decided to keep the 60 day period intact and pursue that as an option here with this proposal. I want to share with you the document that I passed out right before the meeting and I apologize that didn't get into the packet, my mistake, but it was a letter ... or memo I should say, written to our legal Staff from me dated February 4, 2009. And basically what I was asking legal Staff about is whether or not we could impose a demolition delay period for areas outside a noted historic district; again our Alameda Depot district, or Mesquite Street original town site historic district. The idea was you know if we can impose this demolition delay for areas outside those districts, would we somehow have to tie it to historical significance, i.e. possible structures that are on a register but are not within an overlay presently or a historic district I should say presently and whether or not we could just apply it across the board to any structure within the City. That was the nature of my question in seeking an opinion from legal counsel. They responded via the attached page which is an e-mail response, which basically outlines their consideration and facts of the

matter at hand. They were concerned obviously with the temporary taking, any time you impose any delay in permitting processes of this nature they are quick to point out that there could be a temporary taking claim made against a City. Sixty days seemed to be a reasonable amount of time, they would like it to be 30 days, but 60 days we've adopted previously and so we kept it intact. But they felt that putting a demolition delay for any structure within the City limits was too broad. In many areas of town you don't have historically significant structures like you do in the older part of town or original town site, Alameda Depot, obviously there's a grouping of structures that all have some significance, architecturally speaking, historically speaking, that kind of thing. In other parts of town, for instance some of the Bellamah developments, that's you know, it's an area that came to be as the City was very much maturing. It doesn't have the unique architectural styles that you typically see in some of the other parts of town, older parts of town. And so their concern was that putting or imposing a 60 day delay period across the board was too broad and they felt temporary takings could easily be considered if we went that direction. They did feel however, that if a structure already existed on a historic register, be that state or federal, that we can impose said delay and not be at great risk for claims of temporary taking type.

And so with that in mind, I put together this ordinance that speaks to structures only when they exist on federal or state historic register. Now that said, there are only probably one or two that we are aware of that fit that criteria, but the premise of this ordinance is once again to seek citizen interaction, citizen assistance in trying to get this beefed up if you will and implemented to a greater degree. The theory is, is if people out there know that there are some historic properties in the City that are not already in a historic district, maybe there are some more along University Avenue; maybe there are some in other parts of town that we're not aware of towards the railroad tracks for instance down on South Main, maybe there are some structures that they feel are definitely worthy of consideration for historical significance and registry. Maybe they can take the effort to contact the property owners and talk to them and see if they'd be willing to consider nomination to a historic registry. And If that is the case, and they are successful in delivering the message if you will, and getting the property owner to cooperate in that sense, if they ultimately get the property on a register, bingo, this ordinance would pertain to that property.

Okay, so that's the original premise, how it works, how we would involve the community to seek participation at a greater level for historic preservation, again no arm twisting per se, more encouragement. So I'll start there. Any questions so far?

Scholz: Yes, I have two. Do you have one?

Beard: Yes, go ahead.

Scholz: Go ahead. Commissioner Beard.

Beard: Thank you. There's no way to ... I mean there are some nice structures around like the Clyde Tombaugh house which I would say would be something that you'd want to preserve. And that person may say I don't want to make that a historic place. It seems like couldn't we still designate that as a historic place and not tie that person other than the fact that if they do sell the house, then it falls under the rules that the City has provided for a historic structure?

Banegas: Mr. Chairman, Commissioner Beard, in terms of what is being proposed and in general I'll kind of speak to both, the current provisions of both state registry through the state of New Mexico and also the federal registry. We've done a lot of research in fact found some information wherein the state has indicated that if someone asks that a specific house, Mr. Tombaugh's house as an example, be placed on a registry and be nominated to be placed on the registry, the state typically will not take action on any nomination process until the property owner has agreed to that.

Beard: So that's a state statute?

Banegas: I don't know if it's a state statute, but it's certainly their policy at minimum and perhaps nomination rule maximum. They want buy in by the property owner. They don't want to knock on the door and say oh you're property's been nominated; you know we need to gain access to it so we can evaluate the interior structure etc. They want participation from the property owner.

Beard: It sounds like there are a lot of these structures we won't be able to protect and the case of the one that Phillipou, the property that he destroyed, that was a financial gain to go ahead and destroy that and continue his venture, increase his ventures. And he really doesn't have any incentive to keep that house in place and that's why he destroyed it so fast.

Banegas: Except Commissioner Beard, with this proposal what I'm going to walk you through is what I feel is a reasonable degree of flexibility in terms of application of our zoning rules to hopefully grant enough flexibility for them to consider some alternative to demolition. Adaptive reuse being one of them, reuse of the structure, parking flexibility, setback flexibility, procedural means, expediting reviews, and so forth. There's a series of measures.

Beard: I guess my concern it ... I'm not stating it correctly, is that if we wait until the 60 day grace period, I think we're too late. It may provide a little bit of

flexibility but I was thinking we should do everything we can right now, but it sounds like we can't, to designate these pieces of property as historical.

Banegas: Correct. We can, I guess theoretically the City could notify property owners that there will be a wide scale inventory if you will, but still the nomination process still requires access to the property both exterior and interior and that usually means property owner concurrence, at least in some degree.

Beard: Thank you.

Scholz: My question was could we use the age of the structure? I'm thinking that the majority of development that's been in Las Cruces has been post World War II, is that right?

Banegas: Right. Correct.

Scholz: And there's very little historically significant architecture post World War II, except perhaps on campus, and perhaps ... I think of the County building as a historic structure. Is that on the register by the way?

Banegas: Don't know. Don't know if that is. I don't believe it is. I've got a listing, but...

Scholz: Well, I'm just curious. Anyway, I'm thinking, could we put an age limit in and say any structure built before 1920 would be considered in this ordinance?

Banegas: Mr. Chairman, Commissioners, the age issue ... age alone is not a unique factor if you will, for consideration of historical significance. Normally they use a 50 year threshold, generally speaking 50 year old structures and older, but that's just kind of the background. They're really looking for someone who may have owned the property who is significant in national scene or state scene or something that has happened there, some event that took place on the property that is of historical significance, something that was significant shift in you know governmental policy or something like that. There are a series of criteria that needs to be addressed, but age alone is not stand-up.

Scholz: Commissioner Beard.

Beard: Does it have to apply to a structure? Could it apply to a cemetery or could it also apply to a dump? Like the Tortugas Dump they just built houses on it and there was some beautiful pottery in there.

Banegas: My understanding of the nomination process and the criteria could include a lot of those things. There are a host of things that we could look at. It's not just individual homes, it could be property, it could be cemeteries or that sort, anything. Battlefields as an example in the East Coast area, that kind of thing.

Beard: Which?

Scholz: Battlefields. Forts for example, you know. Commissioner Crane.

Crane: Tell me if I'm jumping ahead, I have a couple of questions about the proposed ordinance. Section 38-63 is entirely new I believe from your memo. Division 11, Section 34-91 is that one that you're modifying or is it new?

Banegas: Mr. Chairman, Commissioner Crane, Section 38-63 is the proposed amendment that would go in our 2001 Zoning Code. It is a new section being proposed. The Division 11, that's a division or a section out of the Las Cruces Building Code. That too is being modified. It's not a brand new entire section of that code, but there are a couple of paragraphs that are being proposed for it.

Crane: Are they the paragraphs that are italicized?

Banegas: That is correct.

Crane: Thank you.

Banegas: Any other questions? I'll kick into the ... okay. So let me start. I think with the answer to Commissioner Crane's question there, I'm going to start with Section 38-63 which again is intended to go into our Zoning Code. It is a new section and titled as reflected on your document there. It basically would apply in all zoning districts regardless where they exist in the City, and the provisions would only apply, once again only apply to properties that are identified on the New Mexico Registry of Cultural Properties or the National Register of Historical Places, what we refer to as state or federal registers. So the first provision talks about a mandatory delay. We set the stage up front that if you're in the City and your property is already on one of those registers and you come knocking at our door for demolition permit, immediately we have a register that we can keep updated through the state and it's available on line, but we would immediately look at that register, see if the property is listed. If it is listed, automatically the 60 day window begins. The Section 1 and Section 2 respectively talk about how that takes place, the fact that we have to go through notification process. What we're looking to do is notify some of the organizations that typically deal with historic preservation, that being State Historic Preservation

Office, or SHPO. We look into contacting Doña Ana Historical Society. And also obviously post a sign out on the property indicating that an application for demolition has been received by the City of Las Cruces and that the 60 day clock is ticking.

So we're seeking out mandatory delay. We cite how that applies and then we're indicating that notice will be provided. The written notice and the sign placement, what we're looking to do is within two business days make sure that those items are taken care of. We don't want to delay it any further than we have to, but we do also consider the fact that sometimes when a permit comes in it is mid day or later, and we just need a little bit of time to kind of maneuver to meet that criteria and post those signs out on the property. Much like we would do for a typical zoning case or subdivision case.

The sign itself would stay in place for the duration, but obviously the period once again is to investigate possible reuse of the property. And again by definition which there is a section in the back that talks about some of the definitions used here, but when we talk about reuse, we're generally talking about property that was perhaps intended for residential purposes originally, and it may be in an R-1 district, R-2, or R-3 district pursuant to our Zoning Code, and maybe it is historically significant and so maybe someone wants to reuse the property in a residential nature. That's what we're talking about in terms of reuse. Same thing if it was an office or some type of retail establishment, if they're going to use it in a consistent fashion and how it was originally intended. That's what we mean by reuse.

Adaptive reuse, what we're saying is perhaps it was a residential structure originally, but maybe they want to use it as an office. So in that instance obviously it's going to deviate from its original intended purpose, but we're saying that's okay, because what we're trying to achieve here is preservation of the structure so we're allowing that use opportunity to broaden, to widen that opportunity as much as possible, hence adaptive reuse. So that's the intent of that. I mentioned before that we're looking for participation by the general public, anyone who wants to you know have an opportunity to purchase the property out right, may do so if they talk to the property owner and get their concurrence obviously. Or maybe they just want to talk to the property owner and say, hey have you considered going back to the Phillipou example, maybe you know talk to the developer and say, have you considered utilizing the property, maybe retaining part of that structure and building around or something to that affect, and still keeping it intact, but using the property to a much higher standard if you will or use than what was originally there.

Those type of discussions. Those types of measures are called for as a reason for the mandatory delay. Ultimately if the property owner deems it acceptable, whatever, maybe the option for reuse or adaptive reuse is accepted and they want to investigate that further, or maybe they say, heck I've got a buyer and I want to sell. Then if they're going to take

that option, what we're asking them to do through this ordinance is provide written confirmation that they want to stop the clock and the application for demolition is no longer on the table. They're going to rescind that. And so we're asking for written confirmation from them that they're seeking some alternative to that demolition. So that's what that section's doing.

Talked about the notice, the sign, so that's just kind of putting public on notice that we've received application etc. and are engaging in these measures, these steps in order to hopefully preserve what we have. The issue on emergency demolitions on the following page, page 6-2, basically what I'm saying here is that we don't want to take away any authority from the building official if a structure is significantly deteriorated and endangering the public health, safety, and welfare. If a structure is so bad that you have you know rafters that are getting ready to collapse and things are in horrible shape, maybe the structure is simply too far gone. Obviously there's going to be a call made on that, but we're looking for the building official to inspect the building, take as much notes as possible as to the status or the integrity of the building, maybe making any notes that may indicate its significance in one form or another. Photographs are recommended so that hopefully we can at least come up with some information about how the building existed and what it had to show for itself etc. Sometimes that alone is deemed a good thing from a historic preservation perspective. At least we have some documentation that talks about certain features of that building as an example. But that provision right there is just simply intended to say, the building official has the authority to make that call. There is some documenting that goes on, but if it's in bad repair and endangering the health, safety, welfare, then he can issue an emergency demolition permit. So we're not going to take that away.

The next section which is a reuse and adaptive reuse again applies in every instance where property is on the register in any zoning district and what we're talking about here is more a process. We have an existing section in the Zoning Code regarding infill and we have a section in our Subdivision Code regarding infill properties. Obviously one talks about zoning related use and so forth, the other, the subdivision of land when it's in our infill boundary. But what I'm asking to do here is basically allow streamlined provisions much like what's in our infill process. And basically utilize that process for any structure that falls onto this criteria. If it's on our register we're going to streamline it, we're going to give it the most flexibility we can have in terms of adaptive reuse and reuse of the structure, and we're going to hopefully review it and give feedback on the proposal as quickly as possible. If there are variances needed, the proposed ordinance talks about those situations where two or less variances are requested, we're going to try and seek handling those administratively through our flexible standard process that's also outlined in our Zoning Code. But if it's three or more, we're saying we're a little concerned. It might be excessive and we're asking them to go through the

full blown variance process through this body, much like any other variance request you would have. If it's a land use issue, again talking about adaptive reuse; if they're suggesting an office in a residential zoning district or an office in a residential structure, those type of things are also authorized through the infill process, but that too comes before you, as written in this proposal. So there are certain things we would handle administratively, three or more variances come to you, land use related issues when they change definitely come to you as well.

In terms of the actual proposal, we're asking for the greatest amount of flexibility possible during the review, and that's not only from the administrative process, or standpoint, but also from the Commission standpoint and potentially City Council. If someone is requesting something definitely out of the box, makes the neighborhood a little nervous which as we know a lot of infill requests have in the past, certainly what we're asking for is if it seems reasonable, again the question has to be raised, how much is the City willing to do to preserve history. Do we want to just keep it really confined, in which case we're probably not going to gain a lot of favor of property owners and therefore probably risk losing historic structures. But if we're willing to really work with them and help them achieve whatever reuse potential they have of the property or adaptive reuse, then maybe we might gain something there and be successful in preserving that property. So we're looking at that. We definitely don't want to create a situation where we're really destroying the fabric of a neighborhood, that's not what I'm getting at, but if we feel that it's consistent and it could be tolerated, to the extent that it's not going to be a nuisance you know 24/7, that kind of thing, then I'm looking for some judgement in that sense and some flexibility in consideration of approvals. Any time there is use change, land use change, or occupancy change in context to either the zoning code or the building code, there are certain concessions that have to be made and that's one of the biggies obviously is American's With Disability Act compliance. That won't go away. Obviously we have a compelling reason to try and further ADA related compliance and so our current building code speaks to that, wheelchair ramps, access, that kind of thing, those types of things are likely to be put in place as we see proposals come forward seeking adaptive reuse as the example. But also, if there is electrical code issues, which a lot of residential structures that were originally designed for residential uses, when they convert over to some office use, one of the big things, the biggest things they'll have to comply with building code related is electrical code, mechanical code, some of those things they're not going to be able to get around.

The current use of the code, the ones that have been adopted recently take into consideration some of the adaptive reuse and are a little bit more flexible, so that's a good thing. But obviously there are going to be certain things we can accommodate and certain things they're just going to have to bring up to par if you will to current specifications.

We do have a provision in here as we do in the current Zoning Code that talks to parking in historic districts, what I'm proposing is that that same provision even though property may not be within the Alameda Depot or the Mesquite Street, that the same parking flexibility be granted to properties that are on a register but not in an existing district. So what that means is the current provisions speak to uses that require a certain number of parking stalls. When that takes place we can grant a waiver to the parking requirement, at least on historic properties and historic districts and that would apply to any property in this instance that fits the bill. But if there's some use that requires over the certain threshold, I think nine is the magic number there, but if there's a use that requires additional parking, then they'll have to comply with as much parking as necessary. They could take advantage of on-street parking if permissible, certain streets obviously aren't going to be suited for on-street parking. But basically once again looking at flexibility and applying all the standards that would typically apply for businesses. So that's all that I have to say on 6-2.

The following page, basically when we're talking about structural modifications to the structures etc., certainly on historic structures what we're trying to do is keep the integrity of those historic properties intact to the extent possible while recognizing that there's going to be certain additions of structures, certain remodeling projects that are going to have to take place. When any proposal comes in that seeks to remodel or seeks to add on to structures, that kind of thing, our intent is to send the request, the information, the plans, etc. over to SHPO and solicit their input. We do that now from ... we have a home rehabilitation program through HUD and any time we deal with historic properties before they are allowed to do any type of upgrade to that property, we send information over to SHPO and indicate what it is we're seeking to do and they give us feedback. They tell us you know you must use windows of a certain type to keep the integrity intact. You must use doors, you must not ... if you're going to do an addition, do it in the back and not on the street side, those types of things. That's the type of input they usually provide us with. And we're trying to do the same thing here. We want to convey to SHPO that we're interested in preserving this, but we want their input, but their guidance. That's not to say that if they say no, we won't go forward, but yet again it's just more information that we can use to make a judgement call to say yea or nay to specific proposals. They are very adept at ... and very well suited to giving us input on how best to achieve certain thing, such as additions. Probably far better than we are as Staff, and so that's one of the reasons why we're going to that extent. But what that provision also says is look folks, if you're going to have to do an addition, again do it to the back of the property. Don't do it on the street side. Try not to eliminate features that are architecturally significant that make it what it is. You know we're not looking to allow so much activity on the property where it diminishes its historical value, that's not the intent here. If we're

going to allow them to reuse the property, then we're hoping that they help us by preserving the structure to the extent possible. So that's what the bottom of that page 6-3 talks to.

Ultimately if they're doing additions, we want the new part of the building to be compatible with, but we're not looking for the same style as the original. In fact I think SHPO as example, typically feels that generally speaking, that any new addition to a historic property should be of a manner that is distinct enough to know that's new, this is old. That way there's no blending or blurring if you will of what was originally significant and what was not. So we have language in there that talks to that issue to the extent possible. We also have a provision in there regarding the need for the property owner if they go through the reuse or adaptive reuse process, and they are granted that, that they have an obligation to maintain. Keep the buildings painted if necessary, keep stucco from getting too far gone with cracks; cover them up to the extent possible. That's kind of our watered down version of what they call addressing demolition by neglect. That's a term that typically means that someone will just let a building fade over time, they don't use it, they don't fix it up and it's historical and to get out of dealing with historical related issues, they're hoping the rot and decay and everything else basically renders the building useless. So what we're saying here is if you follow our processes, keep the property up. Do what you can to preserve that structure.

And finally, the last section of the Zoning Code version is of course our definition section, that are specific to this proposal itself. Those are terms that are used in this amendment proposal and ones that are likely to be used when discussing related matters. So that's the Zoning Code.

And rather briefly I think I can just lump in the Las Cruces Building Code proposal, on page one of that page, Division 11, the items that are italicized basically the large paragraphs, it would be the fourth, fifth, and sixth paragraph of page one and the beginning of page two, those are the sections that are being proposed for amendment to the Las Cruces Building Code. Again, that talks in similar vain to the need for a mandatory 60 day cooling off period, delay period, the fact that it's intended purpose is to seek an alternative to demolition, that a sign will be posted etc. Very similar to what the Zoning Code talks of in terms of the initial steps, and that's just to bring about consistency. The reason why we're proposing amendment to the Las Cruces Building Code, that's the code that speaks to demolition, so I wanted to make sure we amended that to be consistent with anything we did in the Zoning Code. Now that Building Code isn't under the purview of the Planning and Zoning Commission, but I did want to bring that forward to you so you can see the parallel nature of those provisions are presented. And that concludes my presentation Mr. Chairman. I'll be happy to entertain any questions.

Scholz: No, no other questions? Commissioner Beard.

Beard: There is no incentive for a person to keep a structure or make a structure historical, is there?

Banegas: Mr. Chairman, Commissioner Beard, there are some tax credits, I wouldn't call them significant. In fact a lot of people don't feel that they go far enough to make an incentive or create a big enough incentive, but tax credits are on the books for this type of issue. There has been talk about investigating tax credits of some sort at a more localized level. Don't know if that would fly, but at this point it's very limited.

Beard: I'm just concerned that people are going to think about their back pocket first.

Banegas: Yeah.

Beard: And I think there's going to have to be incentives for people to want to make, or change their mind about making money and keeping that building as a historical building. One of the buildings I'm thinking of right now is the building there at ... on Amador, there at the Loretto Center. The two story building. It's owned by the bank. I mean that's beautiful property ... to demolish that building and then put in a business center there. And that building is, even though it's occupied right now, it doesn't seem to be very safe.

Banegas: That for the record is one of the few buildings outside one of our historic districts presently that is on the register.

Beard: Oh, it is on it?

Banegas: Yeah. So this, if it got passed, would apply.

Beard: Oh, great. Citizen's Bank, right. They're easy to work with though.

Banegas: Yeah, in fact Commissioner, back in ... I forget when they did some modeling to that thing, but that thing was in really bad shape and they went through a significant process to bring it back to its former glory if you will. They did a lot of renovation, remodeling to that thing trying to keep everything intact. And unfortunately, you know its maybe maintenance has been an issue, but hopefully they'll do it again.

Beard: I'm glad that's on the register.

Scholz: That's an adobe building, isn't it?

Banegas: I don't know. I think so. I think a majority of it is.

Scholz: It looks like it. You know it looks like that style. Well I think this is a ... I think this is a reasonable attempt to do what you know what I think probably a majority of people would like to see done. The protests that I heard anyway about the demolition of those buildings on University Avenue were two-fold; one that they didn't have enough notice that they were going down.

Banegas: Right.

Scholz: Was that by the way done for an emergency demolition?

Banegas: No, that was not an emergency. It's just the current provisions literally could allow demolition application to be submitted, Mr. Chairman, and then if it's a simple demolition they just ensure that the utilities are cut off and away they go.

Scholz: So it was ... and I think the whole process was like 10, 12 days, wasn't it?

Banegas: That's correct.

Scholz: The reason I ask about the emergency is because the justification they gave for demolishing it was that the building wasn't salvageable. And of course we saw no evidence of that.

Banegas: Correct.

Scholz: And I don't know whose opinion that was, whether it was the owner's or the developer's.

Banegas: That's a very interesting point Mr. Chairman. There were two ... I think if memory serves there were two reports from the property owner, developer's engineer. And their engineer had indicated that there was significant structural damage to the point where it wasn't going to be very easy to say the least, if economically viable, to bring it back to its former glory.

Scholz: Well that's the thing that struck me as demolition by neglect.

Banegas: Correct.

Scholz: Obviously the building had been going downhill for five or 10 years. I think the last occupancy was in the early, 2001, 2002, something like that when it was still a fraternity house.

Banegas: And the previous property owner, I think there was a Ms. Cunningham if I'm not mistaken, she's gone on record a couple of times if I think at the

University Avenue Corridor meeting or one of those meetings, I think she did put out notice, I don't know whether it was to NMSU or to whom I'm not sure, indicating that she was very much interested in selling the property for the mere purpose that she was hoping that someone would retain it's historical significance, redo what needed to be redone because she simply was not in position to do that. So, that's one of those things were ... that kind of speaks to you know we want the property owner to buy into the process and if maybe they can't, maybe they sell it off to someone who's definitely willing to do that.

Scholz: Any other comments gentlemen? Well thank you very much for the presentation. As I said, I think this is a good attempt to forestall what we would consider kind of I don't know, rampant demolition you know or unnecessary demolition.

Beard: What do we do?

Scholz: Well if there's no other business ... in a work session we don't pass anything. We're merely giving our comments. Yes, I know you want to wield your authority Mr. Beard.

IV. DISCUSSION OF OTHER ITEMS

V. ADJOURNMENT 6:51

Scholz: I would say that are then adjourned at nine minutes to seven.

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Chairperson

ATTACHMENT "C"

SPECIAL MEETING OF PLANNING AND ZONING COMMISSION FOR THE CITY OF LAS CRUCES
City Council Chambers
June 30, 2009 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Charles Scholz, Chairman
Godfrey Crane, Vice Chair
Donald Bustos, Secretary
Charles Beard, Member
Ray Shipley, Member
Clayton Iserman, Member
Shawn Evans, Member

BOARD MEMBERS ABSENT:

STAFF PRESENT:

Vincent Banegas, Planning and MPO Administrator
Cheryl Rodriguez, Development Services Administrator
Gary Hembree, Senior Planner
James White, Planner
Robert Gonzales, Las Cruces Fire
Jared Abrams, CLC Legal Staff
Dan Soriano, CLC
Becky Eich, Recording Secretary

I. CALL TO ORDER 6:00

Scholz: Good evening and welcome to the Planning and Zoning Commission meeting for June 30, 2009. This by the way is a special meeting. It is substituting for the meeting of the previous Tuesday, which we couldn't carry out because we didn't have a quorum. You're going to say something, Gary.

Hembree: Chairman, Commissioners, this is technically, since we have re-advertised the first item which is Case A1695, it should be reflected as new business and I request that the agenda be reordered accordingly.

Scholz: So worded.

Hembree: In addition, also discuss conflict of interest as well.

Scholz: I will do that before we discuss the particulars of the case.

Hembree: Okay. Thank you.

Scholz: Thank you. Okay, before we start I want to introduce the members of the Commission. On my far right, Commissioner Shipley, he is the mayor's appointee. Next to him is Commissioner Crane, that's District 4, Commissioner Iserman, District 1, Commissioner Evans, District 5, Commissioner Bustos

District 3, and Commissioner Beard is District 2, and I represent Council District 6.

II. APPROVAL OF MINUTES - May 26, 2009

Scholz: Okay, the first thing is the approval of the minutes of May 26, 2009. Did everyone weigh their copy? Any additions or corrections? Then I'll entertain a motion to accept.

Crane: So moved.

Scholz: And a second.

Shipley: I will second.

Scholz: It's been moved and seconded. All those in favor, say aye.

ALL COMMISSIONERS - AYE.

Scholz: The opposed nay. And abstentions?

Evans: Aye.

Scholz: Okay. So it passes. Thank you. I have a note on my copy that says execution which means I'm supposed to sign it, I think.

III. POSTPONEMENTS

IV. WITHDRAWALS

V. CONSENT AGENDA

VI. OLD BUSINESS

1. **Case A1695:** A request for a variance from Article VI, Section 38-53 (D) of the 2001 Zoning Code, as amended, that requires schools to be located on a roadway having a minimum right-of-way of 85 feet being classified as a Collector status roadway. Las Cruces Catholic School is requesting a variance to allow for a proposed expansion of the school site by 8,400 square feet or eight portable buildings. The school campus is located on a portion of N. Miranda Street having a varying right-of-way between 50 and 55 feet classified as a local roadway. The subject property is located at 1321 N. Miranda Street on a 11.07 +/- acre parcel that is shared with Holy Cross Catholic Church zoned R-1a (Single-Family Medium Density). Submitted by Dan Schneider for the Las Cruces Catholic School.
   MOVED TO NEW BUSINESS NUMBER 2.

VII. NEW BUSINESS

1. **Case ZCA-09-03:** A request to amend the 2001 Las Cruces Zoning Code, as amended by adding a new section entitled 38-63 Demolition Delay, Reuse and Adaptive Reuse - Historic Structures for the purpose of establishing a mandatory

sixty day time period prior to demolition in which investigation of alternatives to the demolition of a historic structure either in part or in whole may take place and to grant greater flexibility toward the use of the subject property as a means to deter said demolition. Submitted by the City of Las Cruces.

Scholz: Since we have actually changed the agenda slightly, originally the Case A1695 was considered old business, but we just moved it to new business. So we're going to take the first item of new business which is Case ZCA-09-03, a request to amend the 2001 Las Cruces Zoning Code, as amended by adding a new section, etc. etc. By the way, the way the procedure works for cases is that the City goes first, then the applicant goes, and then we open it to public discussion, after that we close public discussion and the Commissioners discuss it and vote on it.

Rodriguez: Mr. Chairman, point of order. The first action before we can take action on that case, new business item number one, the Commission needs to formally modify the agenda and reorder it.

Scholz: Okay.

Rodriguez: So we need a motion to modify the agenda and then approval, and then a vote for that. Thank you.

Scholz: Thank you for keeping us honest, Ms. Rodriguez.

Shipley: I so move.

Scholz: It's been moved. Is there a second?

Bustos: Second.

Scholz: It's been moved and seconded that we modify the agenda by starting with new business and then putting Case A1695 second. All those in favor say aye.

ALL COMMISSIONERS MEMBERS - AYE.

Scholz: Those opposed same sign.

Crane: Nay.

Scholz: And abstentions.

Crane: I beg your pardon, aye.

Scholz: Was that a confusion on your part, Commissioner Crane?

Crane: You said same sign so I should have said aye, but voted against the motion.

Scholz: You're voting against the motion. Thank you. So the motion passes 6-1. All right, our first item then, and you're up Mr. Banegas.

Banegas: Good evening, Commissioners, members of the public. My name is Vincent Banegas, Administrator for Planning and MPO with the Community Development Department, for the record. This case as indicated is ZCA-09-03, which in essence is a request to amend the 2001 Las Cruces Zoning Code, as amended by adding a new section which is Section 38-63 entitled Demolition Delay, Reuse and Adaptive Reuse - Historic Structures.

A little bit of background if I may and some case specifics. Back in January 12, of this year issues were out in the open obviously with some demolition activity that was taking place in the City and it caused quite a stir and a need, if you will, to examine opportunities to investigate historic preservation in our community. As a result the City Council held a work session on January 12th to discuss those opportunities, the issues, and options available to the community, to the City, for historic preservation. There were in essence three options presented. One of them in essence takes a look at what we have in place today, perhaps at a lesser level, but nonetheless a public/private partnership where the City as a public entity would take on certain responsibilities to engage in historic preservation to an extent. And the private, of course, side of things would take measures to ensure that historic structures would receive some attention and therefore maintenance in order to preserve their historic character. Other options were Demolition Delay Ordinance and there were a couple of alternatives associated with that discussed. I will talk a little bit more about that in a bit, but suffice it to say there's a level of demolition delay that takes a look at not only the actual delay of demolition of structures but also a review period in order to determine whether or not a structure has any historic significance in which to delay demolition thereof.

The Historic Preservation Ordinance and all that it entails was also discussed and those were generally the three versions, the most intensive of which was the Historic Preservation Ordinance. But before we go any further; one of things that we had to talk about and discuss is what do we mean by historic. What is historic? And what I've included in this PowerPoint presentation is basically a definition that is taken from government websites and many of the historic preservation information that is available. In essence we're looking at anything, some measure of quality in American history, architecture, archeology, and the list goes on, regarding building structures and objects, and districts, and sites that have some integrity and location, design setting, workmanship, those types of things, and where they involve persons of significance in our past that embody distinctive architectural characteristics, for instance, of a certain time or period. And works of the master, as an example, and that have yielded information important to our prehistory or history. I've kind of summarized that somewhat, but I think you get the point, that the federal government along with state government tends to utilize this criteria to help determine what is historic. And that is the basis in which they look at specific submittals when they are considering an application or a nomination for historic consideration.

The Council direction based on the discussion at that time, again on January 12th, focused on the demolition delay aspect. When we talked about demolition delay to City Council, again we took a look at the worst case scenario, and by that I just simply mean amount of time wherein if a structure was deemed to be considered for demolition by a property owner, we could investigate opportunities where we stipulate a review period in which to examine that structure and determine its level of significance in order to determine whether or not a delay period would also apply. If there was no level of significance then a

demolition permit would be issued and off they'd go, proceeding with their work, and that being the property owner's work. If it was determined to have a level of historic significance then some delay period would be established and thereby allowing opportunities for the property owner to entertain options by interested individuals in the community, the City, whomever wanted to participate in that discussion to see if there were any alternatives to the outright demolition of the structure. So that's the "worst case" or the most "lengthiest" aspect of the demolition review delay discussion that took place.

What we ended up going with was the demolition delay wherein we'd simply establish a time period by which again interested individuals could communicate with the property owner to seek alternatives to outright demolition. There wouldn't be any review and we would only be looking at specific types of structures. And in this case, pursuant to the exhibit that's attached in your packet, those structures that are on a recognized state or federal historic register. So that is what is being presented as part of your packet in exhibit A. That is the proposed amendment here this evening.

Presented along with that is a companion amendment to the Chapter 30 of the Municipal Code Division 11. It's specifically part of the Las Cruces Building Code and that section of the Code which is not under the purview of the Planning and Zoning Commission would be amended along with this proposal if it reaches level of Council with your concurrence and would also entertain provisions that are consistent with what would be pursuant to exhibit A in terms of demolition criteria, notice, and some of those other things. We would seek to have some parallel provisions in place for the Building Code, very much like what we see in the Zoning Code. That way we keep things nice and tidy in that respect.

As presented, the proposal in front of you does several things. As indicated we establish a mandatory 60-day delay period for only those structures on either the state or federal registers. Any structure not on those registers would not be subject to the proposal here this evening. So we establish the 60-day period in essence following what we have in place for the South Mesquite Overlay. Some of you may be aware that in that Overlay we do have a provision for 60-day delay period. We also have introduced a 60-day delay period in the Alameda Neighborhood Plan which was recently adopted by this Body. So we haven't implemented it in ordinance form in terms of the Alameda Plan, but it's coming. So we have precedent, if you will, for 60-day period of time, and so we're carrying that over into this proposal this evening.

The consideration of opportunities for the delay again is intended to seek out alternatives to outright demolition and by that we're talking either outright preservation of the structure. Maybe we can talk with the individual property owner to encourage them to preserve the historic structure, get it back to its former glory, if you will. We could also encourage them to reuse the property in a manner in which it was originally intended, that being if something was zoned residential and used as a single-family structure for instance, maybe they could just refurbish that structure, bring it back to its former glory, and utilize the structure in the same manner in which it was originally designed. We could also consider adaptive reuse. Adaptive reuse is similar; we're still trying to bring about maintenance and preservation of the structure, but in this case we might introduce a use that was not originally intended. So if you have a structure that was residentially oriented, if you will, originally maybe through this process adaptive reuse we introduce opportunities for use as an office, maybe a little neighborhood retail establishment of sorts, something along those lines. Again,

the idea is to entice, encourage, and facilitate the preservation of structures to the extent possible.

The consideration of these options is purely at the discretion of the property owner. They are not forced to entertain them. They are not required to pick one. The idea is to talk to them, to encourage them, and hopefully seek their participation in preservation efforts. So in that regard purely voluntary.

Notice is also required for the pending demolition once we receive, we being the City, receive a permit for demolition, we go into action. We as prescribed by the proposed ordinance would place a sign on the property indicating that there has been a submittal for demolition of the historic structure. And we would also notify Doña Ana County's Historical Society and the New Mexico State Historical Preservation office, otherwise known as SHPO, regarding the pending demolition; the idea being to put them on notice and maybe they can in turn communicate with the property owner in some form or fashion to offer information regarding opportunities, benefits to preservation. Either way, we do not restrict in any form or fashion emergency demolition provisions that are authorized in the Las Cruces Building Code. The intent of those provisions is to protect the health, safety, and welfare of the community. In this case, when there's a structure historically identified substantially in danger of falling we do not want obviously members of the public to be on the property, to be within that structure or anywhere near that structure, obviously for reasons of their safety and so forth. The requirements as written require the Building Official upon rendering that decision to back it up with some findings, both written and photographic. The findings or the documentation will serve as findings for the decision to launch an emergency demolition. But it also serves to some extent to document what was on the property. I mean with photographs, at the very minimum, you would take pictures obviously of roof conditions, footing conditions, that kind of thing and also to an extent document what was there so that from a historical perspective you have some indication of what was in place at the time. So that helps, at a minimum, facilitate information sharing in the future in terms of what existed.

We also introduced flexibility with these provisions granted to the properties and the property owners accepting the alternative options, again of reuse and adaptive reuse and we allow them to follow existing provisions that are already in place. As an example, many of you are aware of the infill development and infill subdivision requirements, the idea being some streamlined review and approval processes, but also permit fee waivers, that's another incentive. We're allowing these types of structures that are subject to this provision to take advantage of that process. Again, if they reuse it, if they do some alterations, those types of things would also be triggered and be used concurrent with this infill development process. So a little bit of expediency might help entice them to seek those opportunities.

We allow some flexibility from an administrative perspective to approve flexible standard requests. As many of you know, the flexible standards are very much like variances. However, they are authorized as a flexible standard and may pertain to setback related issues, maybe parking, number of parking stalls required. Maybe there's a need to diminish the demand that would otherwise be required. So up to two qualifying flexible standard requests could be entertained at an administrative level. Three or more, or any use variances associated with a proposal for reuse or adaptive reuse would require approval by this Body. The matter would come before the Planning and Zoning Commission, very much like

several other cases that you have coming before you already. Your review and decisions obviously would be based on the findings. We would encourage you to consider the preservation efforts that are, I guess, at the forefront of the request, but also you need to remain sensitive to the impacts to the neighborhoods that surround these properties. We're not asking you to vote, to approve something for the mere reason of preservation, when we know in fact that there would be a significant impact to the adjoining neighborhood. As an example, light, for instance, noise, potential traffic issues, things of that nature.

Utilization of off street parking provisions are already in place within the Zoning Code are also authorized. We have provisions for historic district properties already. They pertain to properties that would require eight or less parking stalls and basically allow on street parking or other measures. Waivers can be considered. And so we're seeking to allow the use of those provisions with subject properties pursuant to this proposed regulation. Now the question is asked: if we're granting all this flexibility and we're encouraging this and seeking streamlined reviews and no permit fees and those types of things, what do we get back? Again, we're getting back, if they go along with this, the fact that they're preserving history. They're preserving structures that are deemed important to our local history. But we're also requiring that if they need to add on to structures to make them viable structures, to make them usable structures. That any additions of square footage or building be located to the rear of the structure we don't want the view of anything added on to be visible from the roadway to the extent possible. So any type of activity where they're adding on we want it to be hidden as much as possible. We want any additions, any square footage additions, to remain sensitive to the historic character of the structure itself, keeping in mind bulk mass, somewhat architectural character, that type of thing, they should be sensitive to that. But we also want to be able to differentiate between what is new and what is old. That way if someone else buys the property and wants to restore it back to its former glory, they know what to remove theoretically if they wish to do that and it's not such a guess work, if you will, tapestry of guess work. We also want them to try and preserve and maintain the structure and to avoid deterioration. Some of you may have heard demolition by neglect. This is an attempt to seek to an extent some of that in context to these provisions that are provided for you. So if they're taking advantage of all these flexibility measures that we're introducing, we want them to try and preserve the structure to the extent possible. There are broken windows, replace them. If there are cracks in the stucco, fix it. You know, paint. Keep paint in a presentable manner, those types of things.

This proposal also encourages very much a grass roots effort, if you will, which I think is one of the benefits of the proposal; to seek and discuss opportunities with applicable property owners the benefits of nominating their property to the register, either state or federal. Once it becomes nominated and accepted for the register, then that property becomes subject to these provisions. So we're not demanding the applicable properties to go through this process. We're encouraging that through education, if you will, other individuals interested in the effort to discuss matters with property owners that may have structures that could be nominated, those types of processes are encouraged.

We have issues and concerns with this. Just because it's written up and grants all this flexibility doesn't mean it comes with no concerns or no potential setbacks. Demolition delay period itself as indicated would only touch on historic structures. And the reason why we touched on historic structures versus other

structures not on a register and I should say, registered structures versus nonregistered structures, to make it clear, we wanted to ensure that we were in reasonable standing with any potential challenges. If we establish a boundary which many of the state statutes, but many of the other documents that pertain to historic preservation talk to, if we establish a district that's City-wide we may hit a few historic structures that are on a register but we are going to hit many, many structures that have no historic value to many, many individuals as well. You may be talking about areas that have a very eclectic land use pattern. Some areas in the Bellamah region and some areas where there are certainly newer and those types of things and we could be impacting those structures all the same, just like what we're proposing for registered structures. So we wanted to make sure that we only touched on registered structures and we feel that the use of that provision in that manner is consistent to the extent possible with state statute which authorizes the use of our powers to preserve our historical heritage.

I talked about the City-wide application and I think we're in good shape. We certainly have two existing historic districts as mentioned: the South Mesquite, or the Mesquite Original Town Site, I should say, and the Alameda Depot District. There are a lot of historic structures in there already. Those would be subject to, if they're on a register, to these provisions. We have a few structures that are outside of a recognized district that would be subject to these provisions. The Armijo House, as an example, is on a register. It is not within a recognized district. That would be subject to this provision. The other one on El Paseo and University, the former jeweler that was located there, I believe that's also on a register. And I know the University has structures on its premises that are also on a register. Our regulations don't impact NMSU but nonetheless that just gives you some idea of how many structures we're ultimately impacting. But the idea again with outreach by the community perhaps we can get more on a register and therefore subject to this provision.

Delays, in general, as indicated we're recommending a 60-day delay, but delays of this nature if we go beyond that could be considered temporary takings. If by treating these types of structures differently than structures that are not registered there is some risk. But we feel again that we're in reasonable shape as it comes to any challenges. But that's one of the reasons why we kept the delay period consistent with what we have on the books. We didn't want to extend that. Some communities go well beyond 60-day. Many of them go 90; some of them 120; some of them even more than that, up to a year. So we feel 60 days seems reasonable. We're certainly not welcoming any challenges, but we feel that we would be in reasonable shape if one came across our desk.

The nomination process has to be in concert with property owner's wishes. I cannot for example go to a house that I'm pretty sure would be accepted for registry and document its significance from the exterior, submit the form, and have SHPO approve it. SHPO wants to know that the property owner is in concurrence with the action. Not only that but I have to document the significance inside the structure so I'd have to talk to the property owner and have to seek their permission in order to do that and walk on their property, etc. So the property owners have to be in concert with the nomination process and be willing to have their property considered.

One other issue is no regulation can simply and outright prohibit demolition, require preservation, or maintenance of a structure for historical preservation's sake. We do that if we apply those types of mechanisms and

standards, we do that by the willingness of the municipality or the County, or whatever governmental agency to condemn property through eminent domain powers that are authorized and there we're talking about just compensation. We have to pay for the property that we're condemning and often there's litigation and we also have to have an organization structure that allows us to preserve what we originally took action on in order to accomplish historic preservation overall. So there are some repercussions that are associated with historic preservation and I wanted to kind of bring those to your level of awareness as you think about this proposal. It's certainly something that needs to be considered should the City wish to take more significant actions when it reaches City Council level.

That in essence concludes my presentation. Your options this evening are: to vote yes and recommend approval of the proposed amendment to the City Council; you may choose not to, in which case we would still take the exhibit up to City Council for consideration with your attached recommendation. You can vote yes and amend the proposal. Slight modifications can be incorporated into the exhibit with relative ease before it reaches council. Anything significant or not in concert with the exhibit provisions, however, would probably be taken on a parallel track, if you will, although with the exhibit that is in front of you. So City Council would have two options to discuss and consider. But you can also vote to postpone and table the proposed amendment and direct Staff according. And that, Mr. Chairman, concludes my presentation.

Scholz: Thank you, Mr. Banegas. Questions for this gentleman? Commissioner Shipley.

Shipley: Mr. Banegas, just thank you for your presentation and I certainly like your blue shirt. That's very attractive. On paragraph three on the second page ...

Scholz: Excuse me. I didn't know we were doing style commentary today.

Shipley: Well, we are. He's styling.

Scholz: Go ahead.

Shipley: On the third paragraph, it says "status quo" and at the bottom it says the "North Mesquite" has no such provision in place presently.

Banegas: Correct.

Shipley: So even though it's a historic there was no 60-day requirement for there?

Banegas: That's correct. Mr. Chairman, Commissioner Shipley, when the Mesquite Plan was developed, we originally looked at both north Mesquite and South Mesquite areas and we're developing a plan to address both areas, both of them. Obviously, in context to the historic district it's one. You might have a federal and state register in different boundaries, but in essence it's one district. But when we're developing a plan, a local plan, to address various issues, streetscape, land use, things of that nature, it became clear throughout that process that the north didn't want to play with the south, or the south didn't want to play with the north, however you want to look at it, but nonetheless there were differences of opinion. And as a result of that a decision was made to split the district, split the

area that was being studied and planned for into two parts, north and south. South definitely wanted to do the types of things that involve historic preservation to the extent possible, the extent of their comfort level. The north did not, they wanted much more flexibility. In fact, they in essence wanted to follow the 1981 Zoning Code that was in place at the time and so that provision is very much part of the current regulations that are in place.

Shipley: So then how does this affect them?

Banegas: If any structures even within their district are on a historic register, either state or federal, they would be subject to these provisions.

Shipley: Have they been notified of that so that they could come and have their say?

Banegas: Everybody is notified pursuant to the notification process that we do for all our cases.

Shipley: So every property within 300 feet of ...

Banegas: No. These properties, the manner in which notification took place was general notice in the paper, much like what we do in every instance.

Shipley: There was no mailing?

Banegas: No, not to these subject property owners. No.

Scholz: Okay, other questions? All right, since you are the applicant here, right? Then we'll ask for public input. Is there anyone from the public who wishes to speak to this issue? Okay, hearing none we'll close it to public discussion. Gentlemen, it's up to you.

Shipley: Just a general comment.

Scholz: Commissioner Shipley.

Shipley: It would seem, you know, if we're going to pass something a recommendation to go to City Council that we want to make sure that the public is aware of that. And if we didn't send notices out to those people that would be affected by this change I think we may have done a disservice. Now you know sending out a notice in the newspaper doesn't mean that everybody who lives in that area is going to get that newspaper or see that notice or whatever. And we're getting ready to pass or possibly pass an amendment to the Zoning Code that's going to be crammed down their throat without their really even know its coming. And I think what we're trying to do is obviously, you know, I'm kind of one of the guys that started this process when we had a historic structure that was ...

Scholz: Demolished.

Shipley: Being torn down immediately. So I think we want to see that. We want to give everybody the right to have some input. But I think if we're going to do this now,

we're not giving those people their due notice to do that. And I'm concerned with that.

Scholz: Mr. Banegas.

Banegas: If I may, Mr. Chairman, Commissioner Shipley, pursuant to any ordinance change that affects broad number of properties throughout the City, there is no requirement to notify all subject properties to the provisions that are at hand or potential changes that are at hand. But one other thought comes to mind. That's number one. Number two is properties that are already on a register to me and in context to the provisions that are outlined in this exhibit and this proposal, it's actually granting substantially more flexibility for them to use their property since they're already on a register. The theory is that that they want to help preserve their properties. They're on a register so why wouldn't they, you know, continue that train of thought, that's kind of another factor to consider.

Scholz: Does that answer your question, Commissioner Shipley, or your concern?

Shipley: I understand what you're saying and I mean I know we don't have to do that, but we are part of the government and, you know, we have always said that we want to make sure the public has adequate input to that. They may have a better suggestion than what we're offering here and had they been able to come to the meeting they might have been able to provide something. And that's why I asked the question about the amount of participation and about notification. Because, we are directly affecting those areas that haven't been affected before and they're not even going to ... they're going to go do something and find out that they've got a surprise, and to me that's not good government.

Banegas: Mr. Chairman, Commissioner Shipley, what Staff can do is we do have a listing of the registered properties. That is a document that is made available by the State Historic Preservation Office. When it reaches Council and prior to it reaching Council, we can ensure that they do receive their notice if that is a concern. That they do receive it, we can make sure that they do. This only affects those on a register, though not potentially on a register.

Shipley: How many homes are you talking about? I guess I'd say homes or properties, not just homes, but properties.

Banegas: In fact, Carol McCall who has participated in the creation of this effort, this document, indicates that there is probably less than half a dozen outside of the recognized historic district. I don't have a count for you within a recognized historic district. Keep in mind that both the South Mesquite and the Alameda Depot will have a similar 60-day mechanism demolition delay, but unfortunately, I do not have a count for you for those structures within a recognized historic district.

Scholz: But you're suggesting it's a relatively small number.

Banegas: I want to say about a hundred, two hundred, something like that.

Scholz: Okay. Commissioner Crane.

Crane: I always understand these things better if I put them in personal terms. I was told back when this issue first came out in relation to the University Avenue properties that if I personally wished to demolish my house I could simply apply for a permit to do so and after paying a fee I could demolish it, and present that stands, even if my house has a historical significance designation by some authority, state or federal, correct?

Banegas: Mr. Chairman, Commissioner Crane, if you ... if this goes through and you own a registered structure, there's a mandatory 60-day delay, but after that delay, if you choose to demolish the structure any way, you're certainly entitled to do so.

Crane: Right. But as of the moment there is no impediment to my demolishing it.

Banegas: That's correct; unless you're in the South Mesquite Overlay district.

Crane: So what would happen starting whenever this goes into effect? If it goes into effect is that I would ... the City would impose a 60-day delay and the City would come and meet with me and through persuasion would try to persuade me not to have my building demolished in the public interest?

Banegas: Mr. Chairman, Commissioner Crane, the City could participate in those discussions. Interested individuals in the community could also participate. Doña Ana County Historical Society representation, anybody interested can participate.

Crane: But none of them would be in a position to buy my property to compensate me for the fact that I was going to demolish it and erect an apartment house on it.

Banegas: I'm not aware of their financial capabilities but I would probably say not at the moment, no.

Crane: It seems to me that there is a factor that is missing here. A property owner who wants to demolish his property has no doubt a good economic reason to do it. So it'd be awfully hard to talk people out of that unless the City or some organization could come up with the money to make a fair bid for the property to compensate the owner and I think, as a City, we certainly have an interest in preserving historical buildings. But the City should take the initiative in choosing to buy the property, not just buy anything that anybody wishes to demolish, but make an informed decision about it, rather than simply relying on sitting down with the property owner and hoping that he can be persuaded not to demolish the building.

Scholz: Other questions or comments gentlemen? All right, I'll accept a motion to approve Case ZCA-09-03.

Evans: So moved.

Scholz: And is there a second?

Crane: Second.

Scholz: Okay, it's been moved and seconded. I'll call the roll. Commissioner Shipley.

Shipley: I vote nay, conditions, findings, and discussion.

Scholz: Commissioner Crane.

Crane: Aye, findings and discussions.

Scholz: Commissioner Iserman.

Iserman: Aye, findings and discussions.

Scholz: Commissioner Evans.

Evans: Aye, findings and discussion.

Scholz: Commissioner Bustos.

Bustos: Aye, findings and discussion.

Scholz: Commissioner Beard.

Beard: Aye, findings and discussions.

Scholz: And the Chair votes aye, so it passes 6-1. All right, thank you again, Mr. Banegas, for that very interesting presentation and very thorough, too.

2. **Case A1695:** A request for a variance from Article VI, Section 38-53 (D) of the 2001 Zoning Code, as amended, that requires schools to be located on a roadway having a minimum right-of-way of 85 feet being classified as a Collector status roadway. Las Cruces Catholic School is requesting a variance to allow for a proposed expansion of the school site by 8,400 square feet or eight portable buildings. The school campus is located on a portion of N. Miranda Street having a varying right-of-way between 50 and 55 feet classified as a local roadway. The subject property is located at 1321 N. Miranda Street on a 11.07 +/- acre parcel that is shared with Holy Cross Catholic Church zoned R-1a (Single-Family Medium Density). Submitted by Dan Schneider for the Las Cruces Catholic School.

Scholz: Okay, our next case up is the second case under new business. It's Case A1695 and I want to remind you that we are not just continuing the discussion of this case. What we are doing is starting from the beginning. In effect we're rehearing it. And there are a couple of things I want to mention here before Mr. White gives his presentation. We were asked for disclosure and I'll disclose that I received e-mails from Doug Bagwell regarding traffic, two e-mails from Debra Dennis, one regarding procedures, the other regarding code compliance, and an e-mail from Kathy Hernandez regarding traffic. I should remind people that if they want to send information to us, they should send it to the Community Development Office so everyone gets copied on this instead of simply sending it to me or any one of the other Commissioners. I'm going to ask the other Commissioners if they have