



City of Las Cruces[®]

Planning and Zoning Commission Agenda

The following agenda will be considered by the Planning and Zoning Commission of the City of Las Cruces, New Mexico, at a public hearing held on March 28, 2023 beginning at 6:00 p.m. in Council Chambers at City Hall, 700 N. Main Street, Las Cruces, New Mexico.

1. Call To Order
2. Conflict Of Interest
3. Acceptance Of The Agenda
4. Elections Of Officers
5. Approval Of Minutes

Documents:

[02-28-23 PNZ MINUTES.PDF](#)

6. Postponements
7. Public Participation
8. Consent Agenda
- 8.1. Mesilla Valley Mall Subdivision Replat No. 6 Non-Administrative Replat
A non-administrative replat known as Mesilla Valley Mall Subdivision Replat No. 6, located at 550 S Telshor Avenue. The proposed subdivision encompasses 2.15 ± acres, is zoned C-3 and C-3C (Commercial High Intensity/Commercial High Intensity-Conditional). The subdivision will replat the existing commercial lot into two (2) commercial lots that vary in size from 0.503 ± to 0.77 ± acres in size. Submitted by Land-Mark Professional Surveying Inc., representative. (Case # 22CS0500049)
- 8.2. Government Heights Addition Replat No. 1 Non-Administrative Replat
A non-administrative replat known as Government Heights Addition, Replat No. 1 located at 890 McCoy Avenue. The proposed subdivision encompasses 2.15 ± acres, is zoned R-1a (Single-Family Medium Density). The subdivision will replat the existing residential lot into three (3) residential lots that vary in size from 0.22 ± to 1.70 ± acres in size. Submitted by Underwood Engineering, representative. (Case # 22CS0500080)
- 8.3. Yonder Lea Non-Administrative Replat

A non-administrative replat known as Yonder Lea Replat, located at 414 Soledad Avenue. The proposed subdivision encompasses 0.64 ± acres, is zoned R-2 (Multi-Dwelling Low Density) and within the South Mesquite Overlay Zone. The subdivision will replat two (2) existing residential lots into three (3) residential lots that vary in size from 0.176 ± to 0.281 ± acres in size. Submitted by Vista Grande Surveys, representative. (Case # 22CS0500131)

9. Discussion

10. Old Business

10.1. Metro Square Final Site Plan

A request for approval of a Final Site Plan known as Metro Square located within the Metro Verde Planned Unit Development (PUD). The proposed subdivision encompasses 7.36 ± acres, is zoned PUD (Planned Unit Development), and is located on the southeast corner of Red Hawk Golf Road and the future development of Prospect Lane. The Final Site Plan proposes 72 mixed-use lots, one tract of land dedicated for drainage and one tract of land dedicated for a park. Submitted by Sierra Norte Development Inc., property owners. (Case # 23ZO3000149)

10.2. 1160 Encino Avenue Variance Request

A variance of ± 19 feet to the required 25-foot secondary front yard setback required for a proposed attached carport located at 1160 Encino Avenue. The property is approximately 0.137 acres in size, zoned R-1a (Single Family Medium Density Residential) and is within Council District #1. Submitted by Mark Torres on behalf of Jo E. Sr. and Mary A. Sellers, property owners. (Case # 22VO0500159)

11. New Business

11.1. 1221 El Paseo Sign Variance

A variance to allow for an increase in allowable attached signage for the subject property located at 1221 El Paseo Road. The property is zoned C-3 (Commercial High Intensity). Submitted by Carlos Garnica with Texas Illumination Lighting Maintenance. (Case # 22VO0500155)

11.2. 5532 Century Lane Special Use Permit Request

A Special Use Permit (SUP) for a group childcare home not to exceed 12 children on property zoned R-1a (Single-Family Medium Density). The property is 0.33 acres in size and located in Council District 5. Submitted by Lorena Cardiel, co-property owner. (Case # 22ZO1000118)

12. Staff Announcements

13. Adjournment

The City of Las Cruces does not discriminate on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability in the provision of services. The City of Las Cruces will make reasonable accommodations for a qualified individual who wishes to attend this meeting. Please notify the City

Community Development Department at least 72 hours before the meeting by calling 528-3043 (voice) or 1-800-659-8331 (TTY) if accommodations are necessary. This document can be made available in alternative formats by calling the same numbers listed above.

Posted: 03/13/2023

1 **PLANNING AND ZONING COMMISSION**
2 **FOR THE**
3 **CITY OF LAS CRUCES**
4 **City Council Chambers**
5 **February 28, 2023 at 6:00 p.m.**

6
7 **BOARD MEMBERS PRESENT:**

8 Scott Kaiser, Chair
9 Vanessa Vega, Secretary
10 James Bennett, Member
11 Enrico Smith, Member
12

13 **BOARD MEMBERS ABSENT:**

14 Joaquin Acosta, Member
15

16 **STAFF PRESENT:**

17 Larry Nichols, Director Community Development Department, CLC
18 Adam Ochoa, Senior Planner/Building Inspection Supervisor
19 Vincent Banegas, Interim Planner
20 John Castillo, CLC Planner
21 Christina Abeyta-Corella, CLC Planner
22 Jocelyn Garrison, CLC Senior Assistant City Attorney
23 Becky Baum, Recording Secretary, RC Creations, LLC
24

25 **1. CALL TO ORDER (6:00)**

26
27 Kaiser: All right. Good evening ladies and gentlemen and welcome to the
28 February 28th Planning and Zoning Commission meeting. Before we get
29 started, we do have one Commissioner who wishes to participate via
30 phone tonight, so we do need to make a motion and vote on that. So I'll
31 make a motion to allow Commissioner Vega to participate by phone.
32

33 Bennett: I make a motion to allow Commission Commissioner Vega to participate
34 by phone.
35

36 Kaiser: And I'll second.
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38 Baum: Board Member Smith.
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40 Smith: Yes.
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42 Baum: Board Member Bennett.
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44 Bennett: Yes.
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46 Baum: Member Kaiser.

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Kaiser: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Thank you.

2. CONFLICT OF INTEREST

Kaiser: All right. So we'll move to conflict of interest. Does anyone on the Commission have a conflict of interest this evening? Seeing none.

POSTPONEMENTS

1160 Encino Avenue Variance Request: A variance of ± 19 feet to the required 25-foot secondary front yard setback required for a proposed attached carport located at 1160 Encino Avenue. The property is approximately 0.137 acres in size, zoned R-1a (Single Family Medium Density Residential) and is within Council District #1. Submitted by Mark Torres on behalf of Jo E. Sr. and Mary A. Sellers, property owners. (Case # 22VO0500159)

Kaiser: All right, so we're going to make a slight change to today's agenda before we accept the agenda. At the advice of the City's Attorney's office, we're going to move the postponements up, so we'll take care of that and then we'll approve the agenda with those items removed. We do have two postponements tonight; my understanding is item 6.1 is going to be postponed and 8.1 will also be postponed. So beginning with item 6.1. Do we have a date certain on that or is that?

Banegas: Mr. Chairman, Members of the Commission. Vincent Banegas. We are shooting for next month's regularly scheduled meeting. There's some information that's lacking that we need to receive.

Kaiser: Understood. Thank you. So I will go ahead and make a motion to postpone item 6.1 until the March 28 meeting. Can I get a second?

Bennett: I'll second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

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2 Smith: Yes.
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4 Baum: Board Member Bennett.
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6 Bennett: Yes.
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8 Baum: Chair Kaiser.
9
10 Kaiser: Yes.

11
12 **Metro Square Final Site Plan:** A request for approval of a Final Site Plan
13 known as Metro Square located within the Metro Verde Planned Unit
14 Development (PUD). The proposed subdivision encompasses 7.36 ±
15 acres, is zoned PUD (Planned Unit Development), and is located on the
16 southeast corner of Red Hawk Golf Road and the future development of
17 Prospect Lane. The Final Site Plan proposes 72 mixed-use lots, one tract
18 of land dedicated for drainage and one tract of land dedicated for a park.
19 Submitted by Sierra Norte Development Inc., property owners. (Case #
20 23ZO3000149)

21
22 Kaiser: And our second postponement tonight is going to be item 8.1, and that will
23 be postponed to next month's meeting as well. So I'll go ahead and make
24 a motion to postpone item 8.1 until the March 28th meeting.
25
26 Vega: Second.
27
28 Baum: Board Member Vega.
29
30 Baum: Yes.
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32 Baum: Board Member Smith.
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34 Smith: Yes.
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36 Baum: Board Member Bennett.
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38 Bennett: Yes.
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40 Baum: Chair Kaiser.
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42 Kaiser: Yes.
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44 Baum: Thank you.
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46 Kaiser: All right. That does it for our postponements tonight.

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3. ACCEPTANCE OF THE AGENDA

Kaiser: So now we'll go ahead and approve tonight's agenda. Can I get a motion and a second?

Bennett: I make a motion to approve tonight's consent agenda.

Smith: Second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

4. ELECTION OF OFFICERS

Kaiser: We are not doing election of officers tonight. We've been advised to continue to push that off until we get a full board.

5. APPROVAL OF MINUTES – January 24, 2022

Kaiser: So we will move on to the approval of the meeting minutes from January 24th. Before we do that, does anybody have a comment or corrections to make? All right, hearing none. I'll go ahead and make a motion to approve the meeting minutes from January 24th.

Smith: Second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

1 Smith: Yes.

2

3 Baum: Board Member Bennett.

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5 Bennett: Yes.

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7 Baum: Chair Kaiser.

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9 Kaiser: Yes.

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11 Baum: Passes.

12

13 **6. POSTPONEMENTS**

14

15 MOVED TO BEFORE ACCEPTANCE OF THE AGENDA, AS PER City ATTORNEY.

16

17 **7. PUBLIC PARTICIPATION**

18

19 Kaiser: Okay, moving to a public participation. Is there anybody in tonight's
20 audience who wishes to speak on an item that is not on tonight's agenda?
21 I have this gentleman right here. Would you please come forward and
22 state your name for the record?

23

24 Shervanick: Gregory Shervanick, S-H-E-R-V-A-N-I-C-K, Mr. Chairman.

25

26 Kaiser: All right, Mr. Shervanick. Do you swear or affirm that the testimony you're
27 about to give is the truth and nothing but the truth under penalty of law?

28

29 Shervanick: I do.

30

31 Kaiser: All right. I will give you three minutes.

32

33 Shervanick: Thank you. Mr. Chairman, thank you for allowing me to address you and
34 the Commission and City staff. Since this body handles a variety and
35 many types of issues from the carport to multi story apartments to PUDs
36 based on the City's strategic plans, the ones that you accept or deny guide
37 the City's present tense and future tense ability to grow. I am asking that
38 you ask your City representatives as well as City staff to remand this
39 body's to be recorded verbatim each time it meets. At this particular time
40 it has been removed from being recorded in such a manner and live
41 streamed. And as you saw at the last meeting in January, there were
42 ninety people. And based on the number of anachronisms that we use, it
43 would be fair and transparent to have that record recorded, along with the
44 recording being taken at this time from this microphone. So I ask as
45 citizens and as representatives of our elected officials, that you asked the
46 City staff to remand this body's work, which is never challenged when it

1 gets to City Council and is needed to move the City forward in every
2 manner, and in the future. Thank you very much.

3
4 Kaiser: Thank you, sir.

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6 **8. CONSENT AGENDA**

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8 **8.1 Metro Square Final Site Plan: MOVED TO POSTPONEMENTS**

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10 **8.2 White Sage at Sonoma Ranch North Phase 1 Replat No. 4:** A non-
11 administrative replat known as White Sage at Sonoma Ranch North
12 Phase 1 Replat No. 4 located at 4155 White Sage Arc. The proposed
13 subdivision encompasses 4.014 ± acres and is zoned C-3 (Commercial
14 High Intensity). The subdivision will replat the existing commercial lot into
15 six (6) commercial lots that vary in size from 0.509 ± to 0.947± acres in
16 size. Submitted by Pillar Engineering LLC., representative. (Case #
17 22CS0500107)

18
19 Kaiser: All right, moving to tonight's consent agenda. We now only have one item,
20 that is item 8.2. That was the agenda. So we've got one item on the
21 consent agenda tonight. Looking for a motion to approve tonight's
22 consent agenda.

23
24 Smith: I move that we approve tonight's consent agenda.

25
26 Bennett: I'll second.

27
28 Baum: Board Member Vega.

29
30 Vega: Yes.

31
32 Baum: Board Member Smith.

33
34 Smith: Yes.

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36 Baum: Board Member Bennett.

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38 Bennett: Yes.

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40 Baum: Chair Kaiser.

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42 Kaiser: Yes.

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44 Baum: Passes.

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46 **9. OLD BUSINESS**

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Kaiser: Okay, we do not have any old business.

10. NEW BUSINESS

10.1 1602 Lohman Avenue Special Use Permit Request: A Special Use Permit (SUP) to allow a cannabis dispensary (retailer) less than the required 300-foot buffer distance from another cannabis dispensary (retailer). The subject property is located at 1602 E Lohman Avenue and is zoned C-2 (Commercial Medium Intensity) and is 0.215 ± acres in size. Submitted by Euphora Group LLC, representative. (Case # 22ZO1000141)

Kaiser: So moving on to new business. Our next item is item 10.1, a Special Use Permit at 1602 Lohman Avenue to allow a cannabis dispensary within the required 300 foot buffer distance from another cannabis dispensary. So I will turn it over to staff.

Castillo: Good evening. My name is John Castillo, Planner with the City of Las Cruces. Good evening, Mr. Chair, Commission. Today we're going to be discussing a Special Use Permit located at 1024 South Main Street. This is to allow for a cannabis establishment next to another cannabis establishment.

The current conditions of the property, it's currently zoned C-2 which is our commercial medium intensity. It was originally developed as a small auto truck repair shop. And the property is located at 1602 East Lohman at the corner of Lohman and, I forgot what the other street was. I'm sorry. The property is approximately 0.215 acres in size. The surrounding neighborhood is generally retail and office. There are single-family residential homes within the area, but these were a part of the zoning as they came in.

As we can see here from the zoning map, it is largely C-2. This is an aerial map of the property highlighted in yellow as we can see over here to the left. These are some single-family homes as well as commercial businesses or commercial land uses. So the proposal for this SUP is to sell cannabis within the development of a cannabis retail store that's going to be developed. The buffer distance between the cannabis retail area perimeter and closest cannabis retail area perimeter boundary is approximately 78 feet. According to our municipal code it does require a 300 foot buffer distance. All other buffer distances are to be met between single-family residential zoning districts, as well as schools and daycares.

1 The proposal will also follow all City of Las Cruces and State of New
2 Mexico regulations governing cannabis related retail activity. As we can
3 see from the photos here, this is the former Maese's Auto Repair store
4 that will now become the proposed cannabis retail establishment. In the
5 photo, beneath it you can see the existing Organ Mountain Cannabis
6 retailer that's there.

7
8 Public notice was sent to surrounding properties within 500 feet. Staff did
9 receive one phone call that was in opposition of the establishment being
10 proposed. All relevant staff reviewed the application and provided any
11 comments. Today staff recommends a conditional approval, as part of
12 this condition the property will be required to complete an administrative
13 replat bringing three properties into one property before the issuance of a
14 Certificate of Occupancy. As it sits right now its legal description is made
15 up of three properties. Previous maps showed that it was just one but
16 those are what we would consider a tax parcel. The findings for approval
17 are going to be, except for the distance to another cannabis retail
18 establishment, proposed use meets all other distance requirements. The
19 subject property is compatible with other fronting properties along Lohman
20 Avenue. The ingress and egress on site through Lohman or Lujan has
21 very little to no traffic impacts to other surrounding commercial uses. And
22 then it meets the purpose and intent of Section 38-2 of the Zoning Code, it
23 will meet all requirements outlined in the Zoning Code and those
24 stipulated by the State of New Mexico will be followed. This also meets
25 the intent and purpose of Elevate Las Cruces Comprehensive Plan, as it's
26 located along a mixed use corridor and located in the regional commercial
27 place type. Today, your options are going to be to vote "yes" to approve,
28 vote "no" to deny, or vote "yes" with conditions, or vote to table.

29
30 Kaiser: All right. Thank you. Are there any questions from the Commission?

31
32 Smith: I have one question. Just want to confirm that these two businesses aren't
33 connected to each other. Are they two separate businesses?

34
35 Castillo: They are two separate businesses.

36
37 Kaiser: So you mentioned that there are three parcels that would need to be
38 replatted into one, but looking at the map that's on the screen and in the
39 staff report, it just shows one parcel. Can you just explain that a little bit
40 more?

41
42 Castillo: Yes, as this is an older portion of the City that may have come in through,
43 I forget what the subdivision name is, but it was through an older
44 subdivision that was stated in the staff report. It's made up of three lots,
45 lots of one through three of the subdivision due to county tax parcels or
46 being all owned as one property as we share data with the county and

1 vice versa. A lot of these are what we call underlying lot lines or in a
2 sense they would be nonconforming lots and as a new development that's
3 coming and we would bring it into conformity.
4
5 Kaiser: Got it. Thank you. And then just to clarify, this is a current vacant
6 property or not vacant but the building itself is ...
7
8 Castillo: Yes, the business has been, not vacant but hasn't been in use for about
9 three years.
10
11 Kaiser: Okay, and is there any other nonconforming status associated with this
12 parcel?
13
14 Castillo: With the new business that's coming in, they would have to bring the
15 entire property into conformance. So they would have to provide all
16 development standards such as landscaping, parking requirements, and
17 the rest.
18
19 Kaiser: Understood. Thank you. Any other questions from the Commission?
20 Commissioner Vega, did you have any questions?
21
22 Vega: No, thank you.
23
24 Kaiser: I'll turn to the public now. Is there anybody in the audience who wishes to
25 speak on this item? All right, please come forward. And if you could state
26 your name, I'll swear you in.
27
28 Hebert: Yes sir. Sorrel Hebert.
29
30 Kaiser: And do you swear or affirm that the testimony you're about to give is the
31 truth and nothing but the truth under penalty of law?
32
33 Hebert: Yes sir.
34
35 Kaiser: I'll give you three minutes. Go ahead.
36
37 Hebert: Okay, I'm part owner and here representing Organ Mountain Cannabis,
38 which is located directly next door to. I urge you to vote no on this Special
39 Use Permit. Precedent was already established in October of 2022, by
40 the City Council that you were going to leave the current buffer zone in
41 place. We were one of the first dispensaries that was able to open on
42 April 1st of last year. And it just seems like this would be a step
43 backwards making it a little more difficult for a small business. They
44 already allow unlimited licenses throughout the state. I urge you to keep
45 the buffer zone in place. We are a locally owned small business and this
46 would you know be kind of a devastation. Wouldn't be good for any of the

1 businesses. Yes, we've employed numerous people, paid tons of taxes or
2 collected tons of taxes and we would love to continue to operate in the Las
3 Cruces community. Thank you.
4
5 Kaiser: Thank you. Is there anybody else in the audience that wishes to speak on
6 this item tonight? Seeing none. I'm going to actually ask staff to maybe
7 address that comment and the Council's direction or non-direction, as my
8 understanding is the Special Use Permit process is still allowed, correct?
9
10 Castillo: Mr. Chair, Commission. The Special Use Permit is still allowed as City
11 Council did not approve to amend the ordinances regarding the conditions
12 set forth.
13
14 Kaiser: Thank you.
15
16 Nichols: Mr. Chairman, if I may.
17
18 Kaiser: Please.
19
20 Nichols: Nichols, for the record. We're discovering that, I think at this point in time,
21 we have about 46 cannabis businesses that have business registrations in
22 the City. What we have discovered about businesses going into business,
23 all of those have been in existing structures. Many of them were vacated,
24 not being in use. But what happens with an existing structure you will find
25 many times that if it's in a commercial district, that it will be close to other
26 commercial businesses, or it will be close to a residential neighborhood.
27 Because of that, locating in existing structures has brought about many of
28 these requests for Special Use Permits. And distancing is all part of that.
29 I think you'll recall that there have been several requests for distancing
30 reductions, and I believe nearly every one of them have been granted
31 based on the fact that the businesses are similar to other retail
32 businesses, competing with other retail businesses. As this would pretty
33 much be the case in this condition. Thank you Mr. Chairman.
34
35 Kaiser: Okay, are there any other comments from the Commission? I see, this
36 gentleman would like to speak. So I'll go ahead and reopen public
37 comment here. If you can state your name for the record.
38
39 Martin: Bret Martin.
40
41 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
42 and nothing but the truth under penalty of law?
43
44 Martin: I do sir.
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46 Kaiser: I'll give you three minutes. Please go ahead.

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Martin: So once again just going back to the precedent was already established by this Council back in October to maintain the buffering zones for the businesses. So I understand that there is a special use in place, and if there is a special use granted for this business, that is right next door, as the picture showed, right next door to another business, I would like to have a good justification why that Special Use Permit is granted. I do not see why there should be a special use, especially for another business that is the same, does the same retail located right next door, literally right next door to one and another.

So once again, we established our location. We preleased our location for one year prior to opening because of the zoning laws that were in effect. So we didn't get any special treatment. And I would like to have a good justification from this Council if you guys do vote in favor of the special use. I just, I don't see it. And it's especially egregious when the location is right next door to the other location. How was that special? Why is that a special use. It is going to set a dangerous precedent throughout the City and possibly the state that's going to completely inundate the industry with more and more companies coming from out of state. I said, we are locally owned. And we adhere to all the rules that you've established. So I want to get, I would like to have a good justification if it is determined that the special use is going to be granted. Because right now from our perspective, it's going to have nothing but devastating impacts on our business, our new business. That once again we followed all the zoning rules. We followed all the rules to establish ourselves. So we didn't ask for any special treatment, special use. So potential adverse effects on the businesses. I mean it's really, it's kind of hard to comprehend. I mean there could be many potential devastating impacts when you have one retail store located right next to the other one, there's potential for price wars. And then our clientele is going to already decrease. Like we established our store on April 1st, and now there are 10 dispensaries, 10 within a square, a quarter mile radius. It's completely inundated. So and then to consider establishing another retail store right next door to one that's already established that's trying to further establish ourselves, I mean we're not on our feet. We've had to pay a lot, \$238,000 this last calendar year to the state and the City. So I just urge you to vote no, because you're setting a dangerous precedent that is going to have negative impacts on the industry, especially for the new businesses who follow the rules and are trying to still establish ourselves. Thank you.

Kaiser: Thank you. Is staff wishing to make a comment or?

Castillo: Mr. Chair, Commission. Just to reiterate as to what Mr. Nichols said, we have already approved several SUPs regarding distance to other cannabis retailers, especially those located along the corner of Wyatt and El Paseo.

1
2 Kaiser: Thank you. All right, coming back to the Commission. Any comments,
3 additional questions? I'll just go ahead and give my perspective on this
4 issue. As staff mentioned, this body has unanimously, I'm pretty sure
5 unanimously passed every single Special Use Permit for cannabis
6 retailers that's come before us. The way I see it, there's a lot of
7 businesses that are very similar. You have restaurants throughout the
8 City, you have restaurants right next door to each other. Some of those
9 restaurants are in the same genre of cuisine. You've got bars that are
10 right next door to each other downtown, they all sell alcohol, some have
11 different beer selections than others but the nature of the reality is, is that
12 you know the market is going to determine you know unfortunately, who
13 stays and who goes. The rules allow us to grant a Special Use Permit in
14 this case to allow the distance variance. And so from my perspective, I
15 don't see this any differently than if it was a restaurant and a restaurant, a
16 bar and a bar, a disco club and a disco club, a bowling alley and a bowling
17 alley. If the rules allow us to grant this request then we're allowed to do
18 that, And like I said this body has in the past already granted these
19 requests over and over again. So that's just my perspective. I'm going to
20 go ahead and look for a motion and a second.

21
22 Vega: I make a motion to approve.

23
24 Kaiser: I believe we've got a condition here Commissioner Vega.

25
26 Vega: *(inaudible)*. I move to approve item 10.1 with the conditional approval and
27 *(inaudible)*.

28
29 Bennett: I'll second.

30
31 Baum: Board Member Vega.

32
33 Vega: Yes.

34
35 Baum: I need your reasoning behind that. Thank you.

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37 Vega: Yes, based on staff's recommendations and site visit.

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39 Baum: Board Member Smith.

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41 Smith: I vote no based on the fact that 222 for a variance really skirts the
42 boundary of having a 300 foot buffer. If it was the opposite I think it would
43 be fair to support this this Special Use Permit but I think 78 feet is pretty
44 close. It almost negates us even having a buffer at that point. So I vote
45 no.

46

1 Baum: Board Member Bennett.
2
3 Bennett: I vote yes based on staff recommendation.
4
5 Baum: Chair Kaiser.
6
7 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
8 Cruces.
9
10 Baum: Passes three to one.
11
12 **10.2 1024 S. Main Street Special Use Permit Request:** A Special Use Permit
13 (SUP) to allow a cannabis retail establishment within the required buffer
14 distance between said establishment and a single-family residential
15 zoning district boundary. The subject property is ± 0.210 acres in size,
16 located in Council District #4, zoned C-1C (Commercial Low Intensity
17 Conditional), and located at 1024 S. Main Street. Submitted by Victoria
18 Bruce, Co-Owner Bryan's Green Care. (Case # 22ZO1000134)
19
20 Kaiser: Okay, now we've got item 10.2, a Special Use Permit to allow cannabis
21 retail establishment within the required buffer distance between the
22 establishment and a single-family residential zoning district. Mr. Banegas,
23 go ahead,
24
25 Banegas: Mr. Chairman, Members of the Commission. If I may, Vincent Banegas,
26 Interim Planner. If I could request that the Commission suspend the rules
27 and allow item 10.2 and 10.3 to be heard concurrently. I will do my
28 presentation, then we could unsuspend the rules, and then vote on them
29 independently as you wish.
30
31 Kaiser: Okay, do we need a vote on that now? Okay.
32
33 Banegas: Yes, to suspend the rules.
34
35 Kaiser: I'll make a motion to suspend the rules to allow item 10.2 and 10.3 to be
36 presented concurrently.
37
38 Bennett: I'll second.
39
40 Baum: Board Member Vega.
41
42 Vega: Yes.
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44 Baum: Board Member Smith.
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46 Smith: Yes.

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Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Yes.

Baum: Passes.

Banegas: Mr. Chairman, Members of the Commission. This is two cases dealing with the same property. It's located at 1024 South Main Street. It involves a Special Use Permit for the use of the property, in part anyway as a cannabis dispensary. It is located in relative close proximity to an R-1a zoning district which is a single-family zoning district pursuant to our code. And it also involves a zone change request from the C-1C designation that the property now has, and I'll get into that a little bit. And an attempt to eliminate those conditions that were placed on it previously that would restrict the use of the building in the manner in which the applicant wishes to proceed.

And current conditions are as follows. As indicated, the property is zoned C-1C. I'll show you one of the maps, our zoning map that we typically use on our presentations. It does show a C-! designation that is an error. But regardless, there is some conditions that are applied to the current zoning that is in place. And the conditions that are stipulated talk to the use of the building in terms of a cap for nonresidential use at 600 square feet. And then the remaining square footage to be used for residential purposes. That was carried out pursuant to an ordinance number 587 back in 1985. And what we have in place at this point in time is a map zoning inconsistent with the actual ordinance. I found that by chance just on an offshoot trying to determine what the original zoning was, and that's when I came across that that issue.

The property has also been issued a number of parking variances back in the day. We have in place variances related to the backup and driving aisles, stall width, and the number of stalls overall. Those all pertain to 90 degree parking on site. Those variances run with the land and not with any of the previous businesses or the applicants for those businesses that originally applied for those variances. The property is located on South Main Street, basically between Brown Road and Wyatt Drive and is roughly 0.2 acres in size. It does consist of two full lots, as I understand it pursuant to our parcel maps. Lots one and two, and then I believe there's parts of lot three and 14 that make up the property in question. And there's also an 8.5 foot irrigation channel that separates the R-1a, our

1 single-family zoned properties, from the subject property. There's also
2 some landscaping and an approximate seven foot rock wall, a shed, some
3 fencing, and some additional landscaping that serve as a buffer and
4 screen between the residential portion on the west side and of course the
5 subject property on the east side.
6

7 The surrounding neighborhood is office uses, both on the north and south
8 of the subject property. Office and retail exist to the east. And of course,
9 the residential to the west. Zoning that supports those uses include those
10 that are listed below R-1a, O-2C, C-1, C-2, and C-3. CBD is currently sold
11 on the premises, there is an active business license in place,. The
12 applicant has sought to include THC or cannabis into the product offering
13 as part of the business operation. And it is because of this that the
14 Special Use Permit is called into play, and also the need for the rezoning.
15 The distance separation, in this case to the single-family zone, which is
16 part of that irrigation canal, is roughly 12 feet. And as a result of that
17 there's a need to consider the neighborhood impacts per the Special Use
18 Permit provisions pursuant to the code.
19

20 Hours of operation, in talking with the applicant, basically 9:00 a.m. to 9:00
21 p.m. Monday through Saturday. And certainly if I got that wrong, we'll
22 have the applicant speak to that. And 9:00 a.m. to 6:00 p.m. on Sunday.
23 And the reason why I stipulate those hours of operation is we did receive a
24 call from a concerned citizen who was concerned about a 24 hour
25 operation. And they were hoping that that wasn't the case. And I told the
26 individual that I would include this information to allay any fears that the
27 individual had. I also submitted in front of you copies of an e-mail from the
28 same individual that had some additional concerns regarding crime and so
29 forth. But hours of operation was definitely one of them, and that is a
30 current condition at this time.
31

32 So here's the zoning map, you can see that our existing zoning map is
33 showing the zoning of the property incorrectly, there should be a C at the
34 backside of that one. So it should be C-1C. But adjacent to the subject
35 property, you have C-1 to the south, O-2C to the north. Further north you
36 have O-1C, further south you have O-2C, C-2C, etc. And then a plethora
37 of commercial designations off to the east. It is this R-1a area that has
38 drawn the need, again for this Special Use Permit issue or consideration.
39

40 Aerial view showing the parcel in question outlined in red again. The
41 channel in question basically runs along this backside of the property.
42 along the south side of the property, and then I would imagine connects at
43 the center of Main Street where the irrigation canal exists. And parking is
44 primarily provided in front, and there appears to be some parking, at least
45 historically speaking, in the rear of the property.
46

1 So from a historical perspective, the property is part of the Brown Pueblo
2 Addition basically circa 1929. About a year later the building was
3 constructed. Currently based on my measurements using some of the
4 aerial maps provided to staff, I came up with roughly 2,059 square feet of
5 building area, that does not include any of the covered patios, portals,
6 pergolas, whatever you want to refer to those as, it's just the enclosed
7 area where operation would take place. 1985 as indicated earlier, it was
8 rezoned from R-4 which is a multifamily district in the code at that time, to
9 the C-1C designation we have in place today. The property certainly has
10 been used for office and retail and there's been kind of a flipping of that
11 use in the past history. And it sat vacant for a little over a year until its
12 current occupancy, which is Bryan's Green, I forget the name of the
13 business. Excuse me. Green Care. So they are in place now and selling
14 CBD as previously mentioned.

15
16 So, to help with the proposal aspect, I broke out the Special Use Permit
17 side and I'll break out the zoning code side a little bit. But the SUP, the
18 purpose for that is for retail cannabis at the 1024 location. CBD sales will
19 continue on site. And their emphasis is to utilize the entire square footage
20 of the building for all operations. So therein lies, at least going back to the
21 zoning side, a need to clear up some of those conditions. But the SUP is
22 needed for cannabis. The buffer distance between the R-1a zone and the
23 building is approximately 12 feet. And that, of course involves or requires
24 us to examine a neighborhood impacts via the SUP process as a result of
25 that distance. All other buffer distances were met. And of course with the
26 CBD or the cannabis related activity that may occur there, should you
27 approve it, they will follow all CLC and State of New Mexico regulations
28 regarding cannabis retail activity.

29
30 In terms of the zone change, I've already mentioned the ordinance in
31 question that changed it to C-1C. Those conditions certainly restrict
32 nonresidential uses and so there is a need to consider elimination of those
33 conditions, hence the zone change. By considering the zone change it'll
34 correct not only the map error, the zoning map error, it'll bring into
35 compliance the map, the ordinance, and of course land use over time that
36 has existed. It's my understanding that there may have been use of the
37 property in its entirety, the building in its entirety for nonresidential uses.
38 So we'll try to correct all that through the zone change aspect.

39
40 This is a site plan that I received today, just kind of showing the property in
41 question and I'm pointing to the corners of the property along the basically
42 north side, and point to point down here to circle point there. That is the
43 property in question. The parking exists along the front, that's where
44 variances were granted previously. This is an ADA parking stall. They do
45 have, at least it appears as if there are some parking stalls in the back.
46 That is some angled parking. And we're going to need to take a look at

1 the parking if it does exist back there to make sure it complies with current
2 code. That is part of the reason for the site plan is so that we can work
3 with the applicant and determine what exactly needs to take place,
4 pursuant to code, in order to make operation successful and aligned with
5 current code.
6

7 A couple of photos showing the building in question. It's this reddish or
8 orange looking building I guess. I don't know what color I'd call that. But
9 nonetheless you have an enclosed entryway here. None of these
10 canopies, covered patios are part of the square footage in question. It
11 was all the enclosed area that I took into consideration for that 2,059
12 square foot figure. So again, we will take a look at parking, see how the
13 variances were applied, see what we can make work. Here's another
14 photo looking north, showing some of the other offices and/or
15 nonresidential uses. Shot looking south, there's a couple of property, or at
16 least three or so properties that are also nonresidential in terms of use.
17 And one trying to capture the buffer screen that I mentioned earlier in the
18 presentation. It appears as if that rock wall that exists all along the
19 backside stopping right at this point is roughly seven feet, six and a half,
20 seven feet. They got some landscaping This is a shed located on the
21 backside property that helps with that buffer. So the property itself, at
22 least from the residential perspective, is well buffered, well screened.
23 Access coming from North Main Street, staff didn't see any significant
24 concern in terms of traffic to the residential neighborhood.
25

26 Public notice input was sent pursuant to code. I already touched on the
27 fact that I did receive a call and the e-mail that I provided you a copy of
28 both came from the same individual. And hours of operation, safety, crime
29 in the area, that kind of thing were all related concerns, increased
30 pedestrian and auto traffic. But the pedestrian traffic as I understood it
31 was from the perspective of the crime element. That's how I understood
32 the discussion.
33

34 So recommendation and findings, this is for both cases, we recommend
35 approval with conditions. You will find that the conditions are being
36 requested on both cases, the SUP and zoning, they are the same. The
37 business property owner shall replat the existing lots that make up the
38 subject property, and what I understood to be lot one and two and parts of
39 three and 14, those should be replatted into one parcel. The same
40 situation exists as the previous case, they're parcels that are underlying
41 lots from long ago and due to common ownership, the county would rather
42 send out one tax bill as opposed to four tax bills and parts thereof, that
43 kind of thing. So they show them as one but they're not platted as one.
44 The business owner shall also provide necessary parking pursuant to the
45 2001 Zoning Code as amended. And of course, at that time, we will take
46 into consideration any previously approved variances since they run with

1 the land not with the business. Bicycle parking will need to be installed in
2 accordance with code. And landscaping and the required irrigation
3 system will be installed or shall be installed to the extent possible given
4 the build out and configuration of the site. And I say that because as you
5 saw in the photos, there's a lot of asphalt, the building's quite large, so
6 there's limited room for landscaping. All related improvements shall be
7 completed prior to the issuance of a business registration or license if
8 approved. And compliance plan may be used to facilitate completion of
9 improvements. The findings for both cases are as follows, I'm referencing
10 the ordinance 587. Changing the zoning from R-4 to C-1C and those
11 conditions causing limitations on the use of the building. The zone change
12 seeks to eliminate the conditions regarding use sized to the lowest
13 intensity commercial district possible, in this case the C-1 designation,
14 which will become C-1C if these conditions are attached and City Council
15 agrees with them. But nonetheless there will be different conditions. And
16 then all buffer requirements are met except for the single-family zoning.

17
18 Subject property is surrounded by office and retail on the north and south
19 and east side, residential of course exists on the west. The proposed
20 zoning is compatible to several neighboring properties along South Main
21 Street. The ingress and egress is from South Main Street having little or
22 no impacts to the subject residential neighborhood. The channel, the rock
23 wall fencing, landscaping, all provide buffer screens from the subject
24 property to the residential uses which has been determined to be a plus.
25 Variances were approved in 1996 and will be applied to facilitate the
26 parking demand on site. And the requirements outlined in the Zoning
27 Code and those stipulated by the State of New Mexico will be followed to
28 or as applicable. There are several goals, policies, and actions that
29 support both the SUP and the zone change request, all of which are
30 consistent with the Urban Neighborhood Place type which this property
31 falls within. The Urban Neighborhood, as you may recall, seeks to provide
32 a variety of residential housing types at medium to high densities with
33 supporting neighborhood commercial development. Mixed use
34 neighborhoods are some of the items that are identified in those goals,
35 policies, and actions. Expanding economic opportunities, increasing
36 employment, and employment security, etc. And all those elements help
37 support and justify the recommended approval with conditions staff has
38 brought forward. Your options this evening Commissioners are to vote
39 "yes" and approve, vote "no" and deny. If you deny, please provide your
40 findings of facts that differ from staff, in that they all support the request.
41 You can vote "yes" with conditions, or vote to table. And that concludes
42 staffs presentation this evening. I'll be happy to stand for questions. And I
43 am aware that the applicant is in attendance and may have some
44 information to share with you.

1 Kaiser: Thank you very much. Does the applicant wish to speak? You're not
2 obligated to. Okay. All right. Any questions or comments from the
3 Commission?
4

5 Smith: I have a comment to make. I just want to address the e-mail from Ms.
6 Stevenson and her concerns. I'm very familiar with this neighborhood.
7 I've lived right around the corner for almost 24 years, long before cannabis
8 was introduced as businesses in Las Cruces. There was crime and there
9 still is. I was a victim of crime just in December you know when they were
10 stealing catalytic converters. So I just want to just you know help Ms.
11 Stevenson understand that this business going from CBD to THC should
12 not have an impact on the amount of crime in our neighborhood. Most
13 people will be coming and going you know off Main Street. They'll drive
14 into the parking area and you know make their purchase. And what we've
15 seen and what I've seen personally, with the CBD businesses, that most
16 of them, the customers generally just go inside, make their purchase and
17 leave. It's not like a bar. It's not like a strip club or liquor store. They're
18 not hanging around, and you know consuming their product outside, or I'm
19 not sure (*inaudible*) inside. So I just wanted to address that one aspect
20 from a crime perspective, because 24 years of living around the corner,
21 I'm very, very familiar with crime in that area.
22

23 Kaiser: All right. Any other questions? Commissioner Vega, do you have any
24 questions or comments?
25

26 Vega: Not at this time. Thank you.
27

28 Kaiser: Great. I've got a couple of questions. If you could go back to the
29 conditions slide. Yes, so the landscaping requirements, is that because
30 this is in some way a nonconforming use or what's triggering that
31 particular requirement?
32

33 Banegas: Mr. Chairman, Commissioners. That is correct. The property has sat
34 vacant for a year and also has changed use. So because of both those
35 elements that triggers the nonconforming provisions of the Zoning Code.
36

37 Kaiser: Okay, but it's currently; they're currently using the building now to sell, so it
38 was vacant until that point. When did they start selling or when did they
39 establish their business? I'm just trying to understand at what point were
40 they no longer vacant?
41

42 Banegas: I'll let them. I don't know the date that's listed on the license. But let's
43 see.
44

45 Kaiser: Before you answer, I have to swear you and so could you state your
46 name?

1
2 Monteverdi: Dominic Monteverdi.
3
4 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
5 and nothing but the truth under penalty of law?
6
7 Monteverdi: Yes.
8
9 Kaiser: Please, sir.
10
11 Monteverdi: We started selling CBD if I remember correctly at the beginning of
12 December.
13
14 Kaiser: Okay, so very recently.
15
16 Monteverdi: Fairly recently.
17
18 Kaiser: Okay.
19
20 Monteverdi: Yes. We've had our business license, gone through that whole ordeal with
21 the City to be able to sell CBD. And we're just waiting for the SUP to go
22 through so we can just add our inventory is all. So yes, we've been
23 operating, that building we moved into actually at the beginning of
24 November, so we been there a month prior. And then now we've been
25 open for business for at least two and a half months.
26
27 Kaiser: Okay. Thank you. That's helpful. So going back to the landscaping
28 requirement then, the way that it's currently written here to the extent
29 possible, wouldn't they need to come into compliance and if they weren't
30 able to meet those requirements would they then need to request a
31 variance or - I'm just a little thrown off by this. Well, they're out of, their
32 nonconforming use and so we're going to make them come into
33 compliance, but we're only going to do it if it works is kind of where I'm
34 getting hung up.
35
36 Banegas: Mr. Chairman, Members of the Commission. The way that was written
37 was to address primarily from the Special Use Permit side of things. In
38 looking at the subject property, in fact, this one might be a better, yes. In
39 looking at the subject property all the parking, which, again has some
40 variances attached to it, take up all the front side of the existing asphalt
41 area. In fact, the driving aisle or the backup file has been reduced as part
42 of that variance request. So basically from right-of-way into the property
43 where you see the parking stops there, that's all taken care of in terms of
44 parking. If we put any landscaping there, it's going to cause issues with
45 parking. The only areas really where landscaping can be provided for is in
46 front. Here, there's some small areas over to here, and that is probably

1 about it. That was one of the reasons why we wanted to receive a
2 surveyed plat showing the property as it exists with dimensions, etc, so we
3 could determine how much landscaping they can truly provide. At this
4 point of time, we don't know what that is.
5
6 Kaiser: Okay, and should they not meet the requirements that's in the code, would
7 they need to request a variance from that in front of this body or is?
8
9 Banegas: The Special Use Permit, if approved, would cover that. Yes, there would
10 be no need to come forth with a variance.
11
12 Kaiser: Okay. Thank you. And then I think my last question is related to the
13 replatting. You mentioned parts of lots three and 14. Does that mean,
14 somebody else owns the other portions of those lots or how is that
15 planning out?
16
17 Banegas: Mr. Chairman, Members of the Commission. It's my understanding that
18 the property owner for this property also owns this property. And I'm not
19 quite sure how the underlying lots are oriented, but it appears as if
20 somewhere in this vicinity there's the portions of other lots that make up
21 this whole. So basically, what we're asking is for whatever lots, whatever
22 configuration that exists for the lots that make up the subject property, that
23 they be replatted into one legal lot.
24
25 Kaiser: Okay. Just want to make sure we're not making a decision on someone's
26 property that is not represented here in this room so.
27
28 Banegas: Mr. Chairman. They are aware. They've been in contact with the property
29 owner on all these conditions.
30
31 Kaiser: Got it. Thank you. That's all I have. We will go ahead and, are there any
32 members of the public that wish to speak on this item tonight? All right.
33 Seeing none. I'll come back to the Commission, any final comments or
34 thoughts? All right, looking for a motion.
35
36 Banegas: Mr. Chairman. Point of order. If we can unsuspend the rules, motion and
37 the second, vote unsuspending the rules, and then we can.
38
39 Kaiser: Okay. Do we need to vote on unsuspending?
40
41 Banegas: Yes.
42
43 Kaiser: Okay. I'll make a motion to unsuspend the rules so that we can vote on
44 items 10.2 and 10.3 separately.
45
46 Smith: I second.

1
2 Baum: Board Member Vega.
3
4 Vega: Yes.
5
6 Baum: Board Member Smith.
7
8 Smith: Yes.
9
10 Baum: Board Member Bennett.
11
12 Bennett: Yes.
13
14 Baum: Board Member Kaiser.
15
16 Kaiser: Yes.
17
18 Baum: Thank you.
19
20 Kaiser: Okay, now we will go ahead and take motions for item, agenda item 10.2.
21
22 Bennett: I make a motion to approve 10.2 with conditions stated in the packet.
23
24 Kaiser: I'll second.
25
26 Baum: Board Member Vega.
27
28 Vega: *(inaudible)* approval noted by staff.
29
30 Baum: Board Member Smith. Sorry.
31
32 Vega: *(inaudible)*.
33
34 Baum: My apologies. Board Member Smith.
35
36 Smith: I vote yes with conditions based on staff recommendation.
37
38 Baum: Board Member Bennett.
39
40 Bennett: I vote yes based on staff recommendation.
41
42 Baum: Chair Kaiser.
43
44 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
45 Cruces.
46

1 Baum: Passes four zero. Thank you.

2

3 **10.3 1024 S. Main Street Special Use Permit Request:** A zone change from
4 C-1C (Commercial Low Intensity-Conditional) to C-1 (Commercial Low
5 Intensity) for property located at 1024 S. Main Street. The property is ±
6 0.210 acres and is within Council District #4. Submitted by Victoria Bruce,
7 Co-Owner Bryan's Green Care. (Case # 23ZO0500011)

8

9 Kaiser: All right. We will now go to item 10.3. Looking for a motion and a second.

10

11 Bennett: I make a motion to approve 10.3 with the conditions stipulated in the
12 packet.

13

14 Smith: I second.

15

16 Baum: Board Member Vega.

17

18 Vega: Yes (*inaudible*).

19

20 Baum: Board Member Smith.

21

22 Smith: I vote yes based on staff recommendations.

23

24 Baum: Board Member Bennett.

25

26 Bennett: I vote yes based on staff recommendation.

27

28 Baum: Chair Kaiser.

29

30 Kaiser: Yes. Based on staff recommendation and consistency with Elevate Las
31 Cruces

32

33 Baum: Passes four/zero.

34

35 **11. DISCUSSION**

36

37 Kaiser: Okay, going on to discussion.

38

39 **12. STAFF ANNOUNCEMENTS**

40

41 Kaiser: And staff announcements tonight.

42

43 Nichols: Mr. Chair. Nichols for the record. I have no staff comment from my desk.
44 I don't know if Adam has anything from his desk.

45

1 Ochoa: Adam Ochoa, for the record. No sir, we have nothing for you all tonight. I
2 don't think we've ever introduced our new planner. This is Christina. We
3 will be bringing her before the coliseum here starting next month. She'll
4 be handling most of our variances and infill proposals as well. We're
5 going to groom her as best we can and have her ready for you all. So
6 hopefully everything, I'm sure will work out. We're more than confident
7 that it will, but just want to welcome Christina. And you'll be seeing her in
8 the near future here.
9

10 Kaiser: Welcome, Christina. Hopefully, our questions will not scare you away.

11
12 Ochoa: That's all we have, sir. Thank you.
13

14 **13. ADJOURNMENT (7:00)**
15

16 Kaiser: All right. Go ahead and make a motion to adjourn tonight's meeting. Can
17 I get a second?

18
19 Smith: I second.
20

21 Kaiser: All in favor.
22

23 MOTION PASSES UNANIMOUSLY.
24

25 Kaiser: Thank you everyone. Have a good night.
26
27
28
29

30 _____
31 Chairperson