



CITY OF LAS CRUCES

**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
October 22, 2024 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

- Scott Kaiser, Chair
- Enrico Smith, Vice-Chair
- Jeannette Acosta, Member
- Connor Murray, Member
- Kent Thurston, Member

BOARD MEMBERS ABSENT:

- Joaquin Acosta, Member
- Vanessa Porter, Member

STAFF PRESENT:

- Larry Nichols, Director Community Development Department
- David Weir, Deputy Director Community Planning
- Chris Faivre, Interim Deputy Director Community Planning CD
- Adam Ochoa, Senior Planner/Building Inspection Supervisor
- Vincent Banegas, Interim Planner
- John Castillo, Planner

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening. We have quorum, so we will go ahead and call this meeting to order. Welcome to the Las Cruces Planning and Zoning Commission meeting for October 22nd. One just point or I guess announcement to make, which you could probably tell if you're in the room but we are broadcasting live again via the City's website and YouTube channel. So I want to extend a thank you to staff who've been working on that for some time. So thank you very much for getting us back on air. I'm sure members of the public will really appreciate that.

2. APPROVAL OF MINUTES – September 24, 2024

Kaiser: So with that, looking for approval of the minutes from the September meeting pending no changes need to be made.

Je. Acosta: Mr. Chair. I'll make the motion to approve the minutes as presented.

Murray: I second.

1
2 Faivre: Do roll call. Commissioner Thurston.
3
4 Thurston: Yes.
5
6 Faivre: You guys are out of order. Commissioner Smith.
7
8 Smith: Yes.
9

10 Faivre: Commissioner Acosta.
11
12 Je. Acosta: I have to look around for just a minute. Yes.
13
14 Faivre: I'm sorry. Commissioner Murray, sorry.
15

16 Murray: Yes.
17
18 Faivre: Thank you. Commissioner Kaiser.
19
20 Kaiser: Yes.
21
22 Faivre: Thank you.
23

24 **3. CONFLICT OF INTEREST**
25

26 Kaiser: Any conflicts of interest from the Commission this evening?
27
28 Murray: As stated last meeting, I do have a conflict of interest for old business, 8.1
29 and 8.2
30
31 Kaiser: Okay. So I believe that that will ask him to step down from the dais, but he
32 can stay in the room. Should leave the room, okay. So when we get to
33 those items you'll have to leave the room, and then we'll call you back in.
34

35 **4. POSTPONEMENTS**
36

37 Kaiser: We have no postponements.
38

39 **5. ACCEPTANCE OF THE AGENDA**
40

41 Kaiser: So looking for a motion to accept tonight's agenda.
42
43 Smith: I move that we accept tonight's agenda.
44
45 Murray: I second.
46
47 Faivre: Commissioner Thurston.
48

1 Thomas: Yes.
2
3 Faivre: Commissioner Smith.
4
5 Smith: Yes.
6
7 Faivre: Commissioner Acosta.
8
9 Je. Acosta: Yes.
10
11 Faivre: Commissioner Murray.
12
13 Murray: Yes.
14
15 Faivre: And Chair.
16
17 Kaiser: Yes.
18
19 Faivre: Thank you.
20

21 **6. PUBLIC PARTICIPATION**

22
23 Kaiser: All right, moving on to public participation. Is there anybody in the audience
24 tonight that wishes to speak on an item that is not on tonight's agenda? Can
25 I get a show of hands? Seeing none.
26

27 **7. CONSENT AGENDA**

28
29 Kaiser: We'll come back, and we have no consent agenda items this evening.
30

31 **8. OLD BUSINESS**

32
33 **8.1 Case No. 24ZO2500012:** A request for approval of the Sunrise Mesa Planned
34 Unit Development(PUD) Phase II Concept Plan. The concept plan proposes a total
35 of 56 lots/tracts on 23.20 + acres, zoned PUD/R-2, and is located at the northwest
36 corner of Central Avenue and Porter Drive. The PUD proposes land uses
37 consisting of multi-dwelling (four-plex), commercial, and drainage/open space.
38 Submitted by Sauder Miller & Associates for Harlo Dynek, property owner. Council
39 District 6.
40

41 Kaiser: So we will move into old business. We will need to suspend rules to hear
42 items 8.1 and 8.2 together to hear the presentation together, and then we'll
43 unsuspend to take separate votes. So Commissioner Murray, if you would
44 like to recuse yourself. Does he need to state that he's ...Okay. No. We'll
45 come get you when we're done. So I need a motion to suspend the rules
46 to hear items 8.1 and 8.2 together.
47

48 Je. Acosta: I make a motion as presented.

1
2 Kaiser: To suspend the rule.
3
4 Je. Acosta: Yes.
5
6 Thurston: I second.
7
8 Faivre: Commissioner Thurston.
9
10 Thurston: Yes.
11
12 Faivre: Commissioner Smith.
13
14 Smith: Yes.
15
16 Faivre: Commissioner Acosta.
17
18 Je. Acosta: Yes.
19
20 Faivre: Commissioner Murray is abstain. And Commissioner Kaiser.
21
22 Kaiser: Yes. All right, we'll turn it over to staff for a presentation.
23
24 Banegas: Mr. Chairman, Commissioners. This evening, we're here to discuss a
25 planned unit development concept plan and road improvement waiver
26 request involving Case 24ZO2500012. That is for the concept plan itself,
27 and the road improvement waiver is 24CS4000100.
28
29 Just for some of you that have heard me talk to this issue, I apologize, but
30 for those who are new it might benefit you a little bit just to understand what
31 a PUD is. We don't deal with those all too often so I thought I'd put together
32 a little slide that basically compares the PUD process to the traditional
33 development process. When we're talking about the subdivision of land,
34 you're dealing with two processes, again PUD, traditional. Under the
35 traditional, you have the master plan, preliminary plat and final plat,
36 construction drawings follow. Under the PUD you have a concept plan
37 which serves as the master plan. You have a final site plan which serves
38 as the preliminary plat, and the final plat is the same. The PUD complies
39 with growth management policy that is identified in Elevate Las Cruces
40 Comprehensive Plan, but it allows flexibility in terms of the development
41 proposal, and typically speaks to land use densities, intensities. It can
42 speak to architecture, open space, building arrangements, etc, a host of
43 issues that you typically might not get involved with through the traditional
44 process. In essence, what staff has typically stated in the past in several
45 instances is that this process can be a foundation by which a developer
46 develops their own little zoning code if you will, to speak to how property will
47 be developed. And it can be used not only for your large subdivision type
48 land area, but it can also be site specific.

1
2 Going back to Sunrise Mesa in terms of what we're dealing with, the
3 property is located at 5689 Porter Drive. It is the northwest corner of Central
4 Avenue and Porter Drive. It's part of an original PUD under the same name,
5 had a separate concept plan which was approved in 2007. Due to the lack
6 of development on that portion which is north of Central Avenue, the
7 concept plan expired. The zoning remained in place, but the concept plan
8 expired. And so now they're coming forward to resubmit a new proposal to
9 be considered this evening.

10
11 The property is currently undeveloped. It's bordered by a principal arterial,
12 which in this case is Porter Drive. It's a two lane road. It's improved. A
13 collector roadway called Central Avenue. It's unimproved. And at least a
14 portion that is adjacent to the development boundary. And one fully
15 dedicated and unimproved local roadway called Alba Road. That is
16 unimproved and that is the subject of the road waiver request, which will
17 also be discussed this evening. Three larger developments are in the
18 vicinity of this proposed area, Vista de la Montana, Tierra Hermosa, which
19 was recently brought forward to this Commission for approval in terms of
20 their subdivision proposal, and Sunrise Mesa mobile home park, which is
21 located south. The first two are on the east side of Porter Drive, so therefore
22 east of the subject boundary. There's also several individual lots in the
23 vicinity that are developed, in large part they're developed. And the land
24 use pattern basically consists of single-family and some multifamily type
25 uses. And the residential component of which is typically mobile home, site
26 built homes, and manufactured homes. The total acreage under
27 consideration is 23.2 acres. I've got an aerial here that shows the outer
28 boundary in red. Consists of two parcels, obviously, as shown. You got
29 Porter Drive along the east side. You got Central Avenue, you could tell the
30 name changes right at Porter, but Central on the south side. And this little
31 dirt road here is Alba. It's as indicated unimproved. Other roadways, Village
32 Drive will come into the discussion here, and that's located in this vicinity.

33
34 This is where Tierra Hermosa is currently underway in terms of
35 development. And this is where the other significant development has taken
36 place. El Llano Road, which was part of packet discussion previously
37 before the matter had to be postponed, is located here, but it is no longer
38 under consideration for tonight.

39
40 This is the zoning map that again illustrates the location of the proposed
41 development, outlined in red. You could see the subject property is PUD.
42 It's listed as PUD, R-2. Staff believes that the R-2 designation was merely
43 an indication of the density that the original PUD was to be developed
44 under. I think, for tonight and hereafter PUD is the zoning designation that
45 would be used and should be used. Everything around it, at least in this
46 area here is R-1a, that's your typical single-family medium density style of
47 development, site built homes, or mobile homes, in this case exist because
48 of annexation of the area prior to regulation that would prohibit them.

1 Manufactured homes as well. The Sunrise Mesa, the mobile home park sits
2 here. And here's R-1a mobile which allows mobile homes in this vicinity.
3 Further south of the subject property is some commercial, C-2, C-3 as it
4 relates or as it comes closer to Bataan Memorial West.
5

6 So the proposal this evening is a mixed use PUD. It does have the
7 requested road waiver up for consideration. It's a multifamily townhouse
8 style of development that is being proposed. It's approximately 12.6 acres
9 in size for that residential component. If you look at just that residential
10 area, it comes in at about 16 to 20 dwelling units per acre in terms of density.
11 If you look at the whole, the 23.2 acres, it falls more in line with an eight and
12 a half to 11 dwelling unit per acre density calculation. The commercial tract
13 is 4.41 acres more or less, and the drainage/open space is 2.9 acres, and
14 right-of-way consists of four. The proposal seeks to develop the property in
15 three phases. The first one sits clear of any issues involving stormwater,
16 drainage related matters. The other two will come into play and have to be
17 coordinated with the City of Las Cruces in that there's a conditional letter of
18 map revision or a letter of map revision process underway. And that has to
19 take place before any development takes place.
20

21 The public benefits that were identified per the concept plan is mixed use
22 development, provisions for attainable housing, in this case, missing middle
23 or a form of missing middle. It brings commercial, a pocket of commercial
24 into the area further north of Bataan, which is nice. You don't have to travel
25 or hop in the car to go get milk or eggs or whatever else you may find in a
26 commercial center. The proposal also provides opportunities for passive
27 and active recreation in that there is a drainage tract provided in the
28 boundary that will be maintained by the developer, but also allows for some
29 recreational activities if the residents so wish. It's walkable from a
30 connectivity perspective, there will be sidewalks provided throughout, and
31 reflected in future planning efforts associated with the development
32 process. The provisions for stormwater conveyance are being provided to
33 aid the City of Las Cruces and drainage projects, ultimately dumping some
34 of the water into the Oro Vista pond which is adjacent to the subject
35 boundary.
36

37 There are every intention by the developer to match any existing right-of-
38 way cross sections, particularly those for Central Avenue and Porter Drive.
39 Any necessary pro rata share of dedicated right-of-way along Porter will be
40 provided. Any improvements, pro rata share will also be provided. Central
41 Avenue is going to be 100% built out. And there is also provisions for an
42 additional 40 feet of drainage right-of-way to aid in that drainage effort that
43 the City is part is looking at, at the present time.
44

45 The proposal regarding Alba road, there's 50 feet of right-of-way that exists
46 for Alba Road. It is a local roadway, and so there's no need for further
47 dedication right-of-way. But according to design standards, development,
48 or any application for development would have to improve that road, but

1 since the developer is providing additional dedication for drainage to aid in
2 the overall good of the area in terms of drainage, and because the Sunrise
3 Mesa PUD, the concept plan does not intend to access this local roadway
4 or have any form of ingress egress to it. And because the Alba Road dead
5 ends at the northern point, and there just did, it would serve one property
6 owner, and that's the owner where that roadway is located. And so as such
7 they are seeking to not be required to improve Alba Road.
8

9 This is a very small picture snapshot of the concept plan, but I'm going to
10 focus in on this area. This is the actual concept plan itself. This was that
11 drainage pond that I told you about. It's adjacent to Alba Road here. This
12 is the road that has the 50 feet of right-of-way, but they're asking for a waiver
13 request to improvement. This blue area represents, or purple area,
14 however it's coming up there, is the 40 feet of additional drainage right-of-
15 way. Central Road, being a collector has an 85 feet, or will have the 85 feet
16 dedicated. Porter Drive located here along the east side has the hundred,
17 or will have the 120 feet of right-of-way. Village Drive intersects right here,
18 and at the present time, there is a lot of discussion and design
19 considerations going in for a roundabout at this location, which the applicant
20 and representative are well aware of and intend to design with that in mind.
21 The area in red represents the lots that will have the multifamily uses on it,
22 the town homes located on it. Most will be four attached units, some will be
23 less, but the intent is to have four units. They will follow a policy that's
24 established in house to allow development of those units as a single-family
25 use rather than a commercial use. There are some commercial aspects,
26 such as landscaping that are still considered but that serves as a benefit to
27 the developer for a variety of reasons, mostly insurance as I understand it,
28 among others.
29

30 This here is a commercial tract right at the intersection of Central Avenue
31 and Porter Drive. And the road network obviously looping around. One
32 thing you have connectivity. This was an access easement if you will, for
33 pedestrians to get to the commercial tract. And this one as well. A couple
34 of photos just to give you an idea of what's out there, Porter Drive and
35 Central Avenue looking north. Vista de la Montana is over here. Porter
36 Drive looking south, you can see the park that is provided at Vista del la
37 Montana. This is where Village Drive intersects Porter road. And this is
38 Central Avenue at Porter looking west. And I'm along Central Avenue
39 looking north, and this is Alba, more so a trail than anything else at this point
40 in time.
41

42 So our analysis from a staff perspective, no health, safety, welfare issues
43 were identified as concerns by staff. The property sits within the suburban
44 neighborhood place type. It's characterized by low to moderate density
45 residential with some commercial uses incorporated or intermixed into the
46 area. The proposal aligns with Elevate Las Cruces, in fact there's several
47 goals, objectives, and policies that pertain and support what is being
48 considered this evening. It's consistent with the PUD section of the Zoning

1 Code. And notice was sent to the surrounding properties. And at this point
2 in time, other than the one individual who had questions regarding El Llano,
3 which is no longer at issue per this new submittal showing the new
4 boundary, staff has not heard of any other concerns at this point in time.
5

6 The staff recommendation is conditional approval based on the findings.
7 Again, the area was previously planned for multifamily development. That
8 plan expired. It addresses all the requirements per the PUD section of the
9 Zoning Code. All applicable rights-of-way will be provided, and roadways
10 improved per ordinance, except for the local roadway, which is under waiver
11 consideration, of the Commission deems it appropriate to do so. The
12 applicable improvements along Central Avenue will be coordinated with City
13 of Las Cruces to help facilitate off site drainage improvements. The PUD
14 provides flexibility in terms of development, in terms of what they are
15 proposing, and there's a balance with what they're requesting in terms of
16 what public benefit are received by us as residents of Las Cruces. The
17 proposal seeks to provide a form of missing middle housing, and as such
18 the conditions are as follows, the developer's to match any existing and/or
19 approved alternate cross sections as they relate for Central Avenue and
20 Porter Drive. Central Avenue is perhaps the one roadway that will have an
21 alternative cross section considered due to the drainage right-of-way.
22 Porter Drive is pretty much your standard roadway, arterial roadway, so less
23 so on Porter Drive, more so on Central. The modified cross sections or any
24 request to do so will have to go before DRC. And there's a request by
25 several of the DRC members to ensure that safe modes of pedestrian
26 access are incorporated into said road designs or cross sections to ensure
27 proper connectivity and access to uses adjacent to this development. And
28 I'm speaking to the park and trails that are on the east side of Porter. DRC
29 heard this request and the waiver request on 08/28/24. And DRC
30 unanimously recommended a conditional approval to P&Z of the concept
31 plan. The road waiver did not have a similar fate. Keep in mind that that
32 original request involved El Llano and Alba. El Llano is off the table today.
33 It's no longer part of the discussion. The fire department said that at that
34 meeting that they could probably support the Alba Road waiver, but not the
35 El Llano. So if you take that into consideration, it's more three/two in favor
36 as opposed to two/three denied.
37

38 Your options this evening, evening, Mr. Chairman, Commissioners, to vote
39 "yes" and approve the request for the concept plan and the road waiver
40 separately of course. You could vote "no" and deny them. You could vote
41 "yes" with conditions as those presented by staff or any others you may
42 deem appropriate. And you can vote to table. Any denial requires new
43 information or findings that have not been provided to you in the packet or
44 presentation. And that concludes staff's presentation. Mr. Harlow Dynek,
45 the property owner is in attendance as well as Paul Pompeo, his
46 representative, and they may have some presentation to provide.
47

48 Kaiser: Thank you. Does the applicant have a presentation they wish to make?

1
2 Pompeo: Good evening, Mr. Chairman.
3
4 Kaiser: Please state your name for the record.
5
6 Pompeo: Paul Pompeo.
7
8 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
9 and nothing but the truth under penalty of law?
10
11 Pompeo: Yes, I do.
12
13 Kaiser: Go ahead.
14
15 Pompeo: Thank you, Mr. Chairman, Commissioners. I have a short presentation, and
16 then I would be happy to answer any questions you might have about this
17 development. Once again, this is the Sunrise Mesa PUD area located to
18 the northwest of Porter Drive and Central as outlined on this map. Staff has
19 gone over quite complete the concept plan as shown here. Once again
20 here's a zoomed in version showing kind of the lot alignments, the interior
21 roadway alignments that will be built to City standard, along with the
22 commercial tract to the southeast of the development.
23
24 Once again, this property is 23.2 acres in size. Its existing zoning was PUD
25 R-2. The original PUD was actually approved in 1999. And by this
26 development we're proposing 12.6 acres of multifamily housing, 4.41 acres
27 of commercial, 2.19 acres of open space/stormwater management, and
28 then that leaves four acres of dedicated right-of-way from this tract of land.
29 The multifamily areas are proposed to have land use density between 16 to
30 20 dwelling units per acre, for a total unit count of between 201, 252 units.
31
32 This is the original PUD that I presented to this body in 1999. Boy how time
33 flies. And so the northern area kind of showed how the lots were going to
34 be laid out as a manufactured housing type development. So the public
35 benefits of this PUD concept plan is to provide multifamily residential
36 housing and neighborhood commercial land uses for a growing population
37 in an area of Las Cruces that has these limited type of zones. Housing
38 options proposed by this development provide additional opportunities other
39 than typical single-family products that are not attainable to many in the
40 population. Neighborhood commercial zoning allows for goods and
41 services adjacent to the residential housing, within walking distance to this
42 development and to others in the area. Also, as indicated by staff, we are
43 proposing to do our 50% build out of Porter Road and 100% build out of
44 Central Avenue. As discussed by staff on the flood zone issues by this
45 development, we are going to participate in the future Sandhill Arroyo
46 Channel Project which will eventually connect the Waterfalls Flood Control
47 Facility which is to the east and south of Highway 70 to the Oro Vista Flood
48 Control Facility which is located to the west of this development. This

1 project will feature the construction of a concrete line drainage channel
2 which will ultimately remove 27 individual properties from the existing flood
3 zone in that area.
4

5 Now moving on to Alba Road, as shown here on the map, Alba Road is
6 located in this area right here. This is the tract of land that's adjacent to the
7 Sunrise Mesilla development, and then adjacent to that is the Oro Vista
8 ponding area that belongs to the City of Las Cruces. As noted by staff, this
9 strip of land runs up and it dead ends in this area here. And note the
10 housing of existing lots in this area. We are respectfully submitting this
11 roadway waiver to Alba for the following reasons, Alba Road is wholly
12 contained on the adjacent property of the west. This roadway was created
13 by a previous property owner of that tract. The Sunrise Mesa development
14 has no beneficial use of this roadway as we are taking no access from it.
15 Improvements, if required to this roadway, only benefits the underlying
16 property owner and no one else in this area. And to continue Alba Road
17 does not contribute to the overall roadway network in this area either as it
18 dead ends to the north and therefore provides no additional continuity to
19 any other property. Based on these reasons, we feel that a waiver to these
20 roadway improvements for this specific stretch of road are justified. And I
21 want to point out this is the deed where this easement was created and it's
22 located right in this area here where it says, it's subjected to a 60 foot road
23 and utility easement on this property. And what I'm suggesting by that Mr.
24 Chairman, Commissioners, that the property owner took it upon themselves
25 to create this 60 foot strip of land. This deed was filed back in 1988 I believe.
26 And so it was created by that property owner, and so since they've created
27 it on their land, wholly on their land, it should be their responsibility to
28 develop it. With that Mr. Chairman, that concludes my presentation. I'd be
29 happy to answer any questions the Commission might have.
30

31 Kaiser: Thank you. Any questions from the Commission? Commissioner Smith.

32
33 Smith: I just have one quick one for clarification. The access point is it going to be
34 from Porter Road and from Central Avenue?
35

36 Pompeo: Yes. There will be one access point, one off of Porter and one off of Central.
37

38 Smith: Okay, thank you.
39

40 Kaiser: Go ahead, Commissioner Thurston.
41

42 Thurston: Who's the property owner? Sorry, how you're supposed to say it properly.
43 Chair and then Pompeo. I always mess up on the thing. On the other side
44 of Alba Road to the west, who's the property owner of that?
45

46 Pompeo: The last name is Calderon.
47

1 Thurston: Okay. I'm just curious if there's any? Now is this on your, the 50 foot right-
2 of-way is on your piece, or is that on his piece?
3

4 Pompeo: Let me. Mr. Chairman, Commissioner. Let me go back to that. This strip
5 of land, Alba Road, and I guess just for clarity, I found the document that
6 created the 50 foot easement. I have not found a document that took it from
7 an easement to dedicated right-of-way. I don't believe that that has any
8 impact on this discussion tonight because the City would have never
9 accepted it for dedication without having improvements on it. So there may
10 be a mapping issue there. I'm just saying I was not able to find it. That
11 easement does exist, it is of record, and it was on top of this tract of land
12 here that was the 14.6 acres to the west.
13

14 Thurston: Is Alba Road a local road?
15

16 Pompeo: It would be a local road, yes.
17

18 Thurston: Okay.
19

20 Kaiser: Any other questions?
21

22 Je. Acosta: Mr. Chair. I have a question for Mr. Pompeo. So from my understanding
23 you're going to build the 50% of Porter Drive and 100% of Central Avenue,
24 and you are not requesting a waiver for Alba. You don't want to touch Alba
25 because it doesn't impact the property. Correct?
26

27 Pompeo: Yes, Commissioner Acosta. We're going to do the 50% build out of Porter
28 which is required by code. We're going to do 100% of the build out of
29 Central. Central is a Collector, it could be argued that you know we're only
30 to do our half of that but this developer has, in order to get access in area
31 because there's no, we saw no avenue that the property owner to the south
32 was ever going to be able to come back because that development is
33 basically complete. So I guess in the grand scheme of things we talk about
34 benefit, maybe we're shifting the responsibility. We're building out the
35 drainage channel, we're building out more of Central, we're asking for the
36 waiver to Alba Road.
37

38 Je. Acosta: Mr. Chair. I don't know if this is appropriate or not, but I have to commend
39 the builder for doing that, building 100% of the Central Avenue and then
40 participating in the drainage channel. That's a rarity.
41

42 Kaiser: So just for my own clarification, this maybe is a question for staff. So it's
43 established that Alba Road is not on the applicant's property, correct?
44

45 Pompeo: It is not. Mr. Chairman, it is not on my client's property. That's correct.
46

1 Kaiser: Okay. So a question to staff is, why are we requiring them to I guess follow
2 an access easement that is not, that has nothing to do with this application,
3 this property owner, this applicant.
4

5 Banegas: Mr. Chairman Commissioners. Per when we had talked, when staff had
6 talked with the applicants and applicant representative, the discussion
7 centered around Alba Road having 50 feet dedicated. As per the design
8 standards Chapter 32 of the Muni code, any adjacent roadways of a local,
9 anything below a collector improvement is required 100% by the adjoining
10 development or the proposed development that adjoins that road. And
11 that's the only reason why they were on the hook to improve Alba Road.
12 Now, when we were talking about it, it was dedicated, so Mr. Pompeo had
13 just indicated that an easement document had been found, but no
14 dedication document. So if I were to read the code literally, they probably
15 wouldn't be on the hook for it at all unless there is dedication involved. You
16 know it's just one of those catch 22s where what is it really.
17

18 Kaiser: Okay. So, just to make sure I'm following, so there's no record that this,
19 there was a local roadway designation to create all the road, correct?
20

21 Banegas: That's what Mr. Pompeo has stated.
22

23 Kaiser: Okay.
24

25 Banegas: He could not ...
26

27 Kaiser: And the City agrees with that. There's no ...
28

29 Banegas: Based on what I've heard this evening, without doing our own research, that
30 kind of thing, I don't have a clear answer for you on that.
31

32 Kaiser: Okay. Seems like an important question to answer if we're asking the
33 applicant or in this case requiring the applicant to build a road, seems like
34 that would be something we would want to know the answer to. Because
35 the way that I see it right now, the applicant hasn't proposed any access
36 from this Alba Road, and the access, the legal access easement as it exists
37 now is not even part of this application. The property owner doesn't even
38 own it.
39

40 Banegas: Correct. It's adjacent to the boundary of the concept plan. But if it were
41 dedicated, looking at the request and what has been presented and
42 provided to you in your packet, it assumes the worst case scenario in terms
43 of the improvement of that roadway, it assumes dedication. So if it were
44 dedicated they would be on the hook to improve. And what the request is
45 this evening is a waiver to that standard, if you will. So if it's no longer
46 dedicated and it's just an easement and you know question exists whether
47 or not it is considered even a local road, it's just an access easement.
48

1 Kaiser: Okay. I'm falling, I think I'm just not sure why we wouldn't run this to ground.
2 Why are we dealing in the hypothetical? I mean there's clearly an answer
3 out there, right?
4

5 Banegas: Yes, in terms of the review, yes, there should be an answer to that. In terms
6 of the review of the proposal, whatever is submitted by the applicant goes
7 through the reviewing parties. Land management for instance takes a crack
8 at it, planning, etc, fire. And you know this issue did not come up in terms
9 of dedication or easement. It was identified as dedicated right-of-way.
10

11 Kaiser: Okay.
12

13 Banegas: By the applicant.
14

15 Kaiser: And staffs position is the applicant is on the hook for developing.
16

17 Banegas: Per code, yes. If it is dedicated, yes. If it is not ...
18

19 Kaiser: Well is it or isn't it?
20

21 Banegas: That's, we don't know. I don't know. I don't have a firm answer for you. But
22 what I'm saying is the worst case scenario in terms of it being dedicated,
23 the applicant would be on the hook to provide but they're asking a waiver to
24 that standard. So really the question is, do you feel what they're providing
25 via their concept plan warrants consideration of the waiver if it were
26 dedicated or not?
27

28 Kaiser: Yes, I guess I'm having an issue with the fact that we don't, we haven't done
29 our homework here. It seems like if the answer is there's no dedication,
30 there isn't even a need for a waiver. It's a moot point. So I'm just not sure
31 how we got this far without figuring out what seems to be a pretty
32 fundamental question. But I'll get off that horse unless there's anything else
33 to add to it.
34

35 Pompeo: Mr. Chairman. The issue with Alba Road has been one that's been lurking
36 for a while. And it would be inappropriate for myself to pin this one on staff.
37 We did our own property research going back, you know prior to 1980 the
38 tracts of land, and even farther back than that, were identified by sections
39 of land. As we start digging into it and looking at Alba Road, Alba Road has
40 shown up as a dedicated right-of-way on the GIS forever, all the way back.
41 So I think people just inherently just took it that it was a road. Well in looking
42 at this application and actually I didn't get the deed for this until today. And
43 I apologize for the lateness, Mr. Chairman, but the only thing I could find in
44 coming up through 1983 to '88 to '89 so we're in the county and we're prior
45 to ETZ, this easement was showing up on the deeds and then all of a
46 sudden it turned into dedicated right-of-way. Well, taking a step back, so if
47 we start in '89 with the ETZ, the only way that that could have been
48 dedicated right-of-way after that point was either, so that was prior to it being

1 annexed in the City. So I misspoke. The only way for it to be, by the time
2 we get to 1988 or '89, the only way for it to be dedicated right-of-way was
3 there's only two ways, one was via subdivision plat, and both of these
4 properties are not within a recorded subdivision so we know it didn't happen
5 that way. There could have been a separate dedication request that went
6 to City Council, but number one I have not been able to find that, and
7 number two, I find it hard to believe that the City would have accepted
8 dedicated right-of-way with no improvements. They just, that just doesn't
9 happen. So I stand here before you tonight because there's always that
10 one in a million chance that there's a document's going to pop up, and I
11 don't want to take that chance as we get to City Council. So I'd like to
12 proceed forward with the waiver request with it being assumed to be
13 dedicated right-of-way and then if it turns out not to be, then that request
14 will just fall away as we make our way to City Council.

15
16 Kaiser: Okay. Thank you very much. That's helpful context. I appreciate that. Any
17 other questions on this topic? I have a few other questions. Moving on to
18 the open space and drainage. So can you just describe a little bit more
19 what the idea is there as far as combining those two things?

20
21 Pompeo: Well, we've done the drainage calculations volumetrically for what that area
22 needs to be. We just don't have a, if we only need first instance Mr.
23 Chairman, if we only needed half of it for the actual drainage improvement,
24 then we would try for a park or open space or other amenity, some other
25 type of amenity. It's just at this time because we don't have the design
26 finished we don't know how much area we've got to work with. So I wanted
27 to leave the door open for open space. And rather than just calling it a
28 drainage tract, I wanted to leave the opportunity that could be more than
29 that.

30
31 Kaiser: Okay. Because on the concept plan it very clearly just says drainage. So I
32 don't know if we need to change that to make sure that the open space is
33 captured there. I guess what would happen if you, if the calculations come
34 back and you say you need the whole thing for drainage, the open space is
35 out of the picture at that point.

36
37 Pompeo: It possibly could happen that way. I don't know what the, you know with, in
38 what I saw, talking about the drainage not trying to deflect the answer is
39 that, but we have drainage from this development plus we have drainage
40 that we're going to cut off from those existing arroyos to take down to that
41 channel below. So taking all that into consideration, since we haven't done
42 the hard engineering on it yet I couldn't answer that, but there is a possibility,
43 Mr. Chairman, that the entire area would be needed for just stormwater
44 management.

45
46 Kaiser: Okay. But because where I'm kind of thinking that my thought process here
47 is that it seems like there would be an opportunity to have both of those
48 things, right? You could do some sort of native type of landscaping in your

1 stormwater drainage tract that can serve as passive you know recreation in
2 addition to when it does rain on occasion, you're then able to capture
3 stormwater as required. So I'm just wondering if that, could that be the
4 eventual outcome here.
5

6 Pompeo: Yes, Mr. Chairman. I mean, we would accept a recommendation or maybe
7 another condition to modify this from drainage to drainage/open space, and
8 then that would leave opportunities for that.
9

10 Kaiser: Okay. I mean it seems like that would be a way to accommodate both of
11 those concepts. Because it sort of seems weird to be talking about this idea
12 of open space and that you're putting that in your win column, right as it's a
13 public benefit. But then you know we get to the end of it and it's like well
14 just kidding we needed it all for stormwater. It seems kind of ...
15

16 Pompeo: Yes, Mr. Chairman. We can, we'll make that modification. In the original
17 concept plan the green area was wider because we were pushed out to the
18 north a little bit more. So I don't know why it got dropped off, but we will add
19 that back in as a condition, if approval, if you so see fit.
20

21 Kaiser: Okay. Yes. I mean we should consider that as an additional condition here.
22 And then just for clarification on Central Avenue. So that whole right-of-way
23 will be from these two tracts, correct?
24

25 Pompeo: There'll be a total of 125 feet of right-of-way between the existing property
26 line of the Sunrise Mesa Mobile Home Park to the southern boundary of this
27 development.
28

29 Kaiser: Okay, but your dedication, the full dedication of Central Avenue is coming
30 from this applicants property.
31

32 Pompeo: No, there was a, let me go back to the, I think originally you can see the gap
33 in there. This Sunrise Mesa on the southern end built up to this property
34 line. I think this was shown as a 50 foot road at that time in 1999. But so
35 we're going to go from that property line 125 feet north. So whatever is
36 missing there, whatever it takes to get to the 125 foot will come out of the
37 northern piece.
38

39 Kaiser: Got you. Okay. Thank you. And then this is I think a question for staff. So
40 on the density, we obviously have the number that you threw around, I think
41 it was 16 to 20 if you're just looking at the residential component. But what
42 mechanisms are there to ensure that that is ultimately what gets built? I
43 mean, because the site plan, I mean I didn't do the math, I didn't count, I
44 don't know how many lots that is, but I don't think that's the 200 that Mr.
45 Pompeo identified. So I guess what mechanisms, because I don't see
46 anything in the staff report that says there shall be a minimum residential
47 density. How do we ensure that what we're talking about tonight ends up
48 getting best?

1
2 Banegas: So Mr. Chairman, Commissioners. The concept plan itself, if you go to I
3 mean the larger picture, I realize that it's hard to read. It's a lot of
4 information. Down here in there, on the concept plan it illustrates the
5 method of construction and the manner in which those homes will be
6 attached. And so, because it's here and because it gets approved, should
7 you approve it, that's what they're going to have to follow.
8
9 Kaiser: Thank you. Those are all the questions that I have. Commissioner
10 Thurston.
11
12 Thurston: I got a question regarding the lots as well. Because when it comes to
13 permitting time you go in there with just a single lot, and if this is R-2 it still
14 says that you're permitted to build a single-family home on this lot. What's
15 going to stop you from putting a fourplex, a duplex, versus just a single
16 residential family home on there? If it's meant for multifamily what is the
17 mechanism in which that's going to be upheld? Because in here if you've
18 got 51 lots and you get a fourplex on there, you got about 204 lots, or 204
19 units, which in this it's showing that as a multifamily. So is that written, I
20 can't read the small print on the concept plan, so I'm just wondering if that
21 is written in on that?
22
23 Banegas: It is. Mr. Chairman, Commissioner Thurston. The blow up of the concept,
24 Particularly this tabular data here, not only gives the range for multifamily in
25 terms of the density, but also indicates the minimum number of units is 201,
26 and the maximum is 252. And then as indicated in the previous answer, I
27 know I cut it off just simply to fit it on the slide, but down on the bottom page
28 of the concept plan the applicant illustrates the manner in which
29 development will take place on each lot. They are proposing to utilize a
30 departmental policy that allows them to permit those as single-family, but
31 the fact that there's going to be four, we would normally in the planning world
32 call those a quadplex, worst case as indicated in certain instances it would
33 be a duplex. But from a permitting standpoint, they're going to be able to
34 utilize a policy that allows them to permit those as single-family units, but
35 the broader property landscaping all that still has to be met as a multifamily
36 component. So from planning perspective, it's multifamily. I'm just saying
37 from a permitting perspective, they get the benefit of that policy as single-
38 family.
39
40 Thurston: Okay, so on this density I can't read this one. You're saying the minimum
41 density is 201 units.
42
43 Banegas: The total number, the minimum total number of units is 201.
44
45 Thurston: So in the DRC comments they were saying they would possibly be doing
46 some duplexes.
47
48 Banegas: Correct.

1
2 Thurston: So if you did duplexes that would be underneath the, if you did all of them
3 as duplexes you'd be underneath the 201.
4
5 Banegas: Mr. Chairman, Commissioner Thurston. What the applicant has stated is
6 for the most part there's going to be certain instances where duplexes would
7 pertain and perhaps Paul has clarity on that, but it was mentioned that
8 fourplex would be the thrust of their development proposal.
9
10 Thurston: Thank you. I got a couple other little questions for clarity. On the public
11 benefits is the drainage was one of the ones that I saw. As you see the
12 drainage coming across the property, it looks like it's more just being shifted
13 from the middle down to the Central is what I'm kind of seeing. So the public
14 benefit of that is, I don't see a public benefit of that other than it's just a good
15 way for its proper engineering.
16
17 Pompeo: Mr. Chairman, Commissioner Thurston. I need to get back to my slide.
18 Sorry. Okay. So this land tract here, or this, where this vegetation is
19 greener, and then this channel alignment here, it's what constitutes two
20 fingers of the Sand Hill Arroyo. This arroyo runs through the Tierra
21 Hermosa subdivision, which what the staff spoke of, which is to the east of
22 here. This Sand Hill Arroyo runs in its natural flow path between the
23 Waterfalls impoundment area which is up off a Holman Road and, or
24 actually Dunn Drive and Highway 70, runs in its natural course down into
25 the Oro Vista ponds, which you can see are tagged here. Between this
26 development here at Sunrise Mesa, the Tierra Hermosa development to the
27 east, and there are five other, or I'm sorry, four other property owners, is to
28 take the Sand Hill Arroyo from where it crosses Highway 70 and in a
29 concrete channel running down Central Avenue, coming into the two inlets
30 here that are in the Oro Vista pond. So this channel is not just, in other
31 words this cannot be taken out of the flood zone until this entire channel
32 gets built. And that's why we've restricted to only phase one which is in the
33 northern area of the development here. And we can't do anything else until
34 this channel gets built. So this channel is required by this development for
35 phases two and three. It's also required for the third phase of the Tierra
36 Hermosa subdivision next door. We have met with the City of Las Cruces
37 and the Public Works Department. This interconnection is part of the City
38 stormwater management plan. And so we'll be working in a collective effort
39 with the City, the other property owners, and this adjacent developer of
40 Tierra Hermosa to get this channel built.
41
42 Thurston: I got one last question. So thank you for that explanation of that. The last
43 one that I have is on Porter Road or Porter Drive. When will the entire Porter
44 Road be built out? Will that be built out in phase one?
45
46 Pompeo: Well Porter Road is kind of a tricky animal here, because when the Visa de
47 la Montana subdivision that we got approved back in the 2008 or 2009 we
48 had to put this chicane in in Porter Drive because we couldn't get, because

1 Porter Drive was down on the western side of the right-of-way at this
2 intersection. So the decision was made to shift Porter Road over so that it
3 would line up with the other half on the western side. But as Porter Road
4 came up to this Vista de la Montana subdivision, it changed back to the east
5 side. So as it sits today, the Tierra Hermosa development that this
6 Commission has previously approved in the last five or six months, they are
7 on the hook for building this other half of Porter Drive here. The Sunrise
8 Mesa group is required to build it from this location to the north. So you
9 have two existing ongoing subdivisions that will build this full section of
10 Porter Drive.

11
12 Thurston: So when you come in and do phase one, then Porter Drive, that will be
13 installed at that time.

14
15 Pompeo: Yes.

16
17 Thurston: Okay, and that'll be in phase one. I just, I was nervous on that because as
18 you see throughout the City, now this doesn't have to do with this project,
19 but throughout the City we see where it goes from a two lane to a four lane
20 back to a two lane and then another half a mile it goes back again. And so
21 I'm just wanting to make sure that we're not, when phase one is getting put
22 in, if phase one is the north portion of it, we're not going back again and
23 doing the same thing we've done in past, is going from four and then
24 allowing the development to happen here without improving the rest that at
25 that time. So I just, my personal issue of me driving around the City is that
26 it really goes from a four to a two to a four and it drives me insane.

27
28 Pompeo: Yes, Mr. Chairman, Commissioner Thurston. And to your point, the first
29 phase of this development does run down, this little area right here is Village
30 Drive, and so this is the future roundabout that the staff and the developers
31 at Tierra Hermosa have been discussing in the next phase of that
32 subdivision is that this would get built. So all of that will get built all
33 approximately the same time.

34
35 Thurston: Thank you.

36
37 Kaiser: I have one additional question that I remembered. This is I think a question
38 for staff at first. But the commercial part of this development, what? How?
39 How does that align with our current commercial zoning districts? Will it not,
40 any restrictions on what they can and, cannot do from a usage perspective?

41
42 Banegas: Mr. Chairman Commissioners. In terms of the proposed use of that property
43 for commercial purposes, it would align with our existing designations.
44 Keep in mind that the property itself is going to be zoned PUD. They're
45 proposing potentially one, potentially a small center of multiple commercial
46 uses, so it may not have a C-3 or C-2 designation like we typically see, but
47 they intend to use it as a commercial center, either individually or in tandem
48 with other like uses.

1
2 Kaiser: Okay. But when we talk about commercial center, are we talking
3 neighborhood centric uses, God forbid another self-storage. Like what are
4 we? I mean, what's kind of the cons? I guess if we leave it open to whatever
5 they want it sort of seems kind of defeating the purpose of a PUD I would
6 think
7
8 Banegas: The, did you want a use on the C-3 neighborhood.
9
10 Pompeo: Mr. Chairman. The uses on that property would just be more neighborhood
11 based, you know nothing major. In other words, we don't see a plan where
12 the entire four plus acres would be consumed by just more like one building,
13 it would be all neighborhood, small commercial uses.
14
15 Kaiser: Got it. Thank you. All right I will turn to public comment. And if there's any
16 additional comments we can come back afterwards. So anybody in the
17 audience who wishes to speak on this item, can I get a show of hands.
18
19 Pompeo: Mr. Chairman.
20
21 Kaiser: Yes.
22
23 Pompeo: The staff and I are looking at a deed or a warranty deed that speaks to Alba
24 Road, but it does ... it's a warranty deed that, and this is why I couldn't find
25 it. This is a warranty deed between the City of Las Cruces and Woods from
26 '92. But the property information that I found was previous to that in '89. It
27 talks about a warranty deed for a piece of land, but it would, what I'm not
28 seeing, I didn't see a dedication document, and that's what I was looking
29 for. So that's what staff and I are discussing. I apologize if attention was
30 taken
31
32 Kaiser: No worries. I guess what does that mean for us doing research on the fly
33 here?
34
35 Pompeo: I'm going to let Adam take that on.
36
37 Ochoa: Well, welcome Janet, ETZ's back. She saw these can of worms that,
38 pardon me, Adam Ochoa, Community Development. We saw these cans
39 of worms multiple times in the ETZ where basically essentially people
40 owned a huge tract of land that somebody in Albuquerque or somewhere
41 just drew a line saying this is an easement here. So when they bought that
42 land they said a road's eventually going to go there. And then essentially
43 sometimes they would leave it as an easement, and sometimes they just
44 said we're going to dedicate it. So they dedicate it to whatever entity is over
45 them, either the county or the City, ETZ as a joint venture. And then,
46 basically, the City would never accept it. The county would never accept it.
47 So it just stayed there. It's just kind of a no man's land, if you will, of a future
48 road that nobody claims really anymore. And then you find these tidbits

1 here and there, every once while, and sometimes you could put them
2 together, sometimes you couldn't. That's why sometimes ETZ subdivision,
3 especially for larger subdivisions, took such a long time to get done just to
4 find those things. So I guess tonight the request would be to possibly move
5 forward the waiver as if it is dedicated because if it is, then if you choose to
6 move forward with whatever recommendation you choose to, we have that
7 issue taken care of, if you will, where they'll either have to dedicate the road,
8 do more research and dedicate the road and build it, or they got the waiver
9 request and they won't have to build the road, essentially, sir.
10
11 Kaiser: Okay. And it's still staffs position that you wish to deny, or your
12 recommendation is to deny the waiver, that's staffs position.
13
14 Ochoa: Mr. Chair. Ours was correct to deny. Well, staff, planning staff did vote at
15 DRC to recommend approval for the waiver request. But DRC voted to
16 deny it with five different departments. It was a three to two vote for
17 recommending denial for the waiver request, sir.
18
19 Kaiser: Got it. Okay. Thank you.
20
21 Je. Acosta: Mr. Chair.
22
23 Kaiser: Yes.
24
25 Je. Acosta: Just for clarification, so if we approve the waiver, it's for them to do the build
26 out of Alba Road. Am I understanding that correctly?
27
28 Kaiser: No. If we approve the waiver it's so that they would not have to do the
29 improvements.
30
31 Je. Acosta: Would not. Thank you, sir.
32
33 Kaiser: Clear as mud.
34
35 Banegas: Mr. Chairman. If I may. In looking at some of the information from the staff
36 City website regarding rights-of-way, I found an instrument, 924203 with the
37 assistance of staff, dated 02/21/92, and on the map it does talk about right-
38 of-way for Alba Road, file date of 03/03/1992 and instrument number as
39 indicated, 924203. So staff would conclude that it's dedication. It may not
40 be accepted by the City because it's not improved, but it's dedicated.
41
42 Kaiser: And that's just on the adjacent property.
43
44 Banegas: That's on the adjacent property outside the boundary of this concept plan.
45
46 Kaiser: All right. Thank you. Commissioner Thurston.
47

1 Thurston: So the way the code is written, if I understand it correctly, and staff might
2 have to correct me on this, but since it's also a local road, and you're
3 subdividing and it's adjacent you're required to put the whole road in, not
4 just one side of it, but you're supposed to do the whole road.
5
6 Banegas: That's correct, 100%.
7
8 Thurston: So for clarification today they're wanting us to waive it and to not have them
9 have to put it in, and then that the future responsibility would lie on the owner
10 to the west.
11
12 Banegas: That's correct.
13
14 Thurston: Okay.
15
16 Banegas: Where the road currently sits.
17
18 Kaiser: Thank you. All right, going to go back to public comment. I didn't see any
19 hands, but just to confirm, nobody wishes to speak on this item this evening.
20 All right, seeing none. We'll come back to the Commission. Unless there's
21 any further conversation. We've got a couple of things; we need to restore
22 the rules to vote on these two items separately. So first we'll take a motion
23 to do that. Okay. Never mind. We don't need to make a motion. So we
24 can just vote on them separately. So we're unsuspending. Looking for a
25 motion then to, let's see where's my agenda, so the first motion will be item
26 8.1, which is the request for an approval of the Sunrise Mesilla Planned Unit
27 Development concept plan. So this is not the waiver, this is just the PUD.
28
29 Je. Acosta: I make a motion to accept the concept plan as presented.
30
31 Kaiser: Keep in mind there were conditions recommended by staff. So if we need,
32 if we want to keep those you need to specify with conditions. Now the
33 conditions, we are on page two of the staff report. It's just the conditions as
34 follows, there were three of them. Page two.
35
36 Banegas: Mr. Chairman.
37
38 Kaiser: So it doesn't include the waiver.
39
40 Banegas: Point of order. They're also up on the ...
41
42 Kaiser: Yes, they're also on the TV.
43
44 Je. Acosta: With staff recommendations, conditions as recommended by the staff.
45
46 Kaiser: Looking for a second.
47
48 Smith: I second

1
2 Faivre: Okay, so we'll take the vote on 8.1. Commissioner Thurston.
3
4 Thurston: Sorry, I was reading the, making sure I knew what the conditions were. Yes.
5
6 Kaiser: We need an explanation.
7
8 Thurston: Yes, based off of the discussion we have, and also that it meets the, I had
9 my notes, it aligns with the Elevate Las Cruces Comprehensive Plan.
10
11 Faivre: Commissioner Smith.
12
13 Smith: I vote yes, based on staff recommendation, and it complies with the Elevate
14 Las Cruces Comprehensive Plan.
15
16 Faivre: Commissioner Acosta.
17
18 Je. Acosta: Yes, based on staff recommendations and Elevate Las Cruces
19 Comprehension Plan.
20
21 Faivre: And Chair.
22
23 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
24 Cruces.
25
26 **8.2 Case No. 24CS4000100:** A request for approval of a road improvement waiver for
27 Alba Road immediately adjacent to and associated with the proposed Sunrise
28 Mesa Planned Unit Development (PUD) Phase II Concept Plan. As proposed, all
29 required right-of-way will be dedicated, but required improvements are requested
30 for waiver consideration. Submitted by Sauder Miller & Associates for Harlo Dynek,
31 property owner. Council District 6.
32
33 Faivre: Okay, now we're going to vote on item 8.2.
34
35 Kaiser: So looking for a motion to approve the waiver. This is item 8.2.
36
37 Je. Acosta: I make a motion to approve the waiver where the developer is not
38 responsible for Alba Road, development out.
39
40 Smith: I second.
41
42 Faivre: Commissioner Thurston.
43
44 Thurston: Yes.
45
46 Kaiser: What's your explanation?
47

1 Thurston: Sorry, I always forget about that. Yes, based on the, where's it, the public
2 benefit of the drainage coming across and also that the section where they
3 said they're going to produce the pedestrian walkways.
4
5 Faivre: Commissioner Smith.
6
7 Smith: I vote yes based on staff recommendation, and also consistent with Elevate
8 Las Cruces Comprehensive Plan.
9
10 Faivre: Commissioner Acosta.
11
12 Je. Acosta: Yes, based on staff recommendation, discussion, and Elevate Las Cruces
13 Comprehension Plan.
14
15 Faivre: Chair.
16
17 Kaiser: Yes, based on the discussion this evening, and the fact that the
18 development is not taking access off of Alba Road, and that it resides on
19 the adjacent parcel.
20
21 Faivre: Thank you.
22
23 Kaiser: All right, I think it should be a little bit easier the rest of the way.
24

25 **9. NEW BUSINESS**

26
27 **9.2 Case 24ZO1000102:** A request for approval of a Special Use Permit (SUP) to
28 allow a Group Childcare Home not to exceed twelve (12) children on a property
29 encompassing approximately 0.207 acres, zoned R-1a (Single-Family Medium
30 Density), and located at 1809 Beverly Place. Submitted by Creative Kid Care, LLC,
31 representatives. Council District 1.
32

33 Kaiser: Moving on to new business. First we'll hear case number 24ZO1000102,
34 which is a request for special use permit to allow a childcare group home.
35
36 Ochoa: All right. Thank you, Chair. This is a proposed special use permit or SUP
37 for a property located at 1809 Beverly Place. Property is located on the
38 west side of Beverly Place approximately 385 feet north of its intersection
39 with East Mulberry Avenue. It is zoned R-1a which is single-family medium
40 density. There is currently a single-family home with its ancillary uses on
41 there. Property is roughly about 0.207 acres in size. A lot of the lots around
42 this area are a little bit larger than your typical R-1a lots of 5,000 square
43 feet. There is an existing single-family home on there with an existing home
44 occupation. Basically that home occupation, we define that under our
45 zoning code as a family childcare home with a maximum of six children.
46

1 So showing here the subject property, as you can see leading into what's
2 just a large single-family residential neighborhood. Elementary school to
3 the north. A little bit, bearings, East Mulberry to the south here, and Madrid
4 I believe is to the north here as well. Here is the aerial again, a couple of
5 cul-de-sacs leading into that neighborhood here, where the east is majority
6 developed single-family. We've got some vacant multifamily zoning to the
7 west and south, and, of course, again, the school to the north.
8

9 So what we're reviewing tonight is that proposed special use permit to allow
10 essentially what's called by the 2001 Zoning Code a group childcare home,
11 which would allow up to 12 children. Per the City of Las Cruces Zoning
12 Code any more than six children being taken care of at a single-family home
13 with a home occupation are required to seek a special use permit. The
14 applicant has stated that they will be operating Monday through Fridays, as
15 they currently are from 7:30 to 6:00. They do have staggered, will continue
16 staggered drop off and pick up times, in the morning and in the afternoon.
17 They typically see anywhere between about two maybe three parents at a
18 time. They do utilize an online communication system with anybody that
19 comes to their daycare to provide announcements, updates, so on and so
20 forth like that to keep the minimum amount of parents on site at once. They
21 do have adequate parking and have provided a site plan showing they do
22 meet the minimum parking requirements for the single-family home and for
23 the proposed expanded home occupation.
24

25 The applicant has stated they will follow all requirements of the City of Las
26 Cruces, including the fire department and their requirements, and the state
27 of New Mexico as well. They finish off by stating essentially, they have
28 provided childcare services for over 13 years, so they're definitely
29 experienced with this, with what they're proposing here. Showing a site plan
30 here, as you can see rather large area here. Got a play area here for the
31 for the children, the home here. they have improved parking here. They
32 have gravel parking to the east as well, with on street parking along the cul-
33 de-sac, of course, since this is a local roadway on street parking is allowed
34 along the entirety of Beverly Road.
35

36 Showing here just a floor plan of what their day care is, areas are, bathroom,
37 so on and so forth. This was a requirement from them, from a fire
38 department showing their egress and emergency egress and so forth, so
39 they do take care of that. They take care of that issue for fire.
40

41 When staff did their analysis we essentially didn't identify any public safety,
42 health, welfare or safety issues, which is kind of one of the leading things
43 what you should be looking at for a special use permit. The proposed
44 special use permit is supported by Elevate Las Cruces Comprehensive Plan
45 in that it encourages for small business, entrepreneurship, and letting that
46 grow. Support for the increase in access to childcare, not only in small area,
47 neighborhoods, but the City as a whole. And also supports for home
48 employment and live/work units, that type of situation in the City. The

1 proposal is compatible with the neighborhood since it is a home occupation.
2 The primary use will continue to be a home. It'll look like a home. It won't
3 have any signage outside. With the ancillary use being the actual special
4 use permit or that childcare service. And additionally on top of that, this is
5 a much needed service throughout the community since we've had a
6 number of special use permits come before you all and as stated by the
7 applicant, and as stated in the past in other meetings as well, where
8 essentially caretakers have waiting lists for kids trying to get into their
9 childcare home services in order to provide childcare for them.

10
11 So public notice was sent out to all surrounding property owners within 500
12 feet of the proposed special use permit. Staff did receive two, an e-mail
13 and a letter which is before you. We also received two phone calls opposing
14 the proposed special use permit. Staff did receive also a phone call
15 supporting the proposed special use permit, essentially stating that there's
16 a school right there, it makes sense if you will. The people opposing it, as
17 you read in your letters, bringing up issues with traffic, potential additional
18 noise, the blocking of driveways, and so forth like that. We also had two
19 phone calls with really no issues just looking for information and hanging up
20 essentially on staff.

21
22 So with that, staff does recommend approval for the proposed special use
23 permit with the findings seen here. Again the property owner wishes to
24 expand her group childcare, to a group childcare home to allow for more
25 services and provide that assistance to the City. Drop off, pick up locations
26 are optimized on site to promote child safety. State of New Mexico early
27 childcare, education, and care department and their licensing requirements
28 will have to be followed and our requirements as well. Childcare again is a
29 much needed service in the City and surrounding neighborhood. Proposed
30 SUP does meet the purpose and intent of Section 30-2 of the 2001 Zoning
31 Code. And all applicable requirements of the 2001 Zoning Code, including
32 updating her home occupation will be followed. With that your options,
33 ladies and gentlemen, one is to vote "yes" and approve the proposed
34 special use permit. Two, to deny the proposed SUP. Vote to amend or
35 place conditions on the special use permit if deemed appropriate by the
36 Commission. Or four, table to postpone and direct staff accordingly. The
37 applicant is here if you have any questions for her. I stand for questions as
38 well. On one more note, my apologies, they want to mention though if you
39 do vote to deny the proposed special use permit you will have to provide
40 new findings of fact since staff is recommending approval and we provided
41 those findings. But I stand for questions. Thank you.

42
43 Kaiser: Thank you. Does the applicant wish to say anything before discussion?
44 You're not obligated to. Before you get started, please state your name for
45 the record so I can swear you in.

46
47 Sias: Catalina Sias.
48

1 Kaiser: And do you swear or affirm that the testimony you're about to give is the
2 truth and nothing but the truth under penalty of law?
3

4 Sias: Yes.
5

6 Kaiser: Go ahead.
7

8 Sias: I just wanted to state that, like Mr. Ochoa has presented, that I have been
9 doing this over for 13 years. And I've always had parents asking me for, to
10 be put on the waiting list. So I do have possible four people that are
11 interested. And as will gradually enroll them, not all at one time, just
12 because it takes time for you know parents to get used to the new parking
13 and follow protocol. And just to state that I've always been in compliance
14 with zoning in the several, three different locations that we've been
15 providing childcare. Our first place of business was on Bridger, and our
16 second place was Buchanan, and our third place now is Beverly. So if you
17 have any questions for me, I'd be more than welcome to answer them.
18

19 Kaiser: Great. Thank you. Any questions? Commissioner Smith.
20

21 Smith: Chair. I have one question. So you currently operate with capacity of six
22 children. For how long have you been operating?
23

24 Sias: For the pretty much the 17 years of doing this.
25

26 Smith: Okay.
27

28 Sias: And we've done overlap as well. We've done, we've had enrollments up to
29 eight, but it got complicated. And also COVID hit, so we went back to six.
30

31 Smith: Okay, so for 17 years you've been operating a home childcare center with
32 six kids.
33

34 Sias: Yes.
35

36 Smith: So now your request is to increase it by six kids to 12.
37

38 Sias: Yes.
39

40 Smith: So when I think about traffic, I look at the look at some of the concerns that
41 people that are opposing is this have, you may have up to you know possibly
42 six more vehicles stagger over time between 7:30 and 6:00 p.m. arrive and
43 drop off and pick up children. Okay. I just want to make sure from an impact
44 standpoint that you know we understand how many cars are actually going
45 to be increased over this time period from six kids to 12 kids.
46

47 Sias: So what me and my family have decided to do is move our personal vehicles
48 up more into our driveway so that'll give us at least two to three people to

1 park in our personal driveway, and then those that for the curbside, how it
2 goes round, we've done it in the past where we've peril, pepper decum,
3 sorry can't pronounce that word, three cars each, so that's actually six. And
4 then everybody just backs up and moves out correctly as to exit out the cul-
5 de-sac.
6
7 Smith: Okay. So you've already increased the ability to have at least two cars in
8 your driveway.
9
10 Sias: Yes.
11
12 Smith: Okay, so they would not be parked on the street, they would not be blocking
13 traffic. You're in the cul-de-sac, and they would basically stop and enter
14 your home, pick up their kids or drop their kids off. So we're talking
15 maximum five, 10 minutes that that car, if our car would be parked either in
16 your driveway, in front of your home?
17
18 Sias: Yes, five or 10 minutes. Yes.
19
20 Smith: Okay. Thank you. I just want to, I just mean, I'm just asking these questions
21 from a common sense standpoint approach.
22
23 Sias: Yes.
24
25 Smith: To how you're operating the traffic situation with your home. So I just
26 wanted to get some clarification so that as we address some of the
27 opposition to this.
28
29 Sias: Okay.
30
31 Smith: We use practical and pragmatic thinking.
32
33 Sias: Right.
34
35 Smith: In your opposition. Because if you just don't want it, that's one thing, but if
36 you don't want it with a really valid reason then that's something that we
37 have to address as we go forward. So I just want to just kind of set that
38 platform right now. All right. Thank you.
39
40 Kaiser: Any other questions or comments from the Commission? All right. I will go
41 to the public. Is there anybody here who wishes to speak on this item? Can
42 I just get a show of hands real quick so I can see. All right, just looks like
43 we got two, three individuals on this side. I didn't see any over here. So
44 we will start with you, ma'am. If you want to come on down.
45
46 Holloway: Good evening, everybody.
47
48 Kaiser: And before you get started, please state your name so I can swear you in.

1
2 Holloway: Valeria Holloway.
3
4 Kaiser: And do you swear or affirm that the testimony you're about to give is the
5 truth and nothing but the truth under penalty of law?
6
7 Holloway: Yes.
8
9 Kaiser: I'll give you three minutes. Go ahead.
10
11 Holloway: Thank you. I just wanted to just iterate that you were talking about the
12 multiple cars. Well, most parents are calling for two or three kids at a time.
13 There's hardly ever, we ever get one parent, a parent calling for just one
14 child is usually a brother and a sister. Maybe one has to go to school or the
15 other one will be at the daycare all the time. So the cars probably will not
16 be that many going in and out of her driveway. I just wanted to make that
17 clear that I hardly ever have families that have just one child. Thank you.
18
19 Kaiser: Thank you. And then we'll go, you guys take your pick, whoever wants to
20 go first.
21
22 Wong: Sorry about that Board Member, I walk a little slow. I have medical issues.
23
24 Kaiser: No worries. Please state your name for the record.
25
26 Wong: My name is Dominic Wong,
27
28 Kaiser: And do you swear or affirm that the testimony you're about to give is the
29 truth and nothing but the truth under penalty of law?
30
31 Wong: I do.
32
33 Kaiser: I'll give you three minutes. Go ahead.
34
35 Wong: Okay. Basically, I live to the right of the property and the areas of concern
36 that I had that my sister, we were the ones, my sister was the one who sent
37 you the letter, and she voiced her concerns about one being a residential
38 area, low traffic. And she also mentioned two, three other areas ...
39
40 Kaiser: Sir, do you mind just getting closer to the mic so we can hear a little bit
41 better. Thank you.
42
43 Wong: Increased noise pollution, expansion of the subject property, because if
44 they're going to have actually children living there, how much expansion is
45 going to work, and if there's going to be construction equipment and stuff,
46 trucks going in and out of the area. And then, and as far as are the people
47 that live in that area, there's a lot of elderly there, a lot of retired people like
48 myself and some of us have medical issues, and how is this going to affect

1 us with all this extra stuff going on, and for how long is it going to last? And
2 the biggest concern of course was property values. The one thing that we
3 were concerned about and it's in your letter was my sisters have experience
4 with this type of situation before in the past, and the biggest thing is when
5 you have a residential area changing over into a commercial zone area,
6 property values around that area seems to depreciate. And if we try to sell
7 our property in the future, how much of the value is going to lose? How
8 much are we going to lose in the property value? How much will we be able
9 to sell our property for? That was one of the biggest concerns. And we
10 presented that to Mr. Ochoa, and we're trying to figure out what's going on.
11 If it goes through, I don't have, we have a good relationship with the
12 individuals that live in that property with their childcare. But the biggest thing
13 of course is how it affects the rest of us as our properties. Because if it
14 comes in and we try to sell the house, how much do we lose? Because it
15 was just, because in this past experience that my sisters have had been
16 through with other situations, with other people in their residential areas,
17 there was a very substantial amount of money. They lost quite a bit. People
18 living in the area and their property values depreciate a very substantial
19 amount. If there's any kind of guarantee that we can have, I don't know if
20 we can have it in writing or I don't know if something that's verbal, it will
21 stand up, but we would like to have something that's solid that's saying that
22 in the future when we try to sell our properties that we won't lose our
23 property value.

24
25 Kaiser: Thank you very much. You have one second. Anything else? Thank you.

26
27 Wong: Thank you very much you guys. Have a good evening.

28
29 Kaiser: Thank you too. All right. There was at least one more hand, so please
30 come down.

31
32 Baron: Eloy Baron.

33
34 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
35 and nothing but the truth under penalty of law?

36
37 Baron: Yes, I do.

38
39 Kaiser: Go ahead.

40
41 Baron: Honestly, I'm a parent that drops off his children there. I don't know, is there
42 any way you can pull up a little cul-de-sac? Honestly, I think the gentleman
43 might be a little misunderstood of like contract or like contractors coming in
44 and building. She's not building or doing anything extra. I don't know if
45 you're able to zoom in on that cul-de-sac there. No, you're not able to.
46 When I pull in to drop off my child, I actually never see any other, like any
47 other parents, maybe one. And honestly the best part about the way they're
48 set up is I'm able to just drive pull in, usually I'm the one that pulls in all the

1 way up the driveway. In reality they have probably at least good room for
2 four vehicles to get in and out pretty easily. But if you notice around the cul-
3 de-sac in the front of their house, when people pull up you can park four or
4 five cars and you're not blocking anything anywhere along the way. Being
5 able to go in and out very quickly, that's probably like the best thing is that
6 we're able to mobile check in our children instead of having to get off. Or
7 we get off at the door and, boom, we're out. The kids usually run in. It's not
8 even five minutes, honestly, I'm not even there. But the truth is, is everyone,
9 or actually all these are parents here and everyone has at least two kids
10 that are going in there. So for that, it being more mobility, more vehicles, or
11 being worried about parking and stuff like that. For Ms. Catalina, I honestly,
12 there's plenty of room and plenty of space just within the front of her own
13 house for at least seven to eight vehicles easy. But yes, I just wanted to
14 clarify that little area. But honestly she has just about everything that she
15 needs, and honestly very convenient area. I don't see them, anyone losing
16 depreciation, especially with you have a new home or new homeowners
17 coming in with new kids. You got an elementary right there. You got the
18 hospital right there. Honestly, I think this will probably even bring up
19 appreciation in the neighborhood, just because you got childcare for anyone
20 that's new that has, coming in with a new single-family or more than one
21 family. I mean, you're kind of there, but I appreciate your time and you're
22 listening.

23
24 Kaiser: Thank you. All right. Did I see another hand up on this side? Yes. Do you
25 wish to speak? You don't have to. Okay.

26
27 AUDIENCE MEMBER SPEAKING, NOT AT THE MICROPHONE.

28
29 Kaiser: Got you. Okay. Thank you. Coming back to this side just real quick. No
30 other hands. All right. Close public comment. Come back to the
31 Commission. Commissioner Smith, you want to make a statement.

32
33 Smith: I don't have a question, just have a comment. We've had a number of
34 applicants come forward with requests to either establish or increase the
35 number of children that they have in their home childcare business. And
36 you know there is a shortage of childcare. There's a shortage of affordable
37 childcare in the City. And we have an applicant who has had a very good
38 home childcare center in her home for 17 years. And you know I want to
39 address Mr. Wong your concerns. You know we, as I said earlier we do get
40 a number of these applications over the years, and one thing that always
41 comes up is a decrease in property values. And not one time has someone
42 who's had an issue or concern about property values provided us with any
43 data, any studies, anything that says that this actually occurs. I'm just a
44 practical thinking guy, and I can't imagine that having six kids arrive over a
45 staggered period of time during the day would cause your property value to
46 go down. It's a neighborhood. Neighborhoods have kids. You have people
47 of different ages. We have elderly people, you have young families, kids
48 running around the neighborhood. They used to when I was growing up.

1 So I don't see how that's a detriment to your neighborhood, to have kids or
2 hear the sound of kids laughing and playing in the backyard. How is that a
3 bad thing? How is that noise pollution? I'm just putting that out there
4 because I just, it just, I get concerned when people make complaints and
5 they bring up narrative that don't fit any reality as far as you know the
6 property values going down. If they do, provide us the data, we could help
7 make a decision based on that, but it's just seems like it's useless to even
8 bring that up when that when that occurs. So I respect your concerns. Mr.
9 Wong, I just, we operate from a place of reality and practicality as
10 Commissions on this board. So thank you.

11
12 Kaiser: All right. Looking for a motion to approve this case. And I think this evening
13 instead of using the item number, because there is a typo, if we can go
14 ahead and just state the case number in our motion, just so we're all clear.

15
16 Murray: I make a motion to approve case number 24ZO1000102.

17
18 Je. Acosta: Mr. Chair. I'll second that motion.

19
20 Faivre: Commissioner Thurston.

21
22 Thomas: Yes.

23
24 Faivre: Commissioner Smith. I always mess up on that. I can't get - elaborate.

25
26 Thurston: Yes, based off of the staff recommendations. Yes.

27
28 Faivre: Commissioner Smith.

29
30 Smith: Yes, based on staff recommendation and the need for affordable childcare
31 in the City of Las Cruces.

32
33 Faivre: Commissioner Acosta.

34
35 Je. Acosta: Yes, based on staff's recommendation.

36
37 Faivre: Commissioner Murray.

38
39 Murray: Yes, based off the need of affordable childcare and staff recommendation.

40
41 Faivre: And Chair.

42
43 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
44 Cruces.

45
46 Faivre: Thank you.

47

1 **9.2 Case 24VO0500111:** A request for approval of a variance to the maximum square
2 footage requirements for attached signs as per Section 36-46 of the City of Las
3 Cruces Sign Code. The subject property encompasses approximately 15.98 acres
4 in size, is zoned M-1/M-2 (Industrial Standard) and is located at 1053 Hayner
5 Avenue. Submitted by 828 Productions, representatives. Council District 4.
6

7 Kaiser: Okay, moving on to our final item this evening. This is case number
8 24VO0500111, a request for a variance to the maximum square footage
9 requirements for an attached sign.
10

11 Castillo: Good evening Commission. Today we have a property located at 1053
12 Hayner Avenue, who's requesting a variance to the maximum allowed
13 square footage for signage. The property is located at the southwest corner
14 of Compress Road and Hayner Avenue. Its physical address is 1053
15 Haynor. It's zoned M-1/M-2 which is our industrial standard zoning. It's
16 approximately 15.98 acres in size. It is a vacant, abandoned cotton
17 processing facility. It's also located within the Amador Proximo Community
18 Plan. They are going to be using an existing metal warehouse building.
19 And we do have a proposal utilizing an existing water tower that are on the
20 property as for their attached signage.
21

22 As we can see here on the zoning map, the subject property is highlighted
23 in yellow. Here's an aerial view of the property. The subject attached
24 signage are going to be here located on this abandoned metal warehouse,
25 as well as the proposed one will be on this existing water tower on the
26 property.
27

28 So the code requirements under Chapter 36 section 36-46, anybody who's
29 in a commercially zoned for industrial zoned area is allowed one and a half
30 square feet of on premise signage for each linear foot of exterior wall. And
31 then the following attached signs would be things such as awning signs,
32 canopies or marquees, banners, roof signs, window signs, and wall signs.
33 These wall signs can be anything that could be painted on that provides any
34 type of advertisement, or it can be an actual affixed sign that's illuminated,
35 or just some type of board or anything.
36

37 So the proposed sign that we're looking at for the area is going to be an 828
38 logo. It will be illuminated and it will be located on the water tower, as you
39 can see from the artist rendering, as well as looking at the water tower that's
40 existing as is. The other sign is a constructed sign that has the 828 logo on
41 it as well. This can be seen from Amador Avenue. It does sit back
42 approximately 260 feet, if not a little bit more.
43

44 So the analysis of this is that the painted sign is on existing metal
45 warehouse. As you know it is an abandoned warehouse at the moment.
46 The sign was installed without a permit. Based on the linear foot it does
47 have, it is only allowed 150 square feet maximum. The current sign is 546

1 square feet in size, so we're requesting a deviation of 396 square feet. The
2 proposed illuminated sign, which would be located on the water tower,
3 based on some rough calculations of trying to find an area of a cylinder,
4 we've roughly come up with 70.5 square feet. The sign that they're going
5 to be proposing is going to be roughly about 10 feet high, and will have a
6 maximum square footage of 837 square feet. So they're requesting a
7 deviation of 766.5 square feet. The applicant wasn't also aware of the
8 requirements for the signed permit. It was just erected or painted on at one
9 point from one day to the next. Under the zoning code, Article 2, section
10 38-10 for the variance request they are set to provide criteria of hardships.
11 These are not self-imposed hardships. So one of them that the applicant
12 was speaking to was a physical hardship, being that the building is offset
13 from Amador, the sign does bring significant attention as you drive along
14 Amador Avenue as it sits further back. It also shows a commitment to the
15 community for a future film studio that's going to be provided there or
16 developed there on the site. The other part is about potential for spurring
17 economic development. This may or may not spur economic development
18 at a City wide or statewide level. The applicant has stated that through
19 investments done on behalf of the City as well, through LEDA project there
20 are going to be monies that are brought in in excess of \$350 million both
21 from the film industry on a state level, as well as into the City as well. As
22 the film studio gets developed it brings in jobs, it will keep and maintain jobs
23 on the property. And also it's going to be revitalized and established
24 neighborhood by creating a dynamic destination. The other hardship there
25 would be as if it does get denied, the cost of already placing the sign on the
26 property, they would have to then remove it, thus painting over it, or re-
27 sanding it, however it would be to be removed.

28
29 Today staff recommendation is denial. While discussing it with all staff
30 members it wasn't a unanimous denial. Many of us felt that the sign was
31 not a big issue other than exceeding it and not being done without a permit.
32 So staff still provided a recommendation of denial. We did not find any
33 significant safety, health, and welfare issues identified. The findings of facts
34 for the denial are the existing attached sign was installed without a permit.
35 The existing attached sign exceeded all allowed maximum square footage.
36 And the request for the variance does not meet the criteria for decisions as
37 outlined in Article 2, section 38-J, or 38-10 J of the 2001 Zoning Code.
38 Public notice was sent out to all relevant agencies and departments. They
39 all supported the proposed variance. Notice was also sent out to
40 surrounding properties within 500 feet. Staff did receive two phone calls
41 that were in support of the variance. They're excited to see what the future
42 development is going to bring forth as far as revitalization, and it's bringing
43 well needed attention to the area. Today, your options are to vote "yes" to
44 approve, vote "no" to deny, or vote "yes" with conditions, or vote to table.

45
46 Kaiser: All right. Thank you. Is the applicant here that wishes to make a statement?
47 Yes.
48

1 Castillo: Yes, the applicant is here.
2
3 Kaiser: Let's have the applicant go first, yes. Before we get started, please state
4 your name for the record.
5
6 Sepp: My name is Jonathan Sepp/
7
8 Kaiser: And do you swear or affirm that the testimony you're about to give is the
9 truth and nothing but the truth under penalty of law?
10
11 Sepp: Yes, sir.
12
13 Kaiser: Go ahead.
14
15 Sepp: Good evening, Chair, Commissioners, and staff. My name is Jonathan
16 Sepp, as I stated. And I am the manager of operations and public affairs
17 for 828 Productions. I appreciate the opportunity to be here with you all this
18 evening. And also very thankful for John Castillo, Sara Gonzalez, and other
19 City staff that has assisted us throughout this process. It is our hope that
20 we will be allowed to keep our current painted sign and install up to three
21 828 signs on our water tower, both located at 1053 Hayner. This alongside
22 our adjacent property at 300 South Compress, is our 35 acre site intended
23 for cinematic infrastructure, strategically positioned just minutes from
24 downtown Las Cruces.
25
26 For those unfamiliar with 828 productions, we are your local film studio and
27 production company. We have a LEDA partnership with the State of New
28 Mexico and City of Las Cruces. Highlights from our commitment under that
29 partnership include investing \$75 million in cinematic infrastructure,
30 spending \$350 million on production in New Mexico, and to create 100 jobs.
31 828 Productions is rooted firmly in the film industry here in Las Cruces, and
32 the future that it holds. And our bold signage we feel is essential to
33 establishing our brand identity and creating spaces for film and television
34 productions to enjoy doing business in Las Cruces. If our requested
35 allowance is granted, I am confident in saying that these signs and our
36 investment in branding will spur economic development at both the
37 neighborhood and City wide level. Thank you all for hearing us tonight. And
38 I am open for any questions.
39
40 Kaiser: Thank you. Commissioner Murray, you had a question?
41
42 Murray: Question for staff.
43
44 Kaiser: Please ask it.
45
46 Murray: Could you maybe go back to the sign that shows the 828 on the middle
47 building. Just for understanding purposes, since they painted the
48 background black, you're considering that entire portion square footage to

1 the sign and not just considering the 828 numbers as a portion of the sign
2 only. In another word, if they did not paint the background black and only
3 did, I don't know the letters or numbers in black, would you consider that
4 the same thing or would you just consider the square footage of the
5 numbers?
6

7 Castillo: Mr. Chair, Commissioner Murray. The square footage that was obtained
8 was from the actual size of the 828, both the height and the length that goes
9 beyond what is allotted based on the linear foot of the building.
10

11 Murray: Okay. That makes sense. And then the water tower portion, if they were
12 to get approval and to illuminate it, how is that being illuminated? Is it kind
13 of like back lit, or is it shining like with up lighting?
14

15 Sepp Yes. So we currently got a, we currently received a mockup, a four foot
16 mockup of this, and it is, I don't think I can explain it very well, but it is lit
17 inside with a back glow. But our intent with the lighting of this sign is to stay
18 within the lighting code.
19

20 Murray: Okay. Those are my only two questions.
21

22 Kaiser: Any other questions from the Commission?
23

24 Smith: I do, I'm just trying to figure out how to articulate it. This is a question for
25 the applicant. I mean you were unaware that you needed a permit to you
26 know erect or paint a sign, fairly large sign, you know if this is denied do you
27 have another option for signage that will be within compliance? Because I
28 know it's big, it's bold, but you know I live near that, you know near your
29 building, you know I'm in that community. When I first saw it, it was just an
30 828. There is no 828.com. There was no anything that indicated that you're
31 a studio. So as I look at your proposal and you request to have 828 on a
32 water tower, it's just 828. It could just be an address number. So you know
33 do you have you know a second option that will help you come within
34 compliance so that you can have you know some signage you know for your
35 property and for your business.
36

37 Sepp: Chair, Commissioner Smith. Thank you for your question. At this moment
38 for these two buildings in particular, we do not have alternative sign options
39 available to us at the moment.
40

41 Smith: All right my second question is, I know you want to have you know this large
42 signage to bring attention to your business, but you know we live in a social
43 media, digital advertising world, I think you're going to, you would get much
44 more bang for your buck by you know doing social media as you're well
45 aware I'm sure being a production company. You know I'm just, you know
46 just curious as to why you feel like just having this big, bold statement is
47 that critical to the success of your business when you can actually come up

1 with a plan, that will you know comply with City standards and code for
2 signage.
3

4 Sepp: Chair, Commissioner. I appreciate that note. I don't know how to say this
5 without being cheesy, but we are a film production company. We are film
6 studio. We have a water tower on our lot. It would be against our creative
7 nature to not want to do a big, bold sign on a water tower, similar to many
8 other companies that have done similar signage..
9

10 Smith: I understand where you coming from. I mean you have; you go to
11 Hollywood; you got the big Hollywood signs. You got movie you know
12 studios in Hollywood. They got big bold signs so you want to have a big
13 bold sign here. You know it's just, we're not Hollywood. And we're not you
14 know some of the other areas that are doing big film production. And you
15 know we still have codes and standards that have to be complied with. And
16 I, although I appreciate and respect you know your creative vision you know,
17 yes, it's, you still, you know the big sign that you already have it's you know,
18 it's going to be difficult to have that be a valid reason you know to you know
19 agree with that.
20

21 Kaiser: Any other questions?
22

23 Thurston: I got one, Chair, for the applicant. You said the economic development that
24 we're going to be, that the City is going to receive is, you're planning on the
25 \$75 million and possibly up to \$350 million. Do you have a time frame in
26 which you guys are projecting that out? Is that a five years, is that a 30
27 year?
28

29 Sepp: Chair, Commissioner. Yes, and I do apologize that I don't have those
30 specific numbers in, or the specific dates in front of me, but each of those
31 commitments does have a schedule attached to them, and they range from
32 2028 to 2031. And I apologize, I cannot be more specific as to which one
33 relates to those, but I could happily come back with that information if that
34 is helpful.
35

36 Thurston: Yes, I was just more curious on the actual time frame, because if you know
37 a company comes in and says, I'm going to give you \$75 million but it's over
38 50 years, it's not that big of an impact to the community. It is a good impact,
39 but it's not as much as we would think by when you see the large number.
40

41 The only other thing that I see on here is if for me to, sometimes around the
42 City I like to see things become you know more attractive. And so that your
43 proposed sign on the left it looks attractive because it's new, right, the
44 building, the water tower is nice and shiny. And then you go to the water
45 tower on the right which is actual and it's not shiny, it's not new. So in that
46 update, I personally would say if, in order to approve something I would like
47 to put like a condition on it that you at least paint you know paint the entire
48 water tower type of a deal, and then be able to put your sign on there to at

1 least make it more attractive than just slapping a sign on there. That would
2 be something on my side of thinking that could be one of the conditions to
3 actually at least be more attractive.
4

5 Kaiser: Any more questions? Commissioner Acosta.
6

7 Je. Acosta: Mr. Chair. This is a question for staff. If I were to, if we were to look at a
8 variance on this based on what is in front of us, physical hardship, spur
9 economic development, and monetary consideration. Based on your
10 expertise would any of these three criteria fit for a variance?
11

12 Ochoa: Chair, Commissioner Acosta. That's why we got you on the Commission.
13 So thank you for that question. So this one was really a difficult one for staff
14 to come to a general consensus. This is technically John's case but we
15 come together as a planning team and see, since we have such a very
16 limited, those three items, how we could recommend approval for
17 something. Some things are pretty easily seen. In the past we've had a
18 free signing sign here for Love's, they got a variance. And Allsup's got a
19 variance. That one was pretty cut and dry, because not only did they
20 provide actual engineering fact showing that this sign has to be this tall and
21 this big in order to exit safely off of a freeway. Okay, that's a physical
22 hardship.
23

24 This one staff was trying to wrap the right amount, yes, I guess it's kind of a
25 physical hardship because the building's kind of moved back so you can't
26 really see it from Amador, the only real principle arterial in kind of a more
27 older area. Some staff disagreed. Staff also (*inaudible*) the economic
28 development, that one was probably one of the strongest one, that
29 standpoint and its potential. Yes, it does have a potential for doing that, but
30 it just wasn't that clear as like if it would be an Allsup's store or a Love's that
31 were basically under construction right then and there. And then the last
32 piece of the monetary hardship. Again, yes, they already invested, well they
33 are investing into the property, including the sign as well. So that's why it
34 was kind of left up in the air. But staff still again couldn't have a concrete
35 way to choose one of those three items of our criteria to recommend
36 approval, which is why it was kind of like denial, sure, I guess just because
37 of that fact. That being said though staff just kind of like got together, well
38 let's just put everything in on the table for the Commission just so you could
39 get our thoughts and not only the facts of code, but our thoughts as staff
40 and leave it up to you all because you all can then just find, if you feel that
41 it does meet economic, it'll spark economic development, by all means that
42 is a finding, because that's how you're interpreting the code. Or the
43 monetary hardship that could be finding of fact or physical hardship. You
44 as the Commission have that ability since it is your decision of criteria that
45 you'll be voting on. Staff is just here to present what staff is interpreting per
46 code. I know it's a loaded question, but I think hopefully that kind of clarifies
47 everything for you.
48

1 Kaiser: Any other questions?
2

3 Nichols: Mr. Chairman. If I may please. It depends on how the Commission makes
4 the decision to approve or to deny. I would ask this stipulation, if you do
5 approve the variance, I'm in agreement with Commissioner Thurston, I think
6 the water tower would need to be improved in terms of its appearance. But
7 most importantly, I would also want to condition that the sign was placed
8 without a permit. We issue permits, and we have a fee on the permit. And
9 any time a work is conducted without a permit, we have a penalty for doing
10 that. So we want to see that penalty fee charged if approval is for the
11 variance, the penalty fee for that sign that was painted without a permit.
12 And then we would want them to get a permit for the sign that they're going
13 to do. If the Commission decides on denial, then those two conditions would
14 not be applicable. Thank you.
15

16 Kaiser: Thanks for that clarification. Commissioner Smith. Did you want to say
17 something?
18

19 Smith: That kind of leads to the question I had from the sign that's already been
20 erected or painted. The staff, you stated that it was a soft denial as the term
21 you used. And my question was, is there a way for the current sign to
22 remain in place with the penalty and then they would have to come back or
23 reapply or request for approval for this tower sign? Or are we just voting on
24 both? I mean basically voting on the overall denial or approval with
25 conditions.
26

27 Ochoa: Mr. Chair Commissioner Smith. That again is something that could be left
28 up to you all how you would like to vote to. If denying one, approving the
29 other, based on whatever findings you feel fit to approve or deny those,
30 that'd be up to you. But the application is for right now currently as one
31 application for two signs. That'd be something possibly even speaking to
32 the applicant if he'd be willing to split those up, if you will. Or but like I said,
33 what's before you now is the two signs, the proposed one and then existing
34 .
35

36 Kaiser: I think it be would just be efficient to do both, because they would still have
37 to come back for variance on the one that's currently painted. So I think we
38 just address both of these scenarios. From my perspective, if you present
39 me with Allsup's and a Love's and this, I take this every day. I mean we
40 approve a variance for a gas station sign, but we're going to nitpick the - I
41 mean, this thing actually you know is interesting in my mind. There's a Shell
42 gas station sign, tall, freestanding sign that when I'm walking in the
43 neighborhood at dusk, I swear every time I look at I think it's the full moon,
44 and it's just ridiculous. So I mean to me this is great. I have no problems
45 with it. If I had one maybe critique, you mentioned 828 on the water tower
46 being illuminated. I guess two thoughts, one, does it have to be illuminated?
47 Second, if you, if I understand how you were describing the illumination, it

1 would be kind of like a gas station sign where the lights inside broadcasting
2 out. Is that correct?
3

4 Sepp: Chair. Thank you for the question. So the lighting has like a soft white face
5 that does extrude forward, but the primary lighting feature is to the back of
6 it, or at least that's the current planning and thoughts behind the first
7 rendition that we had created.
8

9 Kaiser: Okay. I think I kind of understand what you're saying. So I guess my first
10 question is, does it have to be illuminated? Number one. So I'll let you want
11 to address.
12

13 Sepp: Chair, Commission. That is our preference. We would prefer to have it
14 illuminated.
15

16 Kaiser: Okay. And then did you give any consideration to maybe just doing paint
17 and then having lights that just broadcast onto the water tower as opposed
18 to light illuminating off the water tower?
19

20 Sepp: Chair Commission. Yes, there was discussions around that, and we
21 ultimately decided that for our ultimate branding vision and the way that
22 some of our other signs are going to look like across our other properties in
23 Las Cruces, this was the fit that we wanted for this was a mixture of the 3-
24 D illuminated, backlit signs with the flat painted white on black.
25

26 Kaiser: Got it. Okay. Thank you. Yes, nothing further from me. I think you know
27 if we're going to approve an Allsup's and a Love's, I mean, this is far, far
28 more interesting in my opinion.
29

30 Thurston: My last one is, is I don't have any issue with it, with the water tower itself.
31 Mine, can you go to the other slide of the painted on the wall? That one
32 has, I have more probably issue with that one than anything, because it's
33 more of it's just, it I mean it's like any other building that we've kind of seen
34 throughout the town. We just kind of paint an entire wall. So if I had any
35 issue at all I would come back and say that that's the one that we should
36 amend, and then allow them to do the one on the water tower. I don't know
37 if you can split it up if that's, you know if we just say, here's the
38 recommendation to actually come back and get the permit for the 828 on
39 this building, and possibly come within the limits of the 828, and then allow
40 the condition on the water tower to go as is, as long as they you know maybe
41 possibly update it, make it a little more appealing instead of just the way It
42 is. That's just my personal thoughts of it. But I'm not sure how to basically,
43 that's all I got.
44

45 Kaiser: Thank you. Yes, I mean it's certainly an option. I think we could do that if
46 we wanted to. I'm just going to, can you go back to the sign size
47 breakdown? No. Yes, that one. So the one that's painted is, so essentially
48 we would be asking them or requiring them to take the current sign and

1 shrink it by 80% right? I'm doing math correctly. So I mean I don't know
2 how that would work on a building at that point but I mean we could as a
3 route if we wanted to.
4

5 Thurston: Yes, I was just throwing it out there that if we do have an issue with that
6 one, we can, I think there's opportunity to change that or leave it you know
7 leave it as is and giving the approval. So I it's up to you guy.
8

9 Kaiser: I have any issue with it. I think this is much preferred over a gas station.
10

11 Murray: I guess the question for the applicant. Do you have a timeline on that
12 specific building and what the other portion of the exteriors can look like in
13 the future?
14

15 Sepp: Chair,. Commissioner Murray. I really appreciate that question. I apologize.
16 I'm going to add some context to this real quick if you don't mind. So my
17 project manager that had the original sign painted for some reason decided
18 that he was going to approach it as a mural, even though it does advertise
19 our business, which is called out in the sign code as specifically not a mural.
20 And so that's what sparked the conversation between me and City, between
21 City staff and myself to start looking at a variance for that one specific
22 already painted sign. In those discussions, they asked you know do we
23 have any other future plans for signage on the property? And that's where
24 we started talking about, yes, we do have signs for, we do have plans for
25 signage on the water tower. And they recommended to us that it would be
26 best to come to you all with both of those options. So we did have to
27 scramble a little bit to get our designs rendered and start working on getting
28 the ball rolling on that. So that did start to move a little bit quicker than we
29 were anticipating. Adding things like painting the water tower will also
30 increase our timeline on that. And actually, I do not have a solid timeline on
31 when that sign will be created, because of the last minute nature-ish of it
32 being requested as part of this variance request or this allowance request.
33

34 To answer your initial question. The original intent behind beautifying this
35 property with signage really sets what we like to consider it, is beautifying
36 the area with our signage, is to just assist in the overall look of the area as
37 we work through the many phases of construction. Right now, we were
38 actually primarily focused on 300 South Compress and getting a stage built
39 there. 1053 Hayner is not currently on our schedule right now to develop.
40 So as we work on the property adjacent to it, we are going to be working on
41 just cleaning up the area, making it just look better than that. That is the
42 original intent behind this signage and this variance request.
43

44 Kaiser: Thank you. Can we just circle through public comment just to close that
45 loop, and then we can finish out our conversation? So is there anybody in
46 the audience who wishes to speak on this item? All right, see none. We'll
47 come back, final thoughts, questions, concerns. Commissioner Smith.
48

1 Smith: I just have one quick question for staff. So this is, this would be a pretty
2 significant variance as far as size of signage from you know the existing
3 code. I mean will we be setting some precedent from you know, for this
4 size of a variance.
5

6 Murray: I have one question to add on to that. In the new code that we're reading,
7 does a variance not set precedents based on how the new codes written?
8 If you could touch on that point too why you hit his?
9

10 Ochoa: Chair, Commissioner Smith. So precedent is difficult to really say, well they
11 did it. Well, that doesn't matter they went through a process in order to do
12 what they did. So whoever would want to come out here would have to go
13 through the exact same process. And essentially lack of better words, sell
14 why that variance is a good thing and does it meet the criteria, which I
15 believe he actually very nicely explained his view from an economic
16 standpoint of how it would potentially help the City if you will from an
17 economic standpoint. Additionally, on top of that, a variance does stay with
18 a property. A variance does not leave, it sticks with that property. Now a
19 feature code comes along that is a little more lenient, that would allow it by
20 right no longer needing a variance, that's a potential as well, sir. As well as
21 our code right now is a little dated, I hate to say, just because of its age, it
22 doesn't really distinguish between you wrote three letters on there or just a
23 logo on there to what an actual sign is. It's just considered an attached sign,
24 whether it's an attached sign that's got fireworks blowing off on it and a rhino
25 running across of it 3-D style, or something that's painted on a piece of metal
26 that's part of the wall. That's kind of a little bit of shortcomings of our code
27 right now. It's gotten some clarification with our new codes, but like I said
28 variances they stick with the property, just basically sticks to the property
29 until either it comes into compliance by themselves or whatever else
30 happens in the future with it, sir.
31

32 Kaiser: Commissioner Smith, I'm pretty sure I don't know the exact numbers, but
33 the Love's and Allsup's that we've recently approved, I think it was similar
34 in the amount of variance that they're asking for. I think the one out on the
35 West Mesa specifically included the fact that they could put it on like a 200
36 foot pole. So I mean I think there's no, to my mind this isn't any significantly
37 different than what we've already done.
38

39 Ochoa: And if I could clarify Chair, pardon me. Those signs were actually four times
40 the height of the sign that was allowed there by right, and not only by height
41 but by square footage, they're almost triple as well, they're rather large.
42 Yes, sir.
43

44 Smith: And I just have one more just comment or question for the applicant. You
45 know as Commission Kaiser said, you know it's like we have you know
46 Love's signs that are big and bright and show signs that look like the moon.
47 You know as far as like having a sign on the tower, I'm going back to his
48 original question about lighting. You know it'll be evident because you're

1 going to have, you would have an 828 on a water tower. That alone would
2 draw people's attention. And at night I think, just a neighborhood
3 compatibility as far as lighting, as he suggested you know maybe just have
4 it painted and then have some lights projected on it, you know similar to
5 what you would see you know in Hollywood. You know just have a you
6 know light projected on the sign. I understand your creativity and you want
7 to really bring attention to it, but you know we're trying to help you know
8 make a decision here. And I think from a lighting standpoint, we can't go
9 from you know big giant, bright Love's sign that they have that you know
10 that it's kind of a you know not really that site, you know a positive site to
11 see, as opposed to you coming up with something that's just as bright you
12 know. So I'm sorry, I guess a combination question then comment.

13
14 Ochoa: Just a point of clarity. So just before any type of illuminated sign, it will have
15 to follow not only our lighting ordinance, we do currently in the City of Las
16 Cruces have a night sky ordinance as well, sir. So there's requirements
17 where depending where you are it could only be so bright at night, so bright
18 during the day, so on and so forth like that. So we do have that code in
19 place as well, sir.

20
21 Smith: That really helps. Yes. Thank you very much.

22
23 Sepp: Chair, Commissioner Smith. If I could also touch on that. I appreciate the
24 comment and the note there. Part of the plan with the lighting is to be able
25 to have it remote, like LED lights, and then to be able to dim it, brighten it,
26 to have full control over the color and the luminosity of it as well.

27
28 Smith: Yes, I appreciate that. My biggest concern was just how bright you know it
29 would be and, but now know that there's definitely a lighting code that you
30 would have to comply with that helps a lot. Appreciate it.

31
32 Kaiser: All right. So I think we're looking for a motion to approve, since it does need
33 to be an affirmative. My recommendation would be we add the condition
34 that Mr. Nichols suggested about getting the appropriate permits for both
35 signs as part of your motion to approve.

36
37 Smith: Would that also include the penalty for the sign.

38
39 Je. Acosta: Yes. Mr. Chair, I'm going to give it a whack here. I'd like to approve granting
40 a variance, is that correct? Case number. I'd like to approve case number
41 24VO0500111 granting a variance based on findings of spurring economic
42 development and monetary considerations, to include conditions of the
43 following: for the tower, the appearance needs to be pristine and brand new
44 all the way from top to bottom. All penalty fees will apply to this particular
45 case for any penalties that need to be applied. The applicant shall apply for
46 all permits as required for both signs. I think I got them all.

47
48 Kaiser: I think we got it. Looking for a second.

1
2 Murray: I second.
3
4 Faivre: Go ahead and call the vote for case number 24VO0500111. Commissioner
5 Thurston.
6
7 Thurston: Yes, based on the economic development impact that will give us and also
8 the discussion we had.
9
10 Faivre: Commissioner Smith.
11
12 Smith: I vote yes with conditions as laid out by Commissioner Acosta, and also that
13 having you know, a new local business and ability to advertise and bring in
14 revenue will be good for the City.
15
16 Faivre: Commissioner Acosta.
17
18 Je. Acosta: Yes, based on the new findings of economic development.
19
20 Faivre: Commissioner Murray.
21
22 Murray: Yes, based on economic development and the simplicity of the sign
23 compared to other gas station signs.
24
25 Faivre: And Chair.
26
27 Kaiser: Yes, based on the discussion this evening and the economic potential and
28 benefit that this business will bring to downtown in the City.
29
30 Ochoa: Thank you.
31
32 Kaiser: Okay, that was final item this evening.
33

34 **10. STAFF ANNOUNCEMENTS**

35
36 Kaiser: Any announcements from staff?
37
38 Ochoa: Yes, Chair. Just a reminder. We will be having a work session next week
39 for Realize Las Cruces. So that work session is scheduled for next week
40 here. You got all your packets already and your books. Hope you guys like
41 reading those. I know we've been having a great time doing it.
42
43 Just one other announcement. Our Planning and Zoning Commission
44 meetings for the November Planning and Zoning Commission and the
45 December Planning and Zoning Commission will be moved up one week
46 due to the holidays. We don't want to you all to have to move your holiday
47 plans around, because essentially if we kept them where they're at you right
48 up with Thanksgiving and the winter holidays, let's put it that way, to be

1 politically correct. So for your records, the November meeting will be on
2 November 19th, and for December it'll be on December 17th. The third
3 Tuesday of the month for both of those. But that is all that we have for staff
4 announcement, sir. Thank you.
5

6 Kaiser: Excellent. Thank you.
7

8 **11. ADJOURNMENT (8:25)**
9

10 Kaiser: All right, looking for a motion to adjourn.
11

12 Je. Acosta: Motion to adjourn.
13

14 Murray: Second.
15

16 Kaiser: All in favor.
17

18 MOTION PASSES UNANIMOUSLY.
19

20 Kaiser: Thank you all for coming out this evening. We'll see you next week.
21
22
23
24
25

26 _____
Chairperson