PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
May 24, 2016 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Ruben Alvarado, Member
Joanne Ferrary, Member
Harvey Gordon, Vice Chair
Roger Hedrick, Member

BOARD MEMBERS ABSENT:

Kirk Clifton, Chairman
LaVonne Muniz, Member
William Stowe, Member

STAFF PRESENT:

Adam Ochoa, Planner, CLC
Mark Dubbin, CLC Fire Department
Chris Mount, CLC Fire Department
Thomas Limon, CLC Legal Staff
Becky Baum, Recording Secretary, RC Creations, LLC

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

Gordon: Good evening. We just need a momentary delay before we start. A little technical difficulty here.

Good evening ladies and gentlemen and welcome to the May 24th, 2016 meeting of the Planning and Zoning Commission for the City of Las Cruces. I'd like to introduce my fellow members of the Commission. On my far right is Mr. Hedrick who is District 4; Ms. Ferrary who is a representative from District 5; Mr. Alvarado who is from District 3. I am Mr. Gordon and I am the Mayor's Appointment. At the moment I am the Vice Chair and we are waiting for Mr. Clifton who is from District 6 uh and he's sorta stuck in traffic in El Paso. But I guess he'll be here as soon as possible. But we do have a quorum so we will be able to uh have our meeting and when he comes I will assume that he'll take over.

II. CONFLICT OF INTEREST

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

Gordon: All right, is there any conflict of interest from the Commission or the Community Development that they feel have a conflict of interest on any of the items on the agenda presented this evening?

Ochoa: No sir.

Gordon: All right.

III. APPROVAL OF MINUTES

1. April 26, 2015 - Regular Meeting

Gordon: I, are there any, we're talking about the minutes, we need an approval of the minutes. Are there any Commissioners present at the time of these minutes from last meeting that feel they have any corrections? If so, please raise your hand. All right, if none can I get a motion to adopt the minutes please?

Ferrary: I ...

Gordon: Ms. Ferrary.

Ferrary: I move we adopt the minutes.

Gordon: *(inaudible)* get a second.

Alvarado: Second.

Gordon: Mr. Alvarado. All in favor say "aye."

MOTION PASSES UNANIMOUSLY.

Gordon: All right so minutes are adopted.

IV. POSTPONEMENTS

Gordon: Continue the agenda. Staff are there any postponements?

Ochoa: No sir, none tonight.

Gordon: Okay, thank you.

V. WITHDRAWALS

Gordon: Are there any withdrawals?

Ochoa: No sir, none tonight either.

Gordon: All right.

VI. CONSENT AGENDA - NONE

Gordon: There are no items on the Consent Agenda so we can move on.

VII. OLD BUSINESS - NONE

Gordon: There is no Old Business.

VIII. NEW BUSINESS

1. **Case 64856:** A Special Use Permit (SUP) application by William and Deborah Caldwell to permit childcare services for up to 12 children within a single-family home located at 3737 Albion Avenue. The subject property encompasses 0.15 +/- acres, is zoned PUD (Planned Unit Development) and is located on the north side of Albion Avenue, 465 +/- feet west of its intersection with Ted Hawk Gold Road within the Metro Verde South PUD; Parcel ID #02-42430. Proposed use: A single-family home with a home occupation business of a group child care home (7-12 children). Council District 5 (Councilor Sorg).

Gordon: So I guess we can begin with our business for the evening. And the first item on the agenda is Case Number 6, 64856 and uh Mr. Ochoa's going to present this item.

Ochoa: Thank you sir. Adam Ochoa, Development Services for the record. First case tonight ladies and gentlemen is Case 64856 it is a request for a Special Use Permit to allow a group childcare home at 3737 Albion Avenue. The subject property, property shown here, *(inaudible)* the subject property highlighted in the light blue line. As you can see it's in the middle of a, a big grey block which is a Planned Unit Development in the City of Las Cruces. This is located on the far north stretches of the City, north of Thurmond Road just to kinda give you an idea of where this is at, um east of Golf Club Road, and west of what's Voyager Street in this PUD.

The subject property itself is approximately, about 465 feet west of its intersection of Albion and Red Hawk Golf Club Road. The subject property encompasses 0.15 acres and as stated, as I stated before it is zoned PUD, Planned Unit Development. This property is located in what is called the Metro Verde South PUD, uh which is essentially mixed use development that utilizes a hybrid form based code to allow different uses, different uh, uh uses allowed within the, with this whole PUD are. The subject property currently is, is a newly built single-family home. Shown

here, street view as you can see uh, single-family home, three car garage with a, a driving pad area for, to allow for three cars to park on it.

As I stated before it is part of the Metro Verde South PUD. It is actually located in what's call the U3 area of the PUD or the suburban area. Just to let you know some of the permitted uses allowed by the PUD in that area are single-family homes of course, townhomes, condos, live/work units similar to what's being proposed tonight, uh, uh like a home occupation if you will; accessory rental units are allowed, in other words you own a home, you can build another smaller home behind yours and rent it out; um religious assembly or institutions are allowed in this zoning area as well as bed and breakfast and, or inns are allows in this area as well, so large hodge-podge of different things that are allowed, some more intense than others.

What we are looking at tonight is a proposed Special Use Permit to permit a, what, what the 2001 Zoning Code calls a Group Childcare Home for up to 12 children in the dwelling. The applicants um are actually currently running a group childcare home at a different location. They've actually had, I believe this is their fourth application at a different location that they're actually moving to, not saying that they have four different locations already, they've just moved from house to house and as they moved from their houses they bring their um home occupation with them. As of now staff, the City has not received any, there are no records of complaints with the current location of the, the existing group childcare home.

As I stated before, the applicants are now seeking to move to this new location and continue their childcare services for up to 12 children. The applicants had stated they will be open Monday through Fridays from 7:00 a.m. to 6:00 p.m. The applicant has stated that they do have specific staggered drop off and pickup times to avoid any traffic problems in the area. They also have a structured schedule uh, including structured playtime, outdoor playtime to help control noise. We could go through their actual um I guess itinerary later in, in another slide. The applicants will be required and are required and currently do follow all childcare regulations of the New Mexico State, New Mexico, sorry, State of New Mexico Child, Children, Youth, and Families Department requirements in addition to all fire and building code requirements for the proposed use. Here is a site plan of that subject property, single-family home as you see there, street here to the south with a backyard. Here is essentially the area where they'll be a taking care of the children. The applicant has stated that this area does follow, and, and the outdoor area does meet the requirements of the state for the required, space required for children to be taken care in this home and they've even stated that this indoor area where they uh ,uh take care of the children is actually larger than the home where they're at currently. Um, looking here at their activity schedule, um open at 7;00 a.m. like I said before, close at 6:00, structured, you know breakfast, morning circle, songs, so on and so forth

like that. One big thing we want to point out is they actually only have two times where they have outdoor play for the children, one time at 9:30, at 10:00 in the morning, another time at 3:00 p.m. at, in the afternoon, roughly about an hour and a half is what they're looking at for outdoor play uh in this area. Just trying to keep conscious with the noise, with the adjacent residents.

When staff looked at this proposed SUP we looked at a, a, a couple different things; first of all, the PUD itself, Metro Verde South PUD does encourage live/work residential units. The biggest concern though with a live/work residential unit in the Metro Verde South PUD is that it requires uh two off-street parking stalls and then one additional uh parking for the home occupation. Um, the applicants as I stated before, and that is, that, you are allowed to provide or count your garage as parking as well. This subject property as I stated before actually has six off-street parking stalls, a three car garage and then a drive way that can, that can basically support three cars to be parked on it. Um, typically what we see from these is the state calls out noise from, from homes uh, that have this type of business are not expected to exceed the average noise level of a typical single-family home, uh, uh, as, as a typical single-family home just with children as well. As well as that, the applicants will be, still be required to follow any and all state regulations as well as any building and fire code regulations as well.

With that, staff did review the proposed SUP and based on the review by staff and all other reviewing departments in the City of Las Cruces, including the Fire Department, Traffic, Engineering, and so forth find that, and the findings found in the staff report, staff recommends approval for the proposed SUP. The P&Z does have the final authority on this, on all SUP cases. Here are those findings that are actually found in your staff report for your record. And just as an, for your information uh, we did receive some public input. We received five e-mails from area property owners opposing the proposed SUP, those are in your staff reports. You got one more e-mail tonight of another resident opposing the proposed SUP. Staff did receive two phone calls from area property owners stating that they received our public notice letter and both stating that they had no issues with the proposed Special Use Permit.

With that tonight ladies and gentlemen uh your options are 1) to vote "yes" and recommend, uh, I'm sorry, uh vote "yes" and approve the proposed Special Use Permit as recommended by staff; 2) to vote "yes" with conditions with any conditions deemed appropriate by the Planning and Zoning Commission; 2) to vote "no" and deny the proposed Special Use Permit, just for your information though if you do vote "no" you have to come up with a separate list of findings because the findings found in your staff report are for supporting or for approval of the proposed SUP, so new findings would have to be brought up when you're making your vote for "no." And 4) is to vote and table, vote to table and postpone the proposed Special Use Permit and direct staff and the applicant

accordingly. That is the end of my presentation, uh, and I stand for any questions. And the applicant is here to uh answer any questions or elaborate on anything.

Gordon: All right, thank you Adam. Before we start though I would like to just if I could question the audience by raising your hands as to how many people would like to speak this evening. Three, four, five, six, seven, eight. Anyone else? All right, I guess I can allow three or four minutes per person which should be ample. Um, but before we start with discussion from the public I, could we hear from the applicant if she'd like to speak.

D. Caldwell: My name's Debbie Caldwell. And um we are the ones that purchased the home at 3737 Albion. Um, we currently operate a home group childcare. We've been there for about two and a half years and previous to that um ...

Gordon: Ex, excuse me for interrupting you. I did forget a simple procedure before you start I do have to swear you in.

D. Caldwell: Okay.

Gordon: So would you please just give us again your name and your address, and do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

D. Caldwell: Yes sir.

Gordon: Thank you. I'm sorry.

D. Caldwell: Okay, my name's Deborah Caldwell. We live at um our purchased house is 3737 Albion, currently 7565 Sierra Bella Place. Um, we've been operating a group home for several years in different locations. We have moved um into the current location because I was taking care of my mother and we had three college kids living at home and it worked out well for us. We, we recently sold that home and purchased the one on Albion, one we're talking about here and it works out better because all one level, it has you know more parking, indoor space is a lot bigger for the children and the outdoor space yards are bigger. And we do run a um childcare curriculum every day for the preschoolers. We do that in the morning from 9:00 to about 10:30, we take a break and then we, they go outside and come back in and then we do, continue finishing up with our preschool and then it's lunch time and so on.

Um we, I've gone over the e-mails from the concerned neighbors, to me it seems like they're un, misinformed about a lot of how this business works. It's not a commercial daycare by any chance. It, there's no signs that we stick outside. We don't advertise, um, every one of these

families is referred to me, I don't get on a list of any kind for advertisement or, and we are very picky about the families we take. Um, the e-mails biggest concerns I saw were "what kind of people we let in our house?" Um, that should be out of the question. We have a lot of people from the City that work, that, that bring their kids here. We have teachers, law enforcement, doctors, dentists, all of it, you know they're all business owners and so we're picky about who we allow into our home as well. We're, you know conscious of our neighbors and so we try to keep it very professional and, from the outside of our house right now you wouldn't know we had a, we had a daycare. I mean I saw some concerns that "Oh they're gonna have toys out front." No we're not gonna have toys out front. You know it's like we don't, they don't play out front. It's very controlled. Outdoor play is controlled. Do they get loud outside, yes it's recess, you know they have their moments but we, they're kids, they're toddlers, they're from new born to four and a half years old, that's it. We don't have any older kids, we don't take afterschool kids. We don't take them anywhere, we don't drop off, we don't pick up, we don't walk them, we don't, you wouldn't know from the outside of our house that we have a childcare.

B. Caldwell: Park.

D. Caldwell: What about it?

B. Caldwell: They were concerned about ...

D. Caldwell: Oh they were con, I think some of them are concerned about um us using the parks. I don't know if they are misinformed about that, but that is a City park, it's not just Metro Verde park, so they don't need to worry about us, they need to worry about who else is coming in there. And um, what else was it?

B. Caldwell: Just the family neighborhood.

D. Caldwell: They were talking about "Oh, who are these people going to be looking in our windows?" Come on. Really? Seriously? I mean I, to me I take offense to that, like these families that I have, have been with me since day one and now they're, and the parking is not going to be a problem because there's two kids each family, so that's like six to seven cars a day. One, one of the e-mails said 48 car, times they're gonna pass by my house. I don't see how they would do that. You know coming in from Red Hawk and we live mid-street down, they may pass their house going out cause they're, all the complaints were on one side of, furthest away from the soccer field. We live mid-way, like the soccer field and then we're like six houses in and then, all the complaints were from the far end. So these people would come in Red Hawk, come to our house, possibly park in our

driveway, go out the same way they come in, if they do pull up in front they would then continue to pass their house once a day, maybe twice ...

B. Caldwell: Twice.

D. Caldwell: But it, like I say most of our families have multiple kids so it's not 12 times any amount of kids, it's six to seven cars a day. So I think that's all I have to say. You got anything to say?

B. Caldwell: My name's Bill Caldwell. I swear to tell the truth.

Gordon: Do, allow, if you'll allow me, give me your name and can, your address too. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

B. Caldwell: Yes.

Gordon: Okay.

B. Caldwell: Uh my name's Bill Caldwell, Debbie's husband, I work with her. Another issue that they thought was uh employees um, it's Debbie and I that run the daycare. If for any reason we need a substitute we have substitutes. We all are background checked, we all have, we all go by

D. Caldwell: State regulations.

B. Caldwell: State regulations. A lot of issues were state regulate, regulations but we keep up with it all. Um, it's just a family neighborhood, you know it's not a retirement community. We've done this in three other houses here in Cruces, we've never had issues. It's a, it's a good asset to the community you know, it keeps kids safe, keeps them off the street. It's a, a good preschool program to keep them you know focused going into preschool is basically what it is. Uh, and we just take it real seriously so. That's it.

Gordon: All right. Thank you. Just one second. Are there any questions from the Commission to the petitioners?

Alvarado: I have one question. What happens if we turn you down? What'll happen to your daycare? Or what will happen?

D. Caldwell: Okay, so we'll go from there.

B. Caldwell: Um, I was going to say one thing. We could operate a daycare up to six anyway. Uh, this is just SUP to go from seven to 12. We've done this at, we did this on Nambe Arc. We did this over on Salvia Loop. We've done this at Sierra Bella. We're just asking to continue doing what we do.

That's how we make a living. Um, people have said you know nobody should be able to run a business, well there's plenty of home businesses that the City of Las Cruces doesn't get involved in, uh plenty of people that live in the City with home businesses as it is every day so. I just think it's important that we con, that we treat everybody the same equally.

D. Caldwell: And this neighborhood like Adam said is built around City parks and entertainment for the children. Who buys a house in a neighborhood like that and doesn't want children in the neighborhood? I don't understand it. It's like you bought a house on the soccer field street, do you think that's not gonna cause traffic and cars and people that you don't know and no background check, you know what I mean, it's like it doesn't - all the e-mails opposed were really, made no sense to me for the people that have bought a house in that neighborhood with all the parks and entertainment that are in there. I mean I get it, Las Cruces is a retirement so they say community, but it's also a college town and very family oriented with all the parks and things going in.

Gordon: Ms. Ferrary.

Ferrary: You answered one of my questions of how many um children per family which is you say, said was two per family usually. And so I was also wondering um how many children do you usually have at one time?

D. Caldwell: We're allowed to have up to 12. We go from 10 to 12 a day depending on the time. Some parents come earlier than others and pick up you know sooner, some come later and stay long, you know later into the day. But usually an average of 10 to 11 at one time, we're allowed to have 12 through the state.

B. Caldwell: And we're regulated through the state.

D. Caldwell: And we're very regulated. They come out and we're on the food program and nutrition program. We go to continued education classes.

B. Caldwell: Focus.

D. Caldwell: I have a degree in early childhood education. It's, it's our job. I really take it seriously.

Ferrary: Thank you.

D. Caldwell: Thank you.

Gordon: I just, I have a question. It's just a, a, for clarification. You, you say you have the right for up to 12. Under the City license you have the right for up to six, if you need more you have to get a Special Use Permit.

B. Caldwell: You are right.

D. Caldwell: That's correct.

Gordon: Which you are applying for tonight.

B. Caldwell: That's exactly right.

Gordon: Why, why didn't you just wait until you moved in and get, get, you're going to need a new license for this residence. You can't carry your other license forward I don't believe.

D. Caldwell: No. What happens is the state will only issue a license for six in the, in the initial application until you have a hearing for a Special Use Permit. And then they'll meet me out there, I won't move at all until I have, I can take all, I can't tell the families they can't go with me obviously. So we, we are still in our old house waiting for this Special Use Permit and then we'll go ahead and, the state will come over there and issue it for 12.

Gordon: Oh I don't know whether or not you're putting the cart before the horse because you don't even have your permit yet for one to six.

D. Caldwell: We have a license for one to six at that address.

Gordon: At the new address?

D. Caldwell: Yes we do.

Gordon: All right, I was not aware of that.

D. Caldwell: We have a, a license. It's already waiting. But I'm not using it. Obviously I haven't moved.

Gordon: Huh um. All right in that case thank you very much and I, at this point I think we'd like to hear from the public.

D. Caldwell: Thank you.

Gordon: Uh whoever would like to be first, please come to the microphone, state your name and address and let me swear you in.

Moon: Yes, my name is Charles Moon. My wife Deb and I live at 3721 Albion.

Gordon: Okay, do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Moon: Yes, I do.

Gordon: Go ahead. Thank you.

Moon: Uh, I'm one of the ones you got the e-mail from. Hopefully you all have a copy. Mr. Ochoa said he would distribute those to you. And I'm not gonna spend a lot of time reiterating what I said. Uh, some of those numbers were based on 12 children, 12 families. Uh, I'm not gonna go into a big rebuttal here. What I want to talk about is kind of a, it, it was very difficult for me to put down on paper and we moved here about three months ago, two and a half months ago and we closed the end of February, moved in the first part of March. And what struck us as how friendly the people were. Not only just in that area but all over Las Cruces. We, we're transplants from Colorado. We met people before we ever moved in. And as people moved in we met them, they, before they ever closed we walked down the mailbox, meet people, introduce ourselves and be honest with you some people were taken aback, they said "Wait what is this?" Everybody at there has come from an environment where they didn't know their neighbors. They didn't know them, they didn't trust them, that sorta thing. Behind me there's eight families represented. There's nine houses that are occupied. So, and the one person that is not there, not here is out of town, he couldn't make it. So it's um, we think we have a pretty good representation here. But what I was getting at is when we were talking about meeting people, we know these people, we trust these people, we, we're not afraid to leave the garage door open, not afraid to leave the front door open and if we have a car parked out there overnight it's not a big deal. What we're seeing here is that this, this Special Use Permit will destroy that neighborhood. It'll be very polarizing. All the trust that we have there that we built up is gone. We see somebody coming down the street, you don't know who they are. You don't what they're background is. Sure they, they say they know and trust these people, but that demographic changes. From my understanding if it's a, the kids are under two they have to a one to two relationship with teachers, caregivers with 12 kids that sounds like six employees. So all of a sudden now rather than a neighborhood of, of people we trust and we know, we know the spouses, we know their kids, we got somebody coming on the street, by gosh they just had a fight with their spouse and they're upset, they're mad. And all these, these people have kids. The people that live there. Three of the four of the families have small children. Some, so we have a mix right now. And I, I you know I resent the fact that they say "well this is all just retired old fuddy-duddies who don't like kids."

Ferrary: Ten seconds.

Moon: I'm sorry. These retired old fuddy-duddies have kids of their own and grandkids, and in my case great grandkids. So anyway, think about it. We, we have covenants you know as well as I do the reality is unless we can hire attorneys, they're just words on paper. So our last best hope is you guys. Thank you.

Gordon: All right. Thank you very much. Perhaps it might make it a little easier and I'm not uh saying that I will not, that we will not listen to everyone who'd like to speak, but if someone's just gonna get up and repeat what the person be, had just spoken about, you could raise your hand and say those are my thoughts exactly and we can save a few minutes, but you're more than welcome to come up and take your full four minutes and we'll hear as many people who want to speak. So whoever would like to be next. Thank you. Just please state your name and your address and let me swear you in please.

Vogel: My name is Kyle Vogel. My wife Tina, Angela Vogel live at 3740 Albion, or we will be. We're closing on the second.

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

Vogel: Yes, sir I do.

Gordon: Thank you.

Vogel: First of all, we, my wife and I moved out here in October of last year or late September. We started our contract with the builder in November knowing nothing about a childcare going direct, this is directly across the street from my house. Uh, we're still working, my wife and I, we haven't retired. We've sunk a lot of money into this house, getting it built the way we wanted. This is our, gonna be our retirement home. I'm concerned about our property value. Okay. Um, I also saw in the slide show where they don't expect the noise of 12 kids to exceed normal household noise. Have any of you been in the middle of 12 kids? Do you know the kind of noise they can make? At times when I do have to work at night, I have to sleep in the daytime. I'm right across the street. You know, it can affect me and my job if I'm not rested. These are the concerns I have and I thank you.

Gordon: All right. Thank you. Anyone else? All right. Please come to the microphone. Again, please state your name and address and let me swear you in.

Huff: Wayne Huff and I live at 3709 Albion.

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

Huff: I do.

Gordon: Thank you.

Huff: My question is, or my concern is, is that Mr. Ochoa was talking about the zoning. That the zoning is for, they encouraged in-home business or whatever. After looking at the, I didn't do extensive research but I did read the uh, the zoning laws and all that. Where we live never one time did I see that. Never one time did I see that it was, it was encouraged for home businesses. All I saw, single-family homes. With that being said, you know it's, I do have three young kids. I have a two-year-old, I have a seven-year-old, and I have a 12-year-old. And I understand people trying to make a living, I got it. But you know we bought this home because we wanted our kids to have the parks. We wanted our kids to be able to walk down to the park and kick a ball around, play outside, get out the house. I agree with that 100%. But as a father you can't always keep a kid under wraps and if my little girl decided that she's gonna run out in the road and I'm just turn my head for a minute to throw something in the trash, somebody comes flying up the road and I'm not saying that it's just necessary the business traffic, just anything, like the other day I just stopped a kid because he was driving like crazy through the neighborhood. Stuff like that is what concerns a father, and I ask you to please take, take that in consideration. Thank you.

Gordon: All right. Thank you. Anyone else? Please state your name and address for the record,

Barrow: My name's Elizabeth Barrow. I'm at 3741 Albion.

Gordon: Okay, and do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Barrow: Yes.

Gordon: Thank you.

Barrow: I just wanted to state for the record that um our house is adjacent, like our, both share the same wall um since we're gonna be right next to it. I was just gonna state for the concern that, of privacy and also the fact that um of, of the sound. Just because we will be neighboring um houses. I do have two little ones that do nap during the day and so I was a little

concerned about that. And also my husband works midnights and sleeps during the day also, so because we are so close, in fact we are touching walls in the backyard, that's what I was concerned about.

Gordon: Okay. Thank you. Someone else please. Once again please state your name and address for the record.

Monroe: My name is Jack Monroe. I live at 3705 Albion.

Gordon: And do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Monroe: I do.

Gordon: Thank you.

Monroe: I, I appreciate the petitioners uh, response and their comments earlier and, and fully understand that they're trying to, to continue the business that they've ran successfully in, in other neighborhoods. And the fact that there is a park right down the road. To me that has no bearing on why I'm standing in front of you today. My, my bearing is, is that I have, I have concern about running a business in a residential neighborhood. And I know that what they stated that they can have up to six children and, and that's fully, you know if that's the law then that's the law, but um my opinion if, if they want to run a, a larger one then they should buy a business in, I mean a location at a commercial property area that they can do that. This is a residential area and, and uh, I, I'm concerned about as well as other members of the, the neighborhood that you see represented here are concerned about the additional traffic. Yes, you cannot control traffic coming to the City parks and that's gonna happen, it already has, there's, that's a high used little park. It's very popular not with just Metro Verde but other communities right next to us. Um my grandchildren live not too far away and they come over and play there sometimes. That, that is not my concern. My concern is, is that running a, a business in a, in a residential area that we retired here after 22 years in active duty in the military and then 19 years uh teaching public school systems, I understand children. My wife was an early childhood development major herself and taught in preschool and elementary school and knows how loud kids can be. I live several houses down from them. I'm sure I probably would never hear them, but the fact that there are additional people driving up and down the road and may, maybe they are professional and, and they, they don't have complete control over that so I'm just a little concerned there.

Some really good friends of ours are buying the house, have already signed the contract to buy the house right next door to them. I hope that they're one of the ones that called you because they couldn't be

here tonight. They almost backed completely out of the deal because they were going to be living right next door to it. They have five children and they're gonna be taking care of their elderly father that's gonna be living with them also, so they're gonna be really tight, but they, they were, they were so sick when they heard that, I know this is hearsay but they, they told us that they were so sick when they heard that they just about backed out of the deal. And that's all I have to say.

Gordon: All right. Thank you. Some one else please. Please state your name and your address for the record.

Herbeck: My name is Lou Herbeck and I live at 3666 San Clemente. If you look on the map you'll see that it's quite a ways from where the daycare is supposed to be proposed.

Gordon: Just, just move the microphone just down a little bit. Thank you. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Herbeck: Yes.

Gordon: Thank you.

Herbeck: I, I kind, I mean I, I concur with what everybody else has been saying. I'm concerned about the business in a residential area. Um, I'm, but my main concern, well one of my main concerns is the noise level. I live on San Clemente which is right on Thurmond/Engler, whatever you want to call it. Um, and I can remember several times, especially last summer, fall, sitting on my patio and wondering where is this screaming coming from. Lots of kids I figure it has to be a daycare. Well I can't imagine anybody living next to that um and I'm concerned about property value. And I, I know it's a vain thing and I don't have anything against daycare but in a residential neighborhood it just seems that it's so um, it's, it's so hard for the people around them to tolerate the noise, the traffic, it just doesn't seem like it's fair and like several of the other people, my husband and I have retired and not that I ... I have grandchildren. I have seven grandchildren of my own and I know they're noisy um, I just don't think that that's appropriate for a golf course community that has a predominant element of retired people, maybe not older people but definitely not young family oriented. Now there are young families in the neighborhood but I would say predominantly it's retired people. Thank you.

Gordon: All right. Thank you. Someone else? Me, all right. Please again state your name and address so I can swear you in please.

Jacobs: My name is Lionell Jacobs. I live at 3716 Albion.

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

Jacobs: I do. Um I know full well that none of us on this street are against kids. Right now there are already 11 children on the block, five more that we know of. So there is no an, no animosity, there's no reason for us to feel that way. But I have a couple of questions. One is; it was pointed out that the PUD was in favor of live/work circumstances, in favor of condominiums, in favor of apartments and all that, however what was not pointed out is that the community was planned to facilitate those things but not in the residential area. The facility was planned to have retail. The facility was planned to have the golf course which is currently there. So I'm wondering if there has been some misrepresentation here and it worries me. The other thing that I need to question is the fact that even though, let me preface this, I believe the Caldwell's are probably honest, good people and they mean well. I have no objection to that. My other question is why are they waiting to close on their home before finding out if their application is approved? That is holding the neighborhood at ransom to some degree and certainly the builder and I would like you just to give that some thought, why are they waiting. I think sir, Mr. Gordon that you asked that question too. That's all I have.

Gordon: All right. Thank you sir. Is there anyone else? Could I at least have a show of hands of those people who haven't spoken who at least feel the same, have the same message that these people have already given? Thank you very much. I understand that they pet ... oh I'm sorry, there's another person. I'm sorry. Can you state your name and your address please? Could you speak into the microphone?

Kelley: My name is Victoria Kelley. I live at 6635 Rio Hondo Court which is in a different part of town.

Gordon: All right, let me swear you in please.

Kelley: Yes.

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

Kelley: Yes, I do.

Gordon: All right.

Kelley: Um, I have two children that attend the Caldwell daycare, one is three-years-old and the, this little guy is five-months-old, and they have been

taking care of my oldest son for two years. They are wonderful people. The people that go to the daycare as they said. I am a teacher myself. I teach 19, 20 first-grade children and yes it's difficult at times to keep those children under control but walking into their home in the morning and the afternoon to pick up my kids, they have such amazing control of their, of the little ones that the neighbors would only hear them if they were outside for the times that they stated up there and of course they're going to make noise when they're outside, they're kids, they run, they play, they need to get that energy out and it's only for a short time. Um, as they stated, they do curriculum. That's not normal for a home daycare, so it's very hard to find a home daycare as wonderful as the Coldwell's. They have just done an amazing job with all of the kids that they have and they will continue to do that. I will not take my children anywhere else. Um, and the, I am here to show my support for them because they have done such a wonderful job and I will always show support for them.

Gordon: All right. Thank you. Someone else? Okay. Again please state your name and address.

Krull: My name is David Krull. Address 10025 Contana Court.

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

Krull: Yes.

Gordon: Thank you.

Krull: Uh, not to, there, there's a group of families that stay there you know 12, we uh usually have uh get togethers with the kids and parties, and birthday parties and so on and so forth. Um, um my self and my wife live, live all the way up on Picacho Hills and we drive every day all the way over there. Uh, typically almost 25 to 30 minutes round trip. Um, we won't take our children anywhere else. Uh, we have complete trust in them. Anything happens, if we're running late my, myself and my wife both uh work law enforcement and there's nobody else that we trust besides them. Um, there is no, nobody we, I'm sure we could find somebody here five minutes away, but we don't. Um 100% my truck, my trust, my children's trust is completely in that family and they will do anything for me. Uh what, what they might've, I wasn't here for the whole thing when they explained it to you and stuff like that but um typically we go in, drop them off, um when we pick them up I know they're, they're worried about traffic so on and so forth. Where they were living before the, the same thing came up, they were worried about traffic so on and so forth but typically what happens when we are, we're getting close to their house we're supposed to text them, they come out with our child, they put 'em in, in our

car and then we leave. That's easy as two or three minutes to, for it to happen. So these individuals here uh saying they're worried about traffic so on and so forth, it just doesn't happen. But thank you for your time.

Gordon: All right. Thank you. Someone else? All right. Again your name and your address please.

Law: My name is Bernadette Law and I live at 4763 Prentice Place.

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

Law: Yes, sir.

Gordon: Thank you.

Law: So the items that these um folks addressed is they don't know who the parents are that are coming and going. This is the second time that I've been through this process with the Caldwells. Uh, they run a reputable daycare. They go through the state. The state comes in and inspects them to make sure that they are doing what they need to do, when they need to do it including small items, like making sure your child's not walking around with a sippy cup which may seem strange to you but it's not to us. There are daycares all over Las Cruces that are not licensed so they're going about it the right way. Um, our kids are very well behaved. Many of them are here today making small noises, uh, they do have a curriculum. My daughter is four and she knows her ABC's, she can count to 100. It is a class-like, it's not just drop your kids off, turn on a movie, and let them play all day. I understand these folk's concerns but none of the issues after the daycare is started, the concerns just dwindle away because they want, they run a very well daycare. I mean we send them a text message when all, when we're on our way, Debbie brings our children out, puts them in the care, we drive off. The transaction is, is very fast. In the mornings we can only drop our kids off, sign them in, we're gone within five minutes. Everybody that goes to their daycare, they're not pedophiles. We are working parents trying to make a better life for ourselves and our children. My husband is a dentist. There's a strength and conditioning coach that teaches NMSU football. There's teachers. She doesn't just take anybody off the street, so that to me is offensive. So she runs a daycare, they're good, and they'll address all of your concerns if they, if they have issues which they shouldn't because we don't have issues where we're at now. That's all.

Gordon: All right. Thank you. Gentleman. You, you already spoken but just again please ...

Vogel: Yes.

Gordon: Give your name for the record.

Vogel: Kyle Vogel. 3740 Albion.

Gordon: All right.

Vogel: I think all of us that currently live on Albion are willing to accept the fact they've got a lot of character witnesses and, and it's nothing against the Caldwells themselves or their daycare. Our concern is the peace of our neighborhood. The fact that this is a new subdivision. That all of us were sold ... the way the, the properties were presented to us as single-family homes not businesses. If the Caldwells want a daycare, why can't they do it in a business area or an area zoned for daycare? Why do they have to do it out of their home? Like it was stated earlier, they haven't even closed on their house yet. They're waiting for approval. This is all gonna affect like I said earlier our property values. That's what we're mostly concerned with. Myself and my wife invested a lot of money in this house that we plan to retire in. You know we've, our life savings is in it. I don't want to see that thrown away. Would any of you like to have the daycare right next door or right across the street from your house? I just ask you to please think about that. Thank you.

Gordon: All right. Thank you. I, I understand from Adam that the petitioner wanted to speak after everyone spoke.

Ochoa: Yes Mr. Chairman. Whenever you're ready to close the, the, the meeting to public comment, uh and the applicant could come back up and uh possibly answer any questions that might have come up and so forth like that.

Gordon: All right. Thank you. So is there any, is there anyone else now that has any comments? All right, have you not spoken already?

AUDIENCE MEMBERS SPEAKING, NOT AT THE MICROPHONE.

Gordon: All right then please come forward. Again please state your name and your address and let me swear you in please.

Moon: My name is Deborah Moon. We live at 31, I'm sorry, 3721 Albion Avenue.

Gordon: All right, do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Moon: Absolutely.

Gordon: Thank you.

Moon: One other thing that no one has failed to mention is this community that we're talking about is still under development. There is over 50% of the homes that have, that are still vacant lots which means there is phenomenal amount of construction traffic and workers that are already on the street. It's a hazard to have additional traffic in and out of that neighborhood because these workers start at seven o'clock in the morning and they're there through the end of the day. So that's additional traffic that I don't think anybody else has considered, so thank you for your consideration.

Gordon: All right. Thank you. Anyone else? Please come forward. Again state your name and address and so I can swear you in please.

Restrepo: My name is Steven Restrepo. I live at 3745 Albion Avenue.

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

Restrepo: I do.

Gordon: Thank you.

Restrepo: I just wanna, a couple things are mentioned from the other side. They mentioned that they're all good people and it's not that we're questioning who's moving in or their character cause we don't know them to be honest. Our concern is we live there. I mean they're going there because that's a business that they're gonna take their kids, but we, at the end of the day we live there. She meant, someone mentioned that, okay kids have to destress at least for an hour. Okay, well I work midnights. I sleep during the day. Can you image walking up at one in the morning and hearing stuff because kids have to destress? Now I think I, this is where I live, this is where I bought my home and I'm not living inside the City of Las Cruces because of the fact that I wanted to be away and I could have that peace and quiet and for my family.

So, another thing I wanted to mention was the fact um they mentioned that they could vouch for everybody, that they're all good people. Can they really vouch for every single person that's going to be going through, through that place? They can't. Who's gonna be held responsible for that? So at the end of the day my main concern is we live there, 24 hours, they're going for a couple of hours, but we live there. This is my daughter. That's, that's my biggest concern. Making, making it a safe street, a safe block and I can vouch everybody that lives on my street cause I trust them, I've known them. We, we bought the relationship.

Now you're gonna add more traffic, more people that we don't, we don't know who they are. So that's all I have to say.

Gordon: All right. Thank you.

Restrepo: Thank you.

Gordon: Is there anyone else? Okay, come forward please. Again please state your name and address.

Jacobs: Rose Jacobs. 3716 Albion. I just have a question.

Gordon: Excuse me. Let me swear you in please. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Jacobs: I, I do.

Gordon: Thank you.

Jacobs: My main question is 12 children and only two people attending to them and the kids are gonna be quiet. I don't think that's possible.

Gordon: All right. Thank you. Anyone else? Gentleman in the back or the young lady coming forward can take turns here. Please, your name and address.

Law: My name is Gayle Law. I live at 1812 Salinas.

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

Law: Yes, I do.

Gordon: Thank you.

Law: I am a teacher with, in the district of Las Cruces. Um, I've been teaching for 27 years and I currently teach the DD pre-kids and I have 16 of them. I do know how noisy it can be and I also know how when there's boundaries um set by people children follow them. I have never been to Debbie and Bill's house where it has not been under control, where they do not know exactly where every child is. Can they vouch for everybody that comes in their house? Yes, they can. They know exactly what time parents come. They know what time parents leave and that's done under the state. As far as when they had a question on how many people can, ratios between caregivers and children, it's actually one to six and that's why you have to

have two for 12, just like we have ratios of teachers to children in the school district depending. Um my two grandchildren go to her and there is nobody I would trust more than bringing my kids to her house. I am comfortable every day. I know they're cared for. I know that there are boundaries that are set by them. The kids love Debbie and Bill. When we're here and if Debbie and Bill are here I could, they would probably rather run to them because that's how much care and love they have given to these kids. I cannot imagine not having somebody like them to take care of our kids. Thank you.

Gordon: All right. Thank you. The gentleman. Please state your name and address.

Terry: Uh yes, my name is Travis Terry. I hope to be the owner at 3729 at the end of September. I'm currently having a home built uh west of their property.

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

Terry: Yes sir.

Gordon: Thank you.

Terry: Once again, I want to pay respect to the Caldwells um for coming and asking for the Special Permit and I think that's the point. This is special out of the normal zoning. Um, as I talked with a, purchasing a property I kind of understood the covenants of that area and the zoning that was already in place. I'm very comfortable with the current six that's allowed in a normal situation. I would ask that the Councilors to please consider that this is special and out of the ordinary and that's why we're here tonight. So I would encourage you to turn it down for that reason. Thank you.

Gordon: All right. Thank you. All right then, is there anyone else? All right then I'll close it to the public and I'd like to hear from the petitioner again please. You've already been sworn in so go ahead.

D. Caldwell: Okay. To answer some questions about the single-family home issue. That's why you all have a Special Use Permit, for homes that are in business. There's tons of families that run businesses in their house. The ones that have the parties in the evenings and, I know of two childcare people in that neighborhood that do not go through licensing. We just do it the right way. I mean it's our choice. I mean we could do it the other way but we choose to have a reputation to withhold and that's how we do it.

Um, single-family home dwelling, this is not a commercial business. No one in this room would've known there was a childcare there until they

got the letter or the huge sign that you all put out there. I mean otherwise you wouldn't have known. We, and, and people that go out they say "Oh 12 kids outside." There's not ever 12 kids outside. We let six go outside at a time with one of us and the other six are in and then we switch them. If we choose to have 12 outside we can, it's 75 feet, square feet per child and our yard is more than big enough. If we decide to go out there and have like an all day, you know not all day but everyone out at the same time picnic or something. Um, I get what the neighbors are saying, they don't know us, they don't even give us a chance. They haven't come up and asked us anything. They haven't you know, it, it's just like it gave, it gives everybody a bad taste with how it is addressed when they want, everybody you know you got to put the sign out, you gotta send the letters. To me it doesn't explain things. They're misinformed. They don't know the state regulations. We do follow the regulations as far as everything goes, all their questions and concerns. And if, if they would get to know us like they got to know their other neighbors I feel like they've all ganged up. They've gone from house to house to house and say "Hey, hey, hey, let's do this, let's do that." And that's, we've, we've had these issues before. I mean we've, we've been up against this in the Pueblos which is a gated private community and you know it wasn't anything, a big deal after the sign came down and we were rolling, everybody was fine and they, and then they realized that it's okay, it's a good thing, it's an asset to the community. We don't want to open a commercial daycare. I can, I'm qualified to, I have had them in other states in the past when my children were little, but I, the home environment is what these families are looking for, you know the closeness. They're all intertwined somehow, someway, they've all been referred from each other somehow someway. They're all friends. Thank you.

Gordon: Uh, please don't leave the podium in case the Commission has any questions. Thank you. Anyone have any questions? Ms. Ferrary.

Ferrary: Um, yes could you tell me when, how the staggering of people arriving and leaving usually works out?

D. Caldwell: We open at seven and the first parent is usually there about 7:15, and then after that about 7:25, and that's how, so they come all the way till about 8:30, 8:45 you know and then that's breakfast. And then in the pick-up time, we have um, some school teachers that you know are finished at three o'clock so they start picking up at three o'clock all the way till six and it's just, like I say it's like six or seven cars on a, on a busy day.

Ferrary: And if there's an average of two um parents, two children per family, so that should be like six.

D. Caldwell: Six cars. Um, sometimes, all the kids, all the children do not come every day so we have some that come part time, so like uh we have one family that comes Monday and Tuesday, and then I have the, they don't come the rest of the week and then we, so that day we'll be a little slower through Wednesday, Thursday, Friday. You know I mean so we have it all worked out with schedules to where it's either 10, 11 or 12 kids at one time. Usually when there's 12 there, there's someone getting ready to leave or you know I mean it's not too crazy.

Ferrary: So your limit is by um 12 children at one time, not 12 children throughout your whole time?

D. Caldwell: No.

Ferrary: I thought it was where the family, you couldn't have more than 12 children ...

D. Caldwell: Enrolled.

Ferrary: In the program.

D. Caldwell: Right. No. Well you have as many as you can have, but you can have 12 at one time. Only 12 can be present at one time. So we do have part time. We do have a part-time, a couple part-time children that share a week. You know what I mean like he'll come Monday, Tuesday, the other one will come like Thursday and Friday.

Ferrary: So they ...

D. Caldwell: So we may have you know 15 enrolled, but 12 can only be there at one time.

Ferrary: And if you had to go with the, a, uh what is approved automatically up to six children that would be six children at one time, not you know just six children total.

D. Caldwell: Enrolled. Right, just at one time.

Ferrary: Okay.

D. Caldwell: And a, to clear something else up. We did close on our house. We own, we, we do own the house on Albion. I don't where that came from but we do own the house. We're just waiting for, we were waiting for this meeting to see you know instead of doing it twice through the state, you know what I mean. Having them come out twice and cause it's all very, you have to renew or start a new application every time. So we just are over at the

other house seeing what happens. And if they, you know I mean if it doesn't work out we'll probably rent the house out so I mean that's to answer any questions, and then you don't, you really won't know who's in there so, that's all I have to say. Thank you.

Gordon: Please don't leave. Is there anyone else? I have a couple of questions I'd like to ask. How many children do you have now at your current location that your under, that's under care? Not, not the number but are you permitted to have 12 or one to six?

D. Caldwell: Yes. No we, we had 12 for, since 2010.

Gordon: Uh huh. Uh, but you do know that by right you can have one to six under City, you can just, if you have your license you can have one to six.

D. Caldwell: Yes. I'm aware of that.

Gordon: Right.

D. Caldwell: Thank you.

Gordon: And, and you just made a statement that if you don't get more than six you will not live in that residence, you will stay where you are or perhaps move someplace else and rent this house out or sell it?

D. Caldwell: We'll decide that when we get the answer to that, yes. We don't have to, we don't have to um move in there.

Gordon: Uh hum. All right, well that's all the questions I have. Thank you.

D. Caldwell: Thank you.

Gordon: Does the Commission have any discussion?

Ferrary: Yes.

Gordon: Go, go ahead Ms. Ferrary.

Ferrary: I, um support early childhood education and think that um having uh people willing to be caregivers um for children is really advantageous to a neighborhood. I think the um concerns about construction noise and um the children um is kind of nullified um, well they aren't concerned about construction noise but I think that because there is so much construction in this neighborhood for a long time to happen will be impediment more than having the noise of a few more children, and since there are neighbors that have children themselves I think that it would be hard to

distinguish whether it's the children from the um daycare or from the neighborhood. And I think uh just because the neighborhood is uh sold as a golf course community, it's really so far uh detached from where the actual golf course is that just because you get privileges to the golf course doesn't really make it a golf course community and so I would think that the support and the people that um need to have this type of daycare um and which might change over to where it um, even the neighbors in that area would find this advantageous to be able to walk their children over to a reliable and um well educated caregivers would be a good thing for the community.

Gordon: Anyone else? Mr. Hedrick.

Hedrick: Yes sir, I uh support the uh proposal before the Commission and, and let me tell you why. This is not a single-family zoned neighborhood area. The subject property is located within the Metro Verde South PUD which permits multi uses and residential units like what is being currently proposed. The PUD was developed to create a unique development that provides community benefits such as nearby childcare services so I think it's in full compliance with the Zoning Ordinance and the Comprehensive Plan for that matter. Thank you.

Gordon: I have a, a think a, just a simple comment that um, based I think on the age of the children that are being, are there under care, they're apparently all infants there, there's no one there that's perhaps more than four or five-years-old, I can't believe that they're gonna be running around out in the backyard making an awful lot of noise whenever the time that they're out there and if they're under care when they're in the house I certainly don't think anybody's gonna hear them. I went to look at this site and I saw where the house is, I saw the tremendous amount of construction that's there which I'm sure is gonna be going on for many years. It's gonna be a long time before that area gets sold out. This is a tough call and I sympathize with the neighborhood but on the other hand I do feel that there is a need for this type of uh service and in this case um, I think that I would have to agree with the petitioner, so if no one else has any comments, perhaps we can take a vote. All right, Adam could you please just review what our options are please.

Ochoa: Yes sir Mr. Chairman. Uh your options tonight for the person who would like to make a motion is: 1) to vote "yes" and approve the Special Use Permit as recommended by staff; vote "yes" to recommend approval with certain conditions a, a determined appropriate by the Planning and Zoning Commission; 3) to vote "no" and deny the proposed Special Use Permit; or 4) to vote to table and postpone the proposed Special Use Permit and direct staff and the applicant accordingly.

Gordon: Adam let me just ask you one question, if we, if we wanted to vote yes with a condition could a condition be that they would be granted this Special Per, this Special Permit uh for just a period of time and after that time *(inaudible)* can be reviewed we could then again hear from the neighborhood, perhaps everybody would be, would be okay with what's there. We just set the, the Special Use Permit for, for a certain period of time, can that be done?

Ochoa: Mr. Chairman. That is possible. Um, the, the issue might be coming up is the applicants would have to reapply new, fees would have to be assessed again and so on and so forth like that. So it'd be like a whole new application uh essentially so it'd, it'd be kinda like a, a I'd argue it might be possibly a contract zoning if you will, like we'll allow you to do this in the meantime and that, that might be an issue sir.

Gordon: Are, are there fees involved in, in this onerous, is that there's a lot of money, is there's a lot of work to be done to, to bring this back to the Commission if we do this?

Ochoa: Mr. Chairman. There are public notice letters that need to be sent out, uh that could be a couple hundred dollars. The Special Use Permit application itself is $600 by itself, uh as well as the cost of sign, the cost of advertising in newspapers, so it, it does add up.

Gordon: Um hum.

Alvarado: I, I would not be in favor of doing that.

Ochoa: Like I said before um, those are your options tonight gentlemen, ladies and gentlemen, excuse me. Uh, uh the four options; "yes" to motion to approve the proposed SUP; the motion to approve the proposed SUP with any conditions; motion, correction motion has to be in the, in a positive form and then you vote whether uh you support it, yes or you're not supportive of it, you can vote "no."

Gordon: Can I get a, a motion uh on this petition with a condition, is this what the Commission be agreeable to that?

Ferrary: Uh yes. I move that we um accept, vote yes uh in favor of the recommendations by staff, um but with the condition that in three years we have a reevaluation of the SUP.

Gordon: Is there a second? I will second that motion. All in favor please say yes.

Ochoa: Mr. Chair.

Gordon: I'm, I'm sorry, I'll have to poll the, the my, Mr. Hedrick.

Hedrick: Uh, no, I, I don't think there's any need to review it in three years.

Gordon: All right. Ms. Ferrary.

Ferrary: I vote yes.

Gordon: Mr. Alvarado.

Alvarado: No.

Gordon: And I vote yes so.

Ochoa: Mr. Chairman now the person who made the motion to make another motion if they wish or if somebody else, the Chairman can open up for another person to make a motion since that motion failed.

Gordon: Are there any other considerations that you would think of making a motion for?

Ferrary: I make the motion that we vote yes and accept um the recommendations of the staff as um so made for, let me see the, for Case number 64856.

Ochoa: Mr. Chairman. I'm sorry, point of clarification. So the motion is to approve the proposed Special Use Permit as recommended by staff, correct?

Gordon: Yeah.

Ferrary: Yes. Thank you.

Gordon: Adam, Adam what happens if there's a tie?

Ochoa: Mr. Chairman. Then it would fail and if there's no other motions the, the, it would, it would fail essentially sir.

Hedrick: I second the motion.

Gordon: All right we have a second. So the motion is to accept recommendation by staff.

Ochoa: As, as recommended by staff, yes sir.

Gordon: As recommended by staff. All right, then I'll start on my far right, Mr. Hedrick.

Hedrick: Yes.

Gordon: Ms. Ferrary.

Ferrary: I vote yes according to discussion, findings, and site visit.

Gordon: Mr. Alvarado.

Alvarado: I'm, I'm going to vote yes because I think this is almost déjà vu all over, except for, for one thing, uh my vote is yes, I think, I think we need to support employees, employers, small businesses and especially children. Thank you.

Gordon: And based on findings, based on findings, site visit, staff recommendation, discussion I vote yes. The motion carries uh four/nothing. Uh could we just take a five-minute break please?

FIVE-MINUTE RECESS.

Gordon: Can we commence please? Five minutes are up. Are we back on air?

CCTV: Yes.

Gordon: Okay then well let's, let's get started again.

2. **Case 65154:** A Special Use Permit (SUP) application by Ann Markman on behalf of Greg Biel and Sue Maile, property owners, to allow a cat and dog pet adoption facility at an existing commercial property encompassing 0.28 +/- acres, zoned C-2 (Commercial Medium Intensity) and located within the North Mesquite Neighborhood Overlay Zone (NMO). This application also requests a variance from the NMO C-2 zoning District requirement that the kennel be located a minimum of 400 feet from any residential zoning district; the facility would be located at 194 +/- feet from an R-4 (Multi-Dwelling High Density & Limited Retail and Office) zoned property. The property is located on the west side of North Mesquite Street, 316 +/- feet south of its intersection with Madrid Avenue and further identified by Parcel ID #02-21738. Proposed use: cat and dog pet adoption center and foot bank. Council District 1 (Councilor Gandara).

Gordon: This is Case number 65154. Um Adam.

Ochoa: Thank you sir. Um, ladies and gentleman second case to night is Case 65154. It is another request for a Special Use Permit and this, but this time it is for a cat and dog kennel if you will, or a pet adoption facility and food bank, pet food bank for a property at 2205 North Mesquite Street. Subject property shown here with the stripes on it, uh as you can see in

North Mesquite, south of Madrid Avenue here uh kind of sandwiched between Solano and Main Street, just a huge amount of red and pink all commercial zoning around this area with some um multifamily high density to the south from a zoning standpoint. Uh subject property itself is approximately about 316 feet south of the intersection of North, of Mesquite Street and Madrid Avenue. Subject property currently encompasses 0.28 acres. Uh it is zoned C-2, Commercial Medium Intensity but on top of that this property is also located in what is called the North Mesquite Neighborhood Overlay. Subject property is currently a vacant commercial building and uh well vacant property really is what it is uh currently.

Shown here, the subject property, a vacant building uh with a, an I guess fenced in yard area. Some vacant commercial property to the south. Some commercial property, the applicant actually currently has a Special Use Permit and a, and a business for a, a cat adoption agency or, or a cattery if you will about two lots to the north. Um mobile home park to the west just to give you an idea of what we're looking at in this area. Um under section 38-49 which is the North Mesquite Overlay uh section of the 2001 Zoning Code it states that a commercial kennel uh, being cat or dog, is required to um pursue and obtain a Special Use Permit to be allowed in the C-2 zoning district in the North Mesquite Overlay. Um so that is what we're here for tonight is for that Special Use Permit. Accompanying that proposed Special Use Permit is uh, uh an approval to allow this with, without following basically kind of a variance if you will, an additional variance uh because there is an additional condition of allowing a commercial kennel in the North Mesquite Overlay and that is that the commercial kennel is required to be a minimum of 400 feet from any residentially zoned district boundary.

Um the applicant as I stated before is proposing a pet adoption facility and food bank for cats and dogs. The applicant has stated that the kennel uh, they don't have an exact number yet but they are looking at a, a taking care of upwards anywhere between, about 25 cats and 15 dogs indoors on site with staff on site daily. They don't really have any um exact hours that they'll be open up they're looking at being open about four days out of the week uh, anywhere between noon to five p.m. in the evening, that's on the later end if, if you will. The food bank itself will be open on Sundays. This food bank is essentially for, open to pet owners um in need of assistance for feeding their pets to try to alleviate them taking pets to shelters cause, cause they cannot afford to feed them, so that's the purpose for the food bank at this facility.

And as I stated before the proposed variance uh that, that is accompanying this SUP um essentially is the subject property is 192 feet from a residentially zoned district to the south, there is that R-4 zoned district, it's roughly about 208 feet less than the required 400 feet.

Photo shown here, that is the subject property, commercial building with the enclosed parking sized yard area. Um the aerial/zoning map we

have to the south, to the bottom here uh kind of shows you the makeup of the property, of the area if you will. The black block showing is the actual subject property. Um the yellow dots being essentially residential uses, actually I believe the one on the corner here is a commercial use, but these are residential uses you know on that street, star being commercial uses so as you can see it's a really big hodge-podge of different uses anywhere from a mobile home park, single-family homes, to a, a, it looks like a wrecking yard or, or I'm sorry, auto repair facility, uh and office uses, apartment complexes and so on and so forth like that.

When staff did their analysis we looked at several options, several things when we were doing our analysis of this case. First thing is the applicant did state that the cats and dogs will be enclosed within the building to take away any nuisances of odor or noise from the adjacent, a, a properties. The applicant is, will be providing adequate on street park, off street parking, apologies about the, the slight there, but it's off street parking for the facility on-site. The applicant has stated that the kennel will be clean and sanitized to meet all health code requirements. Uh on top of these they are also required to follow all uh requirements of what is Chapter 7 or the Animal Ordinance if you will of the City of Las Cruces which states how big a kennel needs to be, how clean it needs to be, and so on and so forth like that. City staff has determined that the proposal will not adversely impact the surrounding area and is, appears to be compatible with the surrounding area as well and would be harmonious with the purpose and intent of the 2001 Zoning Code and the Comprehensive Plan.

With that ladies and gentlemen tonight staff, after reviewing this proposed Special Use Permit uh and based on our review and all other reviewing departments in the City of Las Cruces recommends approval for the proposed SUP based on the findings located within your staff report. P&Z does have final authority on Special Use Permit cases. Here are those findings that are also found in your staff report. And when it comes to public input staff, staff did not receive any input from uh, for the proposed Special Use Permit. Our standard 500-foot radius mail-out went out and we received no input from any adjacent property owners. The applicant themselves, the applicant herself actually did have volunteers going out petitioning neighbors including the, the, the residents of the mobile home park to the west of them um and were able to, to get supportive feedback from 18 properties in that area supporting the proposed Special Use Permit and accompanying, and accompanying variance, pardon me.

With that tonight ladies and gentlemen is, your options are 1), 1) to vote "yes" to approve the request as recommended by staff for Case 65154, that one's done; 2) to vote "yes" and approve the request with conditions deemed appropriate by the Planning and Zoning Commission; 2) to, 3) to vote "no" and deny the request, and again since staff is recommending approval for this our findings are for approval of the case, if

you choose to vote to deny this you would have to state um separate list of findings for that denial; and 4) to table and postpone and direct staff and the applicant accordingly. That is the conclusion of my presentation. The applicant is here to clarify anything I may have misspoken or just to add more to it and to answer any questions. And I stand for questions as well.

Gordon: Um does anyone have any questions? Yeah. Is, is the applicant here? Can you please state your name and your address so that we can swear you in please?

Markman: My name is Anne Markman. My address is 4122 Camino Benito, Las Cruces, New Mexico, 88011.

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

Markman: Yes.

Gordon: Thank you. I had just a couple of questions ...

Markman: Can I, can I introduce one other person?

Gordon: Uh, certainly, I'm sorry.

Markman: That's okay.

Gordon: Just have her gave her name and her address and let me swear her in too please.

Meunier: My names is Michel Meunier. My address is 1042 Hillrise Court, Las Cruces, 88011.

Gordon: Okay and do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Meunier: Yes.

Gordon: Thank you. I'm sorry, go ahead.

Markman: That's okay. The reason I introduced Michel is I have been through this process one time before, so I came in with the applicant being the person with the most knowledge about it. Basically the facility would be run by Michel Meunier and her volunteers, but I am also here to offer assistance as well.

Gordon: Okay. I, I have a couple of questions just very simple, I, I was out, I went to the site to see where it was and I noticed there was this vacant lot or vacant little parcel next to the building, is that what you're going to be providing for parking?

Markman: No the actual parking uh, when I spoke with the planning staff the sub, is just for that one initial piece, the piece where the building is. The secondary, the secondary piece that's on the other side is a, a, a vacant parcel that is not part of this.

Gordon: Oh, so in other words the only thing we're talking about is just the building?

Markman: Yes, the building ...

Gordon: Oh, okay.

Markman: And the area to the south of the building which is where the parking ...

Gordon: Oh, okay.

Markman: Parking spots will be and what we established was based on the need of the space for parking the parking will be parallel to the building.

Gordon: Okay.

Markman: And there was also um a recommendation that we would have to pave that entire portion to the south as well as paving out in the front and the ADA disability spot would be in the front.

Gordon: Okay.

Markman: A, probably I would say very close, a little bit off to the side of where the red doors are.

Gordon: Okay, and are you proposing to do this?

Markman: Yes.

Gordon: Okay. And my next question, are you working in uh conjunction in any fashion with the shelter?

Markman: No. Well that's not true. Um I'll have Michel answer that.

Meunier: Well our organization um continuously rescues dogs and cats from the shelter so that's the main place where we get our cats and dogs. We um

help them by taking on the dogs that other rescue groups won't, special needs dogs, and just cats and kittens cause they're inundated.

Gordon: And, and what, what, how long do they stay with you and what do you do with them?

Meunier: We are, we have a network of foster homes so the only ones that are shown at, or the adoption center are the ones ready for adoption. If they have a foster home they just come in when we're open to show for adoption and go back to their foster homes where as the cats and kittens they are housed there to show but it's a continuous thing with the kittens where we get a set come in, they get adopted, we get another set come in, they get adopted and they don't stay there very long when they're kittens, just a few weeks, where as adult cats might you know live there for a few moths before they get adopted.

Gordon: Do you participate in any type of a spay/neuter program?

Meunier: Well all of our animals are spayed and neutered prior to adoption. We don't provide spay and neuter for the public because there's other groups that do that.

Gordon: Yes.

Meunier: But all of ours are definitely spayed and neutered before adoption.

Gordon: And, and where do you get your funding from?

Meunier: We have donations, we run fundraisers all year long, we get grants, it's just a variety of, of sources.

Gordon: An, and all the people who work for you are volunteers?

Meunier: I am a volunteer as well as, I'm the Director but I'm a volunteer director and everyone else is a volunteer as well.

Gordon: As ...

Markman: If I can add one thing just so you know, the animals are up to date with their shots and they are microchipped and they are also tested for feline leukemia.

Gordon: That's very nice. It sounds like a nice program. Thank you. That's very nice. Anyone else?

Alvarado: So there's no animals there uh over night?

Meunier: Yes there are. There's some large dogs that don't have foster homes that pretty much spend most of their time at the facility. We have a small facility right now at 800 West Picacho Avenue and the adult cats and kittens up for adoption will usually be there as well, and that we have caretakers come in morning, noon, and night when we're not open to take care of the animals.

Alvarado: But it, it's not the same animals all the time, they probably keep ...

Meunier: We rotate them, yes.

Alvarado: Moving them. Rotating.

Meunier: As much as possible. We have some places that um like Doggy Daycares that'll help us out and take dogs for a while so we can get them in a new environment, they can go play for a while and then before they come back, so we try to not keep an animal for, if an animal stays with us, like a big dog for more than 6 months I start looking for options for that animal cause I don't want them to get stuck in a kennel.

Alvarado: I see. Thank you.

Markman: And also just to let you know that uh we, the facility will be in compliance with animal codes and codes, codes enforcement.

Gordon: And ... Ms. Ferrary.

Ferrary: Uh yes, um looking at this um photo the lot to the south is part of the property that you're going to be using so the lot that is to the north between you and Cats Meow is going to continue to be vacant?

Markman: We consider, it will be considered to I think *(inaudible)* all, all they'll do is maintain the weeds to make sure that they're in compliance with codes also.

Ferrary: But that's not part of the ...

Markman: No, that's not part of this Special Use Permit.

Ferrary: Okay. And will the um southern area be used to um exercise or walk the dogs during the day?

Markman: Probably very limited but Michel could answer that better than I can.

Meunier: In our current place we have a little backyard where we use for meet and greets and to let the dogs out to potty, but mostly we have volunteers that come walk the dogs and spend time with dogs that way. But we will have some times when we will have dogs outside to play but it's very limited, mostly it's potty breaks one at a time so they don't make much noise.

Ferrary: Yes. Okay, so it's um not just gonna be an open area where dogs are just let loose to run.

Meunier: No, they'll be small yards that we will fence in so they're not just going to be running around that whole yard, no.

Ferrary: Okay.

Gordon: Anyone else? Well thank you very much.

Markman: Thank you.

Gordon: Adam. Does anybody from the public who has anything to speak? All right in that case I guess you can tell us what our options are, again.

Ochoa: Yes Mr. Chairman. Again your, your options tonight ladies and gentleman is: 1) to vote "yes" and approve the request as recommended by staff for Case 65154; 2) to vote "yes" and approve the request with any conditions deemed appropriate by the Planning and Zoning Commission; 3) to vote "no" and deny the request; or 4) table/postpone, and direct staff and the applicant accordingly.

Gordon: All right. Thank you. Can I have a motion on …

Ferrary: Did you want to have more discussion?

Gordon: I'm, I'm sorry?

Ferrary: Did we want to have more discussion between us?

Gordon: Oh, I'm sorry. Is there any further discussion?

Ferrary: Uh yes, I'd like to just note that I think because the um group has gone to the extent of talking to the different people who live close by and getting such uh support and also because this is going to um help uh the group expand their um facility and um be able to house more pets and to get them adopted as a, a supplement to what the shelter is doing, that um I think this is a, a really a great move for APA.

Gordon: All right. Thank you. Anyone else? All right in that case I'd like to entertain a motion for Case number 65154. Ms. Ferrary.

Ferrary: I move that we approve the Special Use Permit um and uh the staff recommendations and approve the request as recommended for Case 65154.

Gordon: Is there a second?

Hedrick: I'd like to second the motion along with the variance.

Gordon: All right, in that case we can take a vote. Let me start on my right. Mr. Hedrick.

Hedrick: Yes.

Gordon: Ms. Ferrary.

Ferrary: I vote yes according to discussion, um site visit, and uh findings.

Gordon: Mr. Alvarado.

Alvarado: I vote yes based on discussion, findings, and site visit.

Gordon: And I vote yes based on staff recommendations, findings, discussions, and site visit. And I wish to say thank you for all the work that you do, that's very nice.

3. **Case 65729W:** Application of Donohue Land Surveys, on behalf of Sylvia Cardon to waive 100% of the road improvement requirements for Bell Road. The proposed waiver is associated with improvements required for a proposed preliminary plat known as Cardon Estates on a 2.40 +/- care tract located on the west side of Bell Road, 336 +/- feet south of its intersection with Stanley Road; a.k.a. 5301 Bell Road; Parcel ID# 02-19810. Proposed Use: Three (3) new single-family residential lots. Council District 5 (Councilor Sorg.)

Gordon: In that case we can move onto Case number 65729W. Adam.

Ochoa: One more time, yes sir. Last case tonight ladies and gentlemen is Case 65729W. It is a request for approval of a waiver request to the required road improvements for a proposed uh subdivision known as Cardon Estates Subdivision for a property located at 5301 Bell Road, Bell Road. As you can see the subject property here in the blue color, as you can it is in the very far east outskirts of town, um north of Highway 70, um south of

Stanley Road here. To get to there you go east on Holman Road to the east.

Subject property is on the west side of Bell Road actually about 336 feet south of its intersection with Stanley Road. Subject property actually currently encompasses 2.4 acres, so it is real, relatively large property. Currently it is a non-conforming property, uh with multiple residences on it. There are two mobile homes on one lot now. That property was annexed into the City that way so it is an existing non-conforming property. Considering the property is zoned REM which is single-family residential mobile estate where you're only allowed to have one home, but as I stated before this was annexed into the City like that, it is allowed to continue as is.

Subject property does front Bell Road. Bell Road is a, about a 20-foot wide paved roadway currently. There are currently 50-feet of right-of-way which is what's required for a minor local roadway which is what this is, um as required by our Design Standards. The property has never been previously subdivided. It is a, an original USRS tract. Subject property shown here, uh as you can see there are those two mobile homes there. Bell Road going from north to south, as you can see it actually dead ends right where the property ends as well, Stanley Road to the north. As you can see multiple type of units around this area, a lot of mobile homes, some single, site built single-family homes as well. As you can see there are other properties out here with multiple mobile homes on the properties as well. Here are some um pictures of the existing roadway. Um looks can be deceiving, it looks like it's graveled and dirt but that's just a lot of washout, it actually is a paved. Staff did go out there and kick around and sweep around the road and made sure there was pavement there. So it is a paved 20-foot wide section. The applicant is proposing essentially to subdivide the exiting tract into three new single-family lots, each lot encompassing approximately 0.8 acres with a, one of the exiting homes on lots one and two and then a new home to be put on lot three. This is, the property owner is essentially an elder mother who would like to move on to that property with her children who actually live there now with the two mobile homes. Uh this subdivision would allow them to have one home on each lot, essentially bringing the property into compliance if you will with one home per property uh and the 0.8 acres do meet the minimum lot size requirement of the existing REM zoning designation out there.

Um design standards of section 32-36 does require for any subdivider in the City of Las Cruces to provide all necessary dedication and improvements to all adjacent roadways. As I stated before the property is already a full 50-feet of right-of-way so that already meets the responsibilities for a dedication, but it is required to be, the property, I'm sorry, the, the road is required to be essentially built out to full cross section, 50-feet, 50-foot road adjacent to the proposed subdivision on Bell Road, so it's just that section in front of the property. Uh the applicant is

proposing to provide no roadway improvements, as I stated before uh the applicant is a, a widow, an elderly woman who uh basically stated that the required roadway improvements would create a substantial hardship for herself and her family and the applicant has stated that she is wanting to subdivide like I said in order to live next to her family. Uh the required road improvements as she states are not, or I'm sorry, by her representative, improvements are not warranted for simply subdividing a large single-family residential tract into three new large still single-family residential lots.

Here is kind of a, a look at what those three lots will look fronting Bell Road, as you can see here each one over 0.8 acres in size, Bell Road to the east here with the 50-foot wide right-of-way with a 20-foot paved roadway. So essentially by following City Design Standards the applicant is required to essentially build out the, all 50-foot wide cross section or the whole 50-foot wide roadway adjacent to this subdivision here. Shown here on the aerial again, that section that would have to be built, roughly about 330 feet in length adjacent to the subject property. Here is a, right out of our design standards, what that roadway might look like if you will a cross section of what it would have to look like um with uh 32-feet wide of pavement with a curb/gutter sidewalk and uh possibly a parkway and uh streetlights as well if warranted.

Um the hardships expressed by the applicant unfortunately do not demonstrate a substantial hardship as outlined in, in our codes essentially under Article 6, section 37-332. The way it reads is that the hardship actually must be due to exceptional physical issues, uh exceptional topographic, soil, or other surface or subsurface conditions, that would basically make it essentially impossible for them to build the road, that has not been shown for this proposed waiver request.

Staff did send out our standard mail outs, advertisements and so on and so forth like that and staff has received no public input on the proposed waiver request. Staff just received one phone call from a neighbor on Bell Road as well just being curious but had no opinion on it. The case went before our, the Development Review Committee on May 5th, 2016, the DRC is a, does review subdivisions from an infrastructure, utility, and improvement standpoint. Um during the meeting there was discussion on the applicant's justification for the waiver request uh and what, after some other minor discussion the DRC did recommend denial for the proposed waiver request to the Planning and Zoning Commission.

So with that, based on the City of Las Cruces Subdivision Ordinance, the Design Standards, and the unfavorable recommendation by the DRC, staff recommends denial of the waiver request based on the findings found in your staff report. The Planning and Zoning Commission is the recommending body to City Council for waivers. Essentially City Council will have final action on this waiver request. Here are those findings that staff put in your staff report for denial, as I stated before. And with that tonight ladies and gentlemen your options are: 1) to vote "yes"

and recommend approval for the waiver request to the City Council; 2) to vote "yes" and recommend approval of the waiver request with a conditions deemed appropriate by the P&Z; 2) to vote "no" and recommend denial for the waiver request as recommended by staff; or 4) to table and postpone and direct staff and the applicant accordingly. That is the conclusion of my presentation. The applicant's representative is here if you have any questions for them and I stand for questions as well.

Gordon: Commission.

Ferrary: Um Adam with the way that this is being subdivided um from Bell um do we need to, if we do approve this, um also need to have a condition of access being provided, right-of-way through the first property or somehow through there to be able to get to all three or the other two.

Ochoa: Mr. Chairman, Commissioner Ferrary. Pardon me, um Mr. Chairman, Commissioner Ferrary all three lots actually do front Bell Road, so that is actually a subdivision requirement uh, a requirement from our Subdivision Code that all residential lots are required to have direct access to right-of-way and all three lots do have direct access to right-of-way which is Bell Road.

Ferrary: Can you go to the aerial? Do we have an aerial of this um and explain how then that would be divided without having to move the, one of the two uh mobile homes?

Ochoa: Mr. Chairman, Commissioner Ferrary. One of the mobile homes would have to be moved into one of the new lots that are being created. The lots will essentially run east to west so if you follow my cursor here to be one lot here, two lots, and then three lots in the bottom. So both mobile homes may have to move in order to meet setback requirements as well but one would definitely have to be moved to one of the new lots and make sure that it meets setback requirements as well. So as they exist now they'd have to move essentially in order to meet, in order to be in their new lots if you will.

Ferrary: Do we have to provide that as a condition or is that automatic and they, and what is the compliance, you know who would make sure that that was done?

Ochoa: Mr. Chairman, Commissioner Ferrary. That would be a requirement. There is no waiver request to that. They would have to move the mobile homes, each one to, to a new lot. And staff before we actually would release the final, uh, uh subdivision if this does get approved, they go through the preliminary plat process which would have to come before you as well cause they're creating three lots and then the final plat process

which is taken care administratively, staff would make sure that the mobile homes are moved to meet all of our requirements before we finalize and allow for that subdivision to be filed and made legal if you will.

Ferrary: And you stated that there were no um, a reports of opposition to this?

Ochoa: Mr. Chairman, Commissioner Ferrary. That is correct. Like I said, there was only one phone call uh, I believe from uh somebody near the corner of Stanley and Bell Road, just asking what was going on and uh them potentially coming forward in the future for their own subdivision as well.

Ferrary: Thank you.

Gordon: Mr. Alvarado.

Alvarado: I have a couple of questions or maybe a question and a comment. This has nothing to do with a, with a current request, but will they each have to have their own septic tank?

Ochoa: Mr. Chairman, uh Commissioner Alvarado. Essentially, essentially yes. Each mobile home if there's not sewer out there for them to tap into they would have to provide their own septic system for each lot, each home and that process would have to go through the New Mexico Environmental Department for approval.

Alvarado: I don't think there's any sewer out there. I mean I didn't see any, any evidence of it in the roads.

Ochoa: Mr. ...

Albuquerque The roads are all unpaved.

Ochoa: Mr. Chairman, Commissioner Alvarado. That is correct. They, they are paved, a little, paved a while ago it looks like but they are paved. Um our utilizes department did mention that there were um, um some, there's sewer uh not really close by but within the vicinity but uh they did state in their comments that in the future um they are looking at extending sewer uh out to this area that they would have the option to tap into City sewer as long as they um pay all costs and uh impact fees and so forth like that.

Alvarado: Who paved that wide road that's out there, was that the County or the City?

Las Cruces Mr. Chairman, um Commissioner Alvarado. I believe that was paved before it was into the City so yeah it was probably somebody in the County or the developer of that area, that is correct sir.

Alvarado: And then my, my other question is, is I, I don't know that you or anybody else knows what was the logic of the City to annexing all these areas when they knew that there was no road, no, no sewers, no water, no streets, nothing that somebody and it was, it should've been apparent back then but since there were no developers like there are now in the Red Hawk area, that the City was, the City or somebody was going to eventually have to put all that infrastructure in. Who, who did they think was going to do it? I, I don't know if you can tell me or you know if anybody can tell me.

Ochoa: Sure. Um Mr. Chairman, Commissioner Alvarado. Um I believe the City, I don't know exactly what the actual justification was for annexing those areas into the City uh but what I do know is that it is a little easier for the City to obtain grants and federal grants and funding for paving of roads and so forth like that than the County would uh so that might be one logic for putting these properties into the City. Additionally, if you look at a lot of these lots out there including this one are far larger than the minimum lots as requirement of their zoning districts. And as the code states a subdivider is responsible for providing road improvements to their, to their subdivision so that might be taken care by itself as well, just like some vacant property that was also annexed into the City which, in the nearby area they're all smaller lots, the subdivider actually paved those lots and paved the road to access those lots in that subdivision, of course that's a, you know couple hundred lots as compared to you know three lots that for a family that they're trying to do now, but unfortunately the Subdivision Code and our, our Zoning Code, I'm sorry, Subdivision Code and Design Standards don't differentiate between somebody splitting up a lot between them and their children and somebody creating a Metro Verde if you will uh, uh in the City of Las Cruces everybody's seen as a subdivider so a subdivider is responsible for building those roads there.

Alvarado: Some of those areas have been annexed for over 30 years, over 30 years and the City hasn't put one footprint over there. Not only no water, nothing at all, no fire hydrants, nothing. So I don't know, I don't know how long it's gonna take.

Ochoa: It's a slow process sir.

Alvarado: Another 30 maybe. Sorry and thank you.

Ochoa: Thank you.

Gordon: Adam.

Ochoa: Yes sir.

Gordon: But the issue at hand now is just to either a, approve or deny the waiver for the road improvements, the cost of the road improvements, we're not talking about subdivisions or anything like that, we're just talking about waiving the cost of road improvements, correct?

Ochoa: Mr. Chairman. To a point, yes that is correct. It is a request or to approve or deny, recommend approval or denial, pardon me, for a waiver request to road improvements associated with a future subdivision that'll be coming in if ...

Gordon: Right.

Ochoa: This gets approved.

Gordon: It would be their patient proportional share.

Ochoa: Yes sir, that is correct, for the proportionate share of road improvements which essentially be the portion of Bell Road fronting their lot.

Gordon: Okay. Well I have to tell you this is like déjà vu all over again, all over again, all over again. Since I've been on the Commission we've had this item now three or four times. I, I've spoken to someone on City Council, they were supposed to have addressed this issue about people who have bought this land many years ago when it belonged to the County, when they had every intent to do what they want to do today without having the headaches of which they are met with at the current time, they wouldn't have had, if this land still was in the County and I don't know why it keeps coming to us because as far as I'm concerned I'm always gonna grant the waiver. I, I just can't believe that these people just get trapped. I mean you just don't have any choice. You, you never intended, especially some of these people who have been there like Mr. Alvarado said, maybe more than 30 years ago, I don't know how long. I haven't been here that long, but I've been out there and can see what's there and first of all this is a dead end. This road isn't even going anywhere; it terminates at this property. So I don't know, I'm hoping that some day and I was promised by someone on City Council, I don't think it's necessary to mention his or her name that this matter was going to be taken up by City Council to rectify these types of situations so that this matter wouldn't be kept coming to the Planning and Zoning for the same things over and over and over again. Uh that's my only comment.

Ferrary: I ...

Alvarado: Sorry, go ahead.

Gordon: I'm sorry, Ms. Ferrary.

Ferrary: I agree and I think we've gone to as great an extent as we can of putting it into the record that we'd like the City Council to address this problem of you know making it so that if we would like to have people um contribute to the development of the road when it's appropriate, um that they either are assessed a small amount over the next 20 years which probably is what it's gonna take before this area really needs to have, have the roads um developed, um and if they haven't taken action yet and maybe will soon, um that we could go ahead in good conscious and um support the waivers and I feel bad that on the waivers that we did not grant, possibly those people could come back and we could do something that would appease their um development of their property for circumstances such as this. So I'm, I'm in favor of approving this.

Gordon: Mr. Alvarado.

Alvarado: I, I just for the record, record, I own some property over on the other side, Melody Lane and Jordan Road and I have been asking City Councilors back since uh what was, what was the guys name, uh Holton, Councilor Holtum and Councilor Holtum told me "I can't do anything about it because I wasn't on the Council when it got annexed so I'm really sorry." So that's, and I've asked every Councilor since then. I've asked representatives, I've asked Senators that represent that area and nothing's ever been done. Nothing.

Gordon: Mr. Hedrick.

Hedrick: I uh will not be supporting the uh, uh proposal. While I have empathy for those who uh are involved and are, are making the, request, in my view approval of this will continue and perpetuate the problem, not solve the problem. And the code is very clear, specifically the hardship must be due to exceptional topographic, soil, or other surface or subsurface conditions where such conditions that were to result inhibiting the objectives of the code. No evidence has been forthcoming uh to meet that criteria.

Gordon: If there are no other comments uh does the petitioner have anything they'd like to say? Would you, would you please state your name and your address and, so that I can swear you in please?

Donohue: Gerry Donohue, 100 Wyatt Drive, Las Cruces.

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

Donohue: So help me God.

Gordon: Thank you.

Donohue: Um I appreciate the, the comment that I got from Commissioner Hedrick. It does not meet the exact definition of what constitutes a viable waiver, however the intention of the subdivision act is to promote the harmonious development of the community and this road dead ends into BLM property which is not subject to development. Um and as such it would be um, it would be a dead end development. The, the need for that road doesn't exist. Uh, I don't know if, if I can put that into terms that, that meet the code but, but what, what was intended there was to provide a road that would facilitate growth, not harmonious growth, and, and this doesn't meet that condition. Um so we, we wanted to come before you with the waiver request prior to doing the subdivision. The subdivision will be done as it's shown on that preliminary plat that, that you have in your packet where all three lots front on Bell Road, we'll adhere to that and each lot will have to uh, each home will have to be located on a lot, they'll have to be relocated as part of the process. Um, the, I don't know if you're aware of the cost of uh developing 350-feet of 50-feet wide, but it's a, it's a significant amount um. City Engineering said that they really thought we should improve it out to Stanley Road, um but, but I would appreciate your consideration in this case. I know that you have to handle them individually and um, yeah, so if there's any questions I can answer I'll be glad to.

Gordon: Does the Commission have any questions? None. Thank you.

Donohue: Thank you.

Gordon: Adam. I, I guess Adam it's time for you to give us your options again so we know exactly what we're gonna vote.

Ochoa: No problem. Yes sir. Uh your options tonight are again: 1) to vote "yes" and recommend approval for the waiver request; 2), and since, just keep in mind since staff is recommending denial for this the findings in your staff report are supporting a vote for denial. So if you do vote to recommend approval for this, to vote yes, you would have to state uh new findings essentially uh supporting your vote if you will. 2) is to vote "yes" and recommend approval of the waiver request with conditions deemed appropriate by the P&Z; 3) to vote "no" and recommend denial of the waiver request as recommended by staff; and 4) to table/postpone and direct staff and the applicant accordingly.

Gordon: All right, thank you. Do we have a motion on Case number 65729W?

Alvarado: I make a motion to approve the waiver under Case 65729W, Cardon Estates.

Gordon: Do we have a second?

Ferrary: I'll second.

Gordon: Ms. Ferrary seconds. All right, in that case we can take a vote starting on my far right, Mr. Hedrick.

Hedrick: I vote no. I concur with staff's findings for denial.

Gordon: Ms. Ferrary.

Ferrary: I vote yes um because of uh findings that this needs to be um approved even though we don't have the findings from staff.

Gordon: Mr. Alvarado.

Alvarado: I vote yes on site visit and under the condition, conditions and the conditions under which this waiver was requested.

Gordon: And I vote yes based on the site visit, uh discussions this evening, and I feel that the need for uh the waiver should be granted due to fact of situation which has gone on for too many years. I think that the City should uh have resolved this issue a long time ago to avoid this problem and I hope that we don't have it again.

IX. OTHER BUSINESS

Gordon: All right, is there any other business? Adam.

Ochoa: No sir, no other business tonight.

X. PUBLIC PARTICIPATION

Gordon: Is there any further public participation?

Ochoa: There's nobody left sir.

Gordon: Okay.

XI. STAFF ANNOUNCEMENTS

Gordon: Are there any ...

Alvarado: Adjournment.

Gordon: Wait a minute, are there any Staff Announcements?

Ochoa: Yes sir, just one announcement. As you've all probably received the e-mail uh Commissioner Beard is no longer on the Planning and Zoning Commission. He served us a long, great long time as our, as our, a Commissioner for District 2. Uh he has been replaced by a new Commissioner who was sorry she couldn't be here, um, yes she. But she had some prior engagement before being appointed to the Planning and Zoning Commission. Her name is Ms. LaVonne Muniz and she will be at our next meeting in June. Uh but uh at that meeting hopefully we'll have our Chairman there hopefully won't be stuck in traffic that time and uh we get a couple more Commissioners here because Commissioner Beard was our Secretary, uh since he is gone we would have to vote for a new, to appoint a new Secretary for the Planning and Zoning Commission.

Gordon: All right. Thank you Adam.

XII. ADJOURNMENT (8:05 p.m.)

Gordon: If there are no further staff announcements and no other comments from the Commission, I'd like to take a, get a motion to adjourn.

Alvarado: Move, move for adjournment.

Gordon: Mr. Alvarado. Second. I'll second. Can I second?

Ochoa: Yes you can.

Gordon: I second. And we are adjourned at 8:05. Thank you.

6-28-16

Chairperson